



U.S. Department of Justice

Special Counsel's Office

Special Counsel's Office

Washington, D.C. 20530

November 23, 2023

Mark J. Langer
Clerk, U.S. Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue NW
Washington, DC 20001

Re: *United States v. Donald J. Trump*, No. 23-3190
(Argued November 20, 2023)

Dear Mr. Langer:

The Government submits this letter pursuant to Federal Rule of Appellate Procedure 28(j), to notify the Court of a document filed on November 22, 2023, in connection with the appeal of an order imposed in *New York v. Trump, et al.*, Index No. 452564/2022, which was referenced in the parties' briefing, *see* Govt. Br. at 6-7; Def. Reply at 2, 9, and arises out of an incident that the district court discussed at the October 16, 2023 hearing, *see* JA.192-93. Specifically, the Government refers the Court to Exhibit E to the attached affidavit, which is a sworn affirmation by an employee of the New York State Unified Court System, assigned to the Judicial Threats Assessment Unit, discussing the defendant's October 3, 2023 social media post, which "resulted in hundreds of threatening and harassing voicemail messages that have been transcribed into over 275 single spaced pages."

Because the parties referenced this matter in their briefs, and the Court inquired at oral argument about evidence of ongoing threats and harassment, the Government respectfully submits Exhibit E (and the related documents, for completeness) as supplemental authority.

Respectfully,

/s/ Cecil W. VanDevender
Cecil W. VanDevender
Assistant Special Counsel
U.S. Department of Justice
950 Pennsylvania Ave, N.W.
Rm. B-206
Washington, D.C. 20530

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

In the Matter of the Application of

DONALD J. TRUMP, DONALD J. TRUMP, JR.,
ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY
MCCONNEY, THE DONALD J. REVOCABLE
TRUST, THE TRUMP ORGANIZATION, INC.,
THE TRUMP ORGANIZATION, LLC, DJT HOLDINGS
LLC, DJT HOLDINGS MANAGING MEMBER,
TRUMP ENDEAVOR 12 LLC, TRUMP OLD POST
OFFICE LLC, 40 WALL STREET LLC,
AND SEVEN SPRINGS LLC,

Case No. 2023-05859

**AFFIRMATION
IN OPPOSITION**

Petitioners,

for a Judgment pursuant to Article 78
of the Civil Practice Law and Rules

-against-

THE HONORABLE ARTHUR F. ENGORON,
J.S.C., AND PEOPLE OF THE STATE OF NEW YORK
by LETITIA JAMES, ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Respondents.

LISA M. EVANS, an attorney duly admitted to practice law before the Courts of the
State of New York, affirms under penalties of perjury, the truth of the following:

1. I am a Deputy Counsel in the Office of Court Administration of the State of New
York, and am of counsel to David Nocenti, attorney for Justice Arthur F. Engoron, a Justice of the
Supreme Court, New York County (“Justice Engoron”). I make this affirmation in opposition to
Petitioners’ request for a stay of the enforcement of the limited gag orders issued by Justice
Engoron in *People of the State of New York v. Donald Trump, et al.*, Index No. 452564/2022.

2. On or about November 16, 2023, Petitioners filed the within Article 78 proceeding by Order to Show Cause, seeking, *inter alia*, a stay of four gag orders issued by Justice Engoron in an ongoing trial before him pending an adjudication of their article 78 petition. On October 3, 2023, Justice Engoron issued a limited gag order prohibiting all parties in the underlying action from making any public statements about members of his staff (See October 3, 2023 Transcript annexed hereto as Exhibit A). On October 20, 2023, the court issued its second order sanctioning Petitioner Donald J. Trump for violating the October 3, 2023 order for failing to remove a disparaging and untrue post of his law clerk from his web site (See October 20, 2023 Order annexed hereto as Exhibit B).

3. The Court issued its third order on October 26, 2023, again sanctioning Donald J. Trump for violating the October 3, 2023 gag order on October 25, 2023, when Mr. Trump, during a break in the trial, made the following statement to the press outside of the courtroom: “This judge is a very partisan judge with a person who’s very partisan sitting alongside him, perhaps even more partisan than he is.” The Court found that this statement was referring to his Principal Law Clerk and in violation of the October 3, 2023 order (See October 26, 2023 Order annexed hereto as Exhibit C). On November 3, 2023, the Court issued a fourth order prohibiting “all counsel from making any public statements, in or out of court, that refer to *any* confidential communications, in any form, between my staff and me.” (See November 3, 2023 Order annexed as Exhibit D).

4. Petitioners’ application for a stay of the gag orders pending the adjudication of the within article 78 proceeding should be denied. Petitioners have no likelihood of success on the merits. By this proceeding, petitioners are seeking the extraordinary remedy of prohibition which “lies only where there is a clear legal right and only when the body or officer acts or threatens to

act without jurisdiction over which it has no power over the subject matter or *where* it exceed[s] its authorized powers in a proceeding over which it has jurisdiction.” *Hirschfeld v. Friedman*, 307 A. D. 2d 856, 858 (1st Dep’t 2003) quoting *Matter of Holtzman v. Goldman*, 71 N.Y. 2d 564, 569 (1988). “Prohibition is never available merely to correct or prevent trial errors of substantive law or procedure, however grievous.” *Matter of Hirschfeld*, 307 A. D. 2d at 858.

5. Petitioners cannot establish that they have a clear legal right to the relief sought. Petitioners allege that the gag orders violate their First Amendment Right to free speech. While prior restraints are viewed with a strong presumption against their validity, this Court has recognized that “reasonable limitations may be placed on speech where an important countervailing interest is being served.” *Fischetti v. Scherer*, 44 A.D. 3d 89, 93 (1st Dep’t 2007) Here, as set forth in the Affirmation of Charles Hollon annexed hereto as Exhibit E, it is unquestionable that the conduct engaged in by Petitioners -- the deluge of the court’s chambers phone and the law clerk’s personal cell phone, personal emails and social media accounts with hundreds of threatening, harassing, disparaging and antisemitic messages -- which threatens the safety of court staff is the type of countervailing interest being served that warrants the imposition of the limited gag orders imposed by the Court.

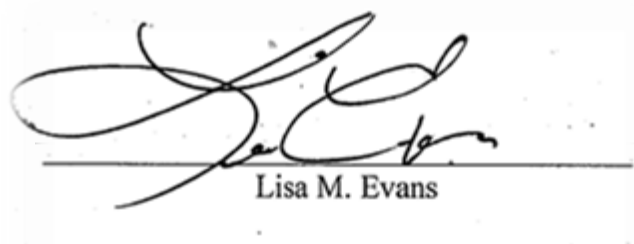
6. The First Amendment does not prohibit courts from limiting speech that threatens the safety of the court’s staff. Courts have broad discretion to control the conduct of litigants and attorneys in ongoing proceedings. *Sheppard v. Maxwell*, 384 U. S. 333, 363 (1966) (“The Court must take such steps by rule and regulation that will protect their process from prejudicial interference.”). Here, the Court reasonably determined that the limited gag orders were necessary for the protection of its staff and to protect the ongoing trial from prejudicial interferences. While

freedom of expression is given wide range, “it must not be allowed to divert the trial from the very purpose of a court system to adjudicate controversies, both criminal and civil, in the calmness and solemnity of courtroom according to legal procedure.” *Sheppard*, 384 U.S. 350-51.

7. Petitioners also seek a stay of the sanctions imposed against Mr. Trump for violating the gag orders. The issue of granting a stay is moot since, as petitioners concede, Mr. Trump already has paid the sanctions. *See*, Petition ¶ 107.

8. Based on the foregoing and for the reasons set forth in the Affirmation in Opposition to Motion for a Stay submitted by the New York State Attorney General, it is respectfully requested that Petitioners’ application for a stay of the gag orders and sanctions imposed for violating the court’s gag orders be denied.

November 22, 2023



Lisa M. Evans

EXHIBIT A

In The Matter Of:

*People of the State of New York v.
Donald J. Trump, et al - CORRECTED*

October 3, 2023

So Ordered

(AE)

10/26/2023

HON. ARTHUR F. ENGORON J.S.C.

OCT 26 2023

Original File People v. Trump 10-3-2023 - CORRECTED.txt

Min-U-Script® with Word Index

10/3.

People of the State of New York v. Donald J. Trump, et al - CORRECTED

October 3, 2023

D. Bender - Direct by Mr. Wallace Page 267

1 through the document, please.

2 Mr. Bender, do you recognize this document?

3 A The document --

4 Q What's that?

5 A Repeat the question, please?

6 Q Do you recognize this document?

7 A Yes, I do.

8 Q What is this document?

9 A This is the representation letter for the DJT -- the

10 compilation of the personal financial statement of Donald J.

11 Trump, as of June 30, 2020.

12 MR. WALLACE: If we could go to the bottom of

13 this document.

14 Q Do you recognize the signature on the left hand side

15 of the screen?

16 A Yes, I do.

17 Q Whose signature is that?

18 A It's Allen Weisselberg.

19 Q And in what capacity is Mr. Weisselberg signing this

20 document?

21 A Chief Financial Officer and Trustee of the Donald J.

22 Trump Revocable Trust.

23 Q And do you recognize the signature on the right hand

24 side?

25 A Yes, I do.

D. Bender - Direct by Mr. Wallace Page 268

1 Q Whose signature is that?

2 A That's Donald J. Trump, Junior's signature.

3 Q And in what capacity is he signing this document?

4 A Executive Vice President of the Trump Organization,

5 and Trustee of the Donald J. Trump Revocable Trust.

6 MR. WALLACE: Your Honor, we would ask that this

7 document be entered into evidence?

8 THE COURT: Granted. It's in evidence.

9 (Whereupon, Plaintiff's Exhibit 855 was received

10 in evidence.)

11 Q And Mr. Bender, would Mazars have issued the 2020

12 Statement of Financial Condition if Mr. Weisselberg and

13 Mr. Trump did not offer these representations?

14 A No, we would not have.

15 Q Would Mazars have issued the 2020 Statement of

16 Financial Condition if it knew that any representations

17 contained in this letter were false?

18 A No, we would not have.

19 Q Mr. Bender, did you work on Statements of Financial

20 Condition for Mr. Trump in any later years?

21 A No, we did not.

22 Q Why not?

23 A Mazars disengaged from the Trump Organization.

24 Q And did you have any involvement in the decision to

25 disengage from the Trump engagement?

D. Bender - Direct by Mr. Wallace Page 269

1 A No, I did not.

2 Q After the time that you disengaged from the Trump

3 engagement, did you have any personal contact with Donald J.

4 Trump?

5 A No, I did not.

6 Q Before seeing him in the courtroom the last two days,

7 when was the last time you saw Donald J. Trump in person?

8 A It was before Covid. It was December, 2019.

9 Q And do you remember in what context that was?

10 A Yes. Ms. Trump had invited by son to a

11 Christmas party for children, to make ornaments, and I had to

12 get some papers signed by Mr. and Ms. Trump.

13 Q Since that meeting, did you have any conversations

14 with Mr. Trump?

15 A No, I have not.

16 Q Did you have any conversations with Mr. Trump about

17 the decision by Mazars to end the engagement with the Trump

18 Organization?

19 A No, I did not.

20 Q Did you have any in-person meetings with Mr. Trump

21 about the decision by Mazars to end to the relationship with the

22 Trump Organization?

23 A No, I did not.

24 MR. WALLACE: Your Honor, we reserve our right to

25 re-direct; or cross, if they go beyond the scope of his

D. Bender - Direct by Mr. Wallace Page 270

1 testimony. We have no more questions at this time, of

2 Mr. Bender.

3 THE COURT: Mr. Kise, do you want five minutes to

4 cross exam?

5 MR. KISE: Do we want to -- just, probably better

6 to just take our break.

7 THE COURT: I thought you would say that. Give

8 me one second.

9 (Whereupon, there was a pause in the

10 proceedings.)

11 THE COURT: Okay. We are going to resume at

12 2:15. Have a good lunch, everybody.

13 (Whereupon, a recess was taken.)

14 * * * * *

15 THE COURT: Welcome back, everyone.

16 This morning, one of the defendants posted, to a

17 social media account, a disparaging, untrue and personally

18 identifying post about a member of my staff. Although I

19 have since order the post deleted, and apparently it was,

20 it was also emailed out to millions of other recipients.

21 Personal attacks on members of my court staff are

22 unacceptable, inappropriate, and I will not tolerate them,

23 under any circumstances. Yesterday, off the record, I

24 warned counsel of this, and this was disregarded. My

25 warning was disregarded.

2063

People of the State of New York v. Donald J. Trump, et al - CORRECTED

October 3, 2023

Proceedings Page 271

1 Consider this statement a gag order forbidding
 2 all parties from posting, emailing, or speaking publicly
 3 about any members of my staff. Any failure to abide by
 4 this directive will result in serious sanctions. I hope
 5 I've been very clear.
 6 Okay. Let's get Mr. Bender back.
 7 MR. KISE: While we're waiting, Judge, I'll just
 8 observe, this will be better for me because I don't have to
 9 stand up and object when there's a document, since it's
 10 cross examination.
 11 THE COURT: Are we up to cross?
 12 MR. SUAREZ: Your Honor, I'll take the
 13 opportunity to introduce myself. My name is Jesus Suarez.
 14 Thank you for admitting me, pro hac vice. I practice with
 15 Mr. Kise, in Florida.
 16 THE COURT: Of course. I remember the
 17 application.
 18 MR. SUAREZ: I don't speak as nicely as he does.
 19 THE COURT: Well, almost nobody does, so --
 20 MR. SUAREZ: Is my mike on? Now my mike is on.
 21 THE COURT: Is he as good in the office as he is
 22 in court?
 23 MR. SUAREZ: He is certainly as charming in the
 24 office as he is in court, but he almost never picks up
 25 lunch. I don't know what that's about.

D. Bender - Cross by Mr. Suarez Page 273

1 Q And Mr. Bender, preparing the president's Statements
 2 of Financial Condition, that was a big job; wasn't it,
 3 Mr. Bender?
 4 A It wasn't a big job. It was part of my normal
 5 engagement.
 6 Q Part of your normal engagement, I see. In 2011 alone,
 7 the first Statement of Financial Condition that the Attorney
 8 General had you talk about, the president had over \$258 million
 9 in cash, Mr. Bender. You don't think that's a significant
 10 engagement?
 11 A No, sir.
 12 Q Okay. The president had a company with a brand value
 13 of over \$10-, maybe even \$20 billion, Mr. Bender. That, for
 14 you, wasn't a significant engagement?
 15 A No, sir.
 16 Q Okay. Now, is that because you were the in-house
 17 accountant at the Trump Organization for over 30 years,
 18 Mr. Bender?
 19 A I wasn't the in-house accountant.
 20 Q Okay. So who was?
 21 A The in-house accountant?
 22 Q Yes.
 23 A Mr. McConney, Mr. Weisselberg. They were the in-house
 24 accountants.
 25 Q Mr. McConney. Mr. McConney worked with you at Spahr

D. Bender - Cross by Mr. Suarez Page 272

1 That was a joke. Mr. Kise picks up lunch.
 2 MR. KISE: You are forgetting all the dinners.
 3 THE COURT: They don't laugh at mine, either, so.
 4 (Whereupon, the witness resumed the witness
 5 stand.)
 6 THE COURT: I'll remind the witness, as usual,
 7 that he is still under oath.
 8 THE WITNESS: Thank you.
 9 THE COURT: Counsel, please proceed.
 10 CROSS EXAMINATION
 11 BY MR. BENDER:
 12 Q Mr. Bender, good afternoon.
 13 A Good afternoon.
 14 Q We have met before?
 15 A Good afternoon.
 16 THE COURT: That's a question. Have you met
 17 before?
 18 Q We have met before. We met in April of 2023, when I
 19 took your deposition on behalf of the defendants. Do you
 20 recall, sir?
 21 A Yes, sir.
 22 Q Okay. Mr. Bender, you have been up here testifying
 23 for the last day about the Statements of Financial Condition of
 24 the 45th President of the United States. Is that correct?
 25 A Yes, sir.

D. Bender - Cross by Mr. Suarez Page 274

1 Lacher?
 2 A Yes, he did.
 3 Q May have been responsible for giving you the name Doc?
 4 A He wasn't, but he kept it going.
 5 Q Did they call you Doc because you were good at
 6 documented transactions? That was the Doc?
 7 A No.
 8 Q It's a cute nickname.
 9 Was Mr. Weisselberg an accountant?
 10 A He was an accountant.
 11 Q Mr. Weisselberg is a CPA?
 12 A No. He is not a CPA.
 13 Q Mr. McConney is a CPA?
 14 A No. Mr. McConney is not a CPA.
 15 Q Okay. So who was the in-house accountant at the Trump
 16 Organization, Mr. Bender?
 17 A Mr. Weisselberg, and his team.
 18 Q All right. You did work for the Trump Organization
 19 for over 35 years; did you not, Mr. Bender?
 20 A Excuse me?
 21 Q You did work for the president and his company, the
 22 Trump Organization, for over 35 years?
 23 A Approximately.
 24 Q Approximately. In fact, you came to work with the
 25 Trump Organization through a gentlemen named Mr. Mitnick; didn't

EXHIBIT B

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART 37
Justice
-----X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
YORK,

INDEX NO. 452564/2022

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP,
ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE
DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP
ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT
HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER,
TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH
VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL
STREET LLC, SEVEN SPRINGS LLC,

Defendants.

-----X
On October 3, during a break in this trial, defendant Donald Trump posted to his social media account an untrue, disparaging, and personally identifying post about my Principal Law Clerk. I spoke to defendants, both on and off the record. Off the record, I ordered Donald Trump to remove the post immediately. Approximately 10 minutes later, Donald Trump represented to me that he had taken down the offending post, and that he would not engage in similar behavior going forward. I then, on the record, imposed on all parties to this action a very limited gag order, “forbidding all parties from posting, emailing, or speaking publicly about any members of my staff,” emphasizing, quite clearly, that “personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances.” I further made clear that “failure to abide by this directive will result in serious sanctions.”

Despite this clear order, last night I learned that the subject offending post was never removed from the website “DonaldJTrump.com,” and, in fact, had been on that website for the past 17 days. I understand it was removed late last night, but only in response to an email from this Court.

Today, in open Court, counsel for Donald Trump stated that the violation of the gag order was inadvertent and was an “unfortunate part of the process that is built into the campaign structure.” Giving defendant the benefit of the doubt, he still violated the gag order. Connors v Pallozzi, 241 AD2d 719, 719 (3d Dept 1997) (“[c]ontrary to defendants’ claim on appeal, a finding of civil contempt does not require a showing that such disobedience was willful”).

OTHER ORDER – NON-MOTION

Further, whether intentional or the result of mere "campaign structure" negligence, the effect of the post on its subject is unmitigated by how or why it remained on Donald Trump's website for 17 days. Moreover, a defendant may not evade liability for violating a court order by asserting that the violation was a result of the actions of one or more of the defendant's employees or agents.

In the current overheated climate, incendiary untruths can, and in some cases already have, led to serious physical harm, and worse.

Donald Trump has received ample warning from this Court as to the possible repercussions of violating the gag order. He specifically acknowledged that he understood and would abide by it. Accordingly, issuing yet another warning is no longer appropriate; this Court is way beyond the "warning" stage.

Given defendant's position that the violation was inadvertent, and given that it is a first time violation, this Court will impose a nominal fine, \$5,000, payable to the New York Lawyers' Fund for Client Protection, within ten (10) days of the date of this order.

Make no mistake: future violations, whether intentional or unintentional, will subject the violator to far more severe sanctions, which may include, but are not limited to, steeper financial penalties, holding Donald Trump in contempt of court, and possibly imprisoning him pursuant to New York Judiciary Law § 753.

ARTHUR F. ENGORON, JSC

DATE: 10/20/2023

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)

EXHIBIT C

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

-----X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

INDEX NO. 452564/2022

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

-----X

On October 3, on the record, I imposed on all parties to this action a very limited gag order, “forbidding all parties from posting, emailing, or speaking publicly about any members of my staff,” emphasizing, quite clearly, that “personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances” (emphasis added). I further made clear that “failure to abide by this directive will result in serious sanctions.”

Despite this unambiguous order, last week I learned that Donald Trump had failed to abide by it by not removing, for a total of 17 days, from the website of donaldjtrump.com an untrue, disparaging and personally identifying post about my Principal Law Clerk. Counsel for defendant stated in open court that the violation of the gag order was inadvertent. Taking counsel at his word, I imposed a \$5,000 nominal sanction against Donald Trump for the first-time violation of the gag order.

On October 25, during a break order from the trial, Donald Trump made the following statement to a gaggle of reporters outside the courtroom: “This judge is a very partisan judge with a person who’s very partisan sitting alongside him, perhaps even more partisan than he is.” Quite clearly, defendant was referring, once again, to my Principal Law Clerk, who sits alongside me on the bench.

Defendant’s attorneys offered the explanation that Donald Trump was referring to Michael Cohen, who had been sitting on the witness stand. I then conducted a brief hearing, during

OTHER ORDER – NON-MOTION

which Donald Trump testified, under oath that he was referring to Michael Cohen. However, as the trier of fact, I find this testimony rings hollow and untrue. The Oxford English Dictionary defines “alongside” as “close to the side of; next to.” Witnesses do not sit “alongside” the judge, they sit in the witness box, separated from the judge by a low wooden barrier. Further, Donald Trump’s past public statements demonstrate him referring to Michael Cohen directly by his name, or by a derogatory name, but in all circumstances, he is unambiguous in making it known he is referring to Michael Cohen.

Moreover, the language Donald Trump used on October 25 mirrors the language he used in public statements to the press on October 2, wherein he inappropriately and unquestionably spoke about my Principal Law Clerk, stating: “this rogue judge is a trump hater, the only one that hates trump more is his associate up there, this person that works with him, and she’s screaming into his ear.”

Using imprecise language as an excuse to create plausible ambiguity about whether defendant violated this Court’s unequivocal gag order is not a defense; the subject of Donald Trump’s public statement to the press was unmistakably clear. As the trier of fact, I find that Donald Trump was referring to my Principal Law Clerk, and that, as such, he has intentionally violated the gag order.

This is the second violation of this Court’s gag order in the less than one month since this trial commenced. Accordingly, this Court imposed a fine of \$10,000 on defendant Donald Trump, to be paid to the New York Lawyers’ Fund for Client Protection, within thirty (30) days of October 25, 2023.

Further, Donald Trump is ordered to post proof of payment, of this fine and the one imposed on October 10, 2023, to NYSCEF within two days of making such payments.

ARTHUR F. ENGORON, JSC

DATE: 10/26/2023

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

-----X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

INDEX NO. 452564/2022

Plaintiff,

- v -

SUPPLEMENTAL LIMITED GAG ORDER

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

-----X

On October 3, 2023, after Defendant Donald J. Trump posted to his social media account an untrue, disparaging, and personally identifying post about my Principal Law Clerk, I imposed on all parties to this action a very limited gag order, “forbidding all parties from posting, emailing, or speaking publicly about any members of my staff,” emphasizing, quite clearly, that “personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances.” I further made clear that “failure to abide by this directive will result in serious sanctions.”

On October 20, 2023, upon learning that Donald J. Trump failed to remove the post from one of his campaign websites, donaldjtrump.com, for a total of 17 days, I imposed a fine of \$5,000.00 against Donald J. Trump for violating the gag order. On October 25, 2023, after conducting a brief hearing, I concluded that Donald J. Trump had intentionally violated my gag order by stating to a gaggle of reporters outside the courtroom the following statement in reference to my Principal Law Clerk: “This judge is a very partisan judge with a person who’s very partisan sitting alongside him, perhaps even more partisan than he is,” and fined him an additional \$10,000.00.

I imposed the gag order only upon the parties, operating under the assumption that such a gag order would be unnecessary upon the attorneys, who are officers of the Court.

Over the past week, defendants’ principal attorneys, namely, Christopher Kise (admitted *pro hac vice*) (Continental PLLC), Clifford Robert (Robert & Robert PLLC) and Alina Habba (Habba

OTHER ORDER – NON-MOTION

Madaio & Associates LLP), have made, on the record, repeated, inappropriate remarks about my Principal Law Clerk, falsely accusing her of bias against them and of improperly influencing the ongoing bench trial. Defendants' attorneys have made long speeches alleging that it is improper for a judge to consult with a law clerk during ongoing proceedings, and that the passing of notes from a judge to a law clerk, or vice-versa, constitutes an improper "appearance of impropriety" in this case. These arguments have no basis.

Pursuant to 22 NYCRR § 100.3(B)(6)(6)(c): "**A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges**" (emphasis added). This is precisely the role of a Principal Law Clerk in the New York State Courts.

Moreover, ethics advisory opinions have further emphasized that: "The relationship between a judge and his/her law clerk is one of particular trust and confidence. Although a judge and his/her law clerk are of course not 'partners,' the two engage in the kind of professional interchange that might be found between long-time colleagues in a law firm." Advisory Opinion 07-04, available at <https://www.nycourts.gov/ipjudicialethicsopinions/07-04.htm>.

As I have stated on the record, seemingly to no avail, my law clerks are public servants who are performing their jobs in the manner in which I request. This includes providing legal authority and opinions, as well as responding to questions I pose to them. Plainly, defendants are not entitled to the confidential communications amongst me and my court staff, who are hired specifically to aid me in carrying out my adjudicative responsibilities. Nor are they entitled to continue referencing my staff in the record. Defendants' attorneys have had ample opportunity to make their record, and they have at length. Indeed, I will assist them by repeating here that I will continue to consult with my staff, as is my unfettered right, throughout the remainder of the trial. Accordingly, defendants' record is now fully preserved for the duration of the proceedings. Defendants' attorneys may refer back to this blanket statement in their appeal as they deem appropriate. Defendants may reference my staff as is appropriate to ask about scheduling issues or the management of the trial, which is an integral part of their jobs. What they may *not* do is to make any further statements about internal and confidential communications (be it conversations, note passing, or anything similar) between me and my staff.

Defendants' First Amendment arguments in opposition to the imposition are wholly unpersuasive. This gag order is as narrowly tailored as possible to accomplish its purpose, which is to protect the safety of my staff and promote the orderly progression of this trial. As I have made clear, as the Judge in this case and the trier of fact, the gag order does not apply to me. However, I will not tolerate, under any circumstances, remarks about my court staff. The threat of, and actual, violence resulting from heated political rhetoric is well-documented. Since the commencement of this bench trial, my chambers have been inundated with hundreds of harassing and threatening phone calls, voicemails, emails, letters, and packages. The First Amendment right of defendants and their attorneys to comment on my staff is far and away outweighed by the need to protect them from threats and physical harm.

Thus, for the reasons stated herein, I hereby order that all counsel are prohibited from making any public statements, in or out of court, that refer to *any* confidential communications, in any form, between my staff and me.

Failure to abide by this directive shall result in serious sanctions.

NOV 03 2023 HON. ARTHUR F. ENGORON



ARTHUR F. ENGORON, JSC

DATE: 11/3/2023

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify _____)

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST JUDICIAL DEPARTMENT

In the Matter of the Application of

DONALD J. TRUMP, DONALD J. TRUMP, JR.,
ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY
MCCONNEY, THE DONALD J. REVOCABLE
TRUST, THE TRUMP ORGANIZATION, INC.,
THE TRUMP ORGANIZATION, LLC, DJT HOLDINGS
LLC, DJT HOLDINGS MANAGING MEMBER,
TRUMP ENDEAVOR 12 LLC, TRUMP OLD POST
OFFICE LLC, 40 WALL STREET LLC,
AND SEVEN SPRINGS LLC,

Case No. 2023-05859

AFFIRMATION

Petitioners,

for a Judgment pursuant to Article 78
of the Civil Practice Law and Rules

-against-

THE HONORABLE ARTHUR F. ENGORON,
J.S.C., AND PEOPLE OF THE STATE OF NEW YORK
by LETITIA JAMES, ATTORNEY GENERAL OF THE
STATE OF NEW YORK,

Respondents.

CHARLES HOLLON, who is not a party to the action, affirms the following to be true
under the penalties of perjury:

1. I am employed by the New York State Unified Court System (“UCS”), as a Court Officer-Captain in the Department of Public Safety (“DPS”). I am assigned to the Judicial Threats Assessment Unit of the DPS. As such, I am familiar with threats, disparaging comments, and harassing messages, made to and about Justice Arthur F. Engoron (“Justice Engoron”), and his staff via emails, telephone, and social media outlets. I am also aware that the personal emails and cell phone number of Allison Greenfield, Principal Law Clerk to Justice Engoron, (“Allison Greenfield”), have been compromised. I make this affirmation in opposition to Petitioners’ request

for a stay of the enforcement of the limited gag orders issued by Justice Engoron in *People of the State of New York v. Donald Trump, et al.*, Index No. 452564/2022.

2. The DPS provides security services at every New York State courthouse to ensure the safety and security of judges, nonjudicial personnel, court visitors, litigants and anyone entering the courthouse. The Judicial Threats Assessment Unit is made up of uniformed personnel who are trained on how to carefully analyze reported threats in order to determine possible courses of action necessary to secure the safety of the judges.

3. Once a judicial threat has been reported, court administration, local law enforcement, and court staff are notified by trained uniformed personnel that a threat exists. After a reported threat is carefully analyzed and is determined to be credible, security measures are put in place to ensure the safety of the judge, the judge's staff and family members.

4. Prior to the commencement of the trial in the underlying matter, the judicial threats unit became aware of harassing and disparaging comments and threats made about and toward Judge Engoron on social media. Once we conducted our assessment that found the threats credible, we contacted local law enforcement, the FBI and Homeland Security to devise the appropriate security measures that would be implemented in order to protect the judge, his chambers staff, and those closely associated around him, including his family.

5. On or after October 3, 2023, the threats, harassment, and disparaging comments increased exponentially and also were now being directed at the judge's law clerk.

Specifically, on October 3, 2023, Mr. Trump posted to his social media account a picture of Allison Greenfield with United States Senator Charles Schumer with the added caption: "Schumer's girlfriend, Allison R. Greenfield, is running this case against me. How Disgraceful! This case should be dismissed immediately." Although Mr. Trump did not directly threaten Ms.

Greenfield, the comments made in his post resulted in hundreds of threatening and harassing voicemail messages that have been transcribed into over 275 single spaced pages.

6. Ms. Greenfield's personal information, including her personal cell phone number and personal email addresses also have been compromised resulting in daily doxing. She has been subjected to, on a daily basis, harassing, disparaging comments and antisemitic tropes. I have been informed by Ms. Greenfield that she has been receiving approximately 20-30 calls per day to her personal cell phone and approximately 30-50 messages per day on combined sites of social media, LinkedIn and two (2) personal email addresses. Ms. Greenfield also informed me that since the interim stay was issued lifting the gag orders on November 16, 2023, approximately half of the harassing and disparaging messages have been antisemitic.

7. Judges who receive threats are advised to not make public statements discussing the threats or any security measures that may be in place because doing so could compromise the security measures put in place to protect them and those around them.

8. The threats against Justice Engoron and Ms. Greenfield are considered to be serious and credible and not hypothetical or speculative. In order to provide this court with the seriousness of the threats being made against Justice Engoron and his staff, below is a representative sample of the hundreds of threats, disparaging and harassing comments and antisemitic messages that are directed at the judge and his staff.

9. The following are transcriptions of voicemail messages left on Justice Engoron's chambers telephone:

- A. You know. I'm not going to. Call you too many names. Today, I mean, it's clear. You're you're little fruit cake. You like to abuse children, I'm sure. And your shirtless pictures. Very inappropriate. I mean, you're so inappropriate. But you're clearly. A ***** dork.¹ Massive quant. I mean everything about you screams little fagot dork. So again. I hope they. ***** bury your ugly ***. You and that

¹ The software used to transcribe the voicemails censors profanity. The asterisks contained in the transcriptions are used in place of the profanity.

fat ***** ***** planet of the apes. ***** star letisha the *****
****. Little ***** Jews and. Filthy little Jews and. That's you. And I hate that
word. And I hate. Putting people under group but you are filthy little Jews and.
And you make everything about. This ****, you ***** hateful, divisive. I mean,
honestly, you should be assassinated. You should be killed. You should be not
assassin executed. You should be executed. But on trial executed for your crimes.
You sick ***** pig and you shut it there and laugh as you ***** abuse this
system because you abuse people you. ***** tyrant. And play this for the FBI
and you can all **** yourself, you little *****. Please call me, you *****
losers. ***** stupid ****. I mean, it's. Clear. I've talked to. A bunch of you
***** dumb *****. I mean the stupidity. I mean, if we ever want to
come for you. But Ebi will be eliminated in a ***** day. Bunch of *****
morons. To listen if any of you silly little **** want to talk, go ahead and call me,
you ***** *****.

- B. Yes, Arthur, you are a corrupt Nazi and one of the ugliest people to ever walk the face of the earth. And your clerk, who's also corrupt Nazi is a fat ***** who blew Chuck Schumer and everybody knows it. You are such a lowlife. No one would ever want to sleep with you. You look like ****. You're corrupt. You're going to get overturned and I hope you get gonorrhea from letisha James the fat grimace looking *****.
- C. Resign now, you dirty, treasonous piece of trash snake. We are going to get you and anyone of you dirty, backstabbing, lying, cheating American. You are nothing but a bunch of communists. We are coming to remove you permanently.
- D. Trust me. Trust me when I say this. I will come for you. I don't care. Ain't nobody gonna stop me either. I'll send every hacker in the world after every little file on you. And they will expose you. Any little dirty secret you have, you will not hide from me. I do not stand with Joseph Biden or what you are doing. I stand with the 12 houses of Israel. And in God we trust. Is the American way. Know that the blood runs red.
- E. Do you think being a judge changes the fact that you're a pathetic little *****? You little ***** dork with your little ***** Jew girl. ***** helper, *****. You ***** stupid ****. God, I hope you ***** die. I hope they ***** come for you and ***** string you up. All you little *****. Watch you **** your pants and **** yourself before it happens. You think you're untouchable. God, I hope they ***** come for you again. Not a threat. I don't hurt anybody. I don't have. A voice other than to. ***** call and tell you that I'll be rooting for the people that come for you. I'll be cheering on your death or your demise. And because to the point where you forced us, I'll ***** bite you. But you'll have to make it so I'm starving, and I'll again be the ones telling people how to **** with you because. I believe in God. I don't believe in hurting people, but you've made it to the point where I hope you get hurt because you're ***** pathetic. You look so *****. What a little fagot. You don't realize what a dork you are, do you? Probably wasn't fun on the school ground for little. Egghead and a little Jewish *****. But that chick is fat and ugly and you're. Very offensive of her. She stuck your. ****, but she sucks your little ***** micro penis, doesn't she, judge *****? Look, ***** bunch of losers. By losers? Geeks, freaks. *****. And dirty Jews. And I love Jewish. People. But there's dirty Jews like you. Just like

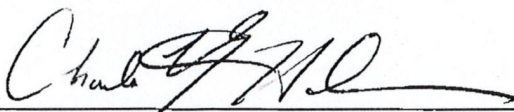
there's dumb. I love black people. But you know what? You guys want to make it all about. Identity and you know. What dirty Jews and stupid? Go die. I hope you all die. We're not going to kill you. I'm not going to kill you. I don't want anybody else to kill you because I don't want them to get in trouble. I just hope you die of like. You're stupidity. We'll probably get you killed, you lazy ***** filthy ****. Goodbye, I hope you. Have another horrible day? Ohh Trump made you. Look like a *****. What a little ***** whiny. Did she eat? Understand. Everybody sees what a little fagot you are. A little dork and freak Trump owns you, *****. I'm sure your aid. Would love to get that daddy Trump ***** planting that **** right up her ***. Freaky ***** *****. Your little ***** clerk. Humors, you know, was it her boyfriend? Probably just sucked his balls too.

- F. Oh, and Allison, you are. I mean, there's nothing you can do. About that ugly face. But he look at his raeli women, Israeli Jews and beautiful in shape. And then there's ***** pig. Jews like you. Fat ***** stupid *****. I mean, lay off the Twinkies, you *****. You're clearly a ***** and a child molester. You ***** pedophilic *****. Anyway, listen. You look like ****. You're ***** filthy. Ugly. Dirty. I bet your ***** smells like a ***** garbage disposal. Guaranteed. Anyway, lose some ***** weight. Have a little pride in yourself, you fat *****.
- G. Arthur, you lowlife ***** ** *****. Violating people's civil rights. You ***** scumbag ***** ** *****. You and lalita. James with your witch hunt. The funny thing is, once this or with remember, for every action there's a reaction. So don't get mad when you come. ***** hunt down. ***** we witch hunt. You and your family. We're going to take you to court. Take your kids, drag them in ***** court. How your parents are probably turning over in their ***** grave. ***** liberal ***** ** *****. You should be more worried about your ***** city and all the ***** robberies and ***** stabbings and then ***** murders and carjackings, but you're jealous of Donald Trump, you ***** scumbag. Pieces of ***** *****. You're ***** low. Like Arthur. I'll be calling you back again, you ***** ***** ** *****. You ***** scumbag *****. Oh yeah, you're ***** clerk Alison ***** Greenfield. She's a ***** ** *****. That's that ***** too. Lilita. James, you fat ***** *****. You can't even ***** make sense when you go, girl. Girl, girl, Merrill, Merrill. Peril. We got real peril. Meryl guy. You're a ***** ***** ***** too, you fat *****. You guys are going to reap what you sow. So don't get. Talking mad.

10. The messages received by Justice Engoron and his staff every day has created an ongoing security risk for the judge, his staff and his family.

11. The implementation of the limited gag orders resulted in a decrease in the number of threats, harassment, and disparaging messages that the judge and his staff received. However, when Mr. Trump violated the gag orders, the number of threatening, harassing and disparaging messages increased.

12. On a daily basis, the judge and his staff are being inundated with hundreds of harassing and threatening phone calls, voicemail messages, and emails, that has resulted in the Judicial Threats Assessment Unit having to constantly reassess and evaluate what security protections to put in place to ensure the safety of the judge and those around him.



Charles Hollon

November 21, 2023