

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

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

**PRESIDENT DONALD J.
TRUMP’S NOTICE
CONCERNING HIS INTENT
TO RELY ON AN ADVICE-OF-
COUNSEL DEFENSE**

President Donald J. Trump respectfully submits notice concerning his intent to rely on the defense of advice-of-counsel at trial (this “Notice”), as ordered by the Court on February 7, 2024.¹

At the outset, we emphasize that there is a marked difference between the commonly referred to “advice-of-counsel” defense and the defense that President Trump expects to raise at trial—*part* of which will be that President Trump lacked the requisite intent to commit the conduct charged in the Indictment because of his awareness that various lawyers were involved in the underlying conduct giving rise to the charges. As Judge Kaplan recently stated, “evidence concerning the presence, involvement and even advice of lawyers in relevant events is viewed best as evidence probative of the defendant’s intent to defraud or lack thereof.” *United States v. Bankman-Fried*, 2023 WL 6392718, at *1 (S.D.N.Y. Oct. 1, 2023); *see also United States v. Scully*, 877 F.3d 464, 476 (2d Cir. 2017) (“[T]he claimed advice of counsel is evidence that, if believed,

¹ The Court’s February 7, 2024 decision ordered President Trump to provide “notice and disclosure of his intent to rely on the defense of advice-of-counsel by March 11, 2024, and to produce all discoverable statements and communications within his possession or control by the same date.” 2/7/2024 Decision at 6.

can raise a reasonable doubt in the minds of the jurors about whether the government has proved the required element of the offense that the defendant had an ‘unlawful intent.’”). President Trump intends to elicit these facts from witnesses, including former AMI executives and Michael Cohen, whom we expect will testify about President Trump’s awareness of counsel’s involvement in the charged conduct.² This is not a formal advice-of-counsel defense.

While President Trump intends to elicit evidence concerning the presence, involvement and advice of lawyers in relevant events giving rise to the charges in the Indictment, he does not intend to assert a formal advice-of-counsel defense that would require him to prove at trial that he “(1) made a complete disclosure to counsel [concerning the matter at issue], (2) sought advice as to the legality of his conduct, (3) received advice that his conduct was legal, and (4) relied on that advice in good faith.” *Bankman-Fried*, 2023 WL 6392718, at *1. Accordingly, there is no privilege waiver requiring production of communications protected by the attorney-client privilege, and there is no basis for the People to demand a preview of our defenses at trial. *See United States v. Wilkerson*, 388 F. Supp. 3d 969, 974-75 (E.D. Tenn. 2019) (“[C]ourts should not *ad hoc* invent new ways to coerce criminal defendants to assist the government in their prosecution—absent compelling reason to do so. . . . [I]t would be untenable—and, most likely, unconstitutional—to require Defendants to turn over potential evidence (most of which is currently privileged) to the Government or risk forfeiting a defense.”); *see also* 2/7/2024 Decision at 4 (noting that the CPL does not require pretrial notice of an advice of counsel defense); *cf. United*

² There are several pending motions *in limine* and the rulings on these motions may alter the defense theory of the case. Moreover, several witnesses in the grand jury were either lawyers themselves or testified about interactions they had with counsel during the course of the conduct charged in the indictment and referenced in the statement of facts. To the extent these witnesses are called by the People at trial, their testimony may alter the defense theory of the case. President Trump must be afforded “a meaningful opportunity to present a complete defense.” *People v. Deverow*, 38 N.Y.3d 157, 164 (2022).

States v. Scali, 2018 WL 461441, at *8 (S.D.N.Y. Jan. 18, 2018) (requiring defendant to produce relevant materials where defendant “unequivocally” stated that he “intend[ed] to demonstrate that he is not guilty of tax evasion because, for the years in question, he followed counsel’s advice”).

As such, President Trump is not in possession of otherwise privileged material that requires production today pursuant to the Court’s February 7, 2024 Order.

Dated: March 11, 2023
 New York, New York

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