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March 10, 2024

Via Email

Honorable Juan M. Merchan
Judge - Court of Claims | Acting Justice - Supreme Court, Criminal Term

Re: People v. Trump, Ind. No. 71543/23

Dear Justice Merchan:

We respectfully submit this premotion letter, pursuant to the Court’s March 8, 2024 Order, seeking leave to file a motion for an adjournment based on current, ongoing, extremely prejudicial pretrial publicity. “[A]dverse publicity can endanger the ability of a defendant to receive a fair trial.” *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 378 (1979). Therefore, “a trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity.” *Id.* A “helpful remedy in decreasing the effect of media coverage on a defendant’s right to a fair trial is postponement of the trial until media attention fades.” *People v. Govan*, 64 Misc. 3d 389, 397 (Sup. Ct. Kings Cnty. 2019). Indeed, “[s]everal courts have noted that the temporal lapse between the time of a newsworthy item’s peak publicity and the time of the defendant’s trial is a crucial factor in determining whether an impartial jury can be assembled.” *People v. Quartararo*, 200 A.D.2d 160, 165 (2d Dep’t 1994). Thus, “where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial,” this Court should “continue the case until the threat abates.” *Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966); *People v. Cahill*, 2 N.Y.3d 14, 39 (2003) (reasoning that “close temporal proximity between the media coverage and the jury selection” may warrant relief).

The proposed motion will be based in part on (1) a survey that included a sample of 400 residents of each of New York, Orange, Richmond, Rockland, and Suffolk Counties and related analysis, which was completed on March 8, 2024; and (2) a review of media coverage relating to President Trump and related litigation, which identified 1,223 relevant news articles between January 15, 2024 and February 24, 2024, and will be finalized by March 11, 2024. The proposed motion is also based on recent prejudicial publicity relating to (3) the People’s handling of Allen Weisselberg’s guilty plea (including media leaks prior to the plea and the scheduling of Weisselberg’s sentencing during a period when President Trump’s trial is currently scheduled to be ongoing), (4) the ongoing and near-daily barrage of prejudicial public comments by Michael Cohen and Stephanie Clifford, and (5) last week’s disclosures relating to the planned release of Clifford’s documentary on NBCUniversal’s Peacock streaming service on March 18, 2024. President Trump’s constitutional right to a fair trial is at stake. As will be discussed in detail in the proposed motion, no fair and impartial jury can be selected in this County at the end of this month. Therefore, the Court should permit President Trump to file the motion and adjourn the trial date until the prejudicial media coverage subsides.

Respectfully Submitted,

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