

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 MOTION FOR A FURTHER ADJOURNMENT
BASED ON PREJUDICIAL PRETRIAL PUBLICITY**

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I. INTRODUCTION

President Donald J. Trump respectfully submits this motion for a further adjournment of the trial date in light of exceptionally prejudicial pretrial publicity, which is substantial, ongoing, and likely to increase. To be clear, the Court should dismiss the Indictment based on DANY's significant and ongoing discovery violations. If the Court does not do so, as it should, following the hearing on March 25, 2024, in addition to the substantial amount of time that is necessary for President Trump to review the voluminous untimely discovery, a significant adjournment is further supported by current prejudicial pretrial publicity.

Based on a survey that included a sample of 400 residents from each of New York, Orange, Richmond, Rockland, and Suffolk Counties (the "Survey"), which is attached as Exhibit 1, it is clear that potential jurors in Manhattan have been exposed to huge amounts of biased and unfair media coverage relating to this case. Many of the potential jurors already wrongfully believe that President Trump is guilty. A separate review of media coverage relating to President Trump (the "Media Study") which is attached as Exhibit 2, identified 1,223 online news articles between January 15, 2024 and February 24, 2024. Many of these articles provided details regarding the People's allegations and purported evidence as well as opinions about this case. A similarly significant number of the articles identified in the Media Study included prejudicial discussion of other proceedings involving President Trump and inaccurate and irrelevant discussions of alleged sexual misconduct, including false claims regarding "rape."

The fact that President Trump cannot get a fair trial in New York County right now is underscored by recent actions by DANY and its star witnesses, Michael Cohen and Stephanie Clifford. DANY has used strategic leaks to prejudice President Trump since the early days of its "zombie" investigation in 2018. More recently, DANY amplified prejudicial coverage relating to

President Trump and the Trump Organization by leaking news of an anticipated guilty plea by Allen Weisselberg. There is no conceivable explanation for the manufactured timing of Weisselberg's plea other than to try to cause prejudice to President Trump in this case. The People are also complicit in scheduling Weisselberg's sentencing on April 10, 2024, which will receive similarly extensive news coverage just days before jury selection is currently scheduled to begin on April 15.

To anyone who will listen, especially if they are paying, Cohen has and will continue to spew vitriol into the public sphere regarding President Trump, including in the build up to the potential trial. And likely during it. Finally, during the first week of March, we learned that Clifford has prepared a "documentary" with prejudicial, false commentary about this case and President Trump, which she screened to a conference audience in Texas on March 8, 2024. On March 12, 2024, the People disclosed for the first time that [REDACTED]

[REDACTED] Clifford premiered the documentary in Brooklyn, New York, on March 18, and released it on NBCUniversal's Peacock streaming service on the same day.

In addition to the discovery violations, which warrant dismissal, the prejudicial pretrial publicity driven by the People and their witnesses has placed President Trump's constitutional right to a fair trial at stake. For all of these reasons, as discussed in more detail below, no fair and impartial jury can be selected in this County at any time in the near future, including in April of this year. Therefore, the Court should adjourn the trial date until the prejudicial media coverage subsides.

II. RELEVANT FACTS

A. Prejudicial Statements And Investigative Leaks By The People

Beginning in early 2021, Alvin Bragg campaigned based on the argument that he had “more experience” with President Trump “than most people in the world” and could “convict” President Trump.¹ One of Bragg’s campaign advertisements wrongfully linked Harvey Weinstein and President Trump’s children, and suggested that “the famous and privileged” had improperly “escaped prosecution” because of “high-powered legal teams” rather than the reality of the situation, which concluded with a just non-prosecution determination based on a lack of evidence.²

In May 2021, the Washington Post and Associated Press reported that the People had convened a special grand jury to investigate President Trump. The Associated Press story was attributed to a “person familiar with the matter [who] was not authorized to speak publicly and did so on condition of anonymity.”³

On November 24, 2021, the *New York Times* ran an article, “Trump Investigation Enters Crucial Phase as Prosecutor’s Term Nears End.”⁴ The article was sourced to “people with knowledge of the matter.”

¹ Corinne Ramey and James Fanelli, *Trump Indictment Places Manhattan DA Alvin Bragg in Spotlight*, WALL ST. J. (Mar. 30, 2023, 6:56 pm), <https://www.wsj.com/articles/trump-probe-places-manhattan-d-a-alvin-bragg-in-spotlight-8bf038bb>.

² *Alvin Bragg for DA*, YOUTUBE, at 0:21-:028 (June 17, 2019), https://www.youtube.com/watch?v=gX_QJ3uqdSw.

³ Michael R. Sisak, *New Grand Jury Seated for Next Stage of Trump Investigation*, ASSOCIATED PRESS (May 25, 2021, 9:46 pm), <https://apnews.com/article/donald-trump-trump-investigations-business-government-and-politics-80592eae7ba9ca508a3161e085a0fec6>.

⁴ Ben Protess, William K. Rashbaum, Jonah E. Bromwich and David Enrich, *Trump Investigation Enters Crucial Phase as Prosecutor’s Term Nears End*, N.Y. TIMES (Nov. 24, 2021), <https://www.nytimes.com/2021/11/24/nyregion/trump-investigation-cyrus-vance.html>.

By February 2022, as District Attorney Bragg was deciding whether to bring charges against President Trump, Mark Pomerantz and his prosecutor colleagues learned that the *New York Times* was preparing to publish an article indicating that the grand jury was on “pause.” M. Pomerantz, *People vs. Donald Trump: An Inside Account* at 239 (2023) (“*Pomerantz Inside Account*”). By his own account, Pomerantz threatened District Attorney Bragg that the *Times* would learn of his and Carey Dunne’s resignations “very quickly” and suggested the *Times* may also learn that former District Attorney Vance had previously directed the team to push forward with charges. *Id.* at 244-45. The *Times* ran the story on February 24, 2022, reporting that District Attorney Bragg’s serious doubts about the case had caused Pomerantz and Dunne to leave.⁵

In March 2022, more than one year before the Indictment, and before locking her Twitter account, District Attorney Bragg’s wife re-posted on social media that there was, “[f]inally, a bit of good news in the Manhattan DA criminal case against Donald Trump” because the People “ha[ve] Trump nailed on felonies.”⁶

In January 2023, NPR reported that the People were once again presenting evidence to a grand jury. Citing a “person familiar with the investigation,” NPR wrote that the People were presenting evidence relating to payments to Clifford.⁷

⁵ Corey Kilgannon, *A Blow to the Manhattan Case Against Trump*, N.Y. TIMES (Feb. 24, 2022), <https://www.nytimes.com/2022/02/24/nyregion/trump-criminal-investigation-manhattan.html>.

⁶ Paul Sperry (@paulsperry_), X (Mar. 23, 2023, 1:48 pm), https://twitter.com/paulsperry_/status/1638960892149891072?lang=en; Jessica McBride, *Jamila Ponton Bragg, Alvin Bragg’s Wife: 5 Fast Facts You Need to Know*, HEAVY (Apr. 4, 2023, 2:53 pm), <https://heavy.com/news/jamila-ponton-bragg-alvin-wife/>.

⁷ Andrea Bernstein, *Manhattan DA Presenting Evidence in Trump-Stormy Daniels Investigation to Grand Jury*, NPR (Jan. 30, 2023, 7:24 pm), <https://www.npr.org/2023/01/30/1152610050/manhattan-da-presenting-evidence-in-trump-stormy-daniels-investigation-to-grand->

In March 2023, the *New York Times* reported that the People had signaled to President Trump’s lawyers that he could face criminal charges. The *Times* described the development as “the strongest indication yet that prosecutors are nearing an indictment of the former president.”⁸

In late-March 2023, *Politico* reported that the Manhattan grand jury examining this case was not expected to hear evidence for several weeks, but noted that a source had indicated that it was “entirely possible” that the grand jury had already voted.⁹

B. Prejudicial Post-Indictment Statements By DANY

On April 4, 2023, District Attorney Bragg sought to amplify prejudicial media coverage of the Indictment by issuing a press release and “Statement of *Facts*,” as opposed to allegations, and holding a press conference regarding the Indictment of President Trump. The “Statement of Facts” suggested improperly that separate violations of Penal Law 175.10 by Cohen and AMI could be used as object offenses to escalate the charges to felonies, which is a legal theory the Court recently rejected. *Compare* Statement of Facts ¶ 3, with 2/15/24 Dec. at 17-18. At the press conference, District Attorney Bragg made a gratuitous and prejudicial reference to matters involving “sex crimes,” that has no relevance to this case.¹⁰

⁸ William K. Rashbaum, Ben Protess and Jonah E. Bromwich, *Prosecutors Signal Criminal Charges for Trump Are Likely*, N.Y. TIMES (Mar. 9, 2023), <https://www.nytimes.com/2023/03/09/nyregion/trump-potential-criminal-charges-bragg.html>.

⁹ Natalie Musumeci, Jacob Shamsian, and Laura Italiano, *The Trump Grand Jury is Taking a Weekslong Break, Clouding When Potential Charges Could be Filed Against the Former President*, BUS. INSIDER (Mar. 29, 2023, 12:36 pm), <https://www.businessinsider.com/donald-trump-hush-money-grand-jury-weeks-long-break-report-2023-3>. There are likely additional leaks attributable to DANY, however, President Trump’s request to determine the extent of DANY’s leaks was denied. 2/15/2024 Dec. at 27-28.

¹⁰ CNBC Television, *Manhattan DA Alvin Bragg Holds Press Conference Following Trump’s Arraignment – 4/4/2023*, YOUTUBE, at 6:06 (Apr. 4, 2023), <https://www.youtube.com/watch?v=C2XoDZjOMs8>.

During a December 2023 radio interview, despite the Court’s acknowledgement that extrajudicial comments by the People or their witnesses could influence the jury pool,¹¹ District Attorney Bragg commented about his Office’s case against President Trump. Seeking to appeal to New York County residents, Bragg said that he had “rebranded” this prosecution to align with the federal prosecution in the District of Columbia. Bragg stated, in contradicting himself, that “[t]he case — the core of it — is not money for sex,” adding, “[w]e would say it’s about conspiring to corrupt a presidential election and then lying in New York business records to cover it up.”¹²

C. False And Prejudicial Public Claims By Cohen

Since April 2023, Cohen has released at least 160 podcasts discussing President Trump, including a public declaration that he is “NOT INTIMIDATED & READY to Strike Back.”¹³ In the last two months, the titles of Cohen’s podcasts have included, “Ex-FBI Agent Tells Michael Cohen Why Trump Is Screwed”; “Former Top DOJ Prosecutor Says TRUMP IS SCREWED, Reveals ALL to Cohen”; and “Prosecutor who investigated Trump hits him with CRUSHING BLOWS, Michael Cohen POUNCES.”¹⁴

¹¹ See 5/4/23 Tr. 39-40 (“The people that you refer to Michael Cohen, Mike [sic] Pomerantz, anybody else, they are not parties to this action. They’re not within the control of the People. I directed the People to speak to them or actually I advised the People to speak to them and I was assured that they have and they will. But at the end of the day, they’re not a party and I don’t see how I could in any way enforce any kind of protective order or suggest that there’s been a violation against the People or those individuals because they choose to speak out.”).

¹² Ben Protess, Johah E. Bromwich, and William K. Rashbaum, *Manhattan’s District Attorney Is Quietly Preparing for a Trump Trial*, N.Y. TIMES (Jan. 25, 2024), <https://www.nytimes.com/2024/01/25/nyregion/trump-hush-money-trial-stormy-daniels.html>.

¹³ MeidasTouch, *Livestream of Political Beatdown with Michael Cohen and Ben Meiselas*, YOUTUBE (Nov. 16, 2023), <https://www.youtube.com/watch?v=m8u-8xUcDDg&t=3427s>; Michael Cohen (@MichaelCohen212), X (Nov. 16, 2023, 2:34 pm), <https://x.com/MichaelCohen212/status/1725236039936053749?s=20>.

¹⁴ MeidasTouch, *Mea Culpa with Michael Cohen*, YOUTUBE, <https://www.youtube.com/playlist?list=PL36GQAccexbzLm-eb2KEe6PPkjRkl4IWY>.

In a February 15, 2024 interview on CNN, Cohen claimed to be speaking on the basis of non-public evidence in the People’s possession: “I believe — based upon the information that I know, and based upon not just the documentary evidence, but the corroborating testimony from so many people — I believe that he will be found guilty on all charges.” Cohen has spewed similarly prejudicial and false claims to his more than 612,000 followers on X (formerly Twitter).

In a February 25, 2024 *Mea Culpa* episode, entitled “Michael Cohen and Malcolm Nance EXPOSE the Trump-Putin Insurgency,” Cohen drew attention to other politically motivated cases involving President Trump and made a series of prejudicial and defamatory analogies. For example, Cohen: (1) praised the testimony of District Attorney Fani Willis during recent hearings regarding prosecutorial ethics violations in *Georgia v. Trump, et al.*, No. 23SC188947; (2) falsely claimed that President Trump would act as a “copy cat” to Russian President Vladimir Putin and accused President Trump of being a “dictator”; and (3) discussed “spreading this message of ‘Vote Blue.’”¹⁵

Cohen continued with a similar tack during a March 2, 2024 *Mea Culpa* episode entitled “Cohen and Popok TEAM UP to Deliver NIGHTMARE Legal News to Trump and GOP.” During that episode, Cohen made false references to President Trump as a “monarch,” “dictator,” the “Führer” (referring to Adolf Hitler), and the “Supreme Leader” (invoking the title held by leaders of Iran and North Korea). Cohen added lied that President Trump would use “his SEAL Team Six” to “incarcerate” “Supreme Court judges,” “politicians,” “members of the media,” and “bring these billionaires to him and do exactly what [Saudia Arabian Crown Prince] Mohammed bin

¹⁵ MeidasTouch, *Michael Cohen and Malcolm Nance EXPOSE the Trump-Putin Insurgency | Mea Culpa*, YOUTUBE, at 59:33, 28:36, & 1:03:43 (Feb. 25, 2024), <https://www.youtube.com/watch?v=tW98Wiq2z9c&list=PL36GQAccexbzLm-eb2KEe6PPkjRk14lWY&index=3>.

Salman did. He hung these motherfuckers up by their neck until they . . . signed over their wealth to him. And Trump will do the same thing.”¹⁶

On March 3, 2024, Cohen published yet another episode of *Mea Culpa* entitled “Michael Cohen and Donny Deutsch on Trump GOING BROKE + More.” During this episode, Cohen argued that “Trump should have been arrested” for “interfering” with “national security” by campaigning near the U.S.-Mexico border, which Cohen said constituted “treason.” Cohen falsely claimed that President Trump was operating a “shadow government” and that, “as a former President, [President Trump] is communicating with members of Congress, even though he is not the Republican nominee as of yet”¹⁷

D. Prejudicial Publicity Relating To *Carroll v. Trump*

Beginning on January 16, 2024, E. Jean Carroll pressed a damages claim at a defamation trial against President Trump in the Southern District of New York. President Trump was not permitted to defend himself against Carroll’s underlying allegations, which he has steadfastly and consistently denied, during that trial, which resulted in inaccurate, one-sided news coverage of the proceedings and evidence that was even more biased than is usually the case for mainstream news coverage of President Trump. On January 26, 2024, a jury returned a damages verdict in favor of Carroll, which has been covered extensively, on a near-daily basis, since that time. Many of the

¹⁶ MeidasTouch, *Cohen and Popok TEAM UP to Deliver NIGHTMARE Legal News to Trump and GOP | Mea Culpa*, YOUTUBE, at 44:12, 40:33, & 44:24 (Mar. 2, 2024), <https://www.youtube.com/watch?v=tW98Wiq2z9c&list=PL36GQAccexbzLm-eb2KEe6PPkjRk14IWY&index=3>.

¹⁷ MeidasTouch, *Michael Cohen and Donny Deutsch on Trump GOING BROKE + More | Mea Culpa*, YOUTUBE, at 1:32 (Mar. 3, 2024), <https://www.youtube.com/watch?v=HW4tg1hIqdg&list=PL36GQAccexbzLm-eb2KEe6PPkjRk14IWY&index=1>.

articles relating to the verdict inaccurately reference “rap[e],” despite the fact that the jury at a prior trial in Spring 2023 specifically rejected that claim by Carroll.¹⁸

E. Strategically Timed Prejudicial Publicity Relating To Allen Weisselberg

On March 4, 2024, prosecutors from DANY pressured Weisselberg to plead guilty to a two-count information, charging him with Perjury in the First Degree, a class D felony, in violation of Penal Law § 210.15, with an agreed-upon term of imprisonment of five months.

Consistent with its past unethical practices, the Office leaked information regarding Weisselberg’s plea to the media.¹⁹ Weisselberg is scheduled to be sentenced on April 10, 2024, which would occur just prior to the start of jury selection for President Trump’s trial, on the current schedule.

F. Prejudicial Pretrial Public Statements By Clifford

During an April 2023 interview, in response to a question about this case, Clifford stated, “For my own sake, I’d like vindication, I’d like him to get what’s coming for once.”²⁰ However, Clifford plainly wants more than that. She is trying to make money based on this case, which is perhaps related to the fact that she owes President Trump approximately \$670,000. This month, her attorney has even suggested that she may “file another defamation case against [President]

¹⁸ Jonathan Stempel and Alexandra Ulmer, *Donald Trump Posts \$91.6 Million Bond For E. Jean Carroll’s Defamation Verdict*, REUTERS (Mar. 8, 2024), <https://www.reuters.com/legal/donald-trump-appeals-e-jean-carrolls-833-million-defamation-verdict-2024-03-08/>.

¹⁹ Jonah E. Bromwich and Ben Protess, *Judge in Trump’s Civil Fraud Case Asks Whether a Key Witness Lied*, N.Y. TIMES (Feb. 6, 2024), <https://www.nytimes.com/2024/02/06/nyregion/trump-fraud-trial-weisselberg-perjury.html>; Ben Protess, William K. Rashbaum, Jesse McKinley, and Kate Christobek, *Key Figure in Trump’s Business Pleads Guilty to Felony Perjury*, N.Y. TIMES (Mar. 4, 2024), <https://www.nytimes.com/2024/03/04/nyregion/weisselberg-guilty-trump-business.html>.

²⁰ AJ McDougall, *Stormy Daniels Recalls Trump in That Hotel Room: ‘Put Your Clothes On’*, DAILY BEAST (Apr. 4, 2023, 10:45 pm), <https://www.thedailybeast.com/stormy-daniels-opens-up-about-nevada-hotel-encounter-with-donald-trump-to-vogue>.

Trump along the same lines as Carroll’s,” which at least one commentary properly regarded as, at best, a “long shot.”²¹

Since January 2024, Clifford has released at least seven podcasts that mention President Trump.²² For example, in a January 11, 2024 podcast, Clifford wrongfully claimed that President Trump “is indeed a monster, that the people who do his bidding are in fact evil, and his ride or die followers”—*i.e.*, tens of millions of voters—“are fucking insane.”²³

G. The Strategically Timed Release Of Clifford’s Documentary

Clifford’s public comments have been so inappropriate that the People were forced to admonish her, according to her own statements: “I’ve been asked to kind of behave. I’m biting my tongue so fucking hard right now.”²⁴ She has not heeded those admonishments.

On the evening of March 7, 2024, the media reported that Clifford is releasing a “documentary,” entitled “Stormy,” on NBCUniversal. Peacock released a 2 minute, 12 second trailer on March 7, which includes Clifford describing herself as “out of fucks” and an “idiot who can’t keep her mouth shut.”²⁵ The trailer also shows excerpts of an agreement that is subject to the Court’s protective order. Clifford asserts in the video trailer that “sh*t got real” when President

²¹ Jeffrey Toobin, *Dark and Stormy*, AIR MAIL (Mar. 9, 2024), <https://airmail.news/issues/2024-3-9/dark-and-stormy>.

²² *Beyond the Norm with Stormy Daniels*, APPLE PODCASTS, available at <https://podcasts.apple.com/us/podcast/beyond-the-norm-with-stormy-daniels/id1530639447>.

²³ *Beyond the Norm with Stormy Daniels, Nation Writer Manda Moore Spent 11 Months Undercover with MAGA and the Far Right What She Discovered Was Terrifying*, APPLE PODCASTS, at 7:03 (Jan. 11, 2024), <https://podcasts.apple.com/us/podcast/nation-writer-manda-moore-spent-11-months-undercover/id1530639447?i=1000641340241>.

²⁴ *Beyond the Norm with Stormy Daniels, Stormy and Kathy Griffin Are Not Sorry*, APPLE PODCASTS, at 10:50 (Feb. 6, 2024), <https://podcasts.apple.com/us/podcast/stormy-kathy-griffin-are-not-sorry/id1530639447?i=1000644306828>.

²⁵ Peacock, *Stormy: Official Trailer*, YOUTUBE, at 0:06 & 1:47 (Mar. 7, 2024), https://www.youtube.com/watch?v=_tE7h_TJkxg.

Trump got the Republican nomination in 2016, and reads highly prejudicial threats not connected to President Trump, such as a random person stating, “you just signed your death warrant.” A male associate claims that unspecified “People,” with no connection to President Trump, tried to bring “guns” and “knives” into Clifford’s events. The trailer ends with an effort to bolster Clifford’s anticipated testimony through the claim that she “won’t give up” because she is “telling the truth.”

In the version of the “documentary” produced to the defense, Clifford makes additional extremely prejudicial, false claims. Contradicting previous claims, Clifford now falsely suggests that her made-up encounter with President Trump may have been non-consensual:

I thought we had this mutual respect. Which is why it was so crazy when, having no red flags whatsoever in a conversation, I came out of the bathroom to find myself cornered. I don’t remember how I got on the bed, and then the next thing I know, he was humping away and telling me how great I was . . . It was awful. But I didn’t say no.

Clifford added:

I was fucking terrified. I mean people had been suspiciously killed for political reasons. It was really about two things: trying to keep the story from coming out so that I wouldn’t lose my husband and my daughter and so that I wouldn’t lose my life. And that there would be a paper trail and a money trail linking me to Donald Trump so that he would not have me killed.

On March 8, 2024, Clifford screened her documentary at the South by Southwest conference in Austin, Texas. She used the platform to declare, “f*ck Trump.”²⁶ On March 12, 2024, the People disclosed for the first time that [REDACTED]

²⁶ Jill Goldsmith, *Stormy Daniels Gets Emotional, Says “And F*ck Trump” In Remarks After Premiere Of Documentary ‘Stormy’ At SXSW*, DEADLINE (Mar. 8, 2024, 6:04 pm), <https://deadline.com/2024/03/stormy-daniels-sxsw-documentary-premiere-donald-trump-1235850640>.

██████ The documentary premiered in Brooklyn, New York, on March 18, and was released on Peacock on the same day.

III. APPLICABLE LAW

“The bedrock principle of our justice system is a defendant’s right to be presumed innocent until found guilty at a fair and impartial trial.” *People v. Boss*, 261 A.D.2d 1, 2 (1st Dep’t 1999). “The right of every person accused of [a] crime to have a fair and impartial trial before an unbiased court and an unprejudiced jury, is a fundamental principle of criminal jurisprudence.” *People v. McLaughlin*, 150 N.Y. 365, 375 (1896); *see also Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966) (“Due process requires that the accused receive a trial by an impartial jury free from outside influences.”); *People v. Govan*, 64 Misc. 3d 389, 392 (Sup. Ct. Kings Cnty. 2019) (“The Sixth Amendment guarantees an accused the right to a public trial by an impartial jury. It is without question that this constitutional standard of fairness requires that a defendant have a panel of impartial, indifferent, jurors.”).

“[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.* “[R]eversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception.” *Sheppard*, 384 U.S. at 363. Specifically, “[g]iven the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused.” *Id.* at 362.

“[O]rdinarily, the intensive news coverage accorded even to a crime of this nature could well be expected to abate with the passage of time.” *People v. Boudin*, 90 A.D.2d 253, 257 (2d

Dep't 1982). "That time soothes and erases is a perfectly natural phenomenon, familiar to all." *Patton v. Yount*, 467 U.S. 1025, 1034 (1984). 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." *Govan*, 64 Misc. 3d at 397. 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," the court should "continue the case until the threat abates." *Sheppard*, 384 U.S. at 363; *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); *see also Patton*, 467 U.S. at 1032 (explaining that "extensive adverse publicity and the community's sense of outrage" had "greatly diminished and community sentiment had softened" based on delay between first and second trial); *Groppi v. Wisconsin*, 400 U.S. 505, 510 (1971) ("One way to try to meet the problem is to grant a continuance of the trial in the hope that in the course of time the fires of prejudice will cool."); *United States v. Yousef*, 327 F.3d 56, 155 (2d Cir. 2003) (reasoning that "press coverage had substantially subsided by the time Yousef was brought to trial," "and there was minimal publicity in the months immediately preceding his trial"); *Delaney v. United States*, 199 F.2d 107, 113 (1st Cir. 1952) (vacating conviction based on denial of adjournment and reasoning that, while "courts are then limited to doing what they can to insulate jurors from the prejudicial effect of such publicity," one option is "the granting of continuances").

IV. DISCUSSION

DANY's discovery violations serve as a strong and independent basis for dismissal or, at minimum, a substantial adjournment of the trial to allow time for the defense to review the recent voluminous and untimely productions. As does the Supreme Court's upcoming consideration of the presidential immunity doctrine, for the reasons stated in our motion on that issue. In addition, based on prejudicial pretrial publicity driven and amplified by DANY, Cohen, and Clifford, as documented through the Survey and Media Study, the Court must adjourn the trial in order to protect President Trump's Sixth Amendment and due process rights. *See Boudin*, 90 A.D.2d at 258 (finding venue change necessary where "[d]amaging testimony of untested admissibility has been widely publicized in the community from which the jury is yet to be drawn"). "Postponement of the trial to allow public attention to subside" is also a less-restrictive and more appropriate response to the People's motion for a gag order. *People v. Fioretti*, 135 Misc. 2d 541, 545 (Sup. Ct. Bronx Cnty. 1987); *see also Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 563-64 (1976) (identifying less-restrictive option to a prior restraint of "postponement of the trial to allow public attention to subside"). Accordingly, for the reasons set forth below, the Court should adjourn the trial.

A. Prejudicial Media Coverage Has Saturated The Venire

"The published findings demonstrate the negative influence of pretrial publicity on verdict choice, perceptions of the defendant, and other criminal trial components." Judith Platania & Jessica Crawford, *Media Exposure, Juror Decision-Making, and the Availability Heuristic*, THE JURY EXPERT (Nov.-Dec. 2012), attached as Exhibit 3. The Survey and the Media Study provide quantitative force to that research and establish that potential jurors in New York County have been bombarded with online media coverage relating to this case and prejudicial references to

other cases and irrelevant matters. Moreover, the Media Study does not even capture the incredible amount of prejudicial television coverage, which has been too voluminous to tally. For example, on March 10, 2024, during his “*This Week With George*” segment on ABC, George Stephanopoulos claimed more than 10 times—falsely and irresponsibly—that President Trump had been found liable for “rape.” In fact, the opposite is true. The jury in *Carroll* found President Trump not liable on the rape claim. Nevertheless, the false and defamatory statements by Stephanopoulos were reposted and viewed millions of times.

Nearly all Manhattan residents who participated in the Survey, 95%, had been exposed to media relating to President Trump in the past six months. Survey Q.20. 93% of respondents said that they had been exposed to media concerning investigations and/or criminal charges relating to President Trump. Survey Q.23. Within that group, 63% indicated that they had seen media reports relating to all of the following: this case, the federal criminal prosecution in the District of Columbia, the federal criminal prosecution in the Southern District of Florida, the charges brought by the Fulton County District Attorney in Georgia, the case brought by the New York Attorney General, and *Carroll*. Survey Q.24.

The Survey demonstrated an even greater level of venire exposure to extrajudicial information relating to this case. A large proportion of the sample, 88%, had read or heard information about alleged “hush money” payments in connection with President Trump’s 2016 campaign, and 84% of respondents said they had heard about the charges brought against President Trump by District Attorney Bragg. Survey Qs.34-35. *Cf. People v. Culhane*, 33 N.Y.2d 90, 96 (1973) (vacating verdict based on flawed jury selection where “86 of the 106 veniremen,” 81%, had “some knowledge of the case”).

The Media Study adds force to the Survey responses. For the six-week period between January 15, 2024 and February 24, 2024, the Media Study identified 1,223 online articles relating to President Trump based on search terms relating to criminal, the *Carroll* matter, the 2016 and 2020 presidential elections, and the Trump Organization. The total number of articles that contained a “Mention” of at least one search term included 455 *New York Times* articles, as well as 343 articles in more locally focused publications such as the *New York Post* and *Politico NY*. The Media Study also identified “Sentences” discussing the search terms to approximate the extent of the discussion devoted to prejudicial topics.²⁷ Of the 1,223 articles, there were 813 Mentions and 1,229 Sentences relating to a “trial,” 308 Mentions and 334 Sentences relating to “criminal charges,” 307 Mentions and 350 Sentences relating to an “Indictment,” and 199 Mentions and 210 Sentences relating to a “felony.”

At the national and local levels in New York County, many of the articles contained Mentions connected to this case:

Search Term	Total	National	New York County
Manhattan Trial	207	110	93
Hush Money Payments	142	80	38
2016 Presidential Campaign	146	90	37
Falsifying Business Records	79	35	26
Justice Juan Merchan	49	29	12
Porn Star	71	47	13

²⁷ The Media Study tallied “Mentions” based on the number of times a search term was used in an article. Additional Mentions of a search term were counted if the article changed topics, then re-used the search term following the separate topic. The “Sentences” figure in the Media Study was calculated based on the number of sentences contextually related to a search term. If a sentence included multiple search terms, each search term was tallied individually.

Search Term	Total	National	New York County
Stormy Daniels	64	30	23
Campaign Finance Violation	8	3	4
Access Hollywood	17	6	7
Karen McDougal	10	3	5

This is an extraordinary amount of case-specific coverage over a six-week period. Many of those articles included extended discussion that treated the People’s allegations as written in stone and made no mention of the presumption of innocence.²⁸ In *Boudin*, for example, the Second Department ordered a venue change where, “[i]n the 50-day period ending November 2, 1982, fully 76 news articles appeared in the local press concerning the case.” 90 A.D.2d at 257. The Media Study, coupled with the Survey, establishes media saturation in New York County that exceeds that in *Boudin* by many multiples.

The Media Study also shows that prejudicial coverage relating to other cases has been disseminated widely, and in New York County, and that these articles contain inflammatory

²⁸ See, e.g., Ex. 4 (claiming that charges against President Trump “trace back to a \$130,000 hush-money payment that . . . Michael D. Cohen made to a porn star, Stormy Daniels,” to “suppress[] her story of a sexual liaison she says she had with Mr. Trump” and that “[w]hile serving as the commander in chief, Mr. Trump reimbursed Mr. Cohen, and that’s where the fraud kicked in”); Ex. 5 (claiming that “Mr. Bragg has presented the loftiest possible conception of the case, casting it as a clear-cut instance of election interference in which [President Trump] defrauded the American people to win the White House in 2016” and falsely claiming that President Trump did so “by concealing an illegal payoff to [a] porn star, thus hiding damaging information from voters just days before they headed to the polls”); Ex. 6 (claiming that a “crime occurred” when President Trump allegedly “reimbursed Mr. Cohen” and further, that “Mr. Cohen, the prosecution’s star witness, is expected to testify that Mr. Trump authorized his family business to falsely record the reimbursements as legal expenses”); Ex. 7 (discussing alleged “scheme to influence the 2016 presidential election by paying off porn star Stormy Daniels” and noting that “Allen Weisselberg, the Trump Organization’s former chief financial officer, was sentenced by Merchan to five months in jail for his role in the scheme”).

discussion of issues that are irrelevant to this case. *See, e.g., United States v. Cortez*, 251 F.R.D. 237, 237 (E.D. Tex. 2007) (ordering venue change where there had been “recent, extensive pretrial publicity in print and on television” suggesting that defendant was a “prime suspect” in a separate investigation). President Trump has been unfairly and improperly “demonized” in this coverage. *United States v. McVeigh*, 918 F. Supp. 1467, 1472 (W.D. Okla. 1996); *see also United States v. Marcello*, 280 F. Supp. 510, 515 (E.D. La. 1968) (ordering venue change where media portrayed defendant with “sinister image”); *United States v. Florio*, 13 F.R.D. 296, 297-98 (S.D.N.Y. 1952) (ordering venue change where pretrial publicity characterized defendant as a “mobster”).

For example, of the articles identified in the Media Study, there were 548 Mentions and 665 Sentences relating to “January 6, 2021,” 332 Mentions and 437 Sentences relating to “insurrection, 292 Mentions and 308 Sentences relating to “overturning” an election, and 127 Mentions and 146 Sentences relating to a “Capitol riot.”²⁹ Other articles discussed improper efforts to disqualify President Trump from the 2024 election, which the Supreme Court recently rejected, but from which potential jurors may infer that the jury in this case has a role to play in those lawless attempts.³⁰

²⁹ *See, e.g., Ex. 8* (“Only in America could a president get impeached—twice—stage an insurrection, perpetrate an alleged fraud with a business that launched him to stardom, be accused of sexual assault and defamation, and still be in a position to run the country again”); *Ex. 9* (claiming that “financial institutions can flag customers who fit the profile of a ‘potential active shooter’ or terrorists based on their transactions” and that “[f]ederal investigators asked financial institutions to use search terms such as ‘TRUMP’ and ‘MAGA’” to identify “various persons of interest” in connection with the “Jan. 6 Capitol riot”).

³⁰ *See, e.g., Ex. 10* (discussing the Colorado Supreme Court’s since-overturned finding—and similar findings made by other states, such as Maine—that President Trump “engaged in insurrection by inciting his followers to attack the U.S. Capitol on Jan. 6, 2021, to stop certification of President Biden’s victory in the November 2020 election”).

The Media Study identified a steady stream of articles that link this case to other politically motivated criminal and civil litigation involving President Trump, and provided irrelevant and prejudicial details relating to those other cases.³¹

Prejudicial coverage of allegations and evidence from other cases is extremely problematic. *See Boudin*, 90 A.D.2d at 257 (“[F]ar more troubling, there have been frequent reports of Ms. Boudin’s alleged connection to criminal organizations and activities, all unproven and uncharged, and all likely inadmissible at her trial.”); *United States v. Casellas-Toro*, 807 F.3d 380, 387 (1st Cir. 2015) (reversing and holding that prejudice must be presumed where, “[m]ost importantly,” pretrial media coverage “extensively and sensationally covered” a separate “trial, conviction, and sentencing in a just-concluded case intertwined with this one”); *see also Casellas-Toro*, 807 F.3d at 387 (noting that pretrial media coverage included “blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight,” including “rumors” about the defendant’s “character” (citing *Skilling v. United States*, 561 U.S. 358, 382 (2010))); *McVeigh*, 915 F. Supp. at 1472 (“The prejudice that may deny a fair trial is not limited to a bias or discriminatory attitude. It includes an impairment of the deliberative process of deductive reasoning from evidentiary facts resulting from an attribution to something not included in the evidence.”).

The Media Study identified 668 Mentions and 1,464 Sentences relating to Carroll, 210 Mentions and 365 Sentences relating to the trial judge in *Carroll*, and 159 Mentions and 168 Sentences relating to the damages verdict in *Carroll*. As could be expected based on Carroll’s

³¹ *See, e.g.*, Ex. 11 (referring to “the case accusing Mr. Trump of being involved in hush money payments to a porn star,” false accusations of “seeking to overturn his election loss” in Georgia, a politically motivated federal prosecution in Florida based on “classified documents,” and “separate” politically motivated “charges of plotting to overturn the 2020 election” in Washington, D.C.).

efforts to publicize the *Carroll* verdict, the articles identified in the Media Study included extremely prejudicial discussion relating to Carroll’s allegations, such as 204 Mentions and 229 Sentences relating to “sexual assault,” 169 Mentions and 182 Sentences relating to “sexual abuse,” and 128 Mentions and 177 Sentences relating to “rape.”³² The Media Study identified numerous articles discussing the *Access Hollywood* recording—which the Court ruled today the jury may not hear—and the manufactured allegations by Jessica Leeds and Natasha Stoyloff.³³ The People’s efforts to present that irrelevant evidence in this case—which we objected to in *in limine* practice—will exacerbate the prejudice from these articles. *See Marshall v. United States*, 360 U.S. 310, 312-13 (1959) (reasoning that “prejudice to the defendant is almost certain to be as great when that [prejudicial] evidence reaches the jury through news accounts” and “may indeed be greater for it is then not tempered by protective procedures”).

In addition to the foregoing, the biased coverage threatens to prejudice President Trump in another very specific way. On March 7, 2024, the Court issued an Order in which it agreed to “take reasonable precautions to minimize any potential prejudice to either party” arising from juror-related protective measures, including by “not disclosing the existence of the protective measures unless absolutely necessary to allay juror concerns, providing neutral explanations for the procedures and giving appropriate jury instructions.” The Media Study identified articles

³² *See, e.g.*, Ex. 12 (claiming that Carroll received messages such as “I will rape u” and “I hope you die soon,” and attributing the messages without foundation to so-called “Trump supporters”); Ex. 13 (mischaracterizing instruction to potential jurors as indicating that President Trump “did sexually assault” Carroll and “dodged potential criminal charges in the case because of the statute of limitations”); Ex. 14 (wrongfully referring to Carroll’s case as a “decades-old rape” lawsuit).

³³ *See, e.g.*, Ex. 15 (“Leeds, a former stockbroker, said Trump abruptly groped her against her will on an airline flight in the 1970s, while Stoyloff, a writer, said Trump forcibly kissed her against her will while she was interviewing him for a 2005 article.”); Ex. 16 (reporting that many people were “repelled” by President Trump’s “treatment of women – including the ‘Access Hollywood’ tape”).

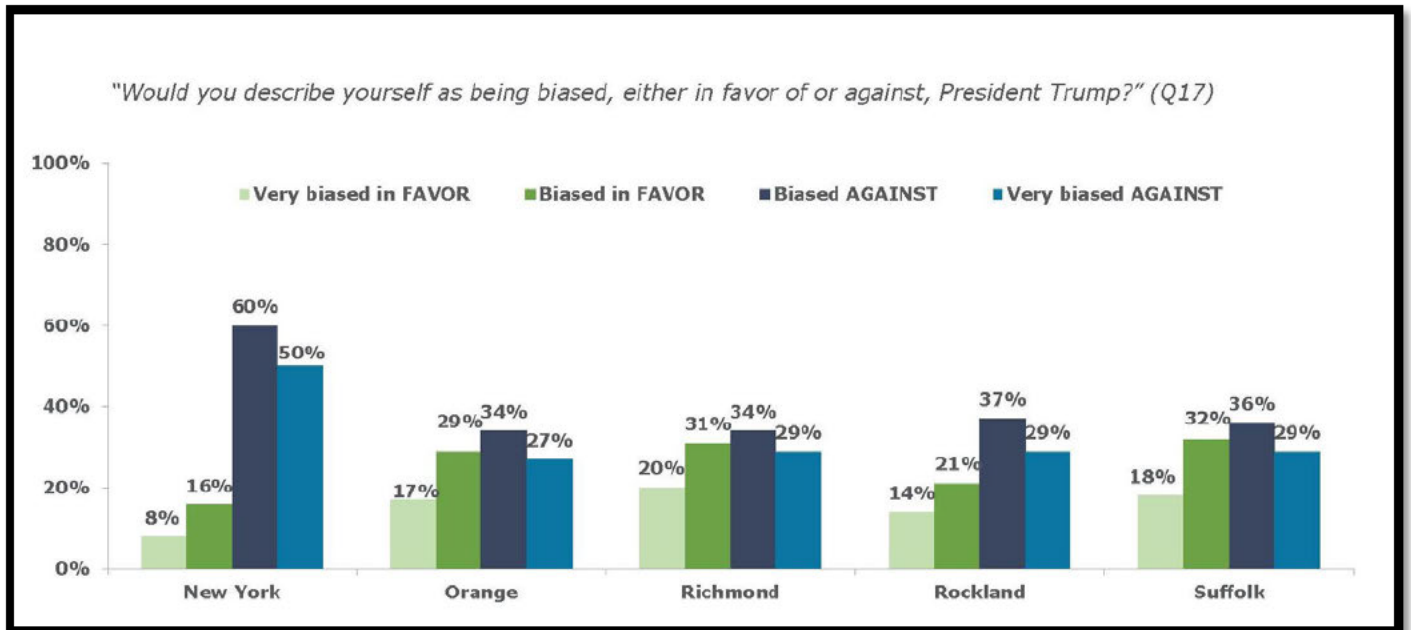
discussing juror anonymity in *Carroll*, and the venire’s exposure to such coverage is yet another significant obstacle to President Trump getting a fair trial in the near future.³⁴

Collectively, the data thus reflects both “bombardment of the community” with pretrial publicity in New York County and a corresponding prejudicial effect in the venire. *Estes v. Texas*, 381 U.S. 532, 538 (1965).

³⁴ *See, e.g.*, Ex. 17 (reporting that “judge, Lewis A. Kaplan, ordered that the jurors remain anonymous” because of the “potential for influence attempts, harassment or worse by Mr. Trump’s supporters — or the former president himself”); Ex. 18 (discussing Judge Kaplan’s suggestion to the jury to “not even use their real names when conversing with each other” and that “jurors would be taken to and from the court’s underground garage to drop-off locations” in order to “to protect [the jurors] from any unwanted attention, harassment and invasion of your privacy”).

B. New York County Is Overwhelmingly Biased Against President Trump

The risks of prejudicial pretrial publicity to the selection of a fair and impartial jury are compounded by the overwhelming bias against President Trump in the venire.



The People have sought to make their case a review of President Trump’s victory in the 2016 election. We have objected to those efforts in motions *in limine*, but respondents’ accounts of their voting history sheds light on the improper purpose behind the prosecution strategy:

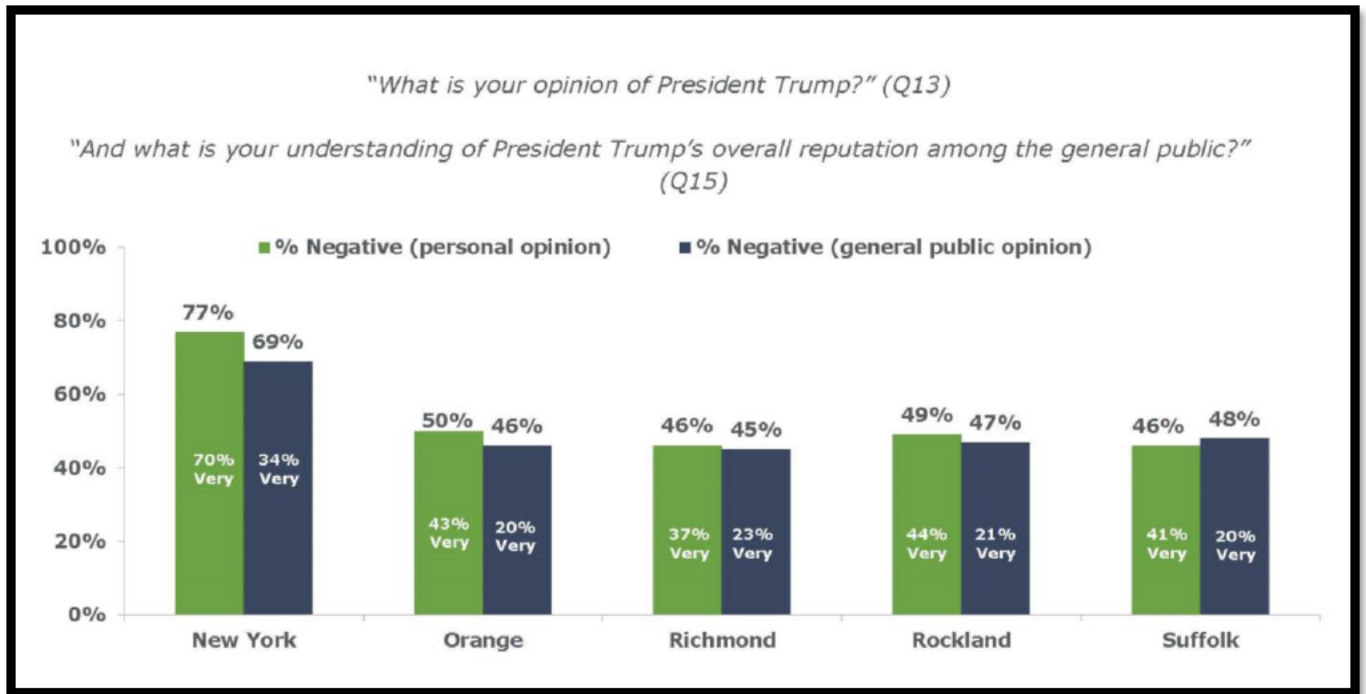
"Thinking back to the 2016/2020 Presidential election, which candidate did you vote for?" (Q3, Q4)

"Looking ahead to the 2024 Presidential election, do you plan to vote for...," (Q5)

	Trump v. Clinton			Trump v. Biden			Trump v. Biden		
	2016			2020			2024		
	Trump	Clinton	Net Trump	Trump	Biden	Net Trump	Trump	Biden	Net Trump
New York Co.	15%	71%	-56%	13%	75%	-62%	18%	58%	-40%
Orange Co.	36%	42%	-6%	40%	45%	-5%	40%	33%	+7%
Richmond Co.	44%	38%	+6%	44%	43%	+1%	43%	31%	+12%
Rockland Co.	40%	41%	-1%	41%	48%	-7%	43%	39%	+4%
Suffolk Co.	44%	33%	+11%	44%	39%	+5%	42%	32%	+10%

Specifically, voters in New York County voted overwhelmingly in favor of President Trump’s opponents in the 2016 and 2020 elections. By improperly seeking to make this case about the 2016 election rather than the 2017 records entries at issue, the People are endeavoring to give jurors an opportunity for a referendum on President Trump’s 2016 victory.

Respondents also described correspondingly negative opinions of President Trump, and their beliefs about the general public’s opinion present a grave risk of “herd mentality” in the jury room:



“Herd mentality, also known as mob mentality or crowd mentality, is a psychological phenomenon that significantly impacts human behavior. It occurs when individuals adopt the beliefs, behaviors, or attitudes of the majority in a group, often at the expense of their own judgment or individuality.” Toketemu Ohwovorirole, *How Herd Mentality Explains Our Behavior*, VERYWELL MIND (May 4, 2023), attached as Exhibit 19. Herd mentality can lead to problematic and unacceptable behavior in the jury room, such as “[s]uppression of dissent,” “marginalization of minority viewpoints,” and “creating an environment where potential problems or alternative perspectives are not adequately considered.” *Id.* at 2. “In the context of group behavior, people underestimate their judgments and individuals imitate group choices.” Xinjie Su et al., *The*

Influence of Herd Mentality on Rating Bias and Popularity Bias: A Bi-Process Debiasing Recommendation Model Based on Matrix Factorization, 13 J. BEHAV. SCI. 63 (2023), attached as Exhibit 20. “Especially when users are in an uncertain environment, imitation is a ‘safe’ choice that users can make. However, this choice is not necessarily subjective, which is different from conformity.” *Id.*

Thus, negative opinions and perceptions of President Trump, as well as people’s belief that their negative opinions are shared with those around them in New York County, are additional bases supporting the adjournment request.

C. Prejudgment Of Guilt Has Reached Unacceptable Levels

There is also strong and unacceptable pre-judgment of guilt in New York County. Not surprisingly, due to extensive media coverage of other cases, 61% of respondents in the survey wrongfully believed President Trump is guilty of criminal charges:

“Based on the recent media reports you have seen, read, or heard related to President Trump, have you formed any opinions as to whether he is likely guilty or innocent of criminal charges?” (Q27)

	Total GUILTY	Definitely GUILTY	Total NOT GUILTY	Definitely NOT GUILTY
New York Co.	61%	40%	12%	6%
Orange Co.	35%	21%	30%	23%
Richmond Co.	34%	20%	36%	21%
Rockland Co.	37%	22%	38%	27%
Suffolk Co.	36%	23%	39%	25%

The 61% figure is striking in light of the Supreme Court’s reasoning in *Irvin v. Dowd*, where the Court found that a belief by 67% of potential jurors, “eight out of 12,” that the defendant

“was guilty” reflected “a pattern of deep and bitter prejudice shown to be present throughout the community.” 366 U.S. 717, 727 (1961); *see also United States v. Gordon*, 380 F. Supp. 2d 356, 365 (D. Del. 2005) (ordering venue change where evidence “strongly support[ed] the view that a substantial percentage of Delawarrians are likely to have concluded that the defendants are guilty as charged”); *cf. Culhane*, 33 N.Y.2d at 96 (vacating verdict based on flawed jury selection where “several” potential jurors “had formed opinions as to the [defendant’s] guilt”).

Those biased views carried over to specific questions about this case. 35% of New York County respondents who participated in the Survey indicated that they believed President Trump is guilty of the charges at issue, including 23% who believe he is “definitely guilty.” Survey Q.37. 26% of the respondents said that they believed President Trump was guilty based on “recent media reports.” Survey Q.32. 24% of respondents indicated that they believed President Trump was guilty based on a “[g]uilty verdict” or “judge’s decision,” and 12% said that their opinion was based on “evidence.” Survey Q.38. In contrast to the substantial prejudgment of guilt demonstrated by the Survey, less than half of the New York County respondents indicated that media coverage had not caused them to form or change opinions regarding the merits of this case. Survey Q.37. These figures prove that prejudicial pretrial media coverage has saturated the venire at this point.

D. The People And Their Witnesses Are Driving Prejudicial Coverage

The prejudicial media coverage of this case will increase as the trial date approaches, based in part on improper actions by DANY and financially-driven decisions by Cohen and Clifford.

Less than a year has passed since the People filed the Indictment. Upon filing, the People sought to stoke press coverage of their actions. This included an April 4, 2023 televised press conference in which District Attorney Bragg wrongfully referenced “sex crimes,” as well as

DANY's release of a document on the same day styled as a "Statement of Facts," which relied on legal theories the Court has since rejected, *see* 2/15/24 Op. at 17-18. Since that time, the "decibel level of media attention" has been steady and substantial. *Skilling*, 561 U.S. at 383. The Media Study demonstrates that there have been more than a hundred articles per week between January 15 and February 24, 2024. *See* Media Study Table 3. During the Survey, 52% of respondents said that they believed the frequency of media reports relating to President Trump had increased, with most of those individuals, 87%, specifying that coverage of criminal charges against President Trump had increased. Survey Qs.25-26. 46% of respondents indicated that there had been an increase in media reports relating to this case specifically. Survey Q.36.

More recently, DANY has taken steps to ensure that prejudicial coverage continues apace. District Attorney Bragg discussed a new theory of the prosecution during a December 2023 interview. Last week, DANY leaked information to the media regarding Weisselberg's guilty plea. A March 4, 2024 *New York Times* article regarding the plea referenced President Trump or the Trump Organization more than 25 times.³⁵ The People's decision to coerce a guilty plea from Weisselberg just weeks before the scheduled start of President Trump's trial is, by itself, an adequate basis to require an adjournment. *See Skilling*, 561 U.S. at 384-85 (noting that trial court granted two-week adjournment following co-defendant's "well-publicized decision to plead guilty shortly before trial," which "created a danger of juror prejudice").

Moreover, in recent months the People's witnesses—Cohen and Clifford—have repeatedly made inflammatory and improper statements to the media despite the Court's May 2023 request that DANY "speak to them." 5/4/23 Tr. at 39-40. For example, this month, Clifford's lawyer has

³⁵ Ben Protess, William K. Rashbaum, Jesse McKinley, and Kate Christobek, *Key Figure in Trump's Business Pleads Guilty to Felony Perjury*, N.Y. TIMES (Mar. 4, 2024), <https://www.nytimes.com/2024/03/04/nyregion/weisselberg-guilty-trump-business.html>.

done explicitly what the People have only implied to date, by seeking to draw a non-existent connection between Clifford’s manufactured claims and the *Carroll* case. *See* note 21, *supra*. Cohen re-posted an article discussing that flawed contention and other prejudicial comments by Clifford to his X account, which, as noted above, has over 612,000 followers.³⁶ Cohen also re-posted articles concerning Weisselberg’s plea,³⁷ and claimed in a March 4, 2024 post that President Trump is a “fuckin joke!”³⁸

In addition to the podcast comments discussed above, *see* Part I.C, *supra*, Cohen’s recent tirades have also included the following:

- March 5, 2024: Cohen sought to blame President Trump for Cohen’s crimes, claiming that he “did 13 fucking plus months plus 51 days of solitary confinement because Donald von shitsinpants couldn’t keep his mushroom dick in his pants” [17:50], and argued that President Trump “is lying” as well as “stupid” [28:15:00]
- March 7, 2024: Cohen referred to the defense team as “Donald Van fucking Shitsinpants and his ongoing continuous . . . D-rated lawyers” [2:11] and asserted that President Trump would “sell this country out, as I’ve said if he was in prison, for a bag of tuna and for a book of stamps” [28:17]
- March 10, 2024: Cohen noted that *Mea Culpa* has been downloaded more than 300 million times [28:31], claimed that “everyone” should be “fearful” of President Trump [53:56], referred to President Trump’s youngest son [53:56], and asserted that authorities should “[s]hip [President Trump] off to a fucking gulag right up in the North Pole with no shoes, no sweater, no jacket, and let him fucking freeze to death out there” [48:46]

³⁶ Michael Cohen (@MichaelCohen212), X (Mar. 8, 2024, 3:12 p.m.), <https://twitter.com/michaelcohen212/status/1766195239545340365?s=46&t=0PSubO-wIb42KJQ153cIKA>.

³⁷ Michael Cohen (@MichaelCohen212), X (Mar. 8, 2024, 8:42 a.m.), <https://twitter.com/michaelcohen212/status/1766097273388228830?s=46&t=0PSubO-wIb42KJQ153cIKA>.

³⁸ Michael Cohen (@MichaelCohen212), X (Mar. 6, 2024, 8:19 a.m.), <https://twitter.com/michaelcohen212/status/1765366627766280528?s=46&t=0PSubO-wIb42KJQ153cIKA>.

“[M]edia coverage can be expected to increase as the trial draws near.” *United States v. King*, 192 F.R.D. 527, 531-32 (E.D. Va. 2000); *cf. United States v. Saya*, 980 F. Supp. 1157, 1159 (D. Haw. 1997) (presuming prejudice where based on “the continuous publicity this case has received” and “the heightened publicity this case would receive as the first anonymous jury empaneled in Hawaii”). There can also be little doubt that Cohen will continue to use social media and *Mea Culpa* to try to make more money by drawing attention to the case and his role in it by criticizing President Trump. Clifford’s objective is also clear, as she released her “Stormy” documentary on March 18, 2024, just days before the since-adjourned trial was scheduled to begin. *See United States v. Ebens*, 654 F. Supp. 144, 146 (E.D. Mich. 1987) (ordering venue change based on “the comment and castigation of public figures, the intensity and long duration of the publicity (since 1982), its inflammatory tone and content, and the continually repeated factual recitations”).

E. Potential Jurors Cannot Be Expected To Set Aside Firmly Held Bias Under Current Circumstances

“[A]dverse pretrial publicity can create such a presumption of prejudice in a community that the jurors’ claims that they can be impartial should not be believed.” *Patton*, 467 U.S. at 1031; *see also Delaney*, 199 F.2d at 112-13 (“One cannot assume that the average juror is so endowed with a sense of detachment, so clear in his introspective perception of his own mental processes, that he may confidently exclude even the unconscious influence of his preconceptions as to probable guilt, engendered by a pervasive pre-trial publicity.”); *Boudin*, 90 A.D.2d at 256 (“No matter how solemnly given, a juror’s statement that he has not been influenced by prejudicial publicity and is capable of affording the defendant a fair trial is not necessarily dispositive.”). Thus, in light of other bias reflected in the Survey, *see supra* Part II.B, it is of no consequence that 67% of respondents from New York County said they could set aside current opinions and render a verdict based on trial evidence. Survey Q.40; *see also Dowd*, 366 U.S. at 728 (“Where so many,

so many times, admitted prejudice, such a statement of impartiality can be given little weight.”); *United States v. Burr*, 25 F. Cas. 49, 51 (C.C.D. Va. 1807) (Marshall, C.J.) (reasoning that the court “cannot view the juror who has formed and delivered” an “opinion” that a defendant is guilty “as impartial, in the legal and constitutional sense of that term”).

Keeping in mind the principles set forth in cases like *Patton*, *Delaney*, *Boudin*, and *Dowd*, one cannot reasonably expect potential jurors to set aside their biases in light of the current volume and content of prejudicial coverage. This is particularly true in New York County, where it is clear that there are overwhelming levels of anti-Trump sentiment:

- 61% of respondents already believe President Trump is guilty (Q.27)
- 77% of respondents have a negative opinion of President Trump (Q.13)
- 70% of respondents have a “very” negative opinion of President Trump (Q.13)
- 71% of respondents voted for Hillary Clinton in 2016 (Q.4)
- 75% of respondents voted for President Biden in 2020 (Q.3)
- 58% of respondents plan to vote for President Biden in 2024 (Q.5)

We recognize that, in a typical case, properly vetted jurors could be expected to set aside their political views. Here, however, the People have made clear that they seek to expand their presentation of evidence so that it focuses on the 2016 election, as well as irrelevant and false allegations of sexual assault, rather than the 2017 records entries at issue.

In a community where most veniremen will admit to a disqualifying prejudice, the reliability of the others’ protestations may be drawn into question; for it is then more probable that they are part of a community deeply hostile to the accused, and more likely that they may unwittingly have been influenced by it.

Murphy v. Florida, 421 U.S. 794, 803 (1975). If the Court plans to allow such a spectacle in a trial involving the leading candidate in the 2024 election, taking place in the middle of the election cycle that he is dominating, these juror biases cannot be overlooked or assumed away.

V. CONCLUSION

The quantitative findings in the Survey and the Media Report support the conclusions that any considered review of the conduct by DANY, Cohen, and Clifford require. President Trump cannot get a fair trial in Manhattan County right now. Therefore, to the extent the Indictment survives the March 25, 2024 hearing—and it should not—the Court must adjourn the trial until prejudicial press coverage abates and to give President Trump sufficient time to review the recent productions.

Dated: March 18, 2024
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