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Via Email

Honorable Juan M. Merchan
Judge - Court of Claims
Acting Justice - Supreme Court, Criminal Term
100 Centre Street
New York, NY 10013

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

Dear Justice Merchan:

We write in response to the People’s March 28, 2024 pre-motion letter relating to the Court’s March 26, 2024 gag order.

The express terms of the gag order do not apply in the manner claimed by the People, which they seem to acknowledge by suggesting the need to “avoid any doubt.” That the gag order has been publicly interpreted in the way that President Trump reads it further supports the defense position on the order’s meaning.¹ As a result, there was nothing “contumacious” about the social media posts cited in footnote one of the People’s pre-motion letter, and no “warn[ing]” would be appropriate. That is particularly true in light of the fact that the defense objected to the vagueness of the proposed gag order in opposition to the People’s motion. *See* Def. Opp’n at 15-16.

Contrary to the People’s suggestion, the Court cannot “direct” President Trump to do something that the gag order does not require. To “clarify or confirm” the meaning of the gag order in the way the People suggest would be to expand it. No expansion is appropriate on the basis of a one-page letter citing only two cases, and where President Trump’s response has been restricted to a single page required to be submitted the following day while President Trump and defense counsel are preparing for trial. Given the sensitivities associated with prior restraints, if the Court wishes to consider such an expansion, a complete opportunity for full adversarial briefing is necessary. Such briefing would address, *inter alia*, the constitutional problems attendant with any additional improper restrictions on protected campaign speech—which would implicate First Amendment rights that belong to not only President Trump but also the public, *see* Def. Opp’n 7-11—where the family member referenced in the pre-motion letter is actively supporting adversarial campaign speech by President Trump’s political opponents.

¹ *See, e.g.*, <https://apnews.com/article/donald-trump-judge-merchan-hush-money-gag-order-truth-social-daughter-578a0c6334b206d81dc2ebf6a410a502> (Mar. 27, 2024) (explaining that the gag order “does not bar comments about Merchan or his family”); <https://www.forbes.com/sites/antoniopequenoiv/2024/03/28/trump-again-targets-judges-daughter-in-new-york-criminal-case/?sh=29a7983f5981> (Mar. 28, 2024) (explaining that social media posts at issue “are not barred by the gag order issued earlier this week”).

Respectfully Submitted,

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