

PART 59 APR 01 2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK
-against-
DONALD J. TRUMP,

Defendant.

PEOPLE’S SUPPLEMENTAL
FILING REGARDING THE
COURT’S MARCH 26, 2024
ORDER RESTRICTING
EXTRAJUDICIAL STATEMENTS

Ind. No. 71543-23

Defendant’s dangerous, violent, and reprehensible rhetoric fundamentally threatens the integrity of these proceedings and is intended to intimidate witnesses and trial participants alike—including this Court. The People accordingly submit this memorandum in further support of our March 28 request that the Court (1) clarify or confirm that its March 26, 2024 Order Restricting Extrajudicial Statements protects family members of the Court, the District Attorney, and all other individuals mentioned in the Order; and (2) warn defendant that his recent conduct is contumacious and direct that defendant immediately desist from attacks on family members. To the extent that the original March 26 Order did not already prohibit this behavior, this Court can and should clarify or extend the Order to protect family members of the Court on the record described below, and should warn defendant that any future disregard of the Order will result in sanctions under Judiciary Law §§ 750(A)(3) and 751.

Based on a factual record that the People have assiduously documented since defendant’s arraignment one year ago—a record that defendant has never contested—this Court judiciously implemented a series of step-by-step measures to protect the administration of justice while providing maximum allowance for defendant’s speech. After a series of statements from defendant that included threatening “death and destruction” if he was indicted and posting a photo of himself wielding a baseball bat at the back of the District Attorney’s head—statements which required an

extensive public safety response by multiple law enforcement agencies—this Court admonished defendant to refrain from statements likely to incite violence or civil unrest or which jeopardized the rule of law.¹ Defendant refused to refrain from his disruptive and terrifying speech. Then, in response to the People’s motion for narrow limits on extrajudicial speech, defense counsel swore to this Court that defendant could and would self-regulate. Defendant proved himself totally incapable of self-regulating, going so far as to refer to one potential trial witness last week as “death.”² With the start of trial imminent and all other less restrictive measures having failed, this Court entered a tailored order on March 26, 2024, restricting certain kinds of extrajudicial speech aimed at witnesses, prospective jurors, court staff, prosecutors, and others.

Defendant immediately responded by launching a barrage of attacks not only on this Court but also on a member of the Court’s family—including by posting a photo of the family member.³ These attacks were based on transparent falsehoods, such as the claim that the family member had made a post on social media; in fact, the social media account cited by defendant was a fraudulent

¹ Tr. of Arraignment 5-8, 12-13 (Apr. 4, 2023). The People filed these and other statements with the Court at defendant’s arraignment, including statements directly addressing the grand jury; calling the District Attorney an “animal,” a “degenerate psychopath,” and “HUMAN SCUM”; referring to multiple potential witnesses in pejorative and violent terms; and threatening “years of hatred, chaos, and turmoil” if he was indicted.

² See <https://truthsocial.com/@realDonaldTrump/posts/112162726199012291> (Mar. 26, 2024, 11:36 AM).

³ See <https://truthsocial.com/@realDonaldTrump/posts/112168130782172121> (Mar. 27, 2024, 10:30 AM); <https://truthsocial.com/@realDonaldTrump/posts/112168131310885618> (Mar. 27, 2024, 10:30 AM); <https://truthsocial.com/@realDonaldTrump/posts/112168132432855508> (Mar. 27, 2024, 10:31 AM); <https://truthsocial.com/@realDonaldTrump/posts/112175286080557091> (Mar. 28, 2024, 4:50 PM); <https://truthsocial.com/@realDonaldTrump/posts/112175287253440880> (Mar. 28, 2024, 4:50 PM); <https://truthsocial.com/@realDonaldTrump/posts/112187120801960861> (Mar. 30, 2024, 7:00 PM); <https://truthsocial.com/@realDonaldTrump/posts/112191041194965817> (Mar. 31, 2024, 11:37 AM).

impersonation.⁴ But the facts are beside the point for this defendant. Indeed, defendant has instead insisted that he is constitutionally entitled to engage in “protected campaign speech” against this Court’s family based on yet another false claim: that the family member is “actively supporting adversarial campaign speech by [defendant’s] political opponents.” Def.’s Mar. 29 Ltr. at 1.

There is no constitutional right to target the family of this Court, let alone on the blatant falsehoods that have served as the flimsiest pretexts for defendant’s attacks. Defendant knows what he is doing, and everyone else does too. And we all know exactly what defendant intends because he has said for decades that it is part of his life philosophy to go after his perceived opponents “as viciously and as violently” as he can.⁵ He has said for decades that he attacks his perceived opponents “viciously” and “violently” both “because it is a good feeling and because other people will see you doing it.”⁶ And he promised very recently that “IF YOU GO AFTER ME, I’M COMING AFTER YOU!”⁷ He is carrying out that promise right now.

Defendant’s conduct since this Court issued the March 26 Order is all the record that is necessary to justify a further order making clear that the Court’s family is off-limits.⁸ Defendant

⁴ Jesse McKinley & Ben Protess, *Trump Spreads Apparent Hoax in Attacking Judge’s Daughter*, N.Y. Times, Mar. 27, 2024, <https://www.nytimes.com/2024/03/27/nyregion/trump-social-media-attack.html>.

⁵ Ex. 11 to People’s Mot. for an Order Restricting Extrajudicial Statements (Feb. 22, 2024).

⁶ Exs. 11 & 12 to People’s Mot. for an Order Restricting Extrajudicial Statements.

⁷ Ex. 1 to People’s Mot. for an Order Restricting Extrajudicial Statements.

⁸ To the extent more is needed—which it is not—the People expressly incorporate by reference and the Court may rely on the exhibits, factual averments, and argument already presented to the Court in the People’s many prior filings (which were already subject to “a complete opportunity for full adversarial briefing,” Def.’s Mar. 29 Ltr. at 1), which comprehensively document defendant’s extensive history of threats and dangerous rhetoric against participants in legal proceedings against him, including this one. *See* People’s Mot. for an Order Restricting Extrajudicial Statements (Feb. 22, 2024); People’s Mot. for a Protective Order Regulating Disclosure of Juror Addresses and Names (Feb. 22, 2024); People’s Mot. to Quash Def.’s

is awaiting trial on felony charges and has been offered many opportunities to conform his behavior to the minimum standard necessary to allow this trial to proceed without disruption. Defendant's continued harassing and disruptive conduct thus demands clarification or expansion of this Court's March 26 Order Restricting Extrajudicial Speech to protect the Court's ability to administer this case; to protect this Court and the Court's family from harm; and to show *all* witnesses, prospective jurors, and other trial participants that the judicial system stands ready to protect them too and to preserve the rule of law in the face of defendant's extreme and deliberate provocations.

Defendant's claim of a constitutional right to levy personal attacks on family members is as disturbing as it is wrong. This Court has already held that, even assuming "the highest scrutiny" under the First Amendment, narrow restrictions on defendant's statements are permissible since his "inflammatory extrajudicial statements undoubtedly risk impeding the orderly administration of this Court." Mar. 26 Order at 1-2. There is absolutely no reason to reach a different conclusion as to inflammatory attacks on this Court's family (or, for that matter, attacks on family members of any other individuals covered by the Order). And the harm to the orderly administration of this proceeding is magnified by the high likelihood that potential witnesses, prospective jurors, and other trial participants will observe defendant's attacks and understand that, if this Court's family is fair game, then so are theirs. *See United States v. Trump*, 88 F.4th 990, 1013 (D.C. Cir. 2023) ("The undertow generated by such statements does not stop with the named individual. It is also highly likely to influence other witnesses.").

Subpoena and for a Protective Order (Nov. 9, 2023); People's Mot. for a Protective Order (Apr. 24, 2023); Tr. of Arraignment 5-8, 12-13 (Apr. 4, 2023).

Defendant’s vague reference to “the constitutional problems attendant with any additional improper restrictions on protected campaign speech” (Mar. 29 Ltr. at 1) suggests that he believes he may have a *higher* entitlement to attack family members than trial participants. But there is no doctrine of constitutional law that provides heightened First Amendment protections for criminal defendants to target family members of the presiding judge. Unlike trial participants—who at least are involved in the proceeding involving defendant—family members have nothing whatsoever to do with this criminal trial except by dint of their personal relationships. As the district court in defendant’s D.C. criminal prosecution observed before ordering similar restrictions on his extrajudicial statements, there is simply no First Amendment value to allowing attacks on family members who have “nothing to do with [the] case.” Tr. 47, *United States v. Trump*, No. 23-00257, Dkt. No. 103 (D.D.C. Oct. 16, 2023) (“In what world is it permissible, Mr. Lauro? In what world, in what case would it be allowable for a criminal defendant to attack a prosecutor’s family?”).

The only fig leaf of a justification that defendant references is his claim that the Court’s family member “is actively supporting adversarial campaign speech by [defendant’s] political opponents.” Mar. 29 Ltr. at 1. But the suggestion that defendant is merely engaging in political counter-speech is an obvious fiction that this Court should emphatically reject. *See Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2575 (2019) (judges “are not required to exhibit a naiveté from which ordinary citizens are free” (quotation marks omitted)). None of defendant’s attacks in the past week consist of campaign advocacy. Instead, defendant has viciously and falsely smeared the Court and the family member for no reason other than the Court’s presiding over this criminal trial. The only possible purpose for such personal attacks can be to impede the orderly

administration of this trial.⁹ That is the very harm that led this Court to impose the March 26 Order in the first place. As U.S. District Judge Reggie B. Walton recently observed in decrying defendant’s remarks, “the rule of law can only function effectively when we have judges who are prepared to carry out their duties without the threat of potential physical harm” to themselves and their families.¹⁰

The claim about the Court’s family member is also a blatant falsehood that this Court rejected last year in denying defendant’s May 31, 2023, motion seeking this Court’s recusal. *See* Decision on Def.’s Mot. for Recusal 2-3 (Aug. 11, 2023). As the People explained in our response on June 14, 2023, there is no factual support at all for defendant’s assertion, and the Advisory Committee on Judicial Ethics agreed when presented with the same question. *See* Opinion of the Advisory Committee on Judicial Ethics, Op. 23-54 (May 4, 2023).¹¹ This Court already admonished defense counsel at the March 25, 2024 hearing and in a subsequent written order to adhere to the facts in making any representations to the Court. *See* Mar. 25 Hearing Tr. at 53; Decision & Order on Def.’s Mot. to Vacate the Court’s Order on the Filing of Motions at 4 (Mar. 26, 2024). Defense counsel has immediately disregarded those admonitions and knowingly repeated a baseless claim about the Court’s family member.

⁹ Defendant accelerated his attacks on the Court and the Court’s family on Thursday afternoon, March 28, several hours after the People filed our request on Thursday morning that the Court clarify or confirm the scope of the Order. Defendant did so again through the weekend after defense counsel made a Friday afternoon request—which the Court granted—for the opportunity to submit a second response today to the People’s letter. Defense counsel’s claim to need more time to brief the straightforward question of whether a member of the Court’s family should be singled out for online harassment has allowed defendant to exploit the intervening period by continuing to target and harass the Court and the Court’s family.

¹⁰ Shania Shelton & Rashard Rose, *Federal Judge Warns of Trump’s Attacks in Extraordinary Rebuke*, CNN, Mar. 29, 2024, <https://www.cnn.com/2024/03/29/politics/federal-judge-donald-trump-rebuke/index.html>.

¹¹ Available at <https://www.nycourts.gov/legacyhtm/ip/judiciaethics/opinions/23-54.htm>.

This issue is not complicated. Family members of trial participants must be strictly off-limits. Defendant's insistence to the contrary bespeaks a dangerous sense of entitlement to instigate fear and even physical harm to the loved ones of those he sees in the courtroom. This Court should immediately make clear that defendant is prohibited from making or directing others to make public statements about family members of the Court, the District Attorney, and all other individuals mentioned in the Order.

Finally, the People note that in our Motion for a Protective Order Regulating Disclosure of Juror Addresses and Names, the People asked this Court to put defendant on notice that he will forfeit any statutory right he may have to access juror names if he engages in any conduct that threatens the safety and integrity of the jury or the jury-selection process. *See* Mot. for a Protective Order 1, 17-20 (Feb. 22, 2024). The Court granted the People's motion to restrict disclosure of juror addresses and names, and further held that "a decision on the People's motion for this Court to explicitly provide notice to Defendant that any harassing or disruptive conduct that threatens the safety or integrity of the jury may result in forfeiture of Defendant's access to juror names is reserved pending this Court's decision on the People's motion for an order restricting extrajudicial statements." Mar. 7, 2024 Order at 6-7. The People respectfully request that any order this Court enters clarifying or confirming the scope of its March 26 Order should also include the relief the People requested in our February 22 Motion for a Protective Order; namely, that defendant be expressly warned that any statutory right he may have to access juror names will be forfeited by continued harassing or disruptive conduct.

DATED: April 1, 2024

Respectfully submitted,

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