TODD BLANCHE
ToddBlanche@blanchelaw.com
(212) 716-1250

March 8, 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. We seek permission to file the enclosed motion for discovery sanctions based on the People's violations of CPL Article 245, which we were in the process of finalizing when we received the order at approximately 4:10 pm today.[1] As set forth in the motion papers, we seek dismissal of the Indictment or, in the alternative, (1) preclusion of testimony from Michael Cohen and Stephanie Clifford, as well as the preclusion of certain testimony from Adav Noti that is not proper rebuttal expert testimony, and (2) an adjournment of the trial date of at least 90 days. There are two principal bases for the motion.

First, the USAO-SDNY has produced over 73,000 pages of materials relating to [redacted] since Monday, March 4, 2024. Those productions are not complete. The People should have obtained and produced these materials long ago, and instead they chose to seek unsuccessfully to obstruct our access to them. President Trump requires additional time to review these untimely disclosures, potentially seek relief in motion practice depending on what is uncovered, and incorporate them into his defense strategy.

Second, also on March 4, 2024, the People produced [redacted]. [redacted] is core impeachment material subject to the People's automatic discovery obligations. They have been aware of [redacted] since at least December 2023, but chose not to obtain and produce it until this month. They apparently did so because [redacted], which we learned in the news yesterday and would cause extraordinarily prejudicial—and unacceptable—pretrial publicity on the current schedule. President Trump requires additional time to review [redacted], and the Court must allow additional time for the prejudice from its release to abate prior to commencing jury selection.

We respectfully submit that the Court should deem the enclosed motion filed immediately and direct the People to respond forthwith.

Respectfully Submitted,

/s/ Susan R. Necheles
Susan R. Necheles
Gedalia M. Stern
Necheles Law LLP

/s/ Todd Blanche
Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC

Attorneys for President Donald J. Trump

[1] Because this motion is based on facts and documents revealed only within the last few days, we cannot possibly have made it by the motion *in limine* deadline, and therefore it is proper to file now. With respect to the March 7, 2024 motion, we explained the reason for the timing of that filing: recent actions by the U.S. Supreme Court and ambiguities in the People's *in limine* filings. Moreover, while we have no objection to the Court seeking previews of incoming motions as a docket-management measure, we believe that it violates the CPL, the Sixth Amendment and other constitutional rights of President Trump if the Court were to refuse to permit the defense to file any particular motion and set forth all of the authorities in support of that motion.

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

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

NOTICE OF PRESIDENT DONALD J. TRUMP'S MOTION TO DISMISS AND FOR AN ADJOURNMENT BASED ON DISCOVERY VIOLATIONS

PLEASE TAKE NOTICE that upon the annexed affirmation of Todd Blanche, dated March 8, 2024, the exhibits attached thereto, and the accompanying memorandum of law, President Donald J. Trump, by his counsel Blanche Law PLLC and NechelesLaw LLP, will move this Court, the Supreme Court of New York, County of New York, 100 Centre Street, New York, N.Y. 10013, on a date and time to be set by the Court, for dismissal of the Indictment or, in the alternative, (1) preclusion of testimony from Michael Cohen and Stephanie Clifford, as well as the preclusion of certain testimony from Adav Noti that is not proper rebuttal expert testimony, and (2) an adjournment of the trial date of at least 90 days.

Dated: March 8, 2024
New York, N.Y.

Susan R. Necheles
Gedalia Stern
NechelesLaw LLP
1120 Sixth Avenue, 4th Floor
New York, NY 10036
212-997-7400
srn@necheleslaw.com

By: /s/ Todd Blanche
Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC
99 Wall Street, Suite 4460
New York, NY 10005
212-716-1250
toddblanche@blanchelaw.com

Attorneys for President Donald J. Trump

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

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

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PRESIDENT DONALD J. TRUMP'S MOTION TO DISMISS AND FOR AN ADJOURNMENT BASED ON DISCOVERY VIOLATIONS

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I. INTRODUCTION

President Donald J. Trump respectfully submits this motion for sanctions based on the People's discovery violations.

The People have engaged in widespread misconduct as part of a desperate effort to improve their position at the potential trial on the false and unsupported charges in the Indictment. These improper and unethical actions violated the automatic discovery provisions of CPL § 245.20. Recently, this misconduct has included:

1. Attempts to suppress voluminous exculpatory evidence relating to Michael Cohen at the U.S. Attorney's Office for the Southern District of New York (the "USAO-SDNY"), which the USAO-SDNY just started to produce on March 4, 2024;

2. Untimely production on March 4, 2024, of [redacted] which contains extensive impeachment material;

3. Untimely production of separate impeachment material relating to Cohen on February 9, 2024, in the form of [redacted];

4. Insisting on improper redactions of [redacted] as well as of other internal communications involving current and former prosecutors associated with this case, and interview reports relating to other witnesses;

5. Untimely production, on February 26, 2024, of [redacted], which contains exculpatory information that undercuts the People's theory of the case; and

6. A strategically timed expert notice on March 1, 2024, relating to proffered testimony from Adav Noti, which was provided after our opposition to the People's motions in *in limine*, which exceeds the scope of the defense expert notice, and is therefore improper.

In connection with these violations, among many others, the USAO-SDNY is currently in the process of producing discoverable materials relating to Cohen. As of this morning, the productions to date have included 73,193 pages, including reports relating to statements by Cohen that are exculpatory and favorable to the defense, as expanded on below. The USAO-SDNY has agreed to make additional voluminous productions, including additional bank records and

materials that the USAO-SDNY and FBI seized as evidence of Cohen's prior crimes, which will be admissible at trial in this case. We are seeking to assess the extent of any overlap of the information with other discovery from the People. However, having previously obtained relevant materials from the USAO-SDNY, and included those documents in a June 8, 2023 production folder labeled "SDNY & FBI Materials," the People should have collected *all* of these documents long ago. Instead, they collected some materials but left others with the federal authorities, in the hope that President Trump would never get them. That approach is completely unacceptable and a blatant discovery violation, which the People further compounded more recently by opposing a request for the materials from defense counsel directly to the USAO-SDNY.

The circumstances surrounding [redacted] are, at least, equally troubling. [redacted], as well as [redacted] relating to President Trump, plainly contains witness statements subject to automatic disclosure under CPL § 245.20(1)(e) and impeachment information subject to disclosure under CPL § 245.20(1)(k), as well as the state and federal constitutions. The People did not produce any evidence relating to [redacted] until March 4, 2024. In that production, they made no mention of the fact—which they obviously were aware of—that [redacted] for a week prior to the scheduled start of jury selection, on March 18. That information was discoverable because it bears on Clifford's bias and motive to monetize her status as a witness in this case, and it is extremely problematic with respect to prejudicial pretrial publicity. We only learned of these plans yesterday from media reports and from the public release of a trailer relating to [redacted].

Also this week, in *People v. Horowitz, et al.*, Ind. No. 72426-22, the People dismissed a separate case based on a mid-trial production "of approximately 6,000 pages of material."[1] The People conceded that "[t]hese delayed disclosures revealed relevant information that the defense should have had the opportunity to explore and [use in] cross-examination of the People's witnesses."[2] Justice Curtis Farber described the disclosures as "jarringly late," "in violation of both discovery mandates and the defendants' Constitutional Right of confrontation . . . ."[3] Justice Farber found that the late disclosures revealed that complaining witnesses had invoked privilege "to shield themselves from a thorough and complete cross-examination" and to "obfuscate and hide information that they believed would be damaging to their position . . . ."[4] With regard to the People, Justice Farber concluded that they had been "passive complicity in allowing this situation to develop,"[5] that the "People should have probed" more deeply,[6] and that the People "should have recognized that they did not have a complete understanding of their case and that potential material existed upon which the defense could rely on their defense."[7] Justice Farber credited District

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[1] Kyle Schnitzer and Ben Kochman, *DA 'checks out' of 'Hotel California' lyrics case mid-trial after rocker Don Henley discloses 6,000 pages of new evidence late*, N.Y. POST (Mar. 6, 2024, 4:32 pm), https://nypost.com/2024/03/06/us-news/da-moves-to-drop-eagles-stolen-lyrics-case-after-admitting-don-henley-produced-6000-pages-of-evidence-late/.

[2] Rachel Scharf, *'Manipulated' DA Checks Out Of 'Hotel California'*, LAW360 (Mar. 6, 2024, 11:24 am), https://www.law360.com/articles/1810690/-manipulated-da-checks-out-of-hotel-california-trial [hereinafter *Manipulated DA Checks Out*].

[3] *Id*.

[4] *Id*.

[5] Molly Crane-Newman, *Manhattan DA drops 'Hotel California' lyrics case amid accusations key evidence withheld*, DAILY NEWS (Mar. 6, 2024, 11:28 am), https://www.nydailynews.com/2024/03/06/manhattan-prosecutors-drop-hotel-california-lyrics-case-don-henley-eagles/ [hereinafter *DA drops 'Hotel California' lyrics case*].

[6] Scharf, *Manipulated DA Checks Out*, *supra* note 2.

[7] Crane-Newman, *DA drops 'Hotel California' lyrics case*, *supra* note 5.

Attorney Bragg and the People with "eating a slice of humble pie" and "refusing to allow itself or the courts to be further manipulated for the benefit of anyone's personal gain."[8]

Justice Farber's findings in *Horowitz* apply forcefully to the People's misconduct and discovery violations here. The late productions consisting of more than 50,000 pages, and counting, greatly exceed the 6,000 pages in *Horowitz*. Those disclosures have revealed information that President Trump must have an opportunity to explore as he prepares his defense. Relative to the automatic disclosure provisions of CPL § 245.20(2), the People's recent productions are jarringly late. The People have been far more than passively complicit in the suppression of evidence in this case; they have actively sought to prevent President Trump from obtaining critical materials to which he is entitled. Similar to the frivolous privilege claims by witnesses in *Horowitz*, the People have improperly invoked federal law, federal immunities, and the work product privilege in this case, in a broad manner to try to shield from discovery information that is discoverable under the state and federal constitutions, because President Trump is entitled to use it to cross-examine the People's witnesses and call to the jury's attention to the lack of integrity associated with this investigation. Finally, the developing situations with the USAO-SDNY's productions and [redacted] illustrate that, as in *Horowitz*, the People should have recognized that they do not have a complete understanding of their witnesses and that material existed that they needed to collect because New York law and due process required its disclosure.

For all of these reasons, dismissal of the Indictment and severe sanctions are required. The People's Certificates of Compliance were illusory and failed to adequately explain their wrong and misleading claims of "diligence," which never truly occurred. Pursuant to CPL § 245.80, as well

[8] Scharf, *Manipulated DA Checks Out, supra* note 2.

as the additional reasons set forth in our motions *in limine*, the Court should dismiss the Indictment or, in the alternative, preclude testimony from Cohen, Clifford, and Noti. Given these facts and the developments, the People should agree that dismissal is proper. If the Indictment is not immediately dismissed, as it should be, an adjournment of the trial is necessary, "[r]egardless of a showing of prejudice," because President Trump is entitled to "reasonable time to prepare and respond to the new material." CPL § 245.80(1)(a). The Court should not set a new trial date until the USAO-SDNY has completed its productions to President Trump and the People so that all parties have a better sense of the volume of those materials, while it is impossible to estimate, due to the People's lack of candor and continued obfuscation, the length of that period, it cannot be any less than 90 days.

Finally and vitally, this motion implicates extremely serious issues relating to prosecutorial misconduct and discovery violations in a high-profile case that are specifically geared to interfere in the 2024 presidential election and deprive the American people of their First Amendment right to receive campaign advocacy from President Trump—the leading candidate in that election. At common law and under the First Amendment, the public and the press have an immediate right of access to this motion. We respectfully submit that no redactions are appropriate and that it should be filed on the public docket immediately.

II. RELEVANT FACTS

A. The People's Production Of "SDNY & FBI Materials"

On June 8, 2023, the People produced to the defense two hard drives that contained nearly 3 million pages of discovery. The People provided an index relating to the production, which included a "Category" labeled "Docs from Government Agencies." Ex. 1 at 4-7. Within this Category, the People produced documents from the New York Attorney General, the U.S. Office of Government Ethics, and "SDNY & FBI Materials"—a reference to the USAO-SDNY and the

FBI, which assisted both the USAO-SDNY and Special Counsel Robert Mueller. *Id.* at 7. The "SDNY & FBI Materials" included 34 documents, such as:

- [redacted] (DANYDJT00000570, DANYDJT00000573);
- [redacted] (DANYDJT00000576);
- [redacted] (DANYDJT00000797, DANYDJT00000580);
- [redacted] (DANYDJT00001091, DANYDJT00001011, DANYDJT00001139, DANYDJT00001152); and
- [redacted] (DANYDJT00098665).

In a Category labeled "Public Court Filings," the People's June 8, 2023 production also included [redacted] (*e.g.*, DANYDJT00021712).

B. DANY Investigator's Improper Relationship With Cohen And His Attorney

The People also disclosed in the June 8, 2023 production that [redacted]. Specifically, [redacted]:

- [redacted]
- [redacted]

- [redacted]
- [redacted]

Ex. 2.

Also on June 8, 2023, DANY produced [redacted], which included the following:

- [redacted] (DANYDJT00160815).
- [redacted] (DANYDJT00160021).
- [redacted] (DANYDJT00160817).
- [redacted] (DANYDJT00160025).
- [redacted] (DANYDJT00160034).
- [redacted] (DANYDJT00160048)

[redacted]. (DANYDJT00184611).

C. [redacted] Unreliable Collection Of [redacted]

On June 15, 2023, DANY produced [redacted]. [redacted]

[redacted]

[redacted]; and [redacted] (DANYDJT00175474).

[redacted].

D. The People's Efforts To Withhold Communications Relating To Cohen

On July 24, 2023, DANY produced, among other things, "Email Review" materials "identified through our review of internal email messages, including materials identified by the Bates prefix[] 'DANYEMAIL.'" Ex. 3. The "Email Review" folders included with the production included a total of 769 documents. The letter accompanying the July 24, 2023 production stated that, "in some circumstances, we *may* have withheld parent emails or attachments where those documents were not subject to disclosure (on work product or other grounds) or where those documents were separately produced." *Id* (emphasis added). The production letter made no reference to redactions and did not include a privilege log.

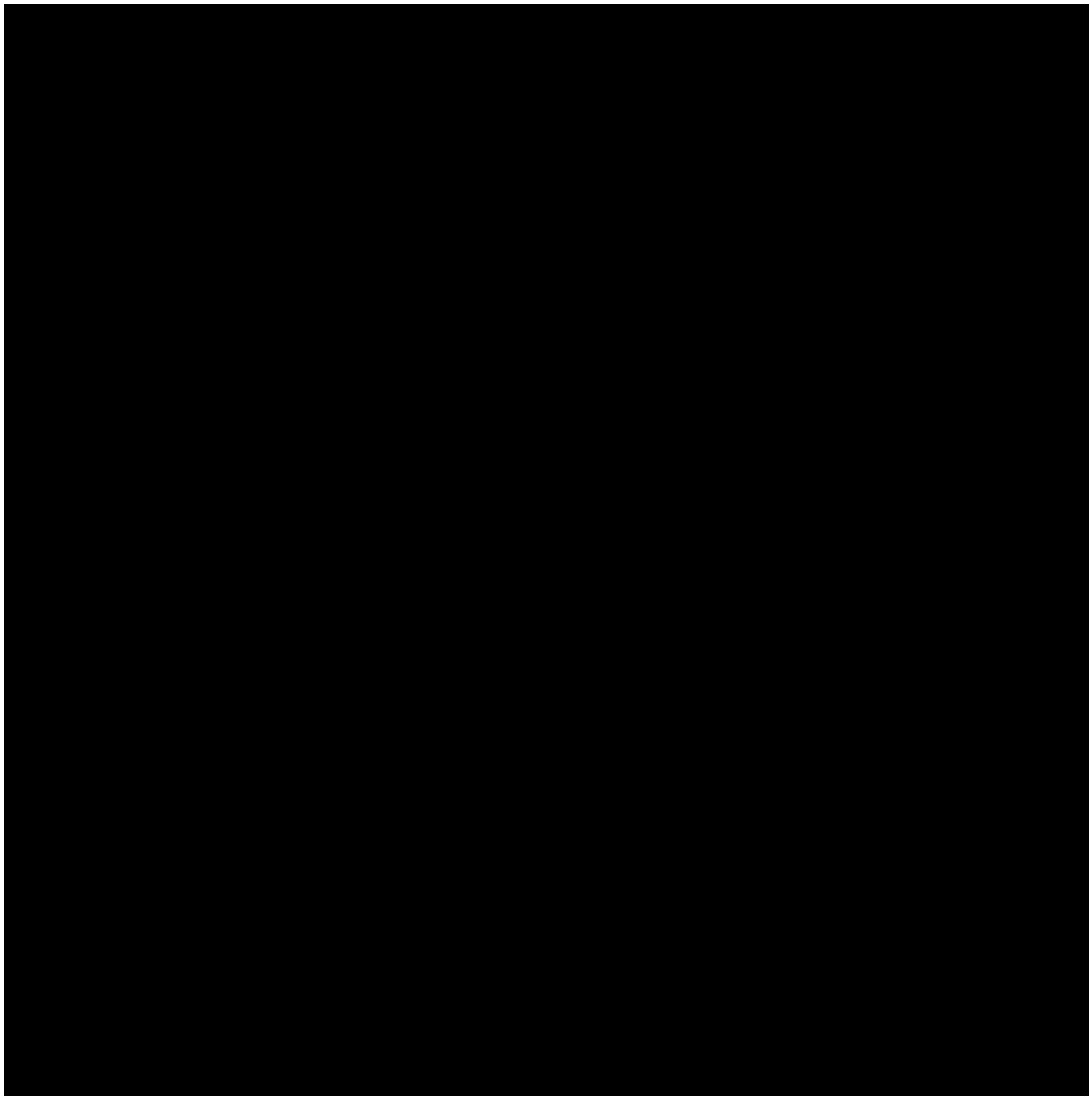
However, many of the documents in the "Email Review" folders were heavily redacted. For example, the People produced the following redacted version of [redacted]:

Ex. 4.

The People also produced [redacted] Ex. 5. In the email, [redacted] *Id.* An entire sentence of the email is redacted:

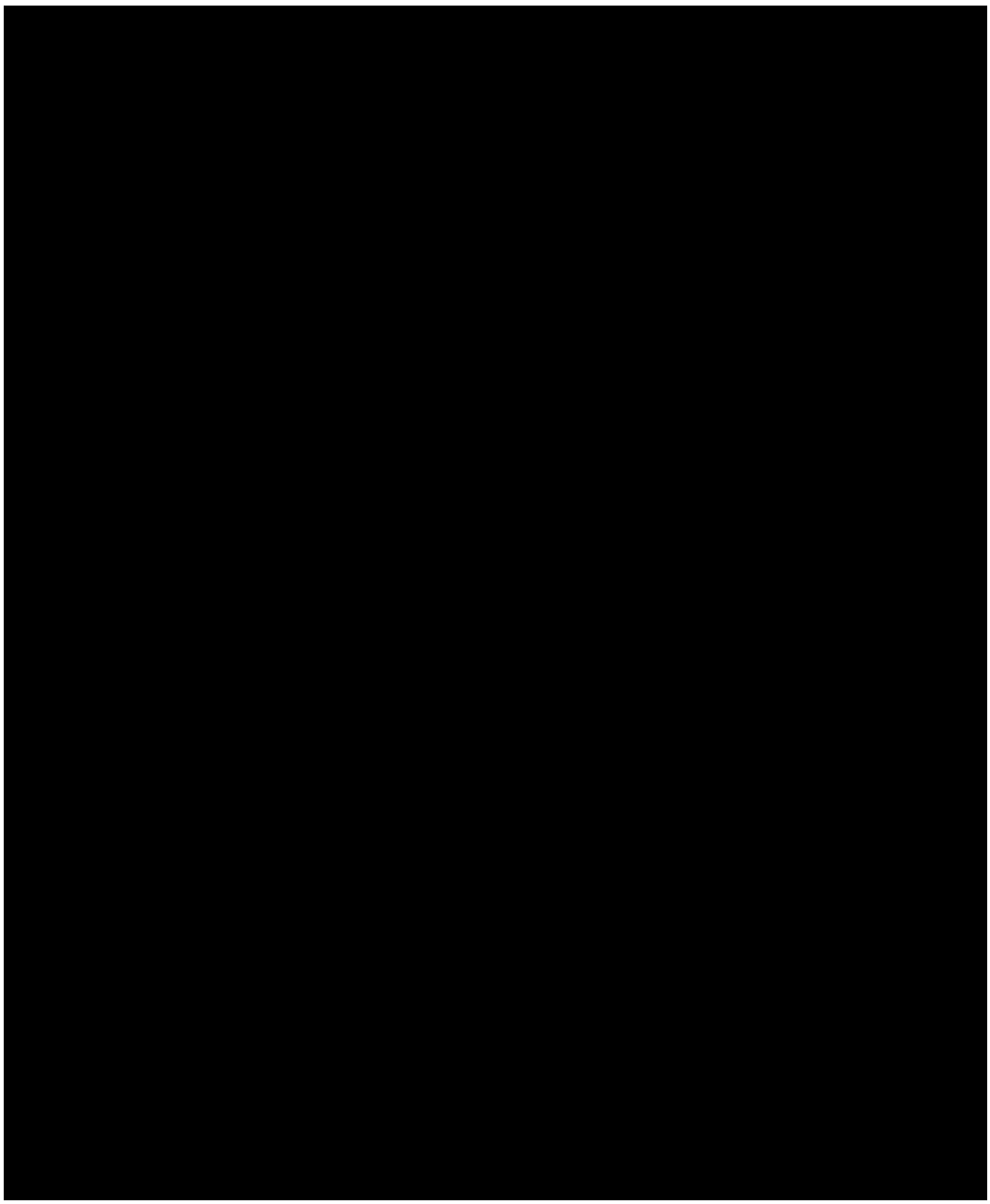
Id.

DANY produced [redacted] Ex. 6 (emphasis added). The email contains heavy redactions, including, inexplicably, the [redacted]:



Id.

The People similarly produced [redacted] which contains rather extensive redactions:



Ex. 7.

DANY produced another highly redacted [redacted]

[redacted]:

Ex. 8.

The People also produced [redacted]

[redacted] once again with heavy redactions:

Ex. 9. The email included [redacted] which the People did not produce.

E. The People's Efforts To Obstruct President Trump's Subpoenas

Beginning on October 17, 2023, based on open-source information and some of the documents in the People's June 8, 2023 production, President Trump issued subpoenas to collect evidence of (1) Cohen's criminal conduct, which is discoverable and admissible at trial because, *inter alia*, his prior crimes provided him with a motive to curry favor with the People by fabricating claims regarding President Trump and a corresponding bias against President Trump; (2) Cohen's writings regarding President Trump and agreements with publishers that provide financial motivations for Cohen to make things up regarding President Trump to sell more ads on his podcasts and more books; and (3) documents relating to the alleged tax crimes that the People allege are a predicate offense *in this case*, *see, e.g.*, 2/15/24 Op. at 11-13, 16-17.

The People obstructed those efforts by coordinating with Cohen to file motions to quash the subpoena that President Trump had served on Cohen's counsel. The Court granted their motions in large part on November 29, 2023, and denied reargument on February 23, 2024—even with respect to *Trump Revolution: From the Tower to the White House, Understanding Donald J. Trump*, an unpublished manuscript by Cohen in which Cohen described his relationship with President Trump in terms that contradict his current story, and which therefore has obvious and important impeachment value at trial.

Consistent with the existing strategy to hide the truth, DANY has thus far successfully obstructed President Trump's efforts to subpoena from Cohen's publishers the relevant agreements and drafts of Cohen's two published books: *Revenge: How Donald Trump Weaponized the US Department of Justice Against His Critics* and *Disloyal: A Memoir: The True Story of the Former Personal Attorney to President Donald J. Trump*. The Court granted motions to quash filed by the People and the publishers on March 1, 2024.

F. The People's Efforts To Obstruct President Trump's *Touhy* Request To USAO-SDNY

On January 18, 2024, while President Trump's motion for reargument on the subpoena to Cohen was pending, the defense served a subpoena on the USAO-SDNY. Ex. 10. The following day, the USAO-SDNY took the position that the subpoena was unenforceable based on sovereign immunity and asked the defense to instead request the information pursuant 28 C.F.R. §§ 16.21 – 16.29, which are regulations promulgated by the Justice Department pursuant to *United States ex. rel Touhy v. Ragen*, 340 U.S. 462 (1951). Ex. 11.

Defense counsel submitted the *Touhy* request to the USAO-SDNY on January 22, 2024, and supplemented the request on January 31, 2024. Exs. 12, 13. On February 7, DANY opposed our request by relying on, *inter alia*, federal law that is not applicable and that the prosecution had

no business invoking. Ex. 14 (citing "the Privacy Act, the federal grand jury secrecy rule, the tax secrecy provisions of the Internal Revenue Code, and the substantive law concerning the federal government's privileges"). For example, DANY argued—wrongly, as proven by subsequent events—that "[e]ach demand in defendant's *Touhy* request" required "Cohen's consent." *Id.* at 7.

On February 23, 2024, the USAO-SDNY agreed to disclose certain of the records sought by President Trump. Ex. 15. The USAO-SDNY found Your Honor's rulings "instructive" and "persuasive," *id.* at 2-3, but agreed to disclose the following:

- Bank records and related emails concerning Cohen, which the USAO-SDNY agreed to produce to DANY "with the understanding that any relevant, material and/or discoverable materials will be shared with the defense." *Id.* at 7 (discussing *Touhy* Request 3).

- All documents seized in 2018 from "two Apple iPhones and three email accounts belonging to Mr. Cohen." *Id.* (discussing *Touhy* Requests 4-10).

- [redacted] *Id.* at 8 (discussing *Touhy* Request 11).

- [redacted] *Id.* (discussing *Touhy* Request 12).

To date, in a series of rolling productions that are not yet complete and ongoing, the USAO-SDNY has produced over 73,000 pages of documents. On March 4, 2024, the USAO produced approximately 182 pages of documents relating to *Touhy* Requests 11 and 12, *i.e.*, [redacted]. As discussed below, [redacted] include exculpatory information that DANY failed to timely obtain and produce.

On March 5, 2024, the USAO-SDNY produced to DANY approximately 10,778 pages of bank records in response to *Touhy* Request 3. DANY produced those documents to President Trump on March 6. We are beginning the process of reviewing those materials.

On March 7 and March 8, 2024, the USAO-SDNY produced to DANY two additional productions of bank records in response to *Touhy* Request 3, bringing the total page count for the recent USAO-SDNY productions to 73,193. The USAO-SDNY has not yet produced any materials relating to *Touhy* Requests 4 through 10, which relate to evidence seized from Cohen's accounts and emails because it is evidence of criminal conduct. Based upon representations from the USAO-SDNY, additional productions will continue next week.

G. Untimely Production Of Additional [redacted]

On February 9, 2024, the People produced 20 pages of [redacted]. Ex. 16. [redacted], and the communications include discoverable information that was not timely produced [redacted]:

- [redacted] *Id.* at DANYDJT00212834.
- [redacted] *Id.* at DANYDJT00212849.
- [redacted] *Id.* at DANYDJT00212836.
- [redacted] *Id.* at DANYDJT00212838.
- [redacted] *Id.* at DANYDJT00212842.

- [redacted] *Id.* at DANYDJT00212847-48.
- [redacted] *Id.* at DANYDJT00212853.

The People have not offered an adequate explanation for the untimely production, given that [redacted] appear to have been in Pomerantz's possession, and [redacted] contain improper redactions. *See id.* at DANYDJT00212843, DANYDJT00212845-46

H. Untimely Disclosure Of [redacted]

On February 26, 2024, DANY produced [redacted]. Ex. 17. DANY described this document as "Intake" and, once again, provided no explanation for its failure to produce this document sooner. Exs. 18, 19 at 21.

I. Improper Rebuttal Expert Disclosure

President Trump provided the People with notice of his intention to elicit testimony from Bradly Smith on January 22, 2024. The People moved to preclude Smith's testimony in a motion *in limine* filed on February 22. The People waited until after President Trump opposed that motion on February 29 to disclose purported expert notice relating to Adav Noti. Ex. 20. Although the notice claimed that Noti would "address the topics identified in Mr. Smith's disclosure," the People added wholly impermissible topics—addressed in President Trump's motions *in limine*—such as Cohen's guilty plea to FECA violations, AMI's non-prosecution agreement, and the FEC's findings regarding AMI and David Pecker. *See id.*

J. Untimely Disclosure Of [redacted]

On March 4, 2024, DANY produced a [redacted], which they described as [redacted] Ex. 21 at 1. According to the production letter, [redacted]:

> [had] not yet been released to the public and was produced to DANY with the understanding that it would be kept confidential by all parties under any and all applicable court orders and confidentiality obligations, and treated as "Limited Dissemination Materials" pursuant to the May 8, 2023 protective order. NBCUniversal did not provide a copy of [redacted] but did provide unique links and passwords for DANY and defense counsel to access [redacted]

Id. In response to a request from the defense, which noted that communications with NBCUniversal were subject to automatic discovery pursuant to CPL § 245.20, the People produced [redacted]

(DANYDJT00214661).

On the evening of March 7, 2024, we learned from media reports, rather than DANY, that [redacted] will not be kept "confidential" at all. Rather, NBCUniversal plans to release [redacted] on its "Peacock" streaming service, in a highly prejudicial fashion, on March 18, 2024. Ex. 22. 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."[9] The trailer shows excerpts of an agreement that is subject to the Court's protective order. Clifford asserts on the video trailer that "sh*t got real" when President Trump got the Republican nomination, claims

[9] Peacock, *Stormy: Official Trailer*, YOUTUBE (Mar. 7, 2024), https://www.youtube.com/watch?v=_tE7h_TJkxg.

that she was "terrified," 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 the claim that Clifford "won't give up" because she is "telling the truth," even though her statements contradict myriad prior statements, including those in writing.

In the version of [redacted] produced to the defense, [redacted] makes additional extremely prejudicial claims. For example, [redacted]:

> [redacted]

[redacted] added:

> [redacted]

As discussed below, Clifford is the People's witness. By at least December 19, 2023, they were aware of [redacted] (DANYDJT00201899). The People had an obligation to collect [redacted] and disclose it at the outset of this case, along with any other videotaped statements by Clifford relating to the false testimony the People seek to elicit from her. Clifford's work with NBCUniversal to further monetize her untrue testimony by releasing [redacted] a week before the scheduled trial date reflects an egregious effort to prejudice the venue, which the People were undoubtedly aware of but failed to disclose, and which requires a dismissal and, if not granted, at the very last, an adjournment of the trial date.

K. The Certificates of Purported Compliance

The People issued their first certificate of compliance ("COC") to the defense on July 24, 2023. Ex. 23. In the COC, ADA Colangelo claimed that DANY, having "exercise[ed] due diligence and ma[de] reasonable inquiries to ascertain the existence of material and information subject to discovery under CPL § 245.20(1)," had disclosed and made available to the defense "all known material and information that is subject to discovery." *Id.* at 1. We now know that this was false.

In omnibus pretrial motions filed on September 29, 2023, President Trump argued that DANY was "not in compliance with their discovery obligations under C.P.L. § 245.50." Def. Omnibus Mot. at 46. In a November 9, 2023 submission, the People falsely characterized the motion as "frivolous." DANY Omnibus Oppn. at 80. The Court recently denied the motion. 2/15/24 Op. at 28-29.

On March 6, 2024, the People filed a Supplemental Certificate of Compliance. The document offered only scant explanation concerning the People's actions to obstruct and delay President Trump's efforts to obtain discoverable information from the USAO-SDNY and the People's untimely production of materials relating to [redacted], [redacted] and [redacted] Based on the sequence of events, including events on March 7, we now know that this certification was also false.

By letter dated March 6, 2024, President Trump provided the People with notice of discovery deficiencies pursuant to CPL §§ 245.50(4)(b) and 245.60. Ex. 24. The People responded with a brief and dismissive letter on the night of March 7. Ex. 25.

III. APPLICABLE LAW

A. Automatic Discovery Pursuant To CPL § 245.20

1. Open-File Discovery

The People's obligations to provide discovery under CPL § 245.20 are "so broad as to virtually constitute 'open file' discovery, or at least make 'open file' discovery the far better course of action to assure compliance." Hon. William C. Donnino, *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Statutory discovery, in general). "That intent is found throughout article 245." *People v. Edwards*, 74 Misc. 3d 433, 439 (Crim. Ct. N.Y. Cnty. 2021). Thus, "a prosecutor who fails to engage in 'open file' discovery (except for 'work product' and information subject to a protective mandate of a statute or court order) may do so at his or her professional peril while also jeopardizing the viability of a prosecution." *Practice Commentaries,* CPL § 245.10 (Prosecutor's Obligations: Statutory discovery, in general).

The opening language of CPL § 245.20(1) itself points towards an "open file" discovery policy. Under CPL 245.20(1),

> If something is in the prosecutor's file (or that of the police investigating agency) that does not fall within one of the defined items of disclosure, but is information that "relate[s] to the subject matter of the case," it will need to be disclosed, unless it constitutes "work product" [CPL 245.65] or material subject to a protective mandate by statute or court order [CPL 245.70].

Practice Commentaries, CPL § 245.10 (Prosecutor's Obligations: Statutory discovery, in general).

CPL § 245.20(1) provides a non-exhaustive list of the items the People must disclose through "automatic" disclosure. *See People v. Williams*, 2024 WL 479408, at *2 (3d Dep't Feb. 8, 2024) ("[T]he disclosure obligations of CPL article 245 are now automatic and obviate the need to file a demand."); *People ex rel. Ferro v. Brann*, 197 A.D.3d 787, 788 (2d Dep't 2021) ("[D]iscovery demands are now defunct."). "This list is not to be interpreted narrowly, as CPL § 245.20(7) mandates, '[t]here shall be a presumption in favor of disclosure when interpreting

sections 245.10 and 245.25, and subdivision one of section 245.20, of this article.'" *People v. Pennant*, 73 Misc. 3d 753, 756 (Dist. Ct. Nassau Cnty. 2021); *see also People v. Randolph*, 69 Misc. 3d 770, 772 (Sup. Ct. Suffolk Cnty. 2020) ("[T]he decision in this case must respect the legislative intent that there shall be a presumption in favor of disclosure." (cleaned up)).

Further, "[t]here is a strong incentive for the prosecutor to provide discovery expeditiously." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Statutory discovery, in general) (Prosecutor's Obligations: Timing of disclosure). In addition, "notwithstanding a statutory limitation on the disclosure of information," "federal due process may yet require disclosure." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Constitutional Requirements). "It is a well settled principle in this State, that the People's duty to disclose exculpatory material in their control 'arises out of considerations of elemental fairness to the defendant and as a matter of professional responsibility.'" *People v. Vasquez*, 214 A.D.2d 93, 99 (1st Dep't 1995) (quoting *People v. Simmons*, 36 N.Y.2d 126 (1975)).

2. Witness Statements

"The People must disclose 'all statements, written or recorded or summarized in any writing or recording, made by persons who have evidence or information' 'that relate to the subject matter of the case.'" *People v. Ballard*, 202 N.Y.S.3d 683, 693 (Crim. Ct. Queens Cnty. 2023) (quoting CPL § 245.20(1), (1)(e)). This provision reflects "another significant expansion of a prosecutor's obligation for early 'automatic' disclosure." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Items of 'automatic' disclosure). "The discovery statute does not limit the type of writing that the People must disclose." *Ballard*, 202 N.Y.S.3d at 694. "There is no requirement that the 'person' with 'information' must be a person whom the prosecutor intends to call as a witness at trial; nor is there a general requirement that 'automatic' disclosure of evidence

or information is limited to evidence or information to be introduced at trial." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Items of 'automatic' disclosure). "[T]he People cannot decline to provide particular items because they believe they are duplicative." *Ballard*, 202 N.Y.S.3d at 697 n.13.

3. Recordings

CPL § 245.20(1)(g) requires the People to disclose "[a]ll tapes or other electronic recordings, . . . and a designation by the prosecutor as to which of the recordings under this paragraph the prosecution intends to introduce at trial or a pre-trial hearing." "There are many types of included recordings, such as . . . relevant surveillance videos supplied by private citizens . . . ." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Items of 'automatic' disclosure). Relatedly, CPL § 245.20(1)(o) requires disclosure of "tangible property that relates to the subject matter of the case."

4. Expert Disclosures

CPL § 245.20(1)(f) requires the People to disclose "[e]xpert opinion evidence." The items of disclosure, aside from the expert witness's curriculum vitae, include a list of, and the results of, proficiency tests (within the past ten years) and either a report from the expert or a written statement containing in effect what the expert will testify to. *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Items of 'automatic' disclosure). CPL § 245.20(1)(f) also includes the following obligation of the Court:

> When the prosecution's expert witness is being called in response to disclosure of an expert witness by the defendant, the court shall alter a scheduled trial date, if necessary, to allow the prosecution thirty calendar days to make the disclosure and the defendant thirty calendar days to prepare and respond to the new materials.

CPL § 245.20(1)(f).

5. Electronically Stored Information

CPL § 245.20(1)(u) requires disclosure of "[a] copy of all electronically created or stored information seized or obtained by or on behalf of law enforcement from: (A) the defendant . . . ; or (B) a source other than the defendant which relates to the subject matter of the case." This obligation "requires the disclosure of a 'complete copy' of the stored information [subparagraph (ii)]." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Items of 'automatic' disclosure).

6. Exculpatory and Impeachment Information

CPL § 245.20(1)(k) "contains a listing of information favorable to the defendant that must be disclosed (whether in 'tangible' form or not) drawn from *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972) and their progeny, as well as New York State Rules of Professional Conduct, Rule 3.8(b); and the New York State Unified Court System's Administrative Order of Disclosure." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Items of 'automatic' disclosure). CPL § 245.20(1)(l) specifically requires disclosure of "rewards and inducements made to, or in favor of, persons who may be called as witnesses, as well as requests for consideration by persons who may be called as witnesses and copies of all documents relevant to a promise, reward or inducement."

"[I]n the pretrial setting, *Brady* requires disclosure of any information 'favorable to the accused' . . . without regard to whether the failure to disclose it likely would affect the outcome of the upcoming trial." *United States v. Singhal*, 876 F. Supp. 2d 82, 103 (D.D.C. 2012) (quoting *United States v. Safavian*, 233 F.R.D. 12, 16 (D.D.C. 2005)). The issue of whether evidence is "favorable" under *Brady* is a "relatively low hurdle." *United States v. Wasserman*, 2024 WL 130807, at *6 (M.D. Fla. Jan. 11, 2024).

> The meaning of the term "favorable" under *Brady* is not difficult to discern. It is any information in the possession of the government—broadly defined to include all Executive Branch agencies—that relates to guilt or punishment and that tends to help the defense by either bolstering the defense case or impeaching potential prosecution witnesses. It covers both exculpatory and impeachment evidence.

United States v. Safavian, 233 F.R.D. 12, 16-17 (D.D.C. 2005); *see also United States v. Chansley*, 2023 WL 4637312, at *8 (D.D.C. July 20, 2023) ("Favorable evidence tends to help the defense by either bolstering the defense case or impeaching potential prosecution witnesses." (cleaned up)). "It is . . . clear that *Brady* and its progeny may require disclosure of exculpatory and/or impeachment materials whether those materials concern a testifying witness or a hearsay declarant." *United States v. Jackson*, 345 F.3d 59, 71 (2d Cir. 2003). "A contrary conclusion would permit the government to avoid disclosure of exculpatory or impeachment material simply by not calling the relevant witness to testify." *Id.*

"[B]ecause the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, the prudent prosecutor will resolve doubtful questions in favor of disclosure." *United States v. Agurs*, 427 U.S. 97, 108 (1976).

> It is demonstrably not the responsibility of a prosecutor to test the credibility or trustworthiness of an exculpatory statement given by a witness or to weigh that statement against their assessment of the inculpatory evidence in the case. It is their responsibility to disclose exculpatory evidence promptly no matter what they may think of its reliability or trustworthiness."

United States v. Sutton, 2022 WL 2383974, at *7 (D.D.C. July 1, 2022).

CPL § 245.20(1)(k) is even broader than *Brady*. *See People v. Hamizane*, 80 Misc. 3d 7, 10-11 (2d Dep't 2023); *see also Pennant*, 73 Misc. 3d at 756 ("Contrary to the People's argument, this obligation is not merely a codification of their *Brady* and *Giglio* obligations, as they existed prior to the enactment of Article 245."). CPL § 245.20(1)(k) requires disclosure of, for example, "*All evidence and information*" that "tends" to "mitigate the defendant's culpability as to a charged

offense" or "impeach the credibility of a testifying prosecution witness." CPL § 245.20(1)(k)(ii), (iv) (emphasis added). Subsection (1)(k)(iv), in particular, "broadly requires disclosure of *all* impeachment evidence." *Matter of Jayson C.*, 200 A.D.3d 447 (1st Dep't 2021) (ordering disclosure of all impeachment evidence in juvenile delinquency case (emphasis added)); *see also People v. Rodriguez*, 77 Misc. 3d 23, 25 (1st Dep't 2022) (dismissing information on statutory speedy trial grounds where "[t]he People failed to provide relevant records to defendant, including *underlying* impeachment materials pursuant to CPL 245.20(1)(k)" (emphasis added)). This obligation "goes beyond what *Brady* required." *Hamizane*, 80 Misc. 3d at 11 (citing six cases); *see also People v. Best*, 2022 WL 4231146, at *3 (Crim. Ct. Queens Cnty. Sept. 13, 2022) ("CPL 245.20(1)(k) goes beyond what *Brady* required. For example, this provision jettisons the 'materiality' requirement. Furthermore, 'impeachment evidence and information is not limited to that which is related to the subject matter of the underlying case.'" (cleaned up)); *see also Pennant*, 73 Misc. 3d at 756.

As to "information that impeaches the credibility of a 'testifying prosecution witness,' the New York State Unified Court System's Administrative Order of Disclosure specifies that such information includes," *inter alia*, "benefits, promises, or inducements," "prior inconsistent statements," and "information that tends to show that a witness has a motive to lie to inculpate the defendant, or a bias against the defendant or in favor of the complainant or the prosecution." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Items of 'automatic' disclosure). Critically, whether something is potential impeachment material "is not for the People to determine, but rather for defense counsel":

> As the Court of Appeals has long recognized, the best judge of the impeachment value of evidence is the "single-minded counsel for the accused" (*People v. Rosario*, 9 N.Y.2d 286, 290, *cert denied* 368 U.S. 866 (1961) . . . . To permit the single-minded counsel for the accused to be permitted only to see filtered allegations of misconduct impinges on counsel's ability to represent the accused. That is not what the Legislature intended (*People v. Edwards*, 74 Misc. 3d 433, 443-44 (Crim. Ct. N.Y. Cnty. 2021)).

Best, 2022 WL 4231146, at *6; *see also People v. Goggins*, 76 Misc. 3d 898, 901 (Crim. Ct. Bronx Cnty. 2022) (reasoning that discovery "should not be filtered through the prosecution"); *People v. Cooper*, 71 Misc. 3d 559, 566 (Erie Cnty. Ct. 2021) (reasoning that the law does not allow discoverable material to be selectively disclosed based on "the People's assessment of its credibility or usefulness"); *see also* CPL § 245.20(k) ("Information under this subdivision shall be disclosed . . . irrespective of whether the prosecutor credits the information.").

"[D]isclosure of all 'evidence and information' tending to impeach the credibility of a testifying prosecution witness cannot be untethered from a recognition that the prosecutorial failure to disclose information favorable to the defense has been recognized as one of the principal causes of wrongful convictions." *People v. Barralaga*, 153 N.Y.S.3d 808, 815 (Crim. Ct. N.Y. Cnty. 2021) (citing New York State Justice Task Force, Report on Attorney Responsibility in Criminal Cases (2017)). "Permitting the prosecutor to be the arbiter of 'essential information' is antithetical to that principal." *Id.* "Anything short of full disclosure without a protective order would amount to a subjective determination by the parties as to what should be turned over. This is contrary to the automatic disclosure requirements and the purpose of the reformed discovery statute." *Best*, 2022 WL 4231146, at *4; *see also People v. Rugerio-Rivera*, 2023 WL 1426817, at *2 (Crim. Ct. Queens Cnty. Jan. 24, 2023) (noting that the First Department has consistently viewed the required disclosures "through a lens of open disclosure and mandate[d] that underlying impeachment material is discoverable").

B. Search "Duties": CPL 245.10(2)

"[T]he law requires the prosecutor to make a 'diligent, good faith effort' to ascertain the existence of information subject to 'automatic discovery' and to 'cause' that information to be disclosed 'where it exists but is not within the prosecutor's possession, custody or control.'" *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Obligation to obtain discoverable items) (quoting CPL § 245.20(2). This is a "fundamental tenet" of the new discovery laws and "cannot be read out of the statute because it is inconvenient or burdensome for the People to meet their obligation." *Barralaga*, 153 N.Y.S.3d at 812.

The statutory framework mandates that all law enforcement files be openly accessible to prosecutors. CPL §§ 245.20(2), 245.55(2). Moreover, "[b]y way of emphasis, CPL 245.55(1) requires the prosecution 'to endeavor' to ensure that a 'flow of information' is maintained between the 'police and other investigative personnel' and the prosecutor's office sufficient to place within the prosecutor's possession or control all material and information pertinent to the defendant and the offense(s) charged." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Obligation to obtain discoverable items). "The legislative intent is clear: as far as law enforcement evidence, very little stands in the way of open disclosure and given these laws, only an 'individualized finding of special circumstances' can excuse withholding police evidence." *Ballard*, 202 N.Y.S.3d at 700.

The People are "not relieved" of their obligation to disclose discoverable materials "simply because they were not in actual possession of those items." *People v. Santos*, 2023 WL 4833769, at *4 (Crim. Ct. Bronx Cnty. Jul. 26, 2023); *see also People v. Edwards*, 77 Misc 3d 740, 746 (Crim. Ct. Bronx Cnty. 2022) ("[I]t is no defense that the People did not have these reports in their actual possession as the law is clear that all documents related to the prosecution of a charge that

are possessed by law enforcement are considered in the custody of the People."); *People v Georgiopoulos*, 2021 WL 1727831, at *4 (Sup. Ct. Queens Cnty. Apr. 29, 2021) ("[T]he assertion that known discovery materials are not in [the People's] physical possession does not in any way excuse their failure to provide them.").

The obligations of CPL § 245.10(2) are not limited to law enforcement evidence deemed to be in the constructive possession of the People. *See id*. (requiring identification of laboratories having contact with evidence and addressing potential need for subpoena duces tecum); *see also People v. Bracy*, 2024 WL 413529, at *1 (Crim. Ct. Queens Cnty. Feb. 5, 2024) (emphasizing need for prosecutors to determine whether law enforcement evidence may exist in other jurisdictions); *cf. Safavian*, 233 F.R.D. at 17 ("Under *Brady*, the prosecutors have an affirmative duty to search possible sources of exculpatory information, including a duty to learn of favorable evidence known to others acting on the prosecution's behalf . . . and to cause files to be searched that are not only maintained by the prosecutor's or investigative agency's office, but also by other branches of government 'closely aligned with the prosecution.'" (first citing *Kyles v. Whitley*, 514 U.S. 419, 437 (1995); and then citing *United States v. Brooks*, 966 F.2d 1500, 1503 (D.C. Cir. 1992))).

"An analysis of whether the People made reasonable efforts sufficient to satisfy CPL article 245 is fundamentally case-specific, as with any question of reasonableness, and will turn on the circumstances presented." *People v. Bay*, 2023 WL 8629188, at *6 (Dec. 14, 2023) (citations omitted); *see also People v. Barrios*, 202 N.Y.S.3d 912, 917 (Crim. Ct. Bronx Cnty. 2024) (citing *Bay*, 2023 WL 8629188, at *6).

C. Continuing Disclosure Obligations: CPL § 245.60

"Once the prosecution provides the required discovery, it may thereafter learn of additional information which it would have been under a duty to disclose." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Continuing duty to disclose). CPL § 245.60 imposes a continuing duty to disclose discoverable evidence:

> If . . . the prosecution . . . learns of additional material or information which it would have been under a duty to disclose pursuant to any provisions of this article had it known of it at the time of a previous discovery obligation or discovery order, it *shall expeditiously* notify the other party and disclose the additional material and information as required for initial discovery under this article.

Id. (emphasis added).

D. Certificates of Compliance: CPL § 245.50(1)

CPL § 245.50(1) requires the People to submit a Certificate of Compliance upon completing the automatic disclosures required by CPL § 245.20(1). "The certificate of compliance shall state that, after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, the prosecutor has disclosed and made available all known material and information subject to discovery." CPL § 245.50(1).

A "proper" certificate of compliance, therefore, requires the People to satisfy three elements: "(1) that they have exercised 'due diligence;' (2) made 'reasonable inquiries' to ascertain the existence of discoverable material; and (3) the prosecutor 'has disclosed' all known material subject to discovery." *Ballard*, 202 N.Y.S.3d at 697 (cleaned up); *see also Bay*, 2023 WL 8629188, at *5 (reasoning that the "key" question in determining if a certificate of compliance was properly filed is "whether the prosecution has exercis[ed] due diligence and ma[de] reasonable inquiries to ascertain the existence of material and information subject to discovery"); *People v. Buenaventura*, 2024 WL 563294, at *3 (Crim. Ct. Kings Cnty. Jan. 29, 2024) (noting that it is the People's obligation to "exercise due diligence" and make "reasonable inquires" prior to filing a

Certificate of Compliance" and "[s]imply stating that they acted diligently or that omissions were due to inadvertent error are not enough to meet their burden of showing due diligence.").

"If additional discovery is subsequently provided prior to trial pursuant to section 245.60 of this article, a supplemental certificate shall be served . . . ." CPL § 245.50(1). "Any supplemental certificate of compliance shall detail the basis for the delayed disclosure so that the court may determine whether the delayed disclosure impacts the propriety of the certificate of compliance." CPL § 245.50(1-a). "Although belated disclosure will not necessarily establish a lack of due diligence or render an initial [certificate of compliance] improper, post-filing disclosure and a supplemental [certificate] cannot compensate for a failure to exercise diligence before the initial [certificate of compliance] is filed." *Bay*, 2023 WL 8629188, at *6 (cleaned up). Although CPL § 245.50(1) directs that "[n]o adverse consequence to the prosecution or the prosecutor shall result from the filing of a certificate of compliance in good faith and reasonable under the circumstances," it clarifies that a trial court may nonetheless grant discovery sanctions and remedies as provided in CPL 245.80. *Id*. at *4.

E. Prosecutorial Ethics

"A prosecutor has the responsibility of a minister of justice and not simply that of an advocate." N.Y. RULES OF PROF. CONDUCT R. 3.8 cmt. 1. "This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." *Id.* A prosecutor "may strike hard blows, [but] he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *People v. Bailey*, 121 A.D.2d 189, 192 (1st Dep't 1986) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). The prosecution must act with "a heightened duty to ensure the fairness of the process by which a criminal conviction is obtained as well as a duty to avoid the public perception

that criminal proceedings are unfair." *People v. Waters*, 35 Misc. 3d 855, 859 (Sup. Ct. Bronx Cnty. 2012).

F. Discovery Sanctions: CPL § 245.80

CPL § 245.80 sets forth additional remedies for late productions and other discovery violations. "When material or information is discoverable under [CPL article 245] but is disclosed belatedly, the court shall impose a remedy or sanction that is appropriate and proportionate to the prejudice suffered by the party entitled to disclosure." CPL § 245.80(1)(a); *see also* CPL § 245.50(1) ("[T]he court may grant a remedy or sanction for a discovery violation as provided in section 245.80 of this article."); *People v. Mercano*, 2024 WL 698345, at *4 (Crim. Ct. Bronx Cnty. Feb. 15, 2024) (stating that "pursuant to CPL § 245.80, a court may impose *a remedy or sanction* where discoverable information is belatedly disclosed which is *appropriate and proportionate* to the prejudice suffered by the party entitled to the discovery."). "The court does not need to find that the People acted in bad faith to impose an appropriate remedy or sanction." *People v. Carey*, 2023 WL 8858731, at *13 (Sup. Ct. Nassau Cnty. Dec. 11, 2023).

CPL § 245.80(2), in particular, "sets forth a litany of remedies and sanctions a court may impose for failure to comply with any discovery order 'imposed or issued' pursuant to CPL art. 245." *Practice Commentaries*, CPL § 245.10 (Remedies and Sanctions); *see also People v. Bruni*, 71 Misc. 3d 913, 920 (Albany Cnty. Ct. 2021) ("Several permissible sanctions/remedies exist under CPL 245.80 for delayed, missing, or destroyed discovery material."). These remedies include dismissal and an adjournment and decisions to "preclude or strike a witness's testimony or a portion of a witness's testimony." CPL § 245.80(2); *see also Bruni*, 71 Misc. 3d at 920 ("The court has the ability to . . . grant a continuance . . . preclude or strike a witness's testimony or a portion of the witness's testimony, admit or exclude evidence, order a mistrial, order the dismissal

of all or some of the charges." (cleaned up)). "[A] defendant's constitutional right to present a defense bears on any sanction a court may consider." *Practice Commentaries,* CPL § 245.10 (Remedies and Sanctions). However, "[r]egardless of a showing of prejudice the party entitled to disclosure shall be given reasonable time to prepare and respond to the new material." CPL § 245.80(1)(a); *see also People v. Pardo,* 81 Misc. 3d 858, 860 (Crim. Ct. Bronx. Cnty. 2023).

IV. DISCUSSION

The People have withheld discoverable evidence from President Trump, and have sought to obstruct his access to discoverable evidence which they should have collected from third parties at the outset of this case, at their "professional peril" in a manner that has "jeopardize[ed] the viability" of this procession. *Practice Commentaries,* CPL § 245.10. The People's discovery violations have violated not only CPL § 245.20, but also President Trump's federal due process rights under *Brady* and *Giglio*. *Id.*

Severe remedies are appropriate, including dismissal of the Indictment, preclusion of testimony from Cohen and Clifford based on discovery violations relating to their prior statements, and an adjournment in light of all of the foregoing as well as the ongoing and voluminous production of materials from the USAO-SDNY that the People failed to timely obtain and produce.

A. The People Violated CPL § 245.20(1)

The People have violated their automatic discovery obligations under CPL § 245.20 in at least the following ways:

1. Exculpatory and Impeachment Information.

The People failed to timely produce, as required by CPL § 245.20(1)(k) and federal authorities such as *Brady* and *Giglio*, exculpatory and impeaching statements in (1) [redacted], which President Trump obtained from the

USAO-SDNY on March 4, 2024; and (2) [redacted] produced in February 2024.

[redacted] is core impeachment material with respect to benefits to Cohen from that special treatment and the lack of integrity in the investigation demonstrated by [redacted]. *See, e.g.*, *Kyles*, 514 U.S. at 442 n.13 (1995) ("There was a considerable amount of . . . *Brady* evidence on which the defense could have attacked the investigation as shoddy."); *see also* Def. MILs Oppn. at 12-14 (citing additional authorities).

The People's failure to produce [redacted]—which we obtained from the USAO-SDNY over strenuous and meritless objections by the People—is deeply problematic. For example, the People have repeatedly claimed that Cohen was part of an agreement to "help" President Trump's "campaign" in 2016. People's Omnibus Oppn. at 3. However, [redacted]. Ex. 26 at 1. [redacted] *Id.* at 4. [redacted]

[redacted] *Id.* at 7. These statements directly contradict the People's theory of the case and are core *Brady* material that they tried to suppress because the statements demonstrate that Cohen did not seek to be, and was not, acting for the benefit of President Trump's campaign.

In motions *in limine*, the People argued that the *Access Hollywood* recording is "central" to the so-called "conspiracy to influence the election." People's MILs at 46. However, [redacted] Ex. 26 at 18. [redacted] *Id.* These statements are also exculpatory, and they further support President Trump's *in limine* argument that the *Access Hollywood* recording is inadmissible at trial on relevance and undue-prejudice grounds.

The People have also argued consistently that Cohen did not provide legal services to President Trump in 2017. *See, e.g.*, People's Mot. to Quash at 15 (arguing that 2017 payments to Cohen "were not for legal services"). [redacted] Ex. 26 at 19. [redacted] . *Id.* [redacted] Ex. 27 at 2. [redacted]

[redacted] *Id.* [redacted]. Ex. 28 at 3.

All of these statements by Cohen undercut the People's theory regarding the basis for the 2017 payments to Cohen and Cohen's alleged work on a scheme to assist the campaign, [redacted] Having had demonstrable access to "SDNY & FBI Materials" by virtue of the People's June 8, 2023 production, the People had an affirmative obligation to collect these additional materials and to produce them. It is easy to see the wrongful motives that drove the People to attempt to make sure that these reports never saw the light of day, and to try to prevent President Trump from obtaining them. Those motives are deeply unethical and require sanctions.

2. Statements Of Potential Witnesses

Separate from the exculpatory nature of certain of the statements by Cohen, Pomerantz, and Davis, the People's failure to timely produce these materials also violated CPL § 245.20(1)(e). It is of no moment that Pomerantz and Davis are not on the People's witness list. *See Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Items of 'automatic' disclosure). ("There is no requirement that the 'person' with 'information' must be a person whom the prosecutor intends to call as a witness at trial."). These additional violations further support President Trump's applications for dismissal and other sanctions.

3. Inducements

The People failed to obtain and timely produce, as required by CPL § 245.20(1)(l), [redacted]. The People produced [redacted] on February 26, 2024, despite the fact that the People's June 8, 2023 production of "SDNY & FBI Materials" included [redacted].

[redacted], moreover, draws a distinction between [redacted] alleged role in payments relating to Clifford and McDougal, which [redacted] Ex. 17 at 1. This distinction is exculpatory with respect to the People's position that AMI's alleged compensation to Sajudin is part of the same "scheme" as alleged compensation to Clifford and McDougal. *See, e.g.*, People's MILs Oppn. at 8 (arguing that the "scheme ultimately led to a series of transactions involving Dino Sajudin, Karen McDougal, and finally Stormy Daniels"). Therefore, the untimely production of [redacted] constitutes yet another *Brady* violation.

4. Relevant Records

The People failed to timely produce "items . . . that relate to the subject matter of the case," CPL § 245.20(1), in the form of almost 50,000 pages of Cohen's bank records that are the subject of ongoing productions by the USAO-SDNY that President Trump and defense counsel have not yet had an opportunity to review. Banking practices in connection with Cohen, including payments from the Trump Organization relating to President Trump, are central to the People's theory of this case and the defense efforts to cross-examine Cohen.

5. Electronically Stored Information

The People failed to ensure proper preservation and production of ESI, as required by CPL § 245.20(1)(k), in the form of data seized from Cohen's phones and email accounts by federal authorities, which the USAO-SDNY agreed to provide in response to President Trump's *Touhy* request.

The People's conduct relating to data from Cohen's phones is particularly suspect. The People collected [redacted], which included a [redacted]. Then, in February 2024, the People claimed to the USAO-SDNY—implausibly—that they had produced the same data to President Trump that the federal prosecutors seized pursuant to a 2018 search warrant, except that it was "filtered" for unspecified "privilege[s]" despite the People and Cohen having run roughshod over President Trump's privilege during this investigation. Ex. 14.

6. Recordings

The People violated their obligation to obtain and produce recordings, *see* CPL § 245.20(1)(g), as well as the "tangible property" requirement of CPL § 245.20(1)(o), by failing to timely produce [redacted] produced on March 4, 2024. *See, e.g.*, *People v. Branch*, 80 N.Y.2d 610, 615 (1992) (reaffirming the "fundamental precept of this State's criminal jurisprudence that the People are obligated to give to the defendant, for use during cross-examination, any nonconfidential written or recorded statements of a prosecution witness that relate to the subject matter of the witness' testimony."). The People were on notice that [redacted] existed as of at least December 2023, but they apparently refrained from collecting

it from Clifford until this month. Moreover, because [redacted] allows her to monetize her efforts to manufacture and publicize false claims against President Trump, the People's failure to disclose [redacted] sooner violated their obligation to produce impeachment information pursuant to CPL § 245.20(1)(k), *Brady*, and *Giglio*.

Moreover, the People plainly knew that NBCUniversal and Clifford planned to release [redacted] on March 18, 2024, in a manner that is enormously prejudicial to jury selection on the current schedule. That prejudice is in addition to the existing prejudice resulting from Clifford's inflammatory and false comments in the trailer released yesterday. The People's failure to disclose these details to President Trump in connection with the March 4 production, and to instead allow defense counsel to learn of these facts from the press, is further indicative of their bad faith and unethical behavior in connection with discovery.

7. Improper Rebuttal Expert Notice

The People violated CPL § 245.20(1)(f) by providing untimely expert notice relating to Noti, which exceeds the topics set forth in the defense notice relating to Smith and is not an appropriate rebuttal to those topics. *See* Ex. 20. The People provided the notice five weeks after President Trump's notice regarding Smith, and the day after President Trump filed his opposition to the People's motion to preclude Smith's testimony. The Notice makes clear that the People are seeking to offer facts and opinions that we do not propose to address during Smith's testimony.

8. Improper Redactions

The People violated CPL § 245.20 by withholding discoverable information through improper redactions of: (1) [redacted] in the "SDNY & FBI Materials" from the June 8, 2023 production (DANYDJT00098665), which relate to the People's witnesses;

(2) the July 24, 2023 "DANYEMAIL" production"; and (3) the February 9, 2024 production of [redacted].

CPL § 245.20(6), entitled "Redactions permitted," only authorizes redactions of "social security numbers and tax numbers." The People have claimed that their redactions are intended to withhold "work product." *See* CPL § 245.65. However, the People's redactions appear to obscure, *inter alia*, [redacted]. That is not "work product." In any event, the qualified work product privilege must give way where prosecutors seek to withhold obvious impeachment material that is discoverable under CPL § 245.20(1) and the state and federal constitutions. *See United States v. Nobles*, 422 U.S. 225, 239 (1975) ("The privilege derived from the work-product doctrine is not absolute."); *United States v. Armstrong*, 517 U.S. 456, 474-75 (1996) (Breyer, J., concurring) (reasoning that "work-product immunity" under Federal Rules of Criminal Procedure "does not alter the prosecutor's duty to disclose material that is within *Brady*," which is "based on the Constitution"). "For example, where there is reason to believe the documents sought may shed light on government misconduct, the privilege is routinely denied, on the grounds that shielding internal government deliberations in this context does not serve the public's interest in honest, effective government." *In re Sealed Case*, 121 F.3d 729, 738 (D.C. Cir. 1997) (cleaned up).

Thus, the People must disclose all of the details of their handling of requests for benefits and favors by Cohen, Clifford, any other witness. *See* CPL § 245.20(1)(l) (requiring disclosure of, *inter alia*, "requests for consideration by persons who may be called as witnesses and copies of all documents relevant to a promise, reward or inducement"). Nor is there any basis for the People to continue withholding [redacted] *See* Ex. 9. [redacted] is plainly "relevant" to [redacted]

[redacted]. CPL § 245.20(1)(l). Accordingly, the People should be required to either remove all redactions, or submit the redacted documents for *in camera* review by the Court. *See, e.g.*, *People v. Kozlowski*, 11 N.Y.3d 223, 244 n.12 (2008) ("A trial court may conduct an in camera review of subpoenaed materials to assess an opposing party's privilege claims.").

B. The People Violated Their Obligations To Obtain Discoverable Evidence

The People have made numerous untimely and inexplicably delayed disclosures, and actively obstructed efforts by President Trump to obtain discoverable materials from the USAO-SDNY, Cohen, and Cohen's publishers, among others. This misconduct weighs in favor of a severe remedy.

Article 245 "demand[s]" that "the People use diligence, act in good faith, and take reasonable steps to ensure that discoverable material is turned over before filing a COC." *People v. Weiss*, 79 Misc. 3d 931, 938 (Crim. Ct. Queens Cnty. 2023) (cleaned up); *see also Bruni*, 71 Misc. 3d at 919 ("[T]he People have a duty to make good faith efforts to ascertain the existence of impeachment material by making reasonable inquiries into the existence of such evidence or information."). "This obligation is true even when such impeachment material is physically in the hands of a law enforcement witness or law enforcement agency." *Bruni*, 71 Misc. 3d at 919. None of the People's COCs, including the most recent one filed on March 6, 2024, offers an adequate explanation for their lack of diligence and failure to obtain and timely produce the materials at issue.

It is inexcusable for the People to have failed to turn over [redacted] until February 9, 2024; [redacted] until February 26, 2024; and [redacted] until March 4, 2024. The People have

unquestionable access to each of these witnesses and were required by CPL 245.20(1) to produce these materials before filing their first COC.

The People were on notice of [redacted]. (DANYDJT00201899). The defense was in no position based on [redacted] to understand the nature, extent, and substance of [redacted] that DANY produced on March 4, 2024, and the People would have improperly quashed any efforts that we took to obtain it as they have in other instances. Clifford has acknowledged that she was "asked to kind of behave" by DANY, and claimed that she was "biting [her] tongue so fucking hard right now."[10] What she meant, apparently, is that she and the People were working to hide the upcoming release of [redacted] to maximize its prejudicial effect on the venire *just a week before the scheduled start of jury selection*.

The People's handling of discovery with respect to the USAO-SDNY, which has resulted in ongoing and voluminous untimely productions, is further troubling. In light of the overlapping state and federal investigations and the fact that ADA Colangelo left DOJ to work on this prosecution, the People's good-faith and due-diligence obligations required coordination with "independent stakeholders," including the USAO-SDNY and the FBI. *People v. Godfred*, 77 Misc. 3d 1119, 1124 (Crim. Ct. Bronx Cnty. 2022). CPL § 245.55(1) places "emphasis" on the People's obligation "to ensure that a 'flow of information' is maintained" with "'other investigative personnel,'"—such as investigators at the USAO-SDNY and the FBI—so that the People obtain and produce "all material and information pertinent to the defendant and the

[10] Alison Durkee, *Stormy Daniels Wants To Testify At Trump's Trial*, FORBES (Apr. 6, 2023, 8:27 am), https://www.forbes.com/sites/alisondurkee/2023/04/06/stormy-daniels-wants-to-testify-at-trumps-trial/?sh=189ead7235aa; Stormy Daniels, *Stormy and Kathy Griffin Are Not Sorry* (Feb. 6, 2024), https://audioboom.com/posts/8453426-stormy-kathy-griffin-are-not-sorry.

offense(s) charged." *Practice Commentaries*, CPL § 245.10 (Prosecutor's Obligations: Obligation to obtain discoverable items).

The People's June 8, 2023 production of "SDNY & FBI Materials" demonstrates that they had access to the files of these federal authorities. *See People v. DaGata*, 86 N.Y.2d 40, 45 (1995) ("[T]he People specified no good reason to deny defendant access to the [FBI] notes other than their reluctance to seek the notes themselves."); *see also Santos*, 2023 WL 4833769, at *4 ("The People's efforts can hardly be described as 'diligent' and 'reasonable' when, outside of a single, generalized request, they made no additional efforts to get from the NYPD discoverable material within the time in which they were statutorily required to complete their initial discovery obligations."); c*f. United States v. Payne*, 63 F.3d 1200, 1209 (2d Cir. 1995) ("Included [in discovery] were publicly available court documents such as the transcript of Wilkerson's plea allocution. A defendant receiving such documents from the government could reasonably assume that the court files did not include other undisclosed exculpatory and impeachment documents pertaining to Wilkerson, and certainly not an affidavit in which she outright contradicted the testimony she was certain to give at the trial of Payne."). Fundamentally, "prosecutor may no longer turn a blind eye." *Bracy*, 2024 WL 413529, at *1 (cleaned up). They may not "speculate[] that such disclosure items [do] not exist and [have] not been created. *Bay*, 2023 WL 8629188, at *8. And they may not avoid disclosure where the existence of discoverable material is *demonstrably known*. *See Ballard*, 202 N.Y.S.3d at 698 ("The facts here show that the People knew or should have known about the underlying [] records and the audit trails. The People provided a letter summary . . . and therefore were aware that underlying records existed.").

The People attempted that exact maneuver of avoiding disclosure by improperly selecting materials they hoped to use while leaving other materials behind at the USAO-SDNY in the hope

that President Trump would not obtain them. *See, e.g.*, *United States v. McGowan*, 552 F. App'x 950, 953 (11th Cir. 2014) ("[T]the government may not leave evidence in the hands of a third party to avoid disclosure."); *United States v. Libby*, 429 F. Supp. 2d 1, 11 (D.D.C. 2006) (reasoning that where prosecutors "sought and received a variety of documents" from an agency, it would "clearly conflict with the purpose and spirit" of the discovery rules to allow the prosecutors to "leave other documents with these entities that . . . are material to the preparation of the defense").

It is equally clear that the People were aware that the USAO-SDNY possessed additional discoverable materials, including extrinsic evidence of criminal conduct by Cohen that is admissible in connection with defense cross-examination. Specifically, the People produced to President Trump on June 8, 2023 [redacted]. Under these circumstances, the People cannot escape their discovery obligations through the meritless claim that they lacked "possession, custody or control" under CPL § 245.20(1).

> Even where documents are beyond the prosecutor's control under *Rosario* and constructive possession under CPL 245.20, the presumption of openness, (CPL 245.20[7]), the duty to maintain the flow of information (CPL 245.55), the continuing duty to disclose (CPL 245.60), and, perhaps most importantly, the goals of article 245 require that when the prosecutor becomes aware after making the requisite reasonable inquiries that an agency outside their control holds information that relates to the subject matter of the case, best practice dictates that the People take steps . . . to obtain those records notwithstanding the fact that the information may be available to the defendant by equivalent process.

People v. Heverly, 2024 WL 396077, *3 (4th Dep't Feb. 2, 2024) (cleaned up); *see also Ballard*, 202 N.Y.S.3d at 698 (failure to exercise reasonable diligence under § 245.20(2) where facts show that the People knew or should have known about discoverable materials).

Finally, the same "right sense of justice" described by the Court of Appeals in *Rosario* required the People to refrain from making frivolous and inaccurate arguments to the USAO-SDNY in an effort to prevent President Trump from obtaining exculpatory and impeachment

material relating to Cohen. It is difficult to conceive of a good faith explanation for the People's conduct, as it was simply an attempt to prevent President Trump from obtaining relevant and exculpatory evidence. As noted above, the People made the misleading and inaccurate suggestion that [redacted] was duplicative of data the FBI seized in 2018. *See* Ex. 14. That is not true. In addition, the People misrepresented to the USAO-SDNY, based on federal authorities the People had no authority to invoke, that USAO-SDNY could not disclose discoverable evidence to President Trump without Cohen's consent. The USAO-SDNY rejected that position as legally incorrect, as did Judge Furman. These unlawful and desperate efforts to prevent President Trump from obtaining evidence that the People were obligated to collect at the outset of this case support the imposition of substantial sanctions for the People's non-compliance.

C. Severe Sanctions Are Necessary

"[T]he court shall impose a remedy or sanction that is appropriate and proportionate to the prejudice suffered by the party entitled to disclosure." CPL § 245.80(1)(a).

Dismissal of the Indictment is appropriate because President Trump has been prejudiced substantially by the People's discovery violations. For example, timely disclosure of [redacted], would have supported President Trump's pretrial motion to dismiss and motion *in limine* to preclude evidence relating to Sajudin because that story is not part of a cohesive "scheme" as the People have suggested. There are numerous intricate and discoverable details in [redacted] which we are still reviewing following the People's late disclosure, and which would have facilitated defense investigation of Clifford in the event we are required to cross-examine her (should the Court deny our motion *in limine* to preclude her inflammatory and inadmissible testimony).

The additional disclosures relating to [redacted] provided further insights into Cohen's inclination to disclose communications by President Trump that constitute official acts and support his presidential immunity defense. Timely production of those documents would have informed the defense's understanding of the People's vaguely articulated "pressure campaign" argument and led to the earlier filing of the immunity-related motion. *See, e.g., People v. Rodriguez*, 152 N.Y.S.3d 879, 886 (Sup. Ct. Queens Cnty. 2021) (precluding the People from using "all fruits of the search warrant" as evidence at trial because the People's belated disclosure of search warrant materials prevented defendant from moving to controvert the warrant during motion practice). In addition, as explained above, [redacted] that are wholly inconsistent with the People's theory of the case and are therefore exculpatory.

If the Court does not dismiss the Indictment, as it should, under § 245.80, another of the "[a]vailable remedies or sanctions" is to "preclude or strike a witness's testimony or a portion of the witness's testimony." CPL § 245.80(2). The Court should preclude testimony on the aspects of Noti's expert notice that are not a direct rebuttal of the defense notice relating to Smith. Moreover, President Trump has a pending motion *in limine* to preclude testimony from Cohen, and the facts set forth herein provide further support for it. Faced with a star witness who is necessary to their case, but who committed obvious perjury in *People by James v. Trump*, the People have actively obstructed our access to materials that fit squarely within their disclosure obligations relating to impeachment material. Therefore, a corresponding and proportionate sanction under these circumstances, which include the arguments regarding admissibility in the defense motions *in limine*, is to preclude Cohen's false testimony at the trial.

The Court should also preclude Clifford's testimony. As explained in our motions *in limine*, the probative value of Clifford's testimony is at best minimal. The risk of prejudice is manifest and underscored by [redacted] itself, in which [redacted] that the People—remarkably—seek to present from hearsay declarants at trial. *See* Def. MILs Oppn. at 26-28. In light of the First Amendment, neither the Court nor the defense is in a position to prevent Clifford from working with NBCUniversal and Peacock to enrich herself based on these proceedings. However, the People should not be able to capitalize on those efforts by presenting testimony from a witness who is actively prejudicing potential jurors in the week prior to the scheduled start of the trial. Accordingly, the Court should preclude Clifford's testimony as well.

D. At Least A 90-Day Adjournment Is Necessary

Over the last two weeks, the People have produced more than 10,000 pages of documents, [redacted], and an expert notice. The USAO-SDNY has produced approximately 63,000 more pages to the People, which they have not yet provided to President Trump. All of these untimely disclosures were avoidable through the exercise of diligence that the People chose not to undertake, and all of these materials should have been disclosed much earlier.

"Regardless of a showing of prejudice the party entitled to disclosure shall be given reasonable time to prepare and respond to the new material." CPL § 245.80(1)(a). Such an adjournment is the "typical remedy" for "late disclosures." *People v. Chavers*, 2023 WL 6333556, *4 (Sup. Ct. Kings Cnty. Sept. 28, 2023). Justice requires an adjournment of the trial date to permit President Trump to review the new materials, file additional motions relating to these late-and-ongoing productions, and to prepare his defense based on the complete discovery contemplated by

CPL Article 245. We respectfully submit that at least 90 days is necessary, and the Court should not set a new trial date until the USAO-SDNY has completed its productions to President Trump and the People so that all parties have a better sense of the volume of those materials.

V. CONCLUSION

For the reasons described above, President Trump respectfully submits that the Court should dismiss the Indictment following a hearing, preclude any testimony from Cohen and Clifford, and adjourn the trial for at least 90 days to permit President Trump a reasonable period of time to review new discovery that the People failed to timely produce and for prejudicial publicity relating to [redacted] to dissipate.

Dated: March 8, 2024
New York, New York

By: /s/ Todd Blanche

Susan R. Necheles
Gedalia Stern
NechelesLaw LLP
1120 Sixth Avenue, 4th Floor
New York, NY 10036
212-997-7400
srn@necheleslaw.com

Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC
99 Wall Street, Suite 4460
New York, NY 10005
212-716-1260
toddblanche@blanchelaw.com

Attorneys for President Donald J. Trump

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

THE PEOPLE OF THE STATE OF NEW YORK, - against - DONALD J. TRUMP, Defendant.	Index No. 71543-23 **AFFIRMATION OF TODD BLANCHE IN SUPPORT OF PRESIDENT DONALD J. TRUMP'S MOTION TO DISMISS AND FOR AN ADJOURNMENT BASED ON DISCOVERY VIOLATIONS**

Todd Blanche, a partner at the law firm Blanche Law PLLC, duly admitted to practice in the courts of the State of New York, hereby affirms the following to be true under penalties of perjury:

1. I represent President Donald J. Trump in this matter and submit this affirmation in support of President Trump's Motion To Dismiss And For An Adjournment Based On Discovery Violations.

2. This affirmation is submitted upon my personal knowledge or upon information and belief, the source of which is my communications with prosecutors and with other counsel, my review of the documents in the case file, a review of the available discovery, and an independent investigation into the facts of this case.

3. Attached as Exhibits 1, 3, 18, 19, 20, 21, 24, and 25 are true and accurate copies of correspondence with the People concerning discovery and related disclosures in this case.

4. Attached as Exhibits 2, 4, 5, 6, 7, 8, 9, 16, and 17 are true and accurate copies of documents produced by the People in discovery in this case.

5. Attached as Exhibits 10, 11, 12, 13, 14, 15 are true and accurate copies of correspondence by and with the U.S. Attorney's Office for the Southern District of New York ("USAO-SDNY") and the People concerning the defense's January 18, 2024 request for the production of materials pursuant to 28 C.F.R. § 16.24(d)(1)(i).

6. Attached as Exhibit 22 is the Certificate of Compliance filed by the People on July 24, 2023.

7. Attached as Exhibit 23 is a true and accurate copy of an article entitled, *Stormy Daniels alleged in new documentary that Donald Trump cornered her the night they met*, published by the *Los Angeles Times* on March 7, 2024.

8. Attached as Exhibits 26, 27, and 28 are true and accurate copies of documents produced by the USAO-SDNY in response to the defense's January 18, 2024 request pursuant to 28 C.F.R. § 16.24(d)(1)(i).

WHEREFORE, for the reasons set forth in the accompanying memorandum of law, President Trump respectfully submits that the Court should grant the requested motions *in limine*.

Dated: March 8, 2024
New York, New York

By: /s/ Todd Blanche
Todd Blanche
Blanche Law PLLC
99 Wall Street, Suite 4460
New York, NY 10005
212-716-1250
toddblanche@blanchelaw.com

Attorney for President Donald J. Trump

EXHIBIT 1

DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

June 8, 2023

VIA HAND DELIVERY
Todd Blanche
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
1120 Sixth Ave., 4th Floor
New York, NY 10036

Joseph Tacopina
275 Madison Ave., 39th Floor
New York, NY 10016

Re: People v. Donald J. Trump, Ind. No. 71543-23

Dear Mr. Blanche, Ms. Necheles, and Mr. Tacopina:

Today, on June 8, 2023, we have provided you with a hard drive containing a second set of discovery materials for the above-referenced case. Please find attached to this letter an index that catalogs the materials provided.

With respect to the June 8, 2023 production, please note the following:

- *First*, all of the materials provided to you are subject to the protective order issued on May 8, 2023;
- *Second*, the People have designated certain of these materials "Limited Dissemination Materials" under the May 8 protective order, as indicated on the attached index;
- *Third*, the People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1) but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65;
- *Fourth*, some materials or information may have been withheld in connection with protective orders issued or anticipated pursuant to CPL § 245.70;

- *Fifth,* we are producing a Supplemental Addendum to our Automatic Discovery Form, dated June 8, 2023. The Supplemental Addendum includes a change to the contact information for one of the individuals listed in Addendum B [redacted], additional information in Section D – "Promises, Rewards, or Inducements" (relating to [redacted], and a new disclosure in Section F – "Brady/Giglio/Gleasen Information" (relating to [redacted]. Documents related to the additional information and disclosures in Sections D and F are included in the discovery materials;

- *Finally*, where applicable, the materials provided have been Bates stamped to aid in the organization and digestion of the materials, and the Bates ranges have been noted on the attached index. Please note, however, that the numbering of the Bates stamps is not sequential.

Separately, we have also provided you today with an additional hard drive that [redacted] and a corresponding index. While these materials are not required to be disclosed under CPL § 245.20(1) in the instant case, we are making them available to you in an exercise of discretion. We are designating all of the materials on this second hard drive "Limited Dissemination Materials" under the May 8, 2023 protective order.

Pursuant to CPL §§ 245.10(1)(a), 245.60 and 245.70, we will continue to make productions to you on a rolling basis and will produce additional discoverable materials and information we learn of or come into the possession of, or as protective orders that impact the disclosure of such items are resolved.

Sincerely,

Katherine Ellis
Assistant District Attorney

EXHIBIT 2

EXHIBIT 3

DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

July 24, 2023

VIA HAND DELIVERY

Todd Blanche
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
1120 Sixth Ave., 4th Floor
New York, NY 10036

Joseph Tacopina
275 Madison Ave., 39th Floor
New York, NY 10016

Re: People v. Donald J. Trump, Ind. No. 71543-23

Dear Mr. Blanche, Ms. Necheles, and Mr. Tacopina:

We are producing today an external hard drive containing additional materials for the above-referenced case.

As detailed in the attached index, this production includes documents designated as "Covered Materials" under the May 8 protective order, including additional open source research materials and public court filings, as well as documents designated as "Limited Dissemination Materials." The "Limited Dissemination Materials" include materials identified through our review of internal email messages, including materials identified by the Bates prefixes "DANYEMAIL" and "DANYNEWS." Note that, in some circumstances, we may have withheld parent emails or attachments where those documents were not subject to disclosure (on work product or other grounds) or where those documents were separately produced. Thus, not all emails were produced as a family. Note further that many of the materials provided, including those with the Bates prefix "DANYNEWS," are not required to be disclosed under CPL § 245.20(1), but we are nevertheless making them available to you in an exercise of discretion.

In addition, we are serving today a Certificate of Compliance and a Supplemental Addendum to the Automatic Discovery Form. The Supplemental Addendum includes additional

information in Section D—"Promises, Rewards or Inducements (CPL § 245.20(1)(l))"; Section F—"*Brady/Giglio/Geaslen* Information (CPL § 245.20(1)(k))"; and Addendum A (listing books in the possession of the People which may include witness statements).

With respect to today's production, please also note the following:

- *First*, all of the materials provided to you are subject to the protective order issued on May 8, 2023;
- *Second*, the People have designated certain of these materials "Limited Dissemination Materials" under the May 8 protective order;
- *Third*, the People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1), but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65;
- *Fourth*, some materials or information may have been withheld in connection with protective orders issued pursuant to CPL § 245.70;
- *Finally*, where applicable, the materials provided have been Bates stamped to aid in the organization and digestion of the materials, and the Bates ranges have been noted on the attached index. Please note, however, that the numbering of the Bates stamps is not sequential.

Pursuant to CPL §§ 245.10(1)(a) and 245.60, we will produce additional discoverable materials and information we learn of or come into the possession of.

Sincerely,

*/s/ Becky Mangold*_____
Becky Mangold
Assistant District Attorney

Received on July 24, 2023 by:

Name: _____

Signature: _____

EXHIBIT 4

EXHIBIT 5

EXHIBIT 6

EXHIBIT 7

EXHIBIT 8

EXHIBIT 9

EXHIBIT 10

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

THE PEOPLE OF THE STATE OF NEW YORK,	:	
- against -	:	Index No. 71543-23
DONALD J. TRUMP,	:	**SUBPOENA DUCES TECUM**
Defendant.	:	

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK

To: United States Attorney's Office
Southern District of New York
c/o AUSA Nicholas Roos
1 St. Andrew's Plaza
New York, NY 10007

YOU ARE HERBEY COMMANDED, all business and excuses being laid aside, to produce, at the Supreme Court of the State of New York, of the County of New York, Part 59, 100 Centre Street, New York N.Y., 10013, on or before February 2, 2024, at 10:00 a.m., the Documents responsive to the Requests set forth below.

DEFINITIONS

1. "Accountant-1" is the accountant described in the Information (defined below).

2. "Cohen" means Michael Cohen, the defendant in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y) and *United States v. Cohen*, No. 18 Cr. 850 (JMF) (S.D.N.Y.).

3. "Counts One through Five" means the tax evasion offenses charged in Counts One through Five of the Information (defined below).

4. "Documents" means communications, electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained directly, or, if necessary, after translation by the responding party into a reasonably usable form. Documents also includes any draft or non-identical copy of any of the foregoing materials.

5. "Guilty Plea" means Cohen's August 21, 2018 guilty plea in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y).

6. "Information" means the August 21, 2018 Felony Information in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y), ECF No. 2.

7. "Search Warrant" means the search warrant bearing docket number 18 Mag. 2969, which is publicly available at ECF No. 43-1 in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y)

8. "SCO Sentencing Submission" means the government's December 7, 2018 sentencing submission in *United States v. Cohen*, No. 18 Cr. 850 (JMF) (S.D.N.Y.), ECF No. 15.

9. "SDNY Sentencing Submission" means the government's December 7, 2018 sentencing submission in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y), ECF No. 27.

INSTRUCTIONS

1. This subpoena covers all Documents in or subject to your possession, custody or control, including all Documents that are not in your immediate possession but that you have the effective ability to obtain, that are responsive, in whole or in part, to any of the individual requests set forth below.

2. To the extent there are no responsive Documents to a particular Request, please indicate that in your response. If a Document once existed and has been lost, destroyed, or is otherwise missing, please provide sufficient information to identify the Document and the details concerning its non-existence.

3. To the extent that a Document otherwise responsive to any of the Requests is withheld on the ground(s) that it is subject to a privilege, please provide a log

that identifies each such document and the specific reason for which it is being withheld in sufficient detail to allow assessment of the validity of the withholding.

4. If you redact any portion of a Document, please provide the reason for the redaction in sufficient detail to allow assessment of the validity of the claimed need for redaction.

REQUESTS

1. With respect to Counts One through Five, please provide the documents (a) described in the Information, (b) summarized to the court at the Guilty Plea as evidence of Cohen's "tax evasion charged in Counts One through Five," or (c) described in the SDNY Sentencing Submission, including:

    a. The federal and state tax filings, and associated work papers, that are relevant to Counts One through Five, including the amended Form 1040s filed by Accountant-1 in 2011 and 2012 and the "individual returns for COHEN and returns for COHEN's medallion and real estate entities" described in paragraph 5 of the Information;

    b. Documents and communications from banks that are relevant to Counts One through Five;

    c. The IRS Revenue Agent Report concerning Cohen's settlement with the IRS over unpaid taxes relating to Counts One through Five;

    d. Documents obtained from or relating to, and communications involving, Accountant-1;

    e. Communications involving the following individuals and entities that paid Cohen unreported income: "Taxi Operator-1," "Taxi Operator-2," "an assisted living company," participants in "the sale of a piece of property in a private aviation community in Florida," and participants in the sale of a "rare and highly valuable French handbag," which are all referenced in the SDNY Sentencing Submission at pages 4-5 and in paragraphs 7 through 12 of the Information;

    f. Documents relating to Cohen's "steps to conceal the interest income he was receiving from Taxi Operator-1," which are referenced at page 7 of the SDNY Sentencing Submission;

    g. The "memorandum that Cohen's accountant prepared in 2013 when Cohen became a client," and the "personal financial statement prepared by Cohen's prior accountant," which are both referenced at page 7 of the SDNY Sentencing Submission; and

    h. Documents relating to Cohen's "updated personal financial statement," including the draft in which "Cohen crossed out the 'loans receivable'

line item altogether," which are all referenced at page 7 of the SDNY Sentencing Submission.

2. For the tax years from 2012 to the present, please provide all state and federal income tax filings, and associated work papers, relating to Cohen and/or entities associated with Cohen.

3. Please provide the documents discussed or relied upon in any way to establish probable cause in the Search Warrant, including bank records and emails from the following financial institutions:

    a. Sterling National Bank;

    b. Melrose Credit Union;

    c. First Republic Bank;

    d. Capital One Bank;

    e. City National Bank;

    f. Morgan Stanley;

    g. Signature Bank;.

    h. Bethpage Credit Union; and

    i. TD Bank.

4. Please provide all documents seized from the Apple iPhone described in the Search Warrant as "Subject Device-1."

5. Please provide all toll records relating to the Apple iPhone described in the Search Warrant as "Subject Device-1."

6. Please provide all documents seized from the Apple iPhone described in the Search Warrant as "Subject Device-2."

7. Please provide all toll records relating to the Apple iPhone described in the Search Warrant as "Subject Device-2."

8. Please provide all documents seized from the email account described in the Search Warrant as the "Cohen Gmail Account."

9. Please provide all documents seized from the email account described in the Search Warrant as the "Cohen iCloud Account."

10. Please provide all documents seized from the email account described in the Search Warrant as the "Cohen MDCPC Account."

11. Please provide all agreements with Cohen or his counsel, including proffer agreements and privilege waivers.

12. Please provide all documents memorializing statements by Cohen, including statements during:

    a. Meetings with the New York Attorney General and New York State Department of Taxation and Financial Services, as described in the SDNY Sentencing Submission at page 16, footnote 5;

    b. Meetings involving personnel from the U.S. Attorney's Office for the Southern District of New York; and

    c. The "seven occasions" that Cohen met with the Special Counsel's Office, as described in the SCO Sentencing Submission at page 2.

13. Documents relating to the following books and manuscripts:

    a. *Trump Revolution: From the Tower to the White House, Understanding Donald J. Trump*;

    b. *Revenge: How Donald Trump Weaponized the US Department of Justice Against His Critics*; and

    c. *Disloyal: A Memoir: The True Story of the Former Personal Attorney to President Donald J. Trump*.

14. Agreements relating to Cohen involving any of the following entities:

    a. Hachette Book Group;

    b. Center Street (an imprint of Hachette Book Group);

    c. Melville House Publishing;

    d. Skyhorse Publishing;

    e. Audio Up, Inc.;

    f. Podcast One Sales, LLC;

    g. Courtside, LLC;

    h. LSJ Media Group, LLC;

    i. LiveXLive, Inc.;

    j. LiveOne, Inc.;

    k. MeidasTouch Network; and

    l. The Arena Group Holdings, Inc.

15. Please provide all documents reflecting or memorializing communications with the Manhattan District Attorney's Office, the Office of the New York State Attorney General, or the Office of Special Counsel Robert S. Mueller III, regarding:

    a. Crimes, misconduct, and/or bad acts by Cohen;

    b. The book titled *People v. Donald Trump: An Inside Account*; or

    c. Cohen's credibility.

16. Please provide all non-privileged documents and communications relating to the December 12, 2023 order to show cause docketed at ECF No. 96 in *United States v. Cohen*.

Failure to comply with this subpoena is punishable as a contempt of court.

Dated: January 18, 2024

By: /s/ Todd Blanche

Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC
99 Wall Street, Suite 4460
New York, NY 10005
212-716-1260
toddblanche@blanchelaw.com

Susan R. Necheles
Gedalia Stern
NechelesLaw LLP
1120 Sixth Avenue, 4th Floor
New York, NY 10036
212-997-7400
srn@necheleslaw.com

Attorneys for President Donald J. Trump

EXHIBIT 11

U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 19, 2024

BY EMAIL
Todd Blanche, Esq.
Emil Bove, Esq.
Blanche Law

Re: Subpoena Duces Tecum issued to the U.S. Attorney's Office for the Southern District of New York in *People of the State of New York v. Trump*, Index No. 71543-23

Dear Todd and Emil:

We write in response to the subpoena duces tecum dated January 18, 2024 ("Subpoena"), directed to this Office in the above-referenced New York State Supreme Court matter, to which the United States is not a party.

As an initial matter, we write to confirm that this Office has received the Subpoena and that the undersigned Assistant United States Attorney will be handling your request. Moving forward, please direct all communications to the undersigned.

Federal regulations govern the response of the United States government to subpoenas and other third-party discovery demands such as yours. *See generally* 5 U.S.C. § 301. The Department of Justice ("Department" or "DOJ") has broad discretion to determine whether its employees will be permitted to produce documents in matters where the government is not a party. *See United States ex. rel Touhy v. Ragen*, 340 U.S. 462 (1951) (authorizing such regulations). The procedural and substantive factors governing the Department's determination are set forth in the agency's "*Touhy*" regulations. *See* 28 C.F.R. §§ 16.21 to 16.29 (the "DOJ *Touhy* regulations").

The DOJ *Touhy* regulations channel review of demands to the responsible United States Attorney and provide a set of procedures for the United States Attorney to follow when considering those demands. *See* 28 C.F.R. §§ 16.22(b), 16.24. The regulations "provide guidance for the internal operations of the Department of Justice," and do not create substantive rights. *Id*. § 16.21(d).

Ordinarily, a party seeking to obtain records from the Department must first submit a written demand, *see* 28 C.F.R. § 16.22(a), summarize the records sought, and explain the relevance of the records to his proceeding, *see id*. § 16.22(d). Once a party complies with these requirements, the United States Attorney will make the determination regarding the party's demand, in light of the considerations codified at 28 C.F.R. §§ 16.24–26. Applying these considerations, the Department will make appropriate disclosures when warranted. *See id.* § 16.26(c).

This letter is not intended to respond to the substance of Subpoena, but rather to acknowledge that this Office has received a written demand for records and summary of the records sought, which are subject to the DOJ's *Touhy* regulations. In accordance with 28 C.F.R. § 16.22(d), we request that you also provide an explanation of the relevance of the various categories of records sought in the Subpoena. Upon receipt of that information, this Office will proceed to review your *Touhy* request and determine whether the requested records, to the extent they are in our possession, may be produced pursuant to the DOJ *Touhy* regulations.

We note that although the Subpoena originates from a state court, the DOJ *Touhy* regulations have the force of federal law and must be followed even in state court proceedings. We further note that sovereign immunity bars direct enforcement by a state court of a subpoena against the Department or its employees. *See, e.g.*, *Edwards v. DOJ*, 43 F.3d 312, 316 (7th Cir. 1994) ("the review action must be in federal court pursuant to 5 U.S.C. § 702, rather than in a state court that lacks jurisdiction"); *In re Elko County Grand Jury*, 109 F.3d 554 (9th Cir. 1997); *Smith v. Cromer*, 159 F.3d 875, 879 (4th Cir. 1998). Nothing herein should be construed as a waiver of any objection or defense to the validity or enforceability of the Subpoena or as a waiver of any applicable privilege or protection from disclosure.

Please contact the undersigned if you have any questions.

Very truly yours,

DAMIAN WILLIAMS
United States Attorney

By: */s/ Sarah S. Normand*
SARAH S. NORMAND
Assistant United States Attorney

EXHIBIT 12

TODD BLANCHE
Todd.Blanche@blanchelaw.com
(212) 716-1250

January 22, 2024

Via Email
Sarah Normand
U.S. Attorney's Office
Southern District of New York

Re: January 18, 2024 Subpoena Duces Tecum And *Touhy* Request

Dear Sarah:

We respectfully submit this letter in response to your January 19, 2024 letter, and in furtherance of our *Touhy* request that the Office ("USAO") produce materials that are responsive to our January 18, 2024 subpoena pursuant to 28 C.F.R. § 16.24(d)(1)(i). For the reasons set forth below, the requested disclosures would be appropriate under § 16.26(a), none of the factors specified in § 16.24(b) presents a significant impediment, and the disclosures would be consistent with due process and administration-of-justice principles under federal and state law in connection with the prosecution of President Donald J. Trump by the Manhattan District Attorney's Office ("DANY").

I. Background

As you know, the USAO prosecuted Michael D. Cohen in *United States v. Cohen*, No. 18 Cr. 602 (S.D.N.Y.), and the Special Counsel's Office ("SCO") led by Robert Mueller prosected Mr. Cohen in *United States v. Cohen*, No. 18 Cr. 850 (S.D.N.Y.). Below are relevant details from those cases and DANY's case against President Trump.

A. The Search Warrants Relating To Mr. Cohen

In 2017, the SCO obtained warrants targeting two email accounts and an iCloud account used by Mr. Cohen. *See* Ex. A at 6-7 (search warrant application). In early 2018, the SCO "referred certain aspects of its investigation into Cohen" to the USAO, and provided to the USAO "all non-privileged emails and other content" obtained pursuant to the warrants. *Id.* at 7. In February 2018, the USAO obtained additional warrants targeting email accounts used by Mr. Cohen. *See id.* at 8 & n.6. In April 2018, the USAO obtained a warrant to execute searches of three premises, two phones, and a safe deposit box used by Mr. Cohen. *See id.* at 2-5.

According to the April 2018 warrant application, the USAO was investigating "schemes" by Mr. Cohen "to defraud multiple banks from in or about 2016 up to and including the present," and an October 2016 campaign contribution to President Trump. Ex. A at 8-9. The warrants sought evidence relating to false bank entries, false statements to financial institutions, wire fraud, bank fraud, and illegal campaign contributions. *E.g.*, *id.* at 253. The warrants placed time

restrictions on certain types of evidence to be seized, but the restrictions specified that evidence could be seized relating to events that occurred up to "the present." *Id.* at 253-54.

B. Cohen's Perjury, Misrepresentations, And Violations Of Supervised Release

In a November 3, 2023 letter, which is enclosed as Exhibit B (without enclosures), we discussed Mr. Cohen's guilty pleas in the cases brought by the USAO and the SCO, as well as his subsequent violations of supervised release and perjury in *NYS Attorney General v. Donald Trump, et al.*, Index No. 452564/2022. We summarize those events below.

On August 21, 2018, Mr. Cohen pleaded guilty in the USAO's case to, *inter alia*, five counts of tax evasion in violation of 26 U.S.C. § 7201 (Counts 1 - 5), and one count of making false statements to a financial institution in violation of 18 U.S.C. § 1014 (Count 6). *See* Ex. B at 2. On November 28, 2018, Mr. Cohen pleaded guilty in the SCO's case to making false statements to Congress, in violation of 18 U.S.C. § 1001(a)(2).

The SCO's case was consolidated with the USAO's case for purposes of sentencing. On December 12, 2018, Judge Pauley sentenced Mr. Cohen principally to 36 months' imprisonment and a three-year term of supervised release. *See* Ex. B at 4. Mr. Cohen is still subject to the terms of supervised release, which include the requirement that he not commit another crime. *Id.*

In December 2019, Mr. Cohen sought a sentence reduction pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure. The USAO opposed the motion and informed Judge Pauley that: (1) Mr. Cohen had engaged in a "veritable smorgasbord of fraudulent conduct"; and (2) the prosecutors had "substantial concerns about Cohen's credibility as a witness," based in part on lies during proffers that included "material false statements"—*i.e.*, further violations of 18 U.S.C. § 1001—in January and February 2019. Ex. B at 4. Judge Pauley denied the motion and found that Mr. Cohen "made material and false statements in his post-sentencing proffer sessions." *United States v. Cohen*, 2020 WL 1428778, at *1 (S.D.N.Y. 2020).

Mr. Cohen has filed several unsuccessful motions to terminate his supervised release. In a November 2021 opposition filing, the USAO noted that it "previously delineated many of Cohen's lies that undermined his attempts at cooperation, and pointed to Cohen's repeated attempts to downplay his own conduct after his guilty plea." Ex. B at 4-5. The USAO added that, "[m]ore recently, just before making his last motion, Cohen falsely wrote in a book he authored that he 'did not engage in tax fraud,' that the tax charges were 'all 100 percent inaccurate,' and that he was 'threatened' by prosecutors to plead guilty. *See* Michael Cohen, REVENGE 54 (2022)." *Id.* at 5.

Furthermore, Mr. Cohen committed perjury during October 2023 trial testimony in *NYS Attorney General v. Donald Trump, et al.*, Index No. 452564/2022. *See* Ex. B at 5. The perjury included (1) testifying falsely that he "refused" a motion pursuant to U.S.S.G. § 5K1.1 from the USAO; and (2) testifying falsely that he did not commit the crimes charged in Counts One through Six. *See id*.

C. The Order To Show Cause Regarding Fabricated Case Citations

On November 29, 2023, Mr. Cohen filed another motion for early termination of his supervised release. *See* ECF No. 88, *United States v. Cohen*, No. 18 Cr. 602 (JMF). On December 12, 2023, Judge Furman entered an Order to Show Cause why sanctions should not be imposed relating to three cases cited by Mr. Cohen in his motion: "As far as the Court can tell, none of these cases exist." *Id.*, ECF No. 96. In response, the attorney who filed the motion on behalf of Mr. Cohen retained counsel, asserted that Mr. Cohen had sent him the citations, and informed Judge Furman that he "believed" the citations originated from another attorney representing Mr. Cohen. *Id.*, ECF No. 103 at 6. In a separate filing, Mr. Cohen claimed that he (1) "provided [his attorney] with citations (and case summaries) he had found online and believed to be real"; and (2) obtained the "invalid citations at issue" from a generative artificial intelligence service. *Id.*, ECF No. 104 at 1, 3.

D. DANY's Prosecution Of President Trump

On March 30, 2023, a New York County grand jury returned an indictment charging President Trump with 34 counts of felony falsifying business records, in violation of New York Penal Law § 175.10.[1] Jury selection is scheduled to begin on March 25, 2024.

DANY alleges that President Trump and Mr. Cohen worked with executives from American Media, Inc. to identify and suppress potential negative news stories during the runup to the 2016 presidential election.[2] The first potential story involved Dino Sajudin, a former doorman at Trump Tower, who tried to sell the false claim that President Trump had fathered a child out of wedlock with a staff member. *See* DANY Statement of Facts ¶¶ 10-11.[3] The second potential story involved Karen McDougal, who falsely alleged that she had a sexual relationship with President Trump. *See id.* ¶¶ 12-15. The third potential story involved Stephanie Clifford, also known as Stormy Daniels, who also falsely alleged that she had a sexual encounter with President Trump. *See id.* ¶¶ 16-21. DANY further alleges that, on October 26, 2016, Mr. Cohen wired $130,000 from his personal account to purchase the life rights to Ms. Clifford's story.

DANY's case focuses on payments to Mr. Cohen in approximately 2017. The 34 charges are organized into 11 separate groups based on three types of records: Mr. Cohen's invoices, ledger entries, and the resulting check and stub. DANY alleges that these records were "false" because they indicated that the payments were part of a "retainer" for "legal" services by Mr. Cohen—

[1] The Indictment is available at: https://manhattanda.org/wp-content/uploads/2023/04/Donald-J.-Trump-Indictment.pdf.

[2] In September 2018, the USAO entered into a non-prosecution agreement with American Media, Inc., which is available at: https://www.justice.gov/usao-sdny/press-release/file/1119501/download.

[3] DANY's Statement of Facts is available at: https://manhattanda.org/wp-content/uploads/2023/04/2023-04-04-SOF.pdf.

which they were. DANY escalated the charges to felonies by alleging that President Trump intended "to commit another crime or to aid or conceal the commission thereof" under Penal Law § 175.10. In response to a request for particulars, DANY proffered that its felony theory is based on violations of one or more of the following: the Federal Election Campaign Act, 52 U.S.C. § 30101 *et seq*.; New York Election Law § 17-152; New York Tax Law §§ 1801(a)(3) and 1802; and New York Penal Law §§ 175.05 and 175.10.[4]

Former Special Assistant District Attorney Mark Pomerantz and his colleagues dubbed DANY's legal theory the "zombie case" because of how many times they abandoned the theory, only to revive it when other inquiries were even less fruitful. *See* M. POMERANTZ, PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT at 200 (2023) ("*Pomerantz Inside Account*"). In Mr. Pomerantz's view, the conduct "did not amount to much in legal terms" because "[p]aying hush money is not a crime under New York State law, even if the payment was made to help an electoral candidate," and "creating false business records is only a misdemeanor under New York law." *Id.* at 40-41.

II. Discussion

The Requests in the Subpoena seek information and evidence—to the extent in the USAO's possession or control—that we will use to defend President Trump in the DANY prosecution. *See* 28 C.F.R. § 16.22(d) (requiring "summary of the information sought and its relevance to the proceeding"). DANY has produced only a [redacted] DANY has not produced [redacted], and we have not been able to obtain the other evidence sought in the Requests from other sources. For example, Mr. Cohen has declared publicly, for reasons that are manifest, that he "wouldn't turn this stuff over for all the money in the world."[5]

First, we are seeking evidence that we will use to challenge DANY's reliance on campaign finance and tax offenses as predicates for felony violations of Penal Law § 175.10. *See, e.g.*, *People v. Ulett*, 33 N.Y.3d 512, 515 (N.Y. 2019) ("The prosecution is required to disclose information that is both favorable to the defense and material to either defendant's guilt or punishment." (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963))).

Second, we are seeking evidence that we will use at trial to impeach the integrity of DANY's investigation. *See, e.g.*, *People v. Hayes*, 17 N.Y.3d 46, 52 (N.Y. 2011) ("In *Kyles*, the Supreme Court . . . acknowledged that it is a common and accepted tactic for defendants to challenge the adequacy of a police investigation."); *see also Kyles v. Whitley*, 514 U.S. 419, 442

[4] DANY's response to President Trump's request for a Bill of Particulars is available at: https://www.justsecurity.org/wp-content/uploads/2023/05/manhattan-district-attorney-bill-of-particulars-response-may-16-2023.pdf.

[5] MeidasTouch (Nov. 16, 2023). Livestream of *Political Beatdown with Michael Cohen and Ben Meiselas* (at 6:50-6:56), *available at* https://www.youtube.com/watch?v=m8u-8xUcDDg&t=3427s.

n.13, 446 (1995) (reasoning that *Brady* obligations include evidence that can be used to "attack[] the reliability of the investigation" and argue that it was "shoddy"). This category of evidence includes communications with DANY regarding Mr. Cohen's bad acts and lack of credibility, as well as materials relating to *Pomerantz Inside Account*, which raised serious questions about the viability of DANY's legal theory and Mr. Cohen.

Third, because of Mr. Cohen's singular importance to DANY as a witness—and DANY's decision to rely on Mr. Cohen's information despite his proven record of lying to prosecutors, law enforcement, and the courts—we are seeking documents relating to Mr. Cohen's credibility and his prior bad acts (including materials relating to the sanctions issue pending before Judge Furman). This includes reports of interviews in which, according to the USAO and the SCO, Mr. Cohen lied to federal authorities. To the extent we are seeking materials described in search warrant applications, we are only seeking evidence that the USAO or FBI seized upon determining that it constituted evidence of a crime.

Fourth, we are seeking evidence of bias and motive that we will also use to impeach Mr. Cohen at trial. For example, we are seeking drafts of *Trump Revolution* and related communications (Request 13(a)), as Mr. Cohen authored that manuscript before he faced penal and financial incentives to demonize President Trump. We are seeking documents relating to Mr. Cohen's agreements with various publishers and media companies (Request 14), as those materials demonstrate the financial motivation that is part of the driving force behind Mr. Cohen's claims. We are also seeking documents relating to Mr. Cohen's subsequently published books (Requests 13(b)-(c))—one of which the USAO has asserted contains lies regarding Mr. Cohen's culpability on tax charges—because communications relating to the editing process bear on counterfactual changes that Mr. Cohen made in order to sell more books.

The Requests in the Subpoena are "appropriate under the rules of procedure governing the case or matter in which the demand arose." 28 C.F.R. § 16.26(a)(1). Specifically, the Requests seek documents that are discoverable in DANY's case under New York law. *See* C.P.L. § 245.20(1).[6] We issued the Subpoena pursuant to C.P.L. § 610.20(3), and it seeks information and records that are "reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome." C.P.L. § 610.20(4); *see also People v. Kozlowski*, 11 N.Y.3d 223, 241 (2008) ("[D]efendants must proffer a good faith factual predicate sufficient for a court to draw an inference that specifically identified materials are reasonably likely to contain information that has the potential to be both relevant and exculpatory."). Moreover, irrespective of the Subpoena, DANY has an obligation to "make a diligent, good faith effort to ascertain the existence of material or information discoverable" under C.P.L. § 245.20, and "to

[6] C.P.L. § 245.20 imposes near open-file discovery obligations that in some respects exceed federal discovery rules. For example, C.P.L. § 245.20 requires prompt production of "[a]ll statements . . . made by persons who have evidence or information relevant to any offense charged or to any potential defense," *id.* § 245.20(1)(e); "[a]ll . . . documents . . . relating to the criminal action," *id.* § 245.20(1)(j); and "all electronically created or stored information seized or obtained by or on behalf of law enforcement from . . . a source other than the defendant which relates to the subject matter of the case," *id.* § 245.20(1)(u)(i).

cause such material or information to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control." *Id.* § 245.20(2). While DANY appears to have taken some steps in furtherance of that obligation, the prosecutors did not go far enough. Accordingly, for all of these reasons, disclosing responsive materials to President Trump would be consistent with 28 C.F.R. § 16.26(a)(1).

Any privilege issues that could arise from the requested disclosures have been, or can be, addressed. *See* 28 C.F.R. § 16.26(a)(2). Providing materials relating to Mr. Cohen's representation of President Trump, or that implicate the executive privilege, would not present concerns because those privileges are controlled by our client. Nor are we seeking materials that are subject to Mr. Cohen's attorney-client privilege or the related work product doctrine. Instruction 3 in the Subpoena contemplates that materials may be withheld on that basis, subject to the provision of an appropriate privilege log. We welcome further discussion on this issue, but it does not appear that these types of privilege issues would present unreasonable burdens in light of the filter-team procedures described in public filings relating to search warrants, *see, e.g.*, Ex. A at 7, 85, and the participation of a Special Master as described in *Cohen v. United States*, 18 Mag. 3161 (S.D.N.Y.). Finally, we recognize that certain of the requests, such as Request 15, could implicate privileges controlled by the USAO. We believe producing some or all of those types of responsive materials can be accomplished in a manner consistent with § 16.26(a)(2). Several of the potentially applicable privileges are qualified, *see, e.g.*, *New York v. Wolf*, 2020 WL 3073294, at *1-2 (S.D.N.Y. 2020), and President Trump has a strong interest in the materials—based on the state and federal constitutions—for defense use in connection with proceedings that could result in his incarceration and impact the 2024 presidential election.

None of the considerations identified in 28 C.F.R. § 16.26(b) warrant rejecting the Requests. The responsive materials may include grand jury information. *See id.* § 16.26(b)(1). However, the USAO already disclosed to DANY [redacted], and we would comply with any procedural requirements you deem necessary in connection with disclosures of similar materials.

Certain of the Requests seek tax return information, but such disclosures would be consistent with 26 U.S.C. § 6103(h)(4)(B)-(C). Any responsive tax information obtained by the USAO pursuant to a court order can be disclosed in connection with DANY's case against President Trump, which is a "State judicial . . . proceeding pertaining to tax administration" because DANY has specified that the object felonies for the Penal Law § 175.10 counts include tax offenses. *Id.* § 6103(h)(4). Mr. Cohen's tax information "directly relates to a transactional relationship between a person who is a party to the proceeding," *i.e.*, President Trump, which "directly affects the resolution of an issue in the proceeding." 26 U.S.C. § 6103(h)(4)(C). Similarly, "the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding." *Id.* § 6103(h)(4)(B). Specifically, Mr. Cohen's treatment of payments that he received relating to Ms. Clifford's is directly relevant to DANY's theory of the case.

The Requests may seek "investigatory records compiled for law enforcement purposes," but disclosure would not "interfere with enforcement proceedings" or disclose sensitive techniques. 28 C.F.R. § 16.26(b)(5). The federal prosecutions of Mr. Cohen have concluded, and we are not aware of any current ongoing federal investigation relating to the same allegations and

offenses. Consistent with our understanding of that finality, FBI reports relating to the SCO's investigation have been released pursuant to FOIA, including a report relating to an interview of Mr. Cohen in September 2018.[7] Therefore, the disclosures we are seeking would also be consistent with the § 16.26(b) considerations.

* * *

We appreciate your consideration of the Subpoena and the Requests therein. Please let us know if you would like to discuss the issues raised in this submission.

Respectfully Submitted,

/s/ Todd Blanche
Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC

Attorneys for Donald J. Trump

Enclosures

[7] *See* https://www.documentcloud.org/documents/6596807-3rd-Mueller-Document-FOIA-Release#document/p105/a542415.

EXHIBIT 13

TODD BLANCHE
Todd.Blanche@blanchelaw.com
(212) 716-1250

January 31, 2024

Via Email
Sarah Normand
U.S. Attorney's Office
Southern District of New York

Re: January 18, 2024 Subpoena Duces Tecum And *Touhy* Request

Dear Sarah:

We write in response to your January 30, 2024 letter. We have no objection to you taking additional time to prepare a complete response to our January 22, 2024 *Touhy* Requests, and we appreciate you taking the steps to do so that you described in your letter. Our motions *in limine* in *People v. Trump*, Index No. 71543-23, are due on February 22, 2024. In order to allow us to incorporate any materials the Office provides into those motions and take any necessary steps in response to the Office's decision, we would appreciate a response by February 16, 2024.

We respectfully disagree with the points you made regarding Judge Merchan's ruling on the motions to quash our subpoena to Michael Cohen. We recognize that the Office may consider a variety of factors under the applicable regulations, but Judge Merchan's ruling is not a persuasive basis to guide the Office's discretion for several reasons.

First, we do not agree that the "law of the case" doctrine has application under these circumstances. The doctrine is applied by judges, not prosecutors. At your request, we have submitted our Requests pursuant to the *Touhy* regulations, and those Requests are independent of the pending criminal case. As such, the *Touhy* regulations and related APA caselaw call for the Office to make an independent determination regarding our Requests.

Second, as reflected in our motion for reconsideration in the criminal case, Judge Merchan's ruling constituted a flawed and erroneous application of the legal framework that was relevant to his decision—C.P.L. § 610.20(3)-(4)—which should not be persuasive to the Office. For example, Judge Merchan's use of the term "general discovery," which you noted in your letter, failed to acknowledge that in most instances the subpoena to Mr. Cohen sought evidence that was probative of bias and motive. This includes evidence we are seeking relating to Mr. Cohen's arrangements with podcast and book publishers, which provide Mr. Cohen with financial incentives to make false and sensational public claims about President Trump in order to sell more books and get more views. Evidence of this type of bias and motivation is not "general discovery." *See, e.g.*, Fed. R. Evid. 608(b); N.Y. Rule of Evidence 6.11(c) (same); *United States v. Chichakli*, 2014 WL 5369424, at *17 (S.D.N.Y. Oct. 16, 2014) ("[P]otential bias can be proven by extrinsic evidence." (citing *United States v. Harvey*, 547 F.2d 720, 722 (2d Cir. 1976))).

As another example, we are seeking tax-related documents collected by the Office during its investigation of Mr. Cohen on the basis that the Office believed at the time that those materials were probative of criminal conduct by Mr. Cohen. The tax materials cannot reasonably be deemed "general discovery" outside the reach of C.P.L. § 610.20. In fact, DANY plans to argue at trial that the misdemeanor violations they have charged against President Trump should be escalated to felonies based on a tax-related scheme. As such, Mr. Cohen's tax treatment of the payments at issue is central to President Trump's defense. Judge Merchan's rulings to-date on this issue are unlawful. And DANY's failure to obtain and produce materials for the tax years in question is unconscionable, particularly in light of the fact that DANY has produced tax materials for earlier years. The Office should not be guided by their positions in evaluating the Requests.

We are also seeking from the Office drafts of the manuscript entitled *Trump Revolution: From the Tower to the White House, Understanding Donald J. Trump*, and related communications—including responsive documents seized from Mr. Cohen's accounts and devices, as well as responsive documents that the Office collected through other methods. Mr. Cohen wrote the manuscript prior to learning that he was being investigated by state and federal authorities, he signed a lucrative agreement to publish it, and he reportedly pulled out of that deal after determining that his current false narrative better suited his interests. This is further evidence of bias to which President Trump is entitled, and which should be admissible in any criminal proceeding guided by the rule of law.

So too are the communications sought in Request 15. We limited this Request to three specific topics that Judge Merchan did not address in a manner that should be persuasive to the Office. Specifically, we are seeking communications regarding crimes and misconduct by Mr. Cohen, Mr. Cohen's credibility, and Mr. Pomerantz's book touching on these topics as well as issues that we are entitled to raise at trial relating to the integrity of DANY's investigation. These communications may be independently admissible, but we are also entitled to use them to prepare President Trump's defense and trial strategy.

Third, our Requests are different from the subpoena to Mr. Cohen in important ways. Our use of the word "seized" in Requests 4 through 10 is important in this regard. We are not asking for "general discovery" or an "unrestrained foray." In those Requests, we are seeking evidence that the Office seized pursuant to the search warrants—a process that is separate from the initial collection of data from electronic service providers—*because* the evidence was probative of fraudulent schemes by Mr. Cohen, including wire fraud and bank fraud schemes. The warrant that we attached as Exhibit A to our *Touhy* letter indicates that the Office represented to a Magistrate Judge that there was probable cause to believe those fraud schemes had continued "to the present," and that there was probable cause to believe that Mr. Cohen was involved in "illegal campaign contributions"—another category of federal crime that DANY has invoked in an effort to escalate its baseless misdemeanor charges against President Trump that is contrary to the law and without evidentiary support. By seeking evidence that the Office seized pursuant to the Fourth Amendment and Rule 41, we pursued a narrower approach in the *Touhy* Requests that Judge Merchan has not addressed and could not reasonably reject.

Fourth, we do not believe that the New York rule regarding trial subpoenas, C.P.L. § 610.20(3)-(4), sets forth the applicable "rules of procedure" for purposes of our *Touhy* Requests. 28 C.F.R. § 16.26(a)(1). Rather, the Office should evaluate the Requests based on the applicable discovery provisions of N.Y. Criminal Procedure Law § 245.20.

Section 245.20(1) essentially requires open-file discovery that in some instances exceeds Rule 16 of the Federal Rules of Criminal Procedure. *See, e.g.*, N.Y. Crim. Pro. Law § 245.20(k)(iv) (requiring pretrial disclosure of "[a]ll evidence and information . . . that tends to . . . impeach the credibility of a testifying prosecution witness"); *id.* § 245.20(u)(i)(B) (requiring pretrial disclosure of "all electronically created or stored information seized . . . from . . . a source other than the defendant which relates to the subject matter of the case"). The *Touhy* Requests seek information that is discoverable under these provisions. Here, for example, the communications sought in Request 15 are discoverable under § 245.20(e), which requires pretrial disclosure of "[a]ll statements, written or recorded or summarized in any writing or recording, made by persons who have evidence or information relevant to any offense charged or to any potential defense thereto."

Moreover, § 245.20(2) establishes an affirmative duty on the part of DANY to:

> [M]ake a diligent, good faith effort to ascertain the existence of material or information discoverable under subdivision one of this section and to cause such material or information to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control . . . .

DANY is in violation of this provision. The *Touhy* Requests identify discoverable materials in the possession of the Office. DANY has illegally declined to obtain the materials we are seeking, despite collecting and producing other materials from the Office. We hope that the Office will not join in those suppression efforts.

Fifth, regardless of any weight the Office chooses to place on Judge Merchan's ruling, the constitutional considerations under *Brady* and *Giglio*, the Justice Manual, and the Office's discovery policies should have a role to play in the Office's analysis. "Government disclosure of material exculpatory and impeachment evidence is *part of the constitutional guarantee to a fair trial*." Justice Manual § 9-5.001(B) (emphasis added). "Under this policy, the government's disclosure will exceed its constitutional obligations." *Id.* § 9-5.001(F). "[T]his policy encourages prosecutors to err on the side of disclosure in close questions of materiality and identifies *standards that favor greater disclosure* in advance of trial . . . ." *Id*. § 9-5.001(B). Based on these authorities and our experience, if Mr. Cohen was testifying in a federal criminal trial in another District, we would expect the materials sought in our *Touhy* Requests to be disclosed to the prosecutors responsible for that trial so that they could be disclosed to the defense. Because the Office has already disclosed certain materials to DANY, and based on basic fairness and the affirmative duty

that DANY has ignored under N.Y. Criminal Procedure Law § 245.20(2), we respectfully submit that the Office should provide the responsive materials as soon as impracticable so that President Trump's trial can proceed in a just fashion.

Respectfully Submitted,

/s/ Todd Blanche
Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC

Attorneys for President Donald J. Trump

EXHIBIT 14

DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

February 7, 2024

BY ELECTRONIC MAIL

Sarah S. Normand
Deputy Chief, Civil Division
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
New York, NY 10007

RE: *Touhy* request by the defendant in *People of the State of New York v. Donald J. Trump*, Indictment No. 71543-23 (Sup. Ct. N.Y. Cnty.).

Dear Deputy Chief Normand,

The District Attorney's Office submits this letter in connection with a request for disclosure of materials in the files of the Department of Justice by counsel for Donald J. Trump, the defendant in *People of the State of New York v. Donald J. Trump*, Ind. No. 71543-23 (Sup. Ct. N.Y. Cnty.).

Counsel for the defendant served a state-court subpoena *duces tecum* dated January 18, 2024, on the Department seeking records related to the federal government's investigation and prosecution of Michael Cohen in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y.), and *United States v. Cohen*, No. 18 Cr. 850 (JMF) (S.D.N.Y.), as well as records related to the investigation by Special Counsel Robert S. Mueller, III into Russian interference in the 2016 presidential election.

Because a state court may not validly subpoena the federal government, *see, e.g.*, *In re Elko Cnty. Grand Jury*, 109 F.3d 554, 556 (9th Cir. 1997), we understand that the Department has advised defendant's counsel that the government will treat his subpoena as if it were a properly-submitted *Touhy* request under the Department's regulations at 28 C.F.R. part 16 subpart B. *See* 28 C.F.R. § 16.21(a)(2); *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). Consistent with the Department's practices for handling *Touhy* requests of this type, the Department notified the District Attorney's Office of defendant's request, and has invited the District Attorney's Office to provide our views regarding whether defendant's request for records satisfies the applicable standards for disclosure. *See* 28 C.F.R. § 16.24(c); Justice Manual § 1-6.220.

For the reasons described below, the materials sought in defendant's *Touhy* request are substantially restricted from disclosure under the Privacy Act, the federal grand jury secrecy rule, the tax secrecy provisions of the Internal Revenue Code, and the substantive law concerning the

federal government's privileges (including the law enforcement, deliberative process, attorney-client, and work product privileges). In addition, and as also described below, most of the materials sought by defendant's *Touhy* request are irrelevant to the *People v. Trump* prosecution—as already determined by the presiding state-court judge—and disclosure is not warranted for that reason.[1]

As to certain of the materials sought in defendant's *Touhy* request that are protected by grand jury secrecy and governmental privileges, we note in the discussion below where we believe a subset of the requested records may, in the discretion of the responsible Department official (and if not prohibited from disclosure on another basis), satisfy the relevant standards for disclosure. Specifically, the following records or categories of records identified in defendant's *Touhy* request may warrant examination by the U.S. Attorney to determine whether the relevant standards for disclosure are satisfied:

- documents responsive to Request 3 if related to Michael Cohen's campaign finance offenses and if not already obtained by the People and produced to defendant in discovery;
- documents responsive to Request 11 if not already obtained by the People and produced to defendant in discovery;
- documents responsive to Request 12(b) if related to Cohen's campaign finance offenses and if not already obtained by the People and produced to defendant in discovery;
- documents responsive to Request 12(c) if relevant to Cohen's credibility and not already disclosed in the Department's court filings;
- documents responsive to Request 15, if any, as related to the District Attorney's Office.

1. Background regarding United States v. Cohen and People v. Trump. On August 21, 2018, Michael Cohen pleaded guilty to eight offenses in the United States District Court for the Southern District of New York. *See* Information, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018); Hearing Tr., *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018). Counts One to Five related to federal income tax evasion; Count Six was for false statements to a bank; and Counts Seven and Eight were for causing and making unlawful campaign contributions in violation of the Federal Election Campaign Act ("FECA"). As to the campaign finance counts, Cohen admitted in his plea allocution that he did so "in coordination with, and at the direction of, a candidate for federal office" later identified as Donald J. Trump "for the principal purpose of influencing the election." Hearing Tr. 23-24, 27-28, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

The federal government's Information further alleged that Cohen committed one of the campaign finance violations by making a payment to an adult film actress (later identified as

[1] *See* Decision and Order on Motion to Quash Def.'s Subpoena and for a Protective Order, *People v. Trump*, Ind. No. 71543/2023 (Sup. Ct. N.Y. Cnty. Dec. 18, 2023) (Merchan, J.) (the "*Trump* Order on Motion to Quash"). We are appending copies of this order and the accompanying motion papers for your awareness, and describe in the body of this submission where we believe this order should inform the U.S. Attorney's analysis. We also note that defendant filed a motion to reargue his opposition to the motions to quash on January 17, 2024, which the People opposed on January 29. We will provide a copy of any order on defendant's motion to reargue if the Court issues its ruling before the U.S. Attorney's determination on defendant's *Touhy* request.

Stormy Daniels) through a shell corporation funded with his personal funds; that Cohen sent invoices for reimbursement to Trump through executives at the headquarters of the Trump Organization, which is located in New York County; and that Trump reimbursed Cohen a total of $420,000 through a series of monthly payments that were falsely accounted for in various business records created and maintained in the Trump Organization's New York offices. *See* Information ¶¶ 32-35, 37-40, 43-44, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

In response to the New York-based conduct described in the Information, the facts admitted at Cohen's plea allocution, and public reporting on the plea, the District Attorney's Office opened an investigation into the circumstances surrounding the facts to which Cohen pleaded guilty, including whether Trump's reimbursement payments to Cohen implicated the New York State criminal prohibition on falsifying business records. In March 2023, and as a result of that investigation, a New York County grand jury returned indictment number 71543/2023 charging Trump with thirty-four counts of Falsifying Business Records in the First Degree in violation of New York Penal Law § 175.10. The March 2023 *People v. Trump* indictment was unsealed at the defendant's arraignment in New York State Supreme Court on April 4, 2023. Trial in *People v. Trump* is scheduled to begin on March 25, 2024.

Under New York law, a person is guilty of first-degree falsifying business records when, "with intent to defraud," he "makes or causes a false entry in the business records of an enterprise," PL § 175.05(1), and when his intent to defraud "includes an intent to commit another crime or to aid or conceal the commission thereof," PL § 175.10. As relevant here, the People have alleged that defendant's intent to defraud included an intent to conceal the two FECA violations identified at Counts Seven and Eight of the government's Information and to which Cohen pleaded guilty. The People have also alleged that defendant's intent to defraud included an intent to commit or conceal tax crimes by reimbursing Cohen twice the amount he was owed for the Daniels payoff so Cohen could characterize the payments as income on his tax returns and still be left whole after paying approximately 50% in income taxes. The tax-related conduct at issue in *People v. Trump* is entirely unrelated to the tax evasion offenses to which Cohen pleaded guilty in federal court (Counts One to Five of the government's Information); those counts charged Cohen with underpayment of taxes for tax years 2012 to 2016, and the intended tax crimes at issue in *People v. Trump* relate to how defendant intended for Cohen to treat the reimbursements he received in 2017. The People have not alleged that any aspect of defendant's intent to defraud on the falsifying business records counts has to do with committing, aiding, or concealing Cohen's tax evasion offenses in Cohen's federal prosecution.

More generally, under state law, "falsifying business records in the second degree is elevated to a first-degree offense on the basis of an enhanced intent requirement . . . not any additional actus reus element." *People v. Taveras*, 12 N.Y.3d 21, 27 (2009). As the federal district court explained last year in rejecting defendant's effort to remove the prosecution to federal court:

> [V]iolations of [another statute] are not elements of the crime charged. The only elements are the falsification of business records, an intent to defraud, and an intent to commit or conceal another crime. The People need not establish that Trump or any other person actually violated [another law]. Trump can be convicted of a felony even if he did not commit any crime beyond the falsification, so long as he intended to do so or to conceal such a crime.

New York v. Trump, No. 23 Civ. 3773 (AKH), 2023 WL 4614689, at *10 (S.D.N.Y. July 19, 2023) (collecting cases).

2. Standards for Disclosure. The United States is not a party in *People v. Trump*. The disclosure of material in state proceedings in which the United States is not a party is generally prohibited absent approval by the responsible Department official (here, the U.S. Attorney) following application of the procedures at 28 C.F.R. § 16.22 and 16.24. *See* 28 C.F.R. §§ 16.22(a), (b).

Under those procedures, the U.S. Attorney shall first "request a summary of the information sought and its relevance to the proceeding." *Id.* § 16.22(d); *see also* Justice Manual 1-6.220. With defendant's consent, the Department has provided the District Attorney's Office with two letters from defense counsel (dated January 22, 2024 and January 31, 2024) that set out defendant's views on the relevance of the requested records.

Section 16.24(b) then provides, in relevant part, that the U.S. Attorney "may authorize . . . the production of material from Department files" if:

> (1) There is no objection after inquiry of the originating component;
> (2) The demanded disclosure, in the judgment of the responsible official, is appropriate under the factors specified in § 16.26(a) of this part; and
> (3) None of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure.

28 C.F.R. § 16.24(b). Section 16.26 in turn provides that:

> (a) In deciding whether to make disclosures pursuant to a demand, Department officials and attorneys should consider:
> (1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and
> (2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.
> (b) Among the demands in response to which disclosure will not be made by any Department official are those demands with respect to which any of the following factors exist:
> (1) Disclosure would violate a statute, such as the income tax laws, 26 U.S.C. 6103 and 7213, or a rule of procedure, such as the grand jury secrecy rule, F.R.Cr.P., Rule 6(e), . . . [or]
> (5) Disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.

28 C.F.R. §§ 16.26(a), (b).

In identifying the applicable "rules of procedure governing the case or matter in which the demand arose," *id.* § 16.26(a)(1), the U.S. Attorney should look to the authority a criminal defendant has under New York state law to compel third parties to produce records in connection with a criminal proceeding. In particular, the New York Criminal Procedure Law authorizes a criminal defendant to issue a subpoena *duces tecum* directing the production of records from a third party. The CPL permits an attorney for a criminal defendant to issue a subpoena of the court, including a subpoena *duces tecum*, to any witness that the defendant would be entitled to require to attend court. CPL §§ 610.10(3); 610.20(3). Such subpoenas "are process of the courts, not the parties." *People v. Natal*, 75 N.Y.2d 379, 384-85 (1990); *see also* CPL § 610.10(2). To sustain such a subpoena, a defendant must show "that the testimony or evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome." CPL § 610.20(4). Subpoenas may not be used to determine if evidence exists or as "an attempt to conduct a 'fishing expedition,'" *People v. Gissendanner*, 48 N.Y.2d 543, 547 (1979); or to circumvent the procedure for discovery, *see Constantine v. Leto*, 157 A.D.2d 376, 378 (3d Dep't 1990), *aff'd*, 77 N.Y.2d 975 (1991).

The CPL also authorizes a defendant to seek an order of the court authorizing discovery from a third party on a similar standard. Specifically, a court order authorizing discovery may be granted when the defendant meets his burden to show, among other requirements, that the information "relates to the subject matter of the case and is reasonably likely to be material," and "the defendant is unable without undue hardship to obtain the substantial equivalent by other means." CPL § 245.30(3). As with a defendant's authority to issue a subpoena *duces tecum*, a request to a court for a discovery order requires meeting the statutory burden to show that the evidence sought is reasonably likely to be material to the proceedings.

Because these are the only provisions of the state Criminal Procedure Law that authorize a criminal defendant to compel the production of records from third parties, it is appropriate for the U.S. Attorney to treat the standard under CPL § 610.20(4), as applied by state court decisions interpreting that statute, as the applicable "rules of procedure" within the meaning of 28 C.F.R. § 16.26(a)(1).

Defendant's letters explaining the basis for his *Touhy* request urge the U.S. Attorney to apply the broader rules of procedure that govern the People's discovery obligations to a criminal defendant under CPL § 245.20(1). *See* Def.'s Jan. 31 Letter at 3; Def.'s Jan. 22 Letter at 5. That statute generally provides that "the prosecution shall disclose to the defendant . . . all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control." CPL § 245.20(1). It would make little sense to apply this broad discovery obligation to the federal government, for several reasons. Most obviously, defendant's argument asks the U.S. Attorney to treat records in the possession of the federal government as if they were in the possession of a county District Attorney, when they are not. Nor are such materials "in the possession, custody or control of . . . persons under the prosecution's direction or control," CPL § 245.20(1), because the U.S. Attorney is not under the "direction or control" of any District Attorney. Moreover, the discovery statute itself makes clear which law enforcement agencies are considered to possess records that are within the constructive possession of a District Attorney's Office, and the Justice Department is not one of them. *See* CPL § 245.20(2) ("For purposes of [245.20(1)], all items and information related to the prosecution of a charge in the possession of any New York state or local police or law

enforcement agency shall be deemed to be in the possession of the prosecution."). Applying the standard defendant requests would be to impose an "open file" disclosure obligation on every U.S. Attorney's Office or other criminal investigative or enforcement component of the Justice Department in any New York state prosecution where a witness is or was a federal criminal defendant or the subject or target of a federal criminal investigation.

Defendant also argues that the U.S. Attorney should disregard the appropriate rules of procedure because the People somehow fell short of our discovery obligations by not obtaining in the course of our investigation *more* records from the federal government related to the Cohen prosecution than we did. *See* Def.'s Jan. 31 Letter at 3; Def.'s Jan. 22 Letter at 6. Defendant selectively quotes the CPL provision that requires state prosecutors to make a "diligent, good faith effort" to obtain discoverable material, but conspicuously omits the rest of the quoted sentence, which reads in full:

> The prosecutor shall make a diligent, good faith effort to ascertain the existence of material or information discoverable under subdivision one of this section and to cause such material or information to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control; *provided that the prosecutor shall not be required to obtain by subpoena duces tecum material or information which the defendant may thereby obtain*.

CPL § 245.20(2) (emphasis added). Here, obviously, defendant "may thereby obtain" any materials from the federal government that are appropriate for disclosure, precisely as he is seeking to do through his *Touhy* request. And the People's obligation under § 245.20(2) is to uncover otherwise "discoverable" material, which records in the possession of the federal government clearly are not. Controlling appellate law in New York forecloses defendant's argument that the People were required to produce materials in the possession of the federal government that the People themselves never possessed. *See People v. Rodriguez*, 155 A.D.2d 257, 259 (1st Dep't 1989) ("[T]he prosecutor could not be held responsible for not producing a file which he had never possessed or seen, and which neither he nor the state courts could gain access to without the consent of the appropriate federal agency."). In any event, to the extent CPL § 245.20(2) required the District Attorney's Office to request any material from the U.S. Attorney's Office—which it did not—defendant concedes that the People did request (and then produced to him in discovery) grand jury minutes, Form 302s, and witness notes for the key witnesses related to the election interference conspiracy that forms the central fact pattern for the *People v. Trump* prosecution.

3. Defendant's Touhy requests. Applying the Department's regulations and the appropriate state-law rules of procedure, the District Attorney's Office believes disclosure of records responsive to defendant's *Touhy* request is significantly restricted based on (a) the Privacy Act; (b) the federal grand jury secrecy rule; (c) the tax secrecy provisions of the Internal Revenue Code; and (d) the substantive law concerning government privileges (including the law enforcement, deliberative process, attorney-client, and work product protections); with possible exceptions identified below.

a. The Privacy Act. The Department's *Touhy* regulations prohibit disclosure where compliance with a demand would violate a statutory restriction. *See* 28 C.F.R. § 16.26(b)(1). The

U.S. Attorney's disclosure of records in response to defendant's *Touhy* request would violate the Privacy Act absent either Cohen's consent to disclosure of the requested records or a court order.

The Privacy Act "protect[s] the privacy of individuals identified in information systems maintained by federal agencies" by regulating "the collection, maintenance, use, and dissemination of information by such agencies." *Maydak v. United States*, 363 F.3d 512, 515 (D.C. Cir. 2004) (quoting Privacy Act, § 2(a)(5), 88 Stat. 1896). The Act does so by prohibiting disclosure of any "record" contained in a "system of records" without "prior written consent of . . . the individual to whom the record pertains," 5 U.S.C. § 552a(b), unless one of twelve authorized grounds for disclosure applies. *See id.* §§ 552a(b)(1)-(12). A "record" is "any item, collection, or grouping of information about an individual that is maintained by an agency," *id.* § 552a(a)(4); a "system of records" is "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number," *id.* § 552a(a)(5); and the Department has identified the U.S. Attorney's Criminal Case Files as among its systems of records. *See* 82 Fed. Reg. 24,147, 24,151 (May 25, 2017).

Each demand in defendant's *Touhy* request seeks materials that relate to Cohen and are contained in the criminal case files involving *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y.); *United States v. Cohen*, No. 18 Cr. 850 (JMF) (S.D.N.Y.); or the Special Counsel's investigation into Russian interference in the 2016 presidential election. Thus, absent Cohen's consent to the disclosure of the materials from these criminal case files that relates to him, the Privacy Act bars disclosure unless one of the statutory bases for disclosure applies. *See* 5 U.S.C. §§ 552a(b)(1)-(12). None does.

The Privacy Act does contain an exception for compliance with "the order of a court of competent jurisdiction." 5 U.S.C. § 552a(b)(11). This exception does not apply here because, although the CPL permits a defendant in a criminal case to issue a subpoena on behalf of the criminal court, CPL § 610.20(3), a state court subpoena is incompetent to compel the production of records from the federal government. *See In re Elko Cnty. Grand Jury*, 109 F.3d at 556; *Edwards v. U.S. Dep't of Justice*, 43 F.3d 312, 316-17 (7th Cir. 1994). Defendant's subpoena therefore is not an "order of a court of competent jurisdiction." 5 U.S.C. § 552a(b)(11).

To the extent the U.S. Attorney determines after review of the *Touhy* request that disclosure of any records is warranted on other grounds and intends to seek a Privacy Act Protective Order from a federal court to authorize that disclosure, we note that there is an existing protective order in *People v. Trump* that was entered on May 8, 2023 to regulate defendant's use and disclosure of materials obtained through discovery, which the state court later extended to apply to defendant's use of materials he obtained through a trial subpoena. *See* Decision and Order on Motion to Quash Def.'s Subpoena and for a Protective Order 12, *People v. Trump*, Ind. No. 71543/2023 (Sup. Ct. N.Y. Cnty. Dec. 18, 2023) (Merchan, J.) (the "*Trump* Order on Motion to Quash") ("[T]his Court hereby directs that any materials Defendant obtains through the subpoena *duces tecum* to Michael Cohen, shall be subject to the restrictions on use and disclosure already imposed by this Court's Protective Order of May 8, 2023."). It would therefore be appropriate for any Privacy Act Protective Order the U.S. Attorney seeks to mirror the language of the May 8, 2023 Protective Order in *People v. Trump*; and the People would likely ask that the state court expressly extend that Protective Order to cover any materials defendant obtains through this *Touhy* request.

b. The grand jury secrecy rule. The Department's *Touhy* regulations separately prohibit disclosure where doing so would violate the governing rules of procedure, including the federal grand jury secrecy rule. *See* 28 C.F.R. §§ 16.26(a)(1), (b)(1). With limited possible exceptions described below, the records sought by Requests 1 to 15 in defendant's *Touhy* request are all barred from disclosure by grand jury secrecy.

The grand jury secrecy rule provides that an attorney for the government "must not disclose a matter occurring before the grand jury" unless an exception to grand jury secrecy applies. Fed. R. Crim. p. 6(e)(2)(B), (e)(3); *see United States v. Procter & Gamble Co.*, 356 U.S. 677, 681 (1958) ("[A] long-established policy . . . maintains the secrecy of grand jury proceedings in the federal courts."). The records sought by Requests 1 to 15 in defendant's *Touhy* request all appear to be covered by the grand jury secrecy provisions of Rule 6(e) because they relate to or affect grand jury proceedings—namely, the government's investigation and prosecution of Cohen in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y.), and *United States v. Cohen*, No. 18 Cr. 850 (JMF) (S.D.N.Y.); and the Special Counsel's investigation of Russian interference in the 2016 presidential election. *See In re Grand Jury Subpoena*, 103 F.3d 234, 236-39 (2d Cir. 1996). Thus, under 28 C.F.R. §§ 16.26(a)(1) and (b)(1), the U.S. Attorney should evaluate whether disclosure to defendant is appropriate under an exception to grand jury secrecy.

The only exception to grand jury secrecy that may apply to defendant's *Touhy* request is for disclosure of grand jury material, when authorized by a court, if sought "preliminarily to or in connection with a judicial proceeding." Fed. R. Crim. P. 6(e)(3)(E)(i). *People v. Trump* is a judicial proceeding, and defendant seeks grand jury material in connection with that proceeding. Where grand jury materials are sought in connection with a judicial proceeding, a court may authorize disclosure on a showing of "particularized need." *United States v. Sells Eng'g*, 463 U.S. 418, 420, 443-46 (1983). This showing requires requesting parties to demonstrate "that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed." *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 222 (1979). Defendant cannot meet this standard in connection with his *Touhy* request, with limited possible exceptions noted below.[2]

Request 1 seeks eight sub-categories of materials that all relate to Counts One through Five of the 18 Cr. 602 Information. Defendant cannot meet this burden to show a "particularized need" for the materials in Request 1 because Counts One to Five are tax evasion counts based on Cohen's nonpayment of taxes on income from 2012 to 2016 that have nothing to do with the conduct charged in the *People v. Trump* indictment; and because a generalized interest in impeaching a potential witness's credibility does not meet the necessary standard under state law for a defendant to show that subpoenaed materials are "reasonably likely to be relevant and material to the proceedings." CPL § 610.20(4).

As noted, *People v. Trump* concerns whether defendant lied in his business records by falsely describing the $420,000 payments to Cohen in 2017 as payments for legal services pursuant to a retainer, rather than truthfully describing them as reimbursements for the Stormy Daniels

[2] Defendant's January 22 and January 31 letters do not identify or address the authority for or standard governing the federal government's disclosure of grand jury materials.

payoff. The People must establish beyond a reasonable doubt at trial that defendant acted with intent to defraud that included an intent to commit or conceal the commission of other crimes, *see* Penal Law § 175.10; and as noted above, the People may allege at trial that defendant's intent to commit or conceal other crimes included Cohen's federal campaign finance offenses (Counts Seven and Eight of the Information), or defendant's intent to mischaracterize for tax purposes the true nature of the reimbursement. But at no point have the People alleged that any aspect of defendant's intent to commit or conceal other crimes involved Cohen's entirely unrelated convictions for tax evasion (Counts One to Five of the Information). Because federal grand jury materials supporting Cohen's tax evasion convictions for conduct from 2012 to 2016 have nothing to do with the *People v. Trump* prosecution, defendant would not be able to show a "particularized need" for these materials "to avoid a possible injustice." *Douglas Oil*, 441 U.S. at 222.

Applying that standard, the state court already quashed defendant's subpoena to Cohen in *People v. Trump* where defendant sought records that were "not limited to the subject matter of this case." *Trump* Order on Motion to Quash 7. As noted above, defendant sought many of the same records listed in his *Touhy* request directly from Cohen through a subpoena *duces tecum* served on October 27, 2023. The District Attorney's Office moved to quash that subpoena, and the Court in *People v. Trump* largely granted the motion to quash in a December 18, 2023 order on the ground that the subpoena was overbroad and violated state law by seeking records that were not material and relevant to the *People v. Trump* proceedings. That reasoning applies squarely to the records sought in Request 1 of the *Touhy* request.

And to the extent defendant believes that the evidence and investigative file the U.S. Attorney compiled in support of its decision to charge Counts One to Five would be useful as general impeachment in terms of Cohen's credibility as a witness, that is not a valid basis to enforce a trial subpoena under New York law. *See Gissendanner*, 48 N.Y.2d at 548 ("[T]hough access must be afforded to otherwise confidential data relevant and material to the determination of guilt or innocence, . . . there is no such compulsion when requests to examine records are motivated by nothing more than impeachment of witnesses' general credibility."). The state court in fact quashed other requests in defendant's subpoena to Cohen in *People v. Trump* where "Defendant here seeks nothing more than 'the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable [them] to impeach witness[es].'" *Trump* Order on Motion to Quash 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549) (alterations in original).

In justifying his *Touhy* request, defendant asks the U.S. Attorney to disregard the state court's discovery opinion and conclude instead that the state court was wrong and his discovery rulings are "unlawful." Def.'s Jan. 31 Letter at 1 ("Judge Merchan's ruling constituted a flawed and erroneous application of the legal framework that was relevant to his decision—C.P.L. § 610.20(3)-(4)—which should not be persuasive to the Office."); *id.* at 2 ("Judge Merchan's rulings to-date on this issue are unlawful."). Asking the Department to base its *Touhy* determination on the conclusion that the presiding state court judge in a pending state prosecution misinterpreted state criminal procedure law, or issued an "unlawful" opinion, is an invitation to ignore the "general requirements of reasoned agency decisionmaking" required by the Administrative Procedure Act. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2569 (2019).

Because the state court has already quashed subpoena requests to Cohen—whose materials are not protected by the grand jury secrecy rule—that were not limited to the subject matter of this case, defendant cannot meet his burden show to a "particularized need" for grand-jury secret materials related to Counts One to Five of the Information that are likewise unrelated to the subject matter of the state prosecution.

Request 2 seeks, "[f]or the tax years from 2012 to the present, . . . all state and federal income tax filings, and associated work papers, relating to Cohen and/or entities associated with Cohen." Defendant sought a narrower set of these tax records directly from Cohen in his October 18, 2023 subpoena, seeking:

> For tax years 2016, 2017 and 2018, all documents and communications relating to any tax liabilities—state or federal—owed by you or by any entity in which you hold or held, directly or indirectly, an ownership interest, including all federal and state tax returns you filed (including amended tax returns), all draft tax returns, all documents related to income calculations or deductions from income, all communications with accountants, and all accountant work papers.

Trump Order on Motion to Quash 10-11. The state court quashed that request in its entirety as an "overbroad . . . request for general discovery" that—even if narrowed to seek only records about Cohen's tax treatment of the $420,000 reimbursement payments he received from defendant in 2017—would still be "immaterial to the question of Defendant's intent to defraud." *Id.* at 10. The state court further held that "[t]he justifications for the demand provided by Defendant are not persuasive," and "[i]t would appear that Defendant here seeks nothing more than 'the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable [them] to impeach witness[es].'" *Id.* at 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549) (alterations in original). Defendant's request for an even broader set of Cohen's tax records in the possession of the U.S. Attorney cannot meet the higher standard to overcome the federal grand jury secrecy rule.[3]

Defendant argues that the state court's rulings as to his request for those tax records are "unlawful." Def.'s Jan. 31 Letter at 2. He is already pursuing recourse for those adverse decisions through a pending motion to reargue. But asking the U.S. Attorney to disclose a witness's confidential tax records to a criminal defendant in the face of a contrary state court order prohibiting the defendant from obtaining those very records is inconsistent with the Department's obligation to follow the appropriate state rules of procedure, however defined. 28 C.F.R. § 16.26(a)(1).

Defendant's *ad hominem* that "DANY's failure to obtain and produce materials for the tax years in question is unconscionable," Def.'s Jan. 31 Letter at 2, likewise ignores that the state court

[3] As noted later in this submission, Requests 1 and 2 both implicate the tax secrecy provisions of the Internal Revenue Code as well.

already held that those tax records are "immaterial" to the pending prosecution.[4] *Trump* Order on Motion to Quash at 10.

Request 3 seeks "the documents discussed or relied upon in any way to establish probable cause" for the federal government's April 2018 search warrant for Cohen's residence, office, and electronic devices, including bank records and emails from eight identified financial institutions. The government's search warrant application, docketed at ECF No. 48-1 on the docket of No. 18 Cr. 602, was intended to support a probable cause showing for potential violations not only of the campaign finance violations to which Cohen later pleaded guilty, but also for potential violations of various bank fraud offenses, including under 18 U.S.C. §§ 1005, 1014, 1343, and 1344. *See* No. 18 Cr. 602, ECF No. 48-1, at p.6 (¶ 5) & pp.8-74 (¶¶ 12-56). But materials supporting the government's probable cause in 2018 to believe Cohen may have committed various bank fraud offenses again have nothing to do with the *People v. Trump* prosecution. Given that the state court previously quashed defendant's subpoena seeking materials from a third party that are "not limited to the subject matter of this case," *Trump* Order on Motion to Quash 7, defendant cannot meet his "particularized need" burden to overcome grand jury secrecy protections for materials related to the government's probable cause showing on potential bank fraud offenses.

The government's search warrant application also sets out its probable cause showing on Cohen's campaign finance offenses. *See* No. 18 Cr. 602, ECF No. 48-1, at pp.38-57 (¶¶ 29-44). Unlike the bank fraud offenses, the campaign finance offenses do relate to the subject matter of the pending state prosecution, both because the business records that defendant allegedly falsified were made to reimburse Cohen for the Stormy Daniels payoff, and because the People allege that among the crimes defendant intended to conceal when he falsified those records were Cohen's FECA violations. However, in reviewing the relevant paragraphs in the search warrant application, it appears that much of the evidence cited at ¶¶ 29-44 of the search warrant application has already been produced to defendant through the People's discovery in the state prosecution, because the People obtained much of that evidence through our own investigative steps [redacted] among other evidence. Defendant cannot show that there is a "particularized need" for disclosure from the federal government of materials he already received from the People in discovery.

The Department's procedures for responding to *Touhy* requests provide that negotiation to limit the requesting party's demand for records is ordinarily appropriate. *See* 28 C.F.R. § 16.24(c); Justice Manual § 1-6.220. Because much of the evidence sought by Request 3 as it relates to the

[4] Defendant's assertion that "DANY has produced [redacted]," Def.'s Jan. 31 Letter at 2, is misleading. In response to a grand jury subpoena to [redacted] And in response to a grand jury subpoena [redacted] There is nothing selective or nefarious about the People's possession of [redacted].

government's probable cause showing on the campaign finance offenses was likely included in the People's discovery to defendant already, the U.S. Attorney should consider asking defendant to identify any particular records referenced in the search warrant application related to the campaign finance offenses that he believes he does not already possess. The U.S. Attorney can then consider whether defendant's request for those specific records meets his burden to show a "particularized need" for those materials, instead of considering a broad demand for materials defendant likely already has. To the extent defendant identifies specific records that were not already included in the People's discovery, the U.S. Attorney has the discretion to examine defendant's stated justification and decide whether the Rule 6(e)(3)(E)(i) exception to grand jury secrecy is satisfied.

Requests 4, 5, 6, and 7 seek all documents seized from, and all toll records relating to, two iPhones described in the search warrant as "Subject Device-1" and "Subject Device-2." The District Attorney's Office [redacted] in the course of our investigation; and on June 15, 2023, we produced to defendant in discovery both the [redacted] as well as the [redacted] accessible to the People's case team (which were filtered for privilege). As before, defendant cannot show a particularized need for materials he already possesses.

Requests 8, 9, and 10 seek "all documents seized from" three of Cohen's email and online storage accounts. Defendant cannot show a particularized need for this extraordinarily broad request because it is "not limited to the subject matter of this case," and instead "seeks nothing more than 'the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable [them] to impeach witness[es].'" *Trump* Order on Motion to Quash 7, 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549).

Request 11 seeks "all agreements with Cohen or his counsel, including proffer agreements and privilege waivers." In the course of the People's investigation, we [redacted], which the People produced to defendant in discovery. As above, defendant cannot show a particularized need to compel production from the federal government of materials he already received from the People. To the extent the government possesses any additional agreements or privilege waivers involving Cohen, the U.S. Attorney has the discretion to examine defendant's stated justification and decide whether the Rule 6(e)(3)(E)(i) exception to grand jury secrecy is satisfied.

Request 12 seeks "all documents memorializing statements by Cohen," including statements during meetings with (a) the New York Attorney General and New York State Department of Taxation and Financial Services; (b) personnel from the U.S. Attorney's Office for the Southern District of New York; and (c) "[t]he 'seven occasions' that Cohen met with the Special Counsel's Office."

Request 12(a) likely does not meet the particularized need standard because, to our knowledge, neither the New York Attorney General nor the New York State Department of Taxation and Financial Services ever investigated the false business records (or the underlying offenses that the People allege defendant intended to commit or conceal) at issue in the *People v. Trump* prosecution; and the state court already held that records unrelated to the subject matter of

the state prosecution are not material and relevant to the proceedings. *See Trump* Order on Motion to Quash 6-7; *see also* CPL § 610.20(4).

As to Request 12(b), the People [redacted] We produced those records to defense counsel in discovery on June 8, 2023.[5] As before, defendant cannot show a particularized need to compel production from the federal government of materials he already received from the People. To the extent the U.S. Attorney's Office possesses notes of meetings with Cohen on other dates that relate to the campaign finance violations to which he pleaded guilty, the U.S. Attorney has the discretion to examine defendant's stated justification and decide whether the Rule 6(e)(3)(E)(i) exception to grand jury secrecy is satisfied.

Request 12(c)—which seeks documents memorializing the Special Counsel's meetings with Cohen during the investigation of Russian interference in the 2016 presidential election—is, as with Request 12(a), not generally related to the subject matter of the state prosecution. *See Trump* Order on Motion to Quash 7. And to the extent defendant's justification for those records is his interest in impeaching Cohen's credibility based on alleged false statements to federal authorities in those meetings, *see* Def.'s Jan. 22 Letter at 2, 5, the People already produced in discovery [redacted] We recognize, however, that unlike most of defendant's other requests, Request 12(c) identifies a defined set of records memorializing seven witness meetings and is not on its face burdensome for the federal government to review. To the extent the U.S. Attorney concludes that any Form 302s or other records directly memorializing Cohen's statements to the Special Counsel contain material that is relevant to Cohen's credibility that is not already discussed in the federal government's public filings identified above, the U.S. Attorney has the discretion to examine defendant's stated justification and decide whether the Rule 6(e)(3)(E)(i) exception to grand jury secrecy is satisfied.

Requests 13 and 14 seek documents relating to books Cohen published or intended to publish, as well as agreements with publishers and media companies. Defendant's justification to the U.S. Attorney explains his request for this records but does not note that the state court quashed defendant's subpoena request to Cohen for his "contract with the publisher for the books Disloyal and Revenge, as well as documents sufficient to show the compensation [Cohen] received from the books Disloyal and Revenge, and from the podcast Mea Culpa," holding that "in the context of this criminal proceeding, the Request seeks nothing more than general discovery." *Trump* Order on Motion to Quash 11. Defendant's *Touhy* request seeks a far broader set of such records from the federal government; given the state court's holding that these records are impermissible general discovery and are not material and relevant to the criminal case, defendant cannot meet his burden

[5] Defendant's January 22 letter states that "DANY has produced only a [redacted] DANY has not produced the complete set of interview reports." Def.'s Jan. 22 Letter at 4. The People have produced in discovery [redacted]

to show a "particularized need" sufficient to overcome the grand jury secrecy prohibition on disclosure.[6]

Request 15 seeks "all documents reflecting or memorializing communications with the Manhattan District Attorney's Office, the Office of the New York State Attorney General, or the Office of Special Counsel Robert S. Mueller III, regarding (a) Crimes, misconduct, and/or bad acts by Cohen; (b) The book titled *People v. Donald Trump: An Inside Account*; or (c) Cohen's credibility." Any communications with the New York Attorney General's Office on these topics are irrelevant to the *People v. Trump* prosecution and do not meet the particularized need standard; this request is, as the state court previously prohibited, an effort at "an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable them to impeach witness[es]." *Trump* Order on Motion to Quash 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549). The same is true of communications between the U.S. Attorney's Office and the Special Counsel's Office regarding Cohen.

As for the request for communications between the District Attorney's Office and the U.S. Attorney's Office on the specified topics, the People have already produced to defendant—after exercising due diligence and reviewing all items and information in the People's possession, custody or control—all "evidence and information" that tends to "impeach the credibility of a testifying prosecution witness," including Cohen, as required by CPL § 245.20(1)(k)(iv). For the same reason, the state court has already quashed defendant's request to seek the same records from a third party. *See Trump* Order on Motion to Quash 7-8. To the extent the U.S. Attorney is nonetheless aware of responsive records on the specified topics, the U.S. Attorney should review those communications and make a determination regarding disclosure based on the applicable standard.

c. The tax secrecy provisions of the Internal Revenue Code. To the extent the requested materials are not exempt from disclosure under the Privacy Act and grand jury secrecy, the Internal Revenue Code applies to prohibit disclosure of the records sought in Request 1 and Request 2 of defendant's *Touhy* request.

The Department's regulations prohibit disclosure where doing so would violate a statutory restriction, such as the tax secrecy provisions of the Internal Revenue Code. *See* 28 C.F.R. § 16.26(b)(1) (citing 26 U.S.C. § 6103). The tax secrecy statute provides generally that "[r]eturns and return information shall be confidential, and except as authorized by this title," "no officer or employee of the United States . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section." 26 U.S.C. § 6103(a), (a)(1); *see also id.* § 6103(b)(1) (defining "return"); *id.* § 6103(b)(2) (defining "return information"). The statutory exceptions to tax secrecy are listed at 26 U.S.C. §§ 6103(c) to (o).

[6] On January 25, 2024, defendant served subpoenas under CPL § 610.20 on the publishers of Cohen's two books—*Disloyal* and *Revenge*—that also sought the same records (and more) that the state court prohibited defendant from obtaining directly from Cohen. The People moved to quash those subpoenas on February 2; one of the publishers filed its own motion to quash on February 6; and defendant's opposition to the People's motion to quash is due on February 16.

Much or all of the material sought by Request 1 is likely protected from disclosure by tax secrecy. Request 1(a) expressly seeks tax returns and work papers that are prohibited from disclosure by 26 U.S.C. § 2601(a); and Requests 1(b) to 1(h)—which seek records related to the tax evasion counts to which Cohen pleaded guilty—largely appear to call for records that would fall within the definition of "return information" that is prohibited from disclosure by 26 U.S.C. §§ 2601(a) & (b)(2). Request 2, which seeks "[f]or the tax years from 2012 to the present, . . . all state and federal income tax filings, and associated work papers, relating to Cohen and/or entities associated with Cohen," even more clearly falls within the prohibition of disclosure of tax returns and return information. None of the statutory exceptions to tax secrecy applies here. *See* 26 U.S.C. §§ 6103(c) to (o).

Defendant's letter to the U.S. Attorney contends that the exceptions to tax secrecy at 26 U.S.C. §§ 6103(h)(4)(B) and (C) apply to permit disclosure. *See* Def.'s Jan. 22 Letter at 6. There are many flaws with this argument. First, the *People v. Trump* prosecution is not a "proceeding pertaining to tax administration" as required by 26 U.S.C. § 6103(h)(4). It is a prosecution for falsifying business records, in which—as noted—"violations of [another statute] are not elements of the crime charged," and "Trump can be convicted of a felony even if he did not commit any crime beyond the falsification, so long as he intended to do so or to conceal such a crime." *Trump*, 2023 WL 4614689, at *10. A prosecution for falsifying business records, whatever the alleged guilty intent, is not a "proceeding pertaining to tax administration," as the statutory definition of "tax administration" makes clear. *See* 26 U.S.C. § 6103(b)(4).

Second, accepting defendant's view that 26 U.S.C. §§ 6103(h)(4)(B) or (C) apply here would again require the Department to conclude that the state court's express application of state law, and the state court's holdings regarding the scope of the pending prosecution, are both wrong. Section 6103(h)(4)(B) only applies if "the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding," and section 6103(h)(4)(C) only applies if the return "direct relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding." But the state court already expressly held that "[h]ow Mr. Cohen treated the alleged $420,000 payment for tax purposes is immaterial to the question of Defendant's intent to defraud – that is because Defendant's intent is separate and apart from whether his intended result actually came to fruition." *Trump* Order on Motion to Quash 10. An issue that is "immaterial" to any element of the charged offenses, *id.*, cannot "directly relate to" or "directly affect[]" the resolution of any issue. 26 U.S.C. §§ 6103(h)(4)(B), (C).

Third, even if the exceptions for proceedings "pertaining to tax administration" applied here, which they do not, defendant's requests don't even seek records that pertain. Request 1 seeks records related to Counts One to Five of the *Cohen* Information. Those are tax evasion counts for the years 2012 to 2016 that do not overlap with Cohen's possible tax treatment in 2018 of an allegedly illegal reimbursement he received in 2017. And Request 2 seeks all filings and work papers for Cohen and any related entity for the tax years "from 2012 to the present." The overbreadth of that request for sensitive records confirms the state court's holding that defendant's request for Cohen's tax information "seeks nothing more than 'the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable [them] to impeach witness[es].'" *Id.* at 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549) (alteration in original).

Disclosure of any records in response to Request 1 or Request 2 in defendant's *Touhy* request is therefore prohibited under 28 C.F.R. § 16.26(b)(1) and the Internal Revenue Code, 26 U.S.C. § 6103.

d. Governmental privileges. Finally, and to the extent not prohibited from disclosure for the reasons described above, government privileges likely apply to restrict disclosure of a subset of the materials sought by defendant's *Touhy* request.

The Department's regulations restrict disclosure of privileged information in response to a *Touhy* request. *See* 28 C.F.R. §§ 16.26(a)(2), (b)(5). Certain of defendant's *Touhy* requests appear to seek records protected by the government's law enforcement, deliberative process, attorney-client, and work product privileges. We also note that the request defines "documents" to include "any draft or non-identical copy" of any document; drafts of any of the materials otherwise disclosable in response to defendant's *Touhy* request are of course extremely likely to be protected under the deliberative process privilege. Because the District Attorney's Office does not know what responsive materials are in the U.S. Attorney's case file that may be protected by these or other privileges, we do not state a position on how the government's privileges may apply here, and whether any qualified privileges are overcome by a sufficient showing of need.

Sincerely,

ALVIN L. BRAGG, JR.
District Attorney, New York County

By: */s/ Matthew Colangelo*
Matthew Colangelo
Christopher Conroy
Susan Hoffinger
Becky Mangold
Joshua Steinglass
Assistant District Attorneys
New York County District Attorney's Office
1 Hogan Place
New York, NY 10013
[redacted]

EXHIBIT 15

U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

February 23, 2024

BY EMAIL
Todd Blanche, Esq.
Emil Bove, Esq.
Blanche Law

Re: Determination regarding *Touhy* Request to the U.S. Attorney's Office for the Southern District of New York in connection with *People of the State of New York v. Trump*, Index No. 71543-23

Dear Counsel:

This letter provides a determination regarding the defendant's request, by subpoena *duces tecum* dated January 18, 2024 ("*Touhy* Request" or "Subpoena"), seeking production of documents from this Office in connection with the above-referenced criminal proceeding, pursuant to the Department of Justice's ("Department's" or "DOJ's") *Touhy* regulations, 28 C.F.R. §§ 16.21-16.29.

***Touhy* Request**

The Subpoena contains sixteen requests for documents relating to Michael Cohen that fall into seven categories:

(i) *Tax-Related Documents*: Requests 1-2 seek documents relating to the tax evasion counts (Counts One through Five) charged in the August 21, 2018 Information in *United States v. Cohen*, 18 Cr. 602(JMF) ("*United States v. Cohen*"), ECF No. 2 ("SDNY Information"), and all federal and state income tax filings and associated work papers for the tax years 2012 to the present, relating to Mr. Cohen and/or entities associated with him;

(ii) *Documents Discussed in Search Warrant Application*: Request 3 seeks documents "discussed or relied upon in any way to establish probable cause" in the search warrant application bearing docket number 18 Mag. 2969, in *United States v. Cohen*, ECF No. 43-1 ("Search Warrant Application"), including bank records and emails from nine identified financial institutions;

(iii) *Documents Seized from iPhones and Email Accounts*: Requests 4-10 seek "all documents seized from" and "all toll records relating to" two Apple iPhones described in the Search Warrant Application, and "all documents seized from" three email accounts described in the Search Warrant Application;

(iv) *Cohen Agreements and Statements*: Requests 11-12 seek agreements with Mr. Cohen or his counsel, including proffer agreements and privilege waivers, and documents memorializing statements by Cohen, including statements during meetings with the New York Attorney General ("NYAG") and New York State Department of Taxation and Financial Services ("NYDTFS"), meetings with this Office, and certain meetings with the Office of Special Counsel Robert S. Mueller III ("SCO");

(v) *Documents Relating to Cohen Books, Manuscripts and Publishing/Media Agreements*: Requests 13-14 seek documents relating to three books or manuscripts by Mr. Cohen and agreements relating to Mr. Cohen involving twelve publishing or media companies;

(vi) *Communications with DANY, NYAG, or SCO*: Request 15 seeks documents reflecting or memorializing communications with the Manhattan District Attorney's Office ("DANY"), NYAG, or SCO regarding Mr. Cohen's "[c]rimes, misconduct and/or bad acts" or "credibility," or the book titled *People v. Donald Trump: An Inside Account*; and

(vii) *Documents Regarding Order to Show Cause*: Request No. 16 seeks non-privileged documents and communications relating to the December 12, 2023 order to show cause docketed at ECF No. 96 in *United States v. Cohen*.

You have confirmed that these requests do not seek material that is publicly available.

***Touhy* Determination**

The Department's *Touhy* regulations identify several considerations that Department officials should evaluate in deciding whether to authorize disclosure in response to a subpoena or other demand. *See* 28 C.F.R. § 16.26.

First, Department officials should consider "[w]hether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose." 28 C.F.R. § 16.26(a)(1). According to your January 22, 2024 letter, you issued the Subpoena pursuant to § 610.20(3) of the New York Criminal Procedure Law ("CPL") to obtain evidence in connection with the criminal proceeding in *People of the State of New York v. Trump*, Index No. 71543-23 ("*People v. Trump*"). The applicable rule of procedure governing a third-party subpoena *duces tecum* issued in a New York State criminal proceeding is set forth in CPL § 610.20(4) and case law applying that provision. Under CPL § 610.20(4), "the showing required to sustain any subpoena issued under this section is that the . . . evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome."[1]

[1] You have suggested that CPL § 245.20(1), rather than CPL § 610.20(4), provides the applicable rule of procedure. *See* Jan. 31, 2024 Letter at 3. By its plain terms, however, CPL § 245.20(1) governs materials that "the prosecution shall disclose to the defendant." This provision is not applicable to this Office, which is not "the prosecution" but rather a third party to the criminal proceeding. Instead, the Subpoena was "issued… pursuant to C.P.L. § 610.20(3)," which authorizes attorneys for a criminal defendant to issue subpoenas to third parties, provided they can make the showing required by CPL § 610.20(4). Jan. 22, 2024 Letter at 5.

In evaluating whether the Subpoena meets this standard, Judge Merchan's December 18, 2023 Decision and Order in *People v. Trump* ("December 18 Order") is instructive. In that Order, Judge Merchan applied CPL § 610.20(4) in evaluating motions to quash a third-party subpoena issued to Mr. Cohen that sought some of the same records sought in the Subpoena to this Office.

Judge Merchan identified the principles that guide an analysis of whether the standard in CPL § 610.20(4) has been met. According to the New York Court of Appeals, "a subpoena is properly quashed when the party issuing the subpoena fails 'to demonstrate any theory of relevancy or materiality, but instead, merely desires the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information will enable them to impeach witnesses.'" *Id.* at 6 (quoting *People v. Gissendanner*, 48 N.Y.2d 543, 549 (1979) (alterations omitted)). "A subpoena *duces tecum* may not generally be 'used for the purpose of discovery or to ascertain the existence of evidence.'" *Id.* (quoting *Gissendanner*, 48 N.Y.2d at 551). "When deciding a motion to quash a subpoena, access must be afforded to data relevant and material to the determination of guilt or innocence, as, for example, when a request for access is directed toward revealing specific biases, prejudices or ulterior motives of the witness as they may relate to the issues or personalities at hand," or "information which if known to the trier of fact[] could very well affect the outcome of the trial." *Id.* (quoting *Gissendanner*, 48 N.Y.2d at 548 (quotation marks omitted)). But "'there is no such compulsion when requests to examine records are motivated by nothing more than impeachment of witnesses' general credibility.'" *Id.* (quoting *Gissendanner*, 48 N.Y.2d at 548). Based on these principles, Judge Merchan articulated the relevant inquiry under CPL 610.20(4) as "whether the subpoena seeks information to be used for impeachment of general credibility or is instead directed towards revealing specific biases, prejudices or ulterior motives related directly to personalities or issues in the instant matter; whether the solicited information is material to the question of guilt or innocence, or nothing more than a 'fishing expedition.'" *Id.* at 6-7.

We understand you believe "Judge Merchan's ruling constituted a flawed and erroneous application of the legal framework that was relevant to his decision—C.P.L. § 610.20(3)-(4)—which should not be persuasive to th[is] Office." Jan. 31, 2024 Letter at 1. We also understand that the defendant has moved for reargument of some aspects of the December 18 Order in the criminal case. Unless and until Judge Merchan grants the motion for reargument, however, the December 18 Order remains the law of the case. While sovereign immunity bars direct enforcement by a state court of a subpoena against the Department or its employees,[2] and the Department must make an independent judgment as to the propriety of disclosure under the *Touhy* regulations, Judge Merchan's Order is persuasive authority as to the proper application of CPL § 610.20(4) to a third-party subpoena in the context of *People v. Trump*.

Second, "[i]n deciding whether to make disclosures pursuant to a demand" under the *Touhy* regulations, Department officials should consider "[w]hether [such] disclosure is appropriate under the relevant substantive law concerning privilege." 28 C.F.R. § 16.26(a)(2). Some of the

[2] *See, e.g.*, *Edwards v. DOJ*, 43 F.3d 312, 316 (7th Cir. 1994) ("the review action must be in federal court pursuant to 5 U.S.C. § 702, rather than in a state court that lacks jurisdiction"); *In re Elko County Grand Jury*, 109 F.3d 554 (9th Cir. 1997); *Smith v. Cromer*, 159 F.3d 875, 879 (4th Cir. 1998).

requests in the Subpoena implicate privileged information, including but not limited to information protected by the work product doctrine, the deliberative process privilege, and the law enforcement privilege. While some of the applicable privileges may be qualified, *see* Jan. 22, 2024 Letter at 6, the defendant would need to make a particularized showing to overcome such privileges. And with regard to attorney work product, even if the defendant could make a showing of substantial need for specific documents, and inability to obtain their substantial equivalent by other means, documents reflecting prosecutors' mental impressions, conclusions, opinions, and legal theories would remain protected. *See Hickman v. Taylor*, 329 U.S. 495, 512-13 (1947); *cf.* Fed. R. Civ. P. 26(b)(3)(B).

Third, the *Touhy* regulations provide that "disclosure will not be made by any Department official" if it would reveal certain categories of protected information set forth in 28 C.F.R. § 16.26(b). Among other things, disclosure is prohibited if it "would violate a statute, such as the income tax laws, 26 U.S.C. §§ 6103 and 7213," or the Privacy Act, 5 U.S.C. § 552a, "or a rule of procedure, such as the grand jury secrecy rule, [Fed. R. Cr. P.] Rule 6(e)." 28 C.F.R. § 16.26(b)(1). Disclosure is also barred if it "would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigatory techniques and procedures the effectiveness of which would thereby be impaired." *Id.* § 16.26(b)(5).

I have carefully considered the *Touhy* Request, your letters of January 22, January 31, and February 19, 2024,[3] and DANY's letters of February 7 and February 9, 2024. Applying the factors set forth in the Department's *Touhy* regulations, I make the following determinations with respect to each of your requests.

(i) Requests 1-2: Tax-Related Documents

Requests 1 and 2 seek documents relating to the tax evasion counts charged in the SDNY Information, and all federal and state income tax filings and associated work papers for the tax years 2012 to the present relating to Mr. Cohen and/or entities associated with him. I decline to authorize disclosure of the records requested in this category, for the following reasons.

First and foremost, disclosure is not "appropriate under the rules of procedure governing the case or matter in which the demand arose," 28 C.F.R. § 16.26(a)(1), as interpreted and applied by Judge Merchan in his December 18 Order. The requests for tax-related documents in this category directly overlap with requests in the subpoena to Mr. Cohen that were quashed by Judge Merchan.

Specifically, Request 6 of the subpoena to Mr. Cohen sought, "[f]or tax years 2016, 2017 and 2018, all documents and communications relating to any tax liabilities—state or federal—owed by [Mr. Cohen] or by any entity in which [he] hold[s] or held, directly or indirectly, an ownership interest, including all federal and state tax returns [he] filed . . . , all draft tax returns, all documents related to income tax calculations or deductions from income, all communications with accountants, and all accountant work papers." Dec. 18 Order at 10. Judge Merchan found this request "overbroad," noting that it "appears to be at its core, a request for general discovery."

[3] At your request, this Office has not shared your February 19, 2024 letter with DANY.

Id. at 10. In Judge Merchan's view, "[i]t would appear that Defendant here seeks nothing more than 'the opportunity for an unrestrained foray into confidential records in the hope that the unearthing some unspecified information will enable them to impeach witnesses.'" *Id.* at 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549) (alterations omitted). Accordingly, Judge Merchan ruled that "[t]he degree of this invasion of the alleged stated purpose can[]not be justified," and quashed the request in its entirety. *Id.* at 11.[4]

Requests 1 and 2 of the Subpoena to this Office appear to be less relevant or material than the subpoena requests quashed by Judge Merchan. Request 1 seeks documents related to the tax evasion counts of the SDNY Information. Those counts involved conduct by Mr. Cohen from 2012 to 2016 that is unrelated to the conduct at issue in *People v. Trump*, which as you note "focuses on payments to Mr. Cohen in approximately 2017." Jan. 22, 2024 Letter at 3 (noting DANY's allegations that certain records "were 'false' because they indicated that the payments were part of a 'retainer' for 'legal' services by Mr. Cohen"); *see also* Feb. 7, 2024 DANY Letter at 8-9 (characterizing prosecution as concerning "whether defendant lied in his business records by falsely describing the $420,000 payments to Cohen in 2017 as payments for legal services pursuant to a retainer, rather than truthfully describing them as reimbursements for the Stormy Daniels payoff"). The defendant has not "show[n]" how records relating to Mr. Cohen's tax evasion in 2012-2016 are "reasonably likely to be relevant and material to the proceedings" in *People v. Trump*, and the Subpoena is overbroad. CPL § 610.20(4); Dec. 18 Order at 10-11 (quashing request for some of the same records sought from Mr. Cohen, including tax filings and documents related to tax liabilities in 2016, as an "overbroad . . . request for general discovery"); *see also id.* at 7 (quashing separate subpoena request seeking materials that were "not limited to the subject matter of th[e] case").

Similarly, according to Judge Merchan's December 18 Order, Mr. Cohen's state and federal income tax filings and associated work papers sought in Request 2 of the Subpoena are not "reasonably likely to be relevant and material to the proceedings" in *People v. Trump*. CPL § 610.20(4); *see* Dec. 18 Order at 10-11. For the years other than 2017, you have not identified any theory of relevance for tax filings and associated work papers. *See* Dec. 18 Order at 6 ("a subpoena is properly quashed when the party issuing the subpoena fails to demonstrate any theory of relevancy and materiality" (citation and quotation marks omitted)). With respect to Mr. Cohen's tax filings and associated work papers for 2017, the year of the payments at issue in *People v. Trump*, Judge Merchan has ruled that such a narrowed request "would still seek information and documents which are neither relevant nor material to the issue of guilt or innocence." *Id.* at 10. Judge Merchan found that "[h]ow Mr. Cohen treated the alleged $420,000 payment for tax purposes is immaterial to the question of Defendant's intent to defraud . . . because Defendant's intent is separate and apart from whether his intended result actually came to fruition." *Id.*

We note that in his motion for reargument, the defendant has narrowed his request for tax-related documents to "[d]ocuments sufficient to show how the entire $420,000 payment was

[4] The subpoena to Mr. Cohen also sought documents sufficient to show "which accountants prepared and filed [Mr. Cohen's] tax returns for the tax years 2016, 2017 and 2018." Dec. 18 Order at 11. Judge Merchan quashed this request as well, finding that it "seeks general discovery and appears to be an 'end around' the possibility that Request 6 would be quashed." *Id.*

treated—whether as taxable income or as non-taxable reimbursement—by [Mr. Cohen] on [his] personal tax returns," Jan. 17, 2024 Motion at 10, and does not challenge Judge Merchan's rulings with regard to other tax-related documents. To the extent Judge Merchan grants the defendant's motion and enforces the Cohen subpoena with regard to this narrowed request, the defendant should be able to obtain the requested records from Mr. Cohen. With regard to the broader requests that were quashed by Judge Merchan, the December 18 Order indicates that disclosure in response to Requests 1 and 2 of the Subpoena to this Office is not appropriate under CPL § 610.20(4). *See* 28 C.F.R. § 16.26(a).

To the extent Request 1 seeks privileged information, including but not limited to attorney work product, disclosure is also not "appropriate under the relevant substantive law concerning privilege." 28 C.F.R. § 16.26(a)(2).

Finally, to the extent Requests 1 and 2 seek disclosure of records protected by 26 U.S.C. § 6103 or Federal Rule of Criminal Procedure 6(e), the Department's *Touhy* regulations prohibit disclosure in the absence of an applicable exception. *See* 28 U.S.C. § 16.26(b)(1). Because disclosure is not appropriate under CPL § 610.20(4), *see* 28 C.F.R. § 16.26(a), it is not necessary to analyze the applicability of these authorities to the specific documents sought. For the reasons set forth above, however, it does not appear that any exception would apply to the records sought in Requests 1 and 2.

(ii) Request 3: Documents Discussed in Search Warrant Application

With regard to Request 3, I decline to authorize disclosure to the extent it seeks all documents "discussed or relied upon in any way to establish probable cause" in the Search Warrant Application filed in *United States v. Cohen*, ECF No. 43-1. The referenced document is 269 pages long and includes an 80-page affidavit. *See id.* (affidavit at pages 2-81, duplicated at pages 104-183). In discussing the evidence giving rise to probable cause, the affidavit often refers to general categories of records reviewed by the affiant, such as "property records," "bank records," "records," "data" or "information" maintained by various financial institutions or telecommunications providers, "emails obtained pursuant to search warrants," "reports of interviews" of employees of various entities, and "public records," without identifying specific records. *See, e.g.*, *id.* at 3-5, 7, 10-11, 13-20, 23, 27, 29-31, 33-35, 37-38, 60-62, 64-65, 67, 69. It would be a painstaking and extremely time-intensive task to attempt to identify the specific records referred to in the affidavit. In many cases, it may not be possible to identify the records referred to only in general terms, let alone documents "relied upon in any way" to establish probable cause. Accordingly, to the extent it seeks documents discussed or relied upon in the Search Warrant Application, the request is unreasonably burdensome, and disclosure is not appropriate under CPL § 610.20(4). *See* 28 C.F.R. § 16.26(a)(1). To the extent Request 3 seeks information "relied upon in any way" but not discussed in the Search Warrant application, disclosure is not appropriate for the additional reason that it would reveal prosecutors' mental impressions and conclusions that are protected by the attorney work product doctrine. *See* 28 C.F.R. § 16.26(a)(2); *Hickman*, 329 U.S. at 512-13; *cf.* Fed. R. Civ. P. 26(b)(3)(B).

By contrast, to the extent Request seeks bank records and emails obtained from nine identified financial institutions, it would not require a retroactive analysis of whether those records

were referred to in the Search Warrant Application. This request is overbroad insofar as this Office obtained records from these institutions relating to accounts maintained by individuals other that Mr. Cohen, and I decline to authorize disclosure of any such records. With regard to records pertaining to accounts maintained by Mr. Cohen, however, it appears that this Request may seek information that is relevant and material to the proceeding. DANY appears to agree that "documents responsive to Request 3[,] if related to Michael Cohen's campaign finance offenses and if not already obtained by the People and produced to defendant in discovery," "may, in the discretion of the responsible Department official (and if not prohibited from disclosure on another basis), satisfy the relevant standards for disclosure." Feb. 7, 2024 DANY Letter at 2; *see also id.* at 11-12. This Office is not in a position to determine which materials have been obtained by the People and produced to the defendant in discovery, and it would be unreasonably burdensome for this Office, as a non-party, to review the materials to identify documents that are related to Mr. Cohen's campaign finance offences. In addition, some or all of the requested materials are protected by Fed. R. Crim. P. 6(e), and this Office currently has authorization to share grand jury information only with law enforcement authorities. Accordingly, I authorize production of the requested financial institution records relating to Mr. Cohen to DANY, with the understanding that any relevant, material and/or discoverable materials will be shared with the defense.

(iii) Requests 4-10: Documents Seized from iPhones and Email Accounts

Requests 4-10 seek "all documents seized from" two Apple iPhones and three email accounts belonging to Mr. Cohen and described in the Search Warrant Application, as well as "all toll records relating to" the two iPhones.[5]

You assert that documents seized from Mr. Cohen's phones and email accounts are relevant and material because, in your view, they are probative of potential bias and motive. Jan. 31, 2024 Letter at 2; *see* Dec. 18 Order at 7 (subpoena may be appropriate if it is "directed towards revealing specific biases, prejudices or ulterior motives related directly to personalities or issues in the instant matter"). You maintain that the seized data sought in Requests 4-10 is different from the requests quashed by Judge Merchan insofar as you "are seeking evidence that th[is] Office seized pursuant to the search warrants—a process that is separate from the initial collection of data from electronic service providers—*because* the evidence was probative of fraudulent schemes by Mr. Cohen." Jan. 31, 2024 Letter at 2. You assert that by seeking evidence that the Office seized, you have "pursued a narrower approach in the *Touhy* Request[] that Judge Merchan has not addressed." *Id.*

DANY does not appear to dispute that the seized records sought in Requests 4-10 may include documents that are relevant and material. However, DANY asserts that at least some of these requests are overbroad insofar as they are "not limited to the subject matter of this case." Feb. 7, 2024 DANY Letter at 12. It would be unreasonably burdensome for this Office to review the seized materials to identify potentially relevant material. Although the overbreadth and burden

[5] DANY asserts that it [redacted] during its own investigation and [redacted] as well as the [redacted] accessible to the People's case team (which were filtered for privilege)." Feb. 7, 2024 DANY Letter at 12. However, you have advised this Office that you are not confident that the data obtained and produced by DANY is coextensive with the data seized by this Office.

objections would be sufficient bases to deny this request, under the extraordinary circumstances of this case, I authorize disclosure of the seized materials, subject to entry of an appropriate Privacy Act and Protective Order that incorporates the provisions of the Protective Order entered by Judge Merchan in *People v. Trump* on May 8, 2023. *See* Feb. 7, 2024 DANY Letter at 7.[6]

By contrast, the requested toll records relating to the iPhones described in the Search Warrant Application are not among the seized materials, and you have not identified why such records would be relevant or material to *People v. Trump*. Accordingly, disclosure is not appropriate under the rules of procedure applicable to that proceeding. *See* Dec. 18 Order at 6 ("a subpoena is properly quashed when the party issuing the subpoena fails to demonstrate any theory of relevancy and materiality" (citation and quotation marks omitted)). To the extent you are seeking records obtained via grand jury subpoena, disclosure is also barred by Fed. R. Crim. P. 6(e) absent a showing of particularized need.

(iv) Requests 11-12: Cohen Agreements and Statements

Request 11 seeks agreements with Mr. Cohen or his counsel, including proffer agreements and privilege waivers, and Request 12 seeks documents memorializing statements by Cohen, including statements during meetings with NYAG, NYDTFS, this Office, and certain meetings with the SCO. Without conceding that Request 16 satisfies the standards of CPL § 610.20(4), I provide the following response.

This Office located [redacted] responsive to Request 11, including [redacted]

With regard to Request 12, this Office located the following responsive records:

- [redacted]
- [redacted]
- [redacted]
- [redacted]

[6] This Office will prepare an application for a Privacy Act and Protective Order for submission to the U.S. District Court for the Southern District of New York.

With the exception of [redacted], I authorize the above-referenced documents responsive to Requests 11 and 12, with redactions of FBI file numbers and the names of law enforcement personnel, subject to entry of an appropriate Privacy Act and Protective Order that incorporates the provisions of the Protective Order entered by Judge Merchan in *People v. Trump* on May 8, 2023.

The [redacted] are privileged under both the work product and deliberative process privileges, and therefore not appropriate for disclosure. *See* 28 C.F.R. § 16.26(a)(2). However, this Office has consulted with the FBI and other relevant Department components, and the FBI has provided [redacted]. I authorize disclosure of [redacted], with redactions of FBI file numbers and identifying information of law enforcement personnel, subject to entry of an appropriate Privacy Act and Protective Order that incorporates the provisions of the Protective Order entered by Judge Merchan in *People v. Trump* on May 8, 2023.

This Office did not identify any responsive documents memorializing statements by Cohen during meetings with the SCO on dates other than those identified above, or during any meetings with NYDTFS.

(v) Requests 13-14: Documents Relating to Cohen Books, Manuscripts and Agreements

Request 13 seeks documents related to three books or manuscripts by Mr. Cohen: (i) *Trump Revolution: From the Tower to the White House, Understanding Donald J. Trump* ("*Trump Revolution*"), (ii) *Revenge: How Donald Trump Weaponized the U.S. Department of Justice Against His Critics* ("*Revenge*"), and (iii) *Disloyal: A Memoir: The True Story of the Former Personal Attorney to President Donald J. Trump* ("*Disloyal*"). Request 14 seeks agreements relating to Cohen and twelve listed publishing or media entities.

Judge Merchan quashed a similar request for draft manuscripts for the books *Disloyal* and *Revenge*, finding "no reasonable likelihood that the information sought is relevant or material" to the proceedings in *People v. Trump.* Dec. 18 Order at 11. Judge Merchan also quashed a request for Mr. Cohen's contract with the publisher of the books *Disloyal* and *Revenge*, as well as documents sufficient to show the compensation received by Mr. Cohen for *Disloyal*, *Revenge*, and a podcast called *Mea Culpa*. I decline to authorize disclosure in response to this request to the extent it seeks the same documents from this Office. In any event, this Office has not located any responsive documents relating to the books *Disloyal* or *Revenge*, which were published in 2020 and 2022, respectively, after this Office's investigation of Mr. Cohen had concluded.

This Office has not located any responsive documents relating to *Trump Revolution*, other than documents that may exist within the set seized materials authorized for disclosure in response to Requests 4-10.

(vi) Request 15: Communications with DANY, NYAG, or SCO

This request seeks documents reflecting or memorializing communications with DANY, NYAG, or the SCO regarding Mr. Cohen's "[c]rimes, misconduct and/or bad acts" or "credibility," or the book titled *People v. Donald Trump: An Inside Account*. We understand this request to seek communications focusing on Mr. Cohen's credibility, rather than communications referring to his federal convictions.

With respect to any documents reflecting or memorializing communications with the SCO, to the extent they exist, any responsive communications would be core attorney work product that would reveal the mental impressions and opinions of SDNY and SCO prosecutors, which remain protected despite the qualified nature of the work product privilege. *See Hickman*, 329 U.S. at 512-13; *cf.* Fed. R. Civ. P. 26(b)(3)(B). In addition, a search for responsive materials, to the extent they exist, would require review of archived emails of former employees of the Office that would have to be requested from the Executive Office of U.S. Attorneys. Such a search would be overbroad and unreasonably burdensome under CPL § 610.20(4), given that any responsive records are likely to be privileged. *Cf.* Dec. 18, 2024 Order at 9 (quashing subpoena request that called for production of material that "may very well be protected by the attorney-client privilege"). This request is therefore denied under 28 C.F.R. § 16.26(a)(1) and (2).

Subject to and without waiving any privileges or other protections from disclosure, and without conceding that Request 16 satisfies the standards of CPL § 610.20(4), this Office did not identify any responsive documents reflecting or memorializing communications with DANY or NYAG.

(vii) Request 16: Documents Concerning Order to Show Cause

Without conceding that Request 16 satisfies the standards of CPL § 610.20(4), this Office has not identified any non-privileged documents or communications relating to the December 12, 2023 order to show cause docketed at ECF No. 96 in *United States v. Cohen*.

Conclusion

Please contact this Office if you have any questions concerning this determination. We will proceed to prepare an application for a Privacy Act and Protective Order with regard to the materials for which disclosure has been authorized.

Nothing in this letter waives any applicable privileges or other protections from disclosure or any objection to the Subpoena. All applicable privileges or other protections from disclosure, and all objections to the Subpoena, are expressly reserved.

Very truly yours,

By: _____
DAMIAN WILLIAMS
United States Attorney

cc: Matthew Colangelo, Esq.
New York County District Attorney's Office

EXHIBIT 16

EXHIBIT 17

EXHIBIT 18

DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

February 26, 2024

VIA EMAIL

Todd Blanche
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
1120 Sixth Ave., 4th Floor
New York, NY 10036

Re: People v. Donald J. Trump, Ind. No. 71543-23

Dear Mr. Blanche and Ms. Necheles:

We are producing today an additional set of discovery materials for the above-referenced case pursuant to section 245.60 of the New York Criminal Procedure Law ("CPL") ("Supplemental Discovery"). Please find attached to this letter an index that catalogs the materials provided.

This production consists [redacted] materials received on February 21, 2024 and [redacted]

Today's production may be accessed from a file transfer site via the following URL:

[redacted]

We will provide the username and password to enter the site in a separate email. Should you encounter any issues accessing the materials, please do not hesitate to reach out for assistance.

With respect to today's supplemental production, please note the following:

- *First*, all of the materials provided to you are subject to the protective order issued on May 8, 2023;

- *Second*, the People have designated certain of these materials "Limited Dissemination Materials" under the May 8 protective order;

- *Third*, the People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1), but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65;

- *Fourth*, some materials or information may have been withheld in connection with protective orders issued pursuant to CPL § 245.70; and

- *Finally*, where applicable, the materials provided have been Bates stamped to aid in the organization and digestion of the materials, and the Bates ranges have been noted on the attached index. Please note, however, that the numbering of the Bates stamps may not be sequential.

Pursuant to CPL §§ 245.10(1)(a) and 245.60, we will continue to make productions to you on a rolling basis and will produce additional discoverable materials and information we learn of or come into the possession of.

Sincerely,

/s/ Becky Mangold
Becky Mangold
Assistant District Attorney

EXHIBIT 19

EXHIBIT 20

DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

March 1, 2024

BY ELECTRONIC MAIL

Todd Blanche
Blanche Law PLLC
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
NechelesLaw LLP
1120 Sixth Ave., 4th Floor
New York, NY 10036

RE: People's responsive disclosure of potential expert witness in *People v. Donald J. Trump*, Ind. No. 71543-23.

Dear Counsel,

Pursuant to CPL § 245.20(1)(f), the People provide the following disclosure in response to defendant's identification of Bradley A. Smith as a potential witness at trial.

The People believe Mr. Smith's proposed testimony should be precluded for the reasons described in the People's February 22, 2024 motions *in limine*. To the extent the Court permits any testimony from Mr. Smith, the People may call Adav Noti as a response witness. Mr. Noti is Executive Director of the Campaign Legal Center. Mr. Noti's current curriculum vitae, which also contains his business address and a list of publications, is attached.

If called as a witness, Mr. Noti's testimony will address the topics identified in Mr. Smith's disclosure. In particular, Mr. Noti may testify:

- That under federal campaign finance law, a third party's payment of a candidate's expenses is a contribution unless the payment would have been made "irrespective of the candidacy";

- That a third party's payment of a candidate's expenses can be deemed a contribution even when the same expense, if paid by the candidate's campaign, would be a prohibited use of campaign funds for personal purposes;

- That the enforcement environment at the time Michael Cohen made the $130,000 payment to Stormy Daniels supported a conclusion that such conduct violated federal campaign finance laws;

- That the district court denied the defendant's motions to dismiss for legal insufficiency in the *United States v. Edwards* prosecution, and that the case was resolved on a factual question for the jury regarding whether the third party's payments of the candidate's expenses would have been made "irrespective of the candidacy," or instead whether one of the third party's purposes was to influence an election;

- That in August 2018, Michael Cohen pleaded guilty to and was convicted of two criminal violations of the Federal Election Campaign Act in connection with the Karen McDougal and Stormy Daniels payments;

- That in September 2018, AMI admitted in connection with a non-prosecution agreement with the United States Attorney for the Southern District of New York that, among other things, AMI knew at all relevant times in connection with the McDougal payment that corporations such as AMI are subject to federal campaign finance laws, and that expenditures by corporations, made for purposes of influencing an election and in coordination with or at the request of a candidate or campaign, are unlawful; and

- That in March 2021, the Federal Election Commission found reason to believe that AMI and David Pecker knowingly and willfully violated the Federal Election Campaign Act by making a prohibited corporate in-kind contribution in connection with the McDougal payment.

Separately, please note that as indicated on Mr. Noti's curriculum vitae, in addition to serving as Executive Director of the Campaign Legal Center, Mr. Noti is also a Complaint Examiner for the District of Columbia Office of Police Complaints. The Office of Police Complaints processes citizen complaints alleging abuse or misuse of police powers against members of the D.C. Metropolitan Police Department. In his capacity as a Complaint Examiner, Mr. Noti has issued Findings of Fact and Merits Determinations on complaints that are assigned for his review. Although the People do not believe that these determinations are "publications" for purposes of the disclosure obligation in CPL § 245.20(1)(f), we advise you that determinations issued by Mr. Noti in his capacity as a Complaint Examiner are available online at https://policecomplaints.dc.gov/page/complaint-examiner-decisions.

Sincerely,

/s/ Matthew Colangelo
Matthew Colangelo
Assistant District Attorney

EXHIBIT 21

DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

March 4, 2024

VIA EMAIL

Todd Blanche
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
1120 Sixth Ave., 4th Floor
New York, NY 10036

Re: People v. Donald J. Trump, Ind. No. 71543-23

Dear Mr. Blanche and Ms. Necheles:

We are producing today an additional set of discovery materials for the above-referenced case pursuant to section 245.60 of the New York Criminal Procedure Law ("CPL") ("Supplemental Discovery"). Please find attached to this letter an index that catalogs the materials provided.

This production consists of intake received on March 4, 2024 from [redacted] selected excerpts from [redacted], and additional publicly-available materials, including [redacted].

Today's production may be accessed from a file transfer site via the following URL:

[redacted]

We will provide the username and password to enter the site in a separate email. Should you encounter any issues accessing the materials, please do not hesitate to reach out for assistance.

In addition to the documents described above, we are producing, as DANYDJT00214611, a link to [redacted] received on March 1, 2024 from NBCUniversal. [redacted] that has not yet been released to the public and was produced to DANY with the understanding that it would be kept confidential by all parties under any and all applicable court orders and confidentiality obligations, and treated as "Limited Dissemination Materials" pursuant to the May 8, 2023 protective order. NBCUniversal did not provide a [redacted], but did provide unique links and passwords for DANY and defense counsel to access [redacted]. The link for defense counsel is below:

We will send the password for the defense counsel link in a separate email.

With respect to today's supplemental production, please note the following:

- *First*, all of the materials provided to you are subject to the protective order issued on May 8, 2023;

- *Second*, the People have designated certain of these materials "Limited Dissemination Materials" under the May 8 protective order;

- *Third*, the People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1), but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65;

- *Fourth*, some materials or information may have been withheld in connection with protective orders issued pursuant to CPL § 245.70; and

- *Finally*, where applicable, the materials provided have been Bates stamped to aid in the organization and digestion of the materials, and the Bates ranges have been noted on the attached index. Please note, however, that the numbering of the Bates stamps may not be sequential.

Pursuant to CPL §§ 245.10(1)(a) and 245.60, we will continue to make productions to you on a rolling basis and will produce additional discoverable materials and information we learn of or come into the possession of.

Sincerely,

/s/ Becky Mangold
Becky Mangold
Assistant District Attorney

EXHIBIT 22

Los Angeles Times

TELEVISION

Stormy Daniels alleges in new documentary that Donald Trump cornered her the night they met

In the forthcoming Peacock documentary "Stormy," adult filmmaker Stormy Daniels offers new details about her 2006 encounter with former President Trump. (Peacock)

BY MAIRA GARCIA | TELEVISION EDITOR

MARCH 7, 2024 9:03 AM PT

Stormy Daniels goes into new detail in a documentary about her alleged 2006 sexual encounter with former President Trump, saying she was cornered by him in his hotel room the night they met and that she blames herself for not stopping him.

The adult filmmaker makes the revelation in "Stormy," a nearly two-hour documentary premiering March 18 on Peacock. It was directed by Sarah Gibson and produced by Erin

Lee Carr and features interviews with Seth Rogen, Jimmy Kimmel, Daniels' family and friends, and several journalists, including New York's Olivia Nuzzi and Denver Nicks, who began a relationship with Daniels while shooting some of the scenes in the film.

"Stormy" details the moments before Daniels met Trump and all that has transpired since, including a $130,000 hush money payment, first reported by the Wall Street Journal, that prosecutors say Trump made to Daniels just before the presidential election in 2016. That payment eventually led to his indictment in New York last year for falsifying business records, with prosecutors saying it was part of a "catch-and-kill" scheme. Trump has denied the relationship and says he didn't know about the payment, but his former lawyer, Michael Cohen, has testified that Trump ordered it.

Daniels previously told her story about the alleged sexual encounter with Trump on CBS' "60 Minutes" in 2018, saying it was consensual. But in "Stormy," her story differs: She says after meeting him in his hotel room and having a conversation, she went to the bathroom, came out and was cornered by him.

"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," she says. "It was awful. But I didn't say no."

TELEVISION

How Stormy Daniels' candor and humor in her '60 Minutes' interview showed 'a woman to be reckoned with'

March 26, 2018

In the latter half of the documentary, she says, "I've maintained that it wasn't rape in any fashion. But I didn't say no because I was 9 years old again." In the film, she discusses how she was sexually abused by a neighbor as a child, something she revealed in her memoir, "Full Disclosure," in 2018.

She also expresses remorse for not trying to stop him.

“To this day, I blame myself and I have not forgiven myself because I didn’t shut his a— down in that moment, so maybe make him pause before he tried it with someone else,” she says. “The hardest part about all of this is that I feel that I am partially responsible for every woman that could have come after me.”

Stormy Daniels describes what happened between her Donald Trump in the documentary: “It was awful. But I didn’t say no.” (Peacock/Peacock)

The Trump campaign did not immediately respond to a request for comment. Peacock, asked if the filmmakers gave Trump a chance to respond to the claims made in the documentary, did not immediately respond to The Times' question. The press screener viewed by The Times does not address the matter. The release of the documentary comes after Super Tuesday, when Trump all but clinched the Republican nomination for president.

In 2006, Trump was at the peak of his "Apprentice" fame, and he attended a charity golf tournament in Lake Tahoe, Nev., where Wicked Pictures, the studio Daniels worked for, sponsored a hole. Daniels, who worked the Wicked booth at the tournament, posed for a photo with Trump — a now-famous image — and was invited to dinner with him. She says in the documentary that she rejected the invitation initially, but then accepted after speaking to her publicist.

She explains that she arrived early at his hotel, and Trump told her to come up to his room and that they could later go back downstairs. Once in his room, she recounts having a conversation with him about her career, that they had a strong rapport and that nothing raised a red flag.

“He wasn’t interested in the sexual performances. It was all about business,” she says.

After he suggested to Daniels that he could try to get her on “Celebrity Apprentice,” Daniels says in the film, Trump told her that she reminded him of his daughter, Ivanka. “I felt that as this father figure who has watched his daughter be treated a certain way, he could identify with me. I thought we had this mutual respect,” she recounts.

Then the dynamic changed.

“And the last thing I remember was like, ‘I could totally take him if I want to scream or fight, but I’m not supposed to act like that,’” explaining that as a Southerner, she “was taught to show respect and be a good girl” toward elders and men.

Daniels also talks about the harassment and threats she has received since coming out with her story, intimidation that has become increasingly vitriolic, causing her to fear for her life and her daughter’s. She also describes what happened with her former lawyer, Michael Avenatti, who was convicted in 2022 of stealing her book proceeds. He appealed the conviction, but it was upheld on Wednesday unanimously by a federal appeals court.

Nonetheless, Daniels says she wants to remain vocal about what happened between her and Trump, , including the way she feels the justice system has failed her.

“I am here today to tell my story and even if I just change a few people’s minds, that’s fine. If not, then at least my daughter can look back on this and know the truth.”

MORE TO READ

In fiery testimony, Fani Willis hits back at misconduct claims that threaten Trump case

Feb. 15, 2024

Trump testifies in his defense in E. Jean Carroll defamation suit, for less than 3 minutes

Jan. 25, 2024

'Access Hollywood' tape of Trump won't be shown to jury at defamation trial, lawyer says

Jan. 21, 2024

Maira Garcia

Maira Garcia is the television editor for the Los Angeles Times. Previously, she was an editor on the culture desk at the New York Times, where she focused on awards shows and breaking news coverage, and led the department's audience strategy. A native of Texas, she graduated from Texas State University with bachelor's and master's degrees in mass communication.

EXHIBIT 23

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.	CERTIFICATE OF COMPLIANCE CPL § 245.50(1) Indictment No. IND-71543-23

Matthew Colangelo, an Assistant District Attorney in the County of New York, states that, after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery under CPL § 245.20(1), the People have disclosed and made available to the defendant all known material and information that is subject to discovery, except for any items and information subject to an order pursuant to CPL § 245.70 or former CPL § 240.50.

The discovery provided to defense counsel is enumerated in the Automatic Discovery Forms served on defense counsel on May 25, 2023, June 8, 2023, and July 24, 2023, which are incorporated herein by reference, as well as in the attached lists[1].

Dated: New York, New York
July 24, 2023

Respectfully submitted,

Alvin L. Bragg, Jr.
District Attorney
New York County

BY: */s/ Matthew Colangelo*
Matthew Colangelo
Assistant District Attorney
Of Counsel
(212) 335-9000

[1] The People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1), but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65.

EXHIBIT 24

TODD BLANCHE
Todd.Blanche@blanchelaw.com
(212) 716-1250

March 6, 2024

Via Email
Susan Hoffinger
Executive Assistant District Attorney
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013

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

Dear Ms. Hoffinger:

We write pursuant to CPL §§ 245.50(4)(b) and 245.60 to provide notice of five apparent deficiencies relating to DANY's July 24, 2023 certificate of compliance and supplemental certificates of compliance. We require a response by the end of the day on March 7, after which we will pursue judicial intervention and appropriate sanctions.

First, in addition to DANY's failure to timely collect obvious impeachment material relating to Michael Cohen from the U.S. Attorney's Office for the Southern District of New York ("USAO-SDNY"), as of the evening of March 5, 2024, DANY is in possession of approximately 10,778 pages of records produced to DANY by the USAO-SDNY (bearing production numbers SDNY_USAO_00000183-SDNY_USAO_00010961). All of these materials are discoverable pursuant to CPL § 245.20, and they should be produced forthwith.

Second, evidence of efforts by Cohen to delete data from [redacted] also has obvious impeachment value. Particularly in light of Cohen's history of lies to government authorities, any failure by DANY to investigate the integrity of the data that [redacted] is discoverable pursuant to *Kyles v. Whitley*, 514 U.S. 419 (1995) and other authorities cited in our February 29, 2024 opposition to your motions *in limine*. For the reasons set forth in that submission, such a failure by DANY is admissible to impeach the lack of integrity in DANY's investigation. We therefore require a response to my March 4, 2024 email inquiring whether DANY conducted any forensic analysis to determine whether Cohen altered or deleted data from [redacted] to you.

Third, you have yet to adequately address the unauthorized redactions to the approximately 520 documents labeled in discovery "DANYEMAIL001." These materials appear to reflect DANY communications relating to the subject matter of this case, including discussions with likely trial witnesses and their counsel. We previously provided 19 examples of improper redactions, and you responded with a conclusory—and wholly indefensible—claim that *all* of the substantive redactions obscure "work production communications." To our knowledge, you have not obtained a protective order relating to the redactions. Nor have you provided us with a privilege log to facilitate review of your improper withholding decisions. Moreover, based upon

DANY's prior disclosures relating to [redacted], and your recent production of previously undisclosed [redacted] it appears that DANY has failed to implement reasonable and adequate measures to assure its ongoing compliance with the obligation to produce all discoverable materials in your possession, custody or control.

Fourth, your untimely production of [redacted] appears to violate CPL §§ 245.20(1)(k)(iv) and 245.20(1)(l). Please explain your failure to timely produce [redacted].

Finally, we require more information regarding the [redacted] and described as [redacted] The production is not timely. Moreover, because you apparently believe that NBCUniversal "[has] evidence or information relevant to any offense charged" in this case, CPL § 245.20(1)(e), you are obligated to produce communications by NBC Universal relating to [redacted] and the dissemination restrictions you purported to impose in the March 4, 2024 letter. It also appears that such communications are subject to CPL § 245.20(1)(k) and—because NBC Universal "may be called as [a] witness[]" to authenticate [redacted]—CPL § 245.20(1)(l). Please explain the failure to timely obtain and produce [redacted] and produce the communications that led to this untimely production forthwith.

Respectfully Submitted,

/s/ Susan R. Necheles
Susan R. Necheles
Gedalia Stern
NechelesLaw LLP

/s/ Todd Blanche
Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC

Attorneys for President Donald J. Trump

Cc: Joshua Steinglass
Matthew Colangelo
(Via Email)

EXHIBIT 25

DISTRICT ATTORNEY
COUNTY OF NEW YORK
ONE HOGAN PLACE
New York, N. Y. 10013
(212) 335-9000

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

March 7, 2024

BY ELECTRONIC MAIL

Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
Gedalia Stern
NechelesLaw LLP
1120 Sixth Ave., 4th Floor
New York, NY 10036

RE: ***People v. Donald J. Trump*, Ind. No. 71543-23.**

Dear Counsel,

This letter responds to your March 6, 2024 letter. The People have fully complied with our obligations under Article 245.

1. Regarding your demand at 8:55 a.m. yesterday that the People produce "forthwith" the records that the United States Attorney's Office produced after 7:30 p.m. the previous evening in response to defendant's trial subpoena, those records were included in our March 6 supplemental discovery production. Our production of those records to you less than twenty-four hours after we received them complies with CPL § 245.60.

2. Regarding your question about [redacted] we explained to you in our June 15 correspondence (and since) that the production included not only [redacted] but also [redacted] You have had this production for nearly nine months and can perform any analysis you consider appropriate.

3. Our January 28, February 2, and February 9, 2024 correspondence fully addressed the questions you raised for the first time on Saturday, January 27, 2024, about redactions to a subset of records in our July 24, 2023 discovery production. The redacted passages consist entirely of work product and protected names of DANY personnel. Article 245 "does not authorize

discovery" of work product. CPL § 245.65. The May 8, 2023 Protective Order prohibits you from viewing the names of certain DANY staff in order to protect those staff members from the risk of harassment and intimidation.

4. Regarding the federal government's [redacted] that was included in our February 26, 2024 production, we explained to you in our February 26 correspondence that we first obtained that document on February 21, 2024. We produced it three business days later, on February 26, which is timely under CPL § 245.60.

5. Regarding [redacted] that we produced on March 4, 2024, we explained to you in our March 4 correspondence that we first obtained [redacted] on March 1, 2024. We produced it one business day later, which is timely under CPL § 245.60. Your letter separately requests communications by NBCUniversal because you believe they may be called as a witness to authenticate [redacted] We have not identified NBCUniversal as a custodial witness, [redacted] is not on our exhibit list, and the communications from NBCUniversal are not discoverable on any other ground. Nonetheless, in an exercise of our discretion, we included [redacted] in our March 6, 2024 supplemental discovery production.

Sincerely,

/s/ Matthew Colangelo
Matthew Colangelo
Assistant District Attorney

EXHIBIT 26

EXHIBIT 27

EXHIBIT 28