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

THE PEOPLE OF THE STATE OF NEW YORK, - against - DONALD J. TRUMP, Defendant.	Index No. 71543-23 **NOTICE OF PRESIDENT DONALD J. TRUMP'S MOTIONS FOR RECONSIDERATION AND ANCILLARY RELIEF**

PLEASE TAKE NOTICE that upon the annexed Affirmation of Todd Blanche, dated October 3, 2023, and the exhibits attached thereto, 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. 10007, on a date and time to be set by the Court, (1) for the Court's reconsideration of its decision to deny counsel's request for a timely conference to discuss a new trial date in the above-captioned case, and (2) for Your Honor's *ex parte* communications with the Honorable Tanya Chutkan, United States District Judge for the District of Columbia, to be documented in the record.

Dated: October 3, 2023
New York, N.Y.

/s/ Todd Blanche
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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 MOTIONS FOR RECONSIDERATION AND ANCILLARY RELIEF**

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 (1) a motion for the Court to promptly schedule an in-person conference so that a new trial date can be discussed; and (2) a motion for the Court to place on the record the substance of *ex parte* communications between Your Honor and the Honorable Tanya Chutkan, United States District Judge for the District of Columbia.

2. This Affirmation and the accompanying motions and exhibits are submitted upon my personal knowledge or upon information and belief, the source of which being my representation of President Trump in this case, in *United States v. Donald J. Trump*, 23-cr-80101 (S.D. Fla.) (the "Florida Case"), and in *United States v. Donald J. Trump*, 23-cr-257 (D.D.C.) (the "D.C. Case") (collectively, the "Cases"). In particular, this includes my participation in court proceedings, my communications with the courts, with prosecutors and with other counsel, my review of documents in the case files, and an independent investigation into the facts of the Cases.

3. For the reasons set forth below, President Trump's motion for reconsideration of a timely in-person conference should be granted to avoid prejudice to his Sixth Amendment and due process rights, and the Court should document its communications with Judge Chutkan because they appear to have prejudiced President Trump insofar as the communications have resulted in trial schedules that are fundamentally incompatible with these rights.

FACTUAL BACKGROUND

4. As the Court is aware, trial in the above-captioned case is scheduled to begin March 25, 2024, and all parties are prohibited by order from entering any commitments, whether personal or professional, that would interfere with the trial date. May 11, 2023 Order, a true and accurate copy of which is attached as Exhibit 1 ("All parties, including Mr. Trump, are directed to not engage or otherwise enter into any commitments: personal, professional or otherwise, that will prevent you from starting the trial on the designated date. . . . This is a date certain.").

5. Since scheduling the trial date on May 11, 2023, President Trump has been indicted by the Special Counsel's Office in two separate cases: *United States v. Donald J. Trump*, 23-cr-80101 (S.D. Fla.) and *United States v. Donald J. Trump*, 23-cr-257 (D.D.C.). President Trump has also been indicted by a grand jury sitting in Fulton County, Georgia. *See The State of Georgia v. Donald J. Trump*, 23SC188945 (Fulton Cnty. Ga. Sup. Ct.) (the "Georgia Case"). There is no trial date in the Georgia Case. In the Florida Case, after extensive briefing and oral argument, the Honorable Aileen M. Cannon, United States District Judge for the Southern District of Florida, scheduled trial to begin in that case on May 20, 2024. Judge Cannon was aware of the trial schedule set by this Court when scheduling trial to begin on May 20, 2024.

6. At an August 28, 2023 conference in the D.C. Case, Judge Chutkan set a trial date in that case of March 4, 2024. Judge Chutkan was also aware of the trial schedule set by this

Court, and the March 4, 2024 trial date was set over the strong objection of President Trump.[1] Transcript of the August 28, 2023 Conference ("Tr.") at 52-57, a true and accurate copy of which is attached as Exhibit 2. Notably, in the D.C. Case, the Special Counsel's Office has estimated that its case-in-chief, alone, will take up to six weeks. Tr. at 4. That estimate does not include jury selection, openings and summations, the defense case, or jury deliberations. Although the exact length of the trial in the D.C. Case is impossible to predict, it is likely that the trial will last more than two months.

7. In both written briefing and at oral argument in the D.C. Case, counsel for President Trump alerted Judge Chutkan to my obligations as co-lead counsel in this case and in the D.C. Case, as well as my representation of President Trump as counsel of record in the Florida Case. Tr. at 7-8. Judge Chutkan acknowledged the "competing demands" presented by the charges filed against President Trump in other state and federal criminal cases, Tr. at 7, including that President Trump's trial in this case is scheduled to begin on March 25, 2024. Tr. at 55. Judge Chutkan also indicated that she "did speak briefly with Judge Merchan" to inform Your Honor that she was considering a trial date that might overlap with the trial in this case. *Id.*[2] Despite this, and despite

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[1] The preparation required for President Trump's defense in these cases is extraordinary. In the D.C. Case, where the Special Counsel's Office continues to produce discovery, counsel and President Trump have received more than 8 terabytes of data, totaling nearly 13 million pages of discovery, including the grand jury testimony and interviews of hundreds of potential witnesses at trial. Similarly, this case currently involves discovery of more than 2 million records spanning more than 10.5 million pages, including the testimony and interviews of potential witnesses in connection with multiple overlapping state, federal, and congressional proceedings. Notably, the People have indicated that further productions will be made on an ongoing basis, and the defense expects to seek further discovery from the People and relevant third parties in connection with this case. Further, between now and February 15, 2024, counsel and President Trump must prepare for numerous motions deadlines in the D.C. Case. The D.C. Case and the Florida Case involve extensive classified discovery, which must be reviewed in secure facilities in the District of Columbia and Florida, where no electronic devices are allowed, as well as extensive litigation pursuant to the Classified Information Procedures Act ("CIPA").

[2] No further disclosures have been made to the parties in the cases—either by Your Honor or Judge Chutkan—regarding the substance of this discussion.

counsel's objections that a March 2024 trial date is inconsistent with President Trump's right to due process and right to effective assistance of counsel under the Sixth Amendment of the United States Constitution, Judge Chutkan set trial in the D.C. Case to begin on March 4, 2024. Tr. at 55-57.

8. Because Judge Chutkan's ruling created a clear conflict with Your Honor's schedule for this case, I wrote to Your Honor on August 30, 2023, respectfully requesting a status conference to discuss the scheduling conflict that has arisen between this case and the D.C. Case and to discuss a new trial date. Attached as Exhibit 3 is a true and accurate copy of my August 30, 2023 letter.

9. After initially agreeing that a status conference was appropriate, Your Honor replied by letter on September 1, 2023, declining my request. Your Honor stated that, "[i]n light of the many recent developments involving Mr. Trump and his rapidly evolving trial schedule, I do not believe it would be fruitful for us to conference this case on September 15 to discuss scheduling. . . . We will have a much better sense [on February 15, 2024] whether there are any actual conflicts and if so, what the best adjourn date might be for trial." Attached as Exhibit 4 is a true and accurate copy of Your Honor's September 1, 2023 letter.

10. Under Your Honor's May 11, 2023 Order, President Trump and his counsel must simultaneously prepare for two trials in two separate courts with separate charges, facts, and witnesses that overlap with each other, and must wait to address the currently existing trial conflict until February 15, 2024—18 days prior to the trial in the D.C. Case, with anticipated trials in the Florida Case and the Georgia Case looming. This preparation is in addition to the work that must be done to prepare for the May 20, 2024 trial date in the Florida Case, which includes extensive motion practice and discovery review.

11. In light of the untenable conflict created by Judge Chutkan's order scheduling trial to begin in the D.C. Case on March 4, 2024, with this Court's order scheduling trial to begin in this case on March 25, 2024, President Trump respectfully moves the Court to promptly schedule an in-person conference to discuss a new trial date in this case. President Trump also respectfully requests that the Court inform the parties of the substance of *ex parte* communications between Your Honor and Judge Chutkan concerning the competing trial schedules so that they may be made part of the record in this case.

THE COURT SHOULD GRANT PRESIDENT TRUMP'S MOTIONS FOR RECONSIDERATION AND ANCILLARY RELIEF

12. The Court should reconsider its decision to deny counsel's request for a timely conference and should promptly schedule an in-person conference with the parties to discuss a new trial date in this case. Failure of the Court to do so would deny President Trump his right to adequately assist in his defense, his right to assistance of counsel, and his right to be personally present at the trial proceedings—all fundamental rights that this Court must vigorously protect. *See People v. Sprowal*, 84 N.Y.2d 113, 118-119 (1994) (noting New York's "long recognition of a fundamental right to be present with counsel at all material stages of trial"); *People v. Arroyave*, 49 N.Y.2d 264, 273 (1980) (holding that the right to be represented by counsel of one's own choosing is a fundamental right); *People v. McLane*, 166 Misc. 2d 698, 704 (Sup. Ct. N.Y. Cnty. 1995) (holding that the constitutional guarantee of fundamental fairness requires that a criminal defendant be assured of a fair opportunity to present a meaningful defense).

13. The constitutional guarantee to due process of law provides criminal defendants with "'the fundamental right to a fair trial,'" and the "essential elements of this right" include the Sixth Amendment right to effective assistance of counsel. *People v. Henriquez*, 3 N.Y.3d 210, 214 (2004) (quoting *Strickland v. Washington*, 466 U.S. 668, 684 (1984)).

14. Inherent in a criminal defendant's Sixth Amendment right to the assistance of counsel is his or her right to prepare and present an adequate defense. *McLane*, 166 Misc. 2d at 704. The guarantee of fundamental fairness set forth in the Due Process Clause of the Fourteenth Amendment requires that once the State commences criminal proceedings against someone, that person must be assured of a fair opportunity to present a meaningful defense. *Id.* But New York's right to assistance of counsel extends well beyond the right afforded by the Sixth Amendment. *People v. Davis*, 75 N.Y.2d 517, 521 (1990) (citing *People v. Velasquez*, 68 N.Y.2d 533, 536 (1986)). It is an "essential ingredient in our system of criminal jurisprudence, rooted deeply in our concept of a fair trial within the adversarial context," *People v. Benevento*, 91 N.Y.2d 708, 711 (1998), grounded in the State's constitutional and statutory guarantees of the privilege against self-incrimination, the right to the assistance of counsel, and due process of law, *Davis*, 75 N.Y.2d at 521; *see also People v. Bing*, 76 N.Y.2d 331, 338-339 (1990) ("by resting the right upon this State's constitutional provisions guaranteeing the privilege against self-incrimination, the right to assistance of counsel and due process of law we have provided protection to accuseds far more expansive than the Federal counterpart"). And it is well established in this State that a defendant's right to counsel embraces his right to be represented by counsel of his own choosing. *Arroyave*, 49 N.Y.2d at 270 (citing *Chandler v. Fretag*, 348 U.S. 3, 9 (1954); *Powell v. Alabama*, 287 U.S. 45, 53 (1932)); *People v. Hannigan*, 7 N.Y.2d 317, 318 (1960); *People v. McLaughlin*, 291 N.Y. 480, 482 (1944); *People v. Price*, 262 N.Y. 410, 412 (1933)).

15. While a defendant's right to counsel of choice may, under certain circumstances, cede to concerns of the efficient administration of the criminal justice system, courts in this State may not arbitrarily interfere with the attorney-client relationship. *People v. Griffin*, 20 N.Y.3d 626, 630 (2013). Interference with that relationship for the purpose of case management, in

particular, is not without limits and is subject to scrutiny: "[I]n exercising its discretion to manage the courtroom, the court's interference with the defendant's established relationship with counsel must be justified by overriding concerns of fairness or efficiency—regardless of whether counsel is assigned or retained." *Id*. at 630-631 (quoting *People v. Knowles*, 88 N.Y.2d 763, 769 (1996)).

16. As a constitutional matter, a defendant also has a right to be present at his or her trial. *Sprowal*, 84 N.Y.2d at 116-117. A defendant's right to be present at trial stems from the Due Process Clauses of the U.S. and New York Constitutions, as well as New York Criminal Procedure Law § 260.20. *Id.* at 116 (citing *People v. Rosen*, 81 N.Y.2d 237, 243 (1993); *People v. Morales*, 80 N.Y.2d 450, 453-457 (1992)).

17. At bottom, "insistence upon expeditiousness in the face of a justifiable request for delay violates the right to the assistance of counsel." *Morris v. Slappy*, 461 U.S. 1, 11-12 (1983); *see also United States v. Parlato*, 538 F. Supp. 3d 286, 293 (W.D.N.Y. 2021). "[J]udicial interference with an established attorney-client relationship in the name of trial management may be tolerable only where the court first determines that counsel's participation presents a conflict of interest or where defense tactics may compromise the orderly management of the trial or the fair administration of justice." *Knowles*, 88 N.Y.2d at 766-67. That is simply not the case here.

18. Counsel and President Trump acknowledge and respect the importance of judicial efficiency. Counsel and President Trump are not seeking to inappropriately delay the proceedings in this matter and have made all reasonable efforts to comply with the Court's May 11, 2023 Order. But it is undeniable that Judge Chutkan's decision to set the trial in the D.C. Case for March 4, 2024, puts both President Trump and his counsel in a precarious position. By Judge Chutkan's own account, she was well aware that by scheduling the D.C. Case for trial on March 4, 2024, she was creating a conflict that prevents President Trump and his counsel from starting trial in this

case on March 25, 2024. *See* Tr. at 55. While noting the conflict, Judge Chutkan acknowledged, as she must, President Trump's right to be present at both trials, as well as the commitments and obligations of his counsel in both preparing for and defending President Trump at the trials. Tr. at 7-8; *see also* Fed. R. Crim. P. 43. Despite this, and despite her reportedly "brief" discussions with Your Honor regarding the scheduling of the trials, trial is now set to begin in the D.C. Case only 21 days before the trial in this case. And Your Honor has denied counsel for President Trump the opportunity to discuss the critical issues presented by this conflict until February 15, 2024.

19. The Court's decision to forgo any conference until February 15, 2024, is improper given the circumstances described above. Such a delay in discussing a trial in the matter before Your Honor will have significant implications for the preparation and presentation of President Trump's defense in this case and in the D.C. Case, and it calls into question whether President Trump's fundamental right to a fair trial will be protected. Counsel and President Trump must review more than 8 terabytes of discovery produced by the Special Counsel's Office in the D.C. Case, must review the grand jury testimony and interviews of hundreds of potential witnesses for trial, and must travel to secure locations to review classified discovery and prepare CIPA filings. Counsel and President Trump must also focus on numerous motions deadlines between now and February 15, 2024, in advance of a trial that is expected to take more than two months. Simultaneously, Counsel and President Trump must prepare for trial in this case. Such preparation will require the defense's review of more than 10.5 million pages of discovery—the volume of which will continue to grow—and the statements of potential witnesses made in connection with multiple overlapping state, federal, and congressional proceedings.

20. Counsel recognizes this Court's intention to proceed on March 25, 2024, if it is at all possible given the competing schedule set by Judge Chutkan, but that simply is not appropriate

and is inconsistent with the fundamental rights afforded to President Trump. Significantly, to wait until February 15, 2024, in the final days of trial preparation for both scheduled trials, cannot adequately protect President Trump's constitutional and statutory rights to aid in the preparation of his defense, to be present at each trial, and to be represented by counsel of his choice.

21. Nor is waiting until February 15, 2024, to discuss a trial date that is in direct conflict with the D.C. Case prudent from a practical perspective. As Your Honor is aware from pretrial proceedings to date, the logistical planning efforts required to administer this trial in a fair manner will be massive. So too are such considerations with respect to the D.C. Case. It would waste the resources of this Court, the City, the U.S. Secret Service, and others to proceed to the precipice of the trial date and incur the attendant planning costs despite knowing that the trial cannot proceed as currently scheduled.

22. Finally, it is inescapable that the circumstances before the Cout today are colored by Your Honor's discussions with Judge Chutkan prior to her ruling. "A judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending proceeding." 22 NYCCR 100.3(B)(6). "[*E*]*x parte* proceedings are undesirable, and they should be rare." *People v. Contreras*, 12 N.Y.3d 268, 273 (2009); *see also People v. Frost*, 100 N.Y.2d 129, 134 (2003) ("Certainly *ex parte* hearings are not to be granted lightly and are unwarranted and impermissible in the vast majority of cases."). And although the rule provides for certain enumerated exceptions, including one to facilitate scheduling and other administrative purposes and another to permit a judge to consult with other judges, the judge should generally disclose the substance of any such communications with the parties. *See* 22 NYCRR 100.3(B)(6)(a) (". . . provided the judge . . . insofar as practical and appropriate, makes provision for prompt notification

of other parties or their lawyers of the substance of the *ex parte* communication and allows an opportunity to respond"); *see also* Comment 3.12 to 3B(6)(e), *Code of Judicial Conduct*, New York State Bar Association (Apr. 13, 1996), *available at* https://nysba.org/app/uploads/2020/02/CJC-1.pdf ("If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.").

23. The defense objects to such *ex parte* communications with Judge Chutkan, as they appear to have impacted President Trump's above-described constitutional and statutory rights and will prejudice him severely should Your Honor not move the trial, or at least timely discuss the possibility of such an adjournment with the parties. We understand from Judge Chutkan that she informed Your Honor that she was "considering" a trial date that conflicts with Your Honor's schedule. Tr. at 55. Beyond that representation, we are not aware of what Your Honor stated to Judge Chutkan, or any other communications between Your Honor and Judge Chutkan regarding the scheduling in these separate cases. As a matter of fairness and to ensure that the record is complete, we respectfully request that the Court inform the parties about the substance of Your Honor's communications with Judge Chutkan.

CONCLUSION

24. For these reasons, the Court should (1) promptly schedule an in-person conference so that a new trial date can be discussed, and (2) place on the record the substance of the communications between Your Honor and Judge Chutkan.

Dated: October 3, 2023
New York, N.Y.

By: /s/ Todd Blanche
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212-716-1260
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Attorney for President Donald J. Trump

EXHIBIT 1

RE: Court's request for counsel to confer regarding trial date

Hon. Juan M. Merchan >
Thu 5/11/2023 2:09 PM
To:Hoffinger, Susan ;James Bergamo ;Stacy Villanueva >
Cc:Colangelo, Matthew >;Conroy, Christopher >;McCaw, Catherine >;Mangold, Rebecca ;Ellis, Katherine >;'Todd Blanche' >;Susan Necheles ;Gedalia Stern >;Joe Tacopina ;Pope, Peter

Thank you Ms. Hoffinger.

Counsel: Although the date proposed by defense counsel provides much more time between decision on motions and trial than is necessary, this matter is hereby set down for trial to begin on March 25, 2024. All parties, including Mr. Trump, are directed to not engage or otherwise enter into any commitments: personal, professional or otherwise, that will prevent you from starting the trial on the designated date – and continue without interruption, through its completion. This is a date certain.

Please be advised that this Court will not consider the substitution or addition of counsel, unless that attorney is available to start the trial on March 25, 2024 and continue through its completion unabated. Thank you, JMM

From: Hoffinger, Susan
Sent: Thursday, May 11, 2023 11 37 AM
To: Hon. Juan M. Merchan James Bergamo ; Stacy Villanueva
Cc: Colangelo, Matthew Conroy, Christopher >; McCaw, Catherine ; Mangold, Rebecca ; Ellis, Katherine ; 'Todd Blanche' ; Susan Necheles Gedalia Stern >; Joe Tacopina Pope, Peter
Subject: Court's request for counsel to confer regarding trial date

Dear Judge Merchan,

Per your request at our court appearance on May 4th, the People have conferred with defense counsel to see if both sides can agree to a trial date in February or March of 2024.

While the People are prepared to start trial in February 2024, defense counsel have informed us that based on their schedules and that of the defendant, they would be able to begin trial on March 25, 2024, but not before that date.

If the Court selects March 25, 2024 to start trial in this matter, the People will of course be ready to do so.

Respectfully,

Susan Hoffinger

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	.	
	.	
Plaintiff,	.	**CR No. 23-0257 (TSC)**
	.	
v.	.	
	.	
DONALD J. TRUMP	.	**Washington, D.C.**
	.	**Monday, August 28, 2023**
Defendant.	.	**10:00 a.m.**
. . . . .		

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE TANYA S. CHUTKAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	**THOMAS WINDOM, ESQ.** **MOLLY G. GASTON, ESQ.** **U.S. Attorney's Office** **601 D Street NW** **Washington, DC 20530**
For Defendant:	**JOHN F. LAURO, ESQ.** **GREGORY M. SINGER, ESQ.** **Lauro & Singer** **400 North Tampa Street** **15th Floor** **Tampa, FL 33602** **TODD BLANCHE, ESQ.** **Blanche Law** **99 Wall Street** **New York, NY 10005**
Court Reporter:	**BRYAN A. WAYNE, RPR, CRR** **U.S. Courthouse, Room 4704-A** **333 Constitution Avenue NW** **Washington, DC 20001**

Proceedings reported by stenotype shorthand.
Transcript produced by computer-aided transcription.

P R O C E E D I N G S

THE DEPUTY CLERK: Good morning, Your Honor. This is Criminal Case No. 23-257, United States of America versus Donald J. Trump. Counsel, please approach the lectern and state your appearances for the record.

MS. GASTON: Good morning, Your Honor. Molly Gaston for the United States along with Thomas Windom, and with us at counsel table is Special Agent Jamie Garman.

THE COURT: Good morning.

MR. LAURO: Good morning, Your Honor. John Lauro on behalf of President Trump. With me is my partner, Greg Singer, and Todd Blanche, who has noticed an appearance as well, as co-counsel for President Trump.

THE COURT: And is Filzah Pavalon here? Is that person appearing or they're not appearing in this case?

MR. LAURO: She's with my firm but not here presently.

THE COURT: All right. So pro hac entered. Good morning, everyone.

We are here for a hearing regarding the parties' proposed trial dates. But before we discuss the proposed schedules, I want to address the defense's motion to exclude time under the Speedy Trial Act, which is ECF No. 18.

The defense has moved to exclude the 25 days between Mr. Trump's initial appearance on August 3, 2023, and today's status conference from the Speedy Trial Act calculation. The

government has opposed that motion but acknowledged in their filing that the exclusion of time between the August 3rd initial appearance and August 28th scheduled hearing already will occur under the operation of other provisions of the act such as those provisions that automatically exclude time delays resulting from the filing of motions.

As the Supreme Court noted in *Bloate v. United States*, 559 U.S. 196 at 203, the Speedy Trial Act requires that a criminal defendant's trial commence within 70 days of a defendant's initial appearance or indictment, but excludes from the 70-day period days lost to certain types of delay. Section 3161(h)(7) of the Speedy Trial Act permits the Court to exclude time from the calculation based on findings that the ends of justice served by taking such action outweigh the best interests of the public and the defendant in a speedy trial.

Taking into account the reasonable time necessary for effective preparation, the numerous motions filed between defendant's arraignment and this hearing, as well as the fact that the motion has been filed by the defense, I do find that the ends of justice outweigh the defendant and the public's interest in a speedy trial, and therefore I will grant the motion. Accordingly, the 25 days between Mr. Trump's initial appearance on August 3, 2023, and today's status conference will be excluded.

Now let's move on to the proposed schedule. In my August

3, 2023, minute order I asked the government to submit a proposed trial date with an estimate of the time that would be needed to set forth the prosecution's case-in-chief during trial. I also asked the defense to respond with their proposed trial date and estimate to the extent possible of the time that they believe they would need to put on a defense case.

So the government in its proposed pretrial schedule, which is ECF No. 23, proposes that trial begin on January 2, 2024, and estimates that its case-in-chief will take no longer than four to six weeks, and actually the government also proposed that voir dire jury selection begin before that date.

The defense in their proposed trial schedule, which is ECF No. 30, proposes that trial begin in April 2026, and states that it cannot yet estimate how long the defense will take but for now adopts, and I quote, the same calculation as the government, four to six weeks.

These proposals are obviously very far apart. And for reasons I will discuss shortly, neither of them is acceptable. So with regard to the Speedy Trial Act, the right to a speedy trial is guaranteed by the Sixth Amendment and the Speedy Trial Act comprehensively regulates the time within which a criminal trial must begin. And that's from *Zedner v. United States*, 547 U.S. 489 at 500.

The act, which is codified at 18 U.S.C. § 3161(a), provides

that the appropriate judicial officer at the earliest practicable time shall, after consultation with the counsel for the defendant and the attorney for the government, set the case for trial on a day certain so as to assure a speedy trial.

The earliest practicable time depends in part on factors which can exclude time from the act's calculation; that is, to stop the speedy trial clock. These factors include whether the case is so unusual or so complex due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself before the trial date. That's from section (h)(7)(B)(ii).

Another factor is whether the trial date would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the government continuity of counsel, or would deny counsel for the defendant or the attorney for the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. And that's from (h)(7)(B)(iv).

Now, I want to note here that setting a trial date does not depend and should not depend on a defendant's personal and professional obligations. Mr. Trump, like any defendant, will have to make the trial date work regardless of his schedule.

If this case, for example, involved a professional athlete, it would be inappropriate for me to schedule a trial date to accommodate her schedule. The same is true here.

Moreover, although the Speedy Trial Act primarily safeguards the defendant's rights, as the Supreme Court noted in *Barker v. Wingo*, 407 U.S. 514 at 519, there is a societal interest in providing a speedy trial which exists separate from and at times in opposition to the interests of the accused. The Supreme Court in *Zedner* observed that if the act were designed solely to protect a defendant's right to a speedy trial, it would make sense to allow a defendant to waive the application of the act. But the act was designed with the public interest firmly in mind.

Among other things, the public has an interest in the fair and timely administration of justice, as well as reducing defendant's opportunity -- reducing a defendant's opportunity to commit crimes while on pretrial release, and preventing extended pretrial delay from impairing the deterrent effort -- deterrent effect of punishment. And I'm quoting from *Zedner* at 501.

The Supreme Court's decision in *Barker* further highlights that delay may prejudice the prosecution and public interest. It noted: Delay is not an uncommon defense tactic. As the time between the commission of the crime and the trial lengthens, witnesses may become unavailable or their memories

may fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so, and it is the prosecution which carries the burden of proof in this case, as in every case. And that's from *Barker* at 521.

Relatedly, the Sixth Amendment also guarantees a defendant's right to effective assistance of counsel, which in turn depends on counsel having adequate time to prepare for trial. But as the D.C. Circuit noted in *United States v. Burton*, 584 F.2d 485 at 489, note 10, counsel is not entitled to unlimited preparation time. Instead, counsel is entitled to reasonable preparation time.

And in *United States v. Cronic*, 466 U.S. 648 at 663, the Supreme Court held that neither the period of time that the government spent investigating the case nor the number of documents that its agents reviewed during that investigation is necessarily relevant to the question of whether a competent lawyer could prepare to defend the case.

I am aware that Mr. Trump faces charges in other state and federal criminal cases. Given that Federal Rule of Criminal Procedure 43 requires his presence at trial unless waived, the Court has considered the currently set trial schedules in those cases, as well as the competing demands of his counsel in this and other cases. Although I believe Mr. Lauro, who is lead counsel in this case, does not represent the defendant in any of the other matters -- is that right, Mr. Lauro?

MR. LAURO: That's correct, Your Honor, although my co-counsel, Mr. Blanche, does represent President Trump in the New York proceeding as well as in the Florida proceeding, and we will be trying this case together. Given the magnitude of the documents, over 250 witnesses, the complexity of the issues, it really is a team effort. So both of us are co-lead counsel in this matter.

THE COURT: All right. Thank you.

All right. I'm going to have some questions for each side, but I'm going to start by addressing the defense argument regarding the timing of other cases. So the defense contends that the median time from commencement to termination for a jury demandable case involving 18 U.S.C. § 371, which is conspiracy to defraud the United States, is 29.4 months, and that the court regularly allows far more time than the government proposes in other January 6 cases.

As an initial matter, and as the government correctly points out, that 29.4 months cited by the defense was the time from commencement to sentencing, not to trial. And sentencing, in this court at any rate, in the last few years usually takes place about 90 days or more from verdict. So that statistic is a bit misleading. And one of the cases that the defense cites, *United States v. Foy*, 21-CR-108, is my case.

In that case, there have been multiple continuances due to

the COVID-19 pandemic, litigation over -- considerable litigation over pretrial detention, a superseding indictment, and plea negotiations. So, given that all the other cases the defense cites were brought in 2021, I expect and suspect that the pandemic had an impact on the time it took to resolve those as well.

In addition, as the government notes, the other January 6 cases cited by the defense all involve between six and 17 codefendants. There are no codefendants in this case. And from my review, the defense has not identified any case in this district where the defendant was given over two years between indictment and trial in which there were no codefendants and no ongoing pandemic.

And the government hasn't identified any cases in this district where the length of time between indictment and trial was roughly five months, although they did point to the *Manafort* case in the Eastern District of Virginia, which went to trial roughly five months after the superseding indictment.

The other factor I wanted to focus on is the preparation that's needed for trial. And I think I will have some questions in that area. The defense advocates for a trial schedule equal to the government's time spent investigating. But as I've already noted, the Supreme Court found in *Cronic* that there is no necessary correlation between the period of time that the government spent investigating the case and the

defendant's task in preparing to deny or rebut a criminal charge.

Cronic was a mail fraud case in which the government took over four and a half years to investigate and included extensive document review. The Court found that the time devoted by the government to the assembly, organization, and summarization of the thousands of written records unquestionably simplified the work of the defense counsel in identifying and understanding the basic character of the defendant's scheme. That's at 664 of *Cronic*.

The defense here argues that they need years to review the over 11.5 million pages of discovery, declaring they would need to review nearly a hundred thousand pages per day to finish the government's initial production by its proposed date for jury selection. The government responds that characterization of the discovery review burden is misleading. It contends that 65 percent of its initial production consists of materials to which the defendant has functionally had access, are duplicative, or do not constitute Rule 16 discovery. 25 percent come from entities associated with Mr. Trump. And hundreds of thousands of pages come from the National Archives and House Select Committee to investigate the January 6 attack.

The government further states that it has made a small second discovery production consisting of 615,000 pages or

files, 20 percent of which were generated by records from an entity associated with Mr. Trump. The government also represents that in the first production it provided defense counsel with a set of key documents that it views as some of the most pertinent to its case-in-chief. Now, I realize the defense may have a different view of that, but nonetheless it's been provided.

So who will be arguing at this point? Will it be you, Ms. Gaston?

MS. GASTON: Yes, Your Honor.

THE COURT: So regarding the discovery that's been turned over to the defense so far, you said in your motion that about 65 percent of the first production is either duplicative, is material that Mr. Trump has already had access to, or is not Rule 16 discovery.

How much of the discovery did Mr. Trump already have access to such as documents from the archives that his counsel would have reviewed for privilege?

MS. GASTON: Yes, Your Honor. And let me begin by saying that at this point discovery is now substantially complete.

THE COURT: Okay.

MS. GASTON: We made a fifth production last night.

THE COURT: Oh, a fifth.

MS. GASTON: A fifth.

THE COURT: Okay. So I had two in the last -- so there's been three more. Okay.

MS. GASTON: Correct, Your Honor. So at this point the discovery is at approximately 12.8 million pages. That is generally the number of pages that we are at. But as we described in our reply, number of pages is not the best metric for measuring such things.

So of those 12.8 million pages, approximately 25 percent, or more than 3 million, are pages associated with the defendant's campaign or political action committees. More than 3 million, as we stated in our reply, came from the United States Secret Service. That's approximately 24 percent. There are hundreds of thousands of pages from publicly available litigation, 172,000 pages from the National Archives. And so --

THE COURT: And those are documents that were -- would have been reviewed for privilege by Mr. Trump's counsel before they were turned over.

MS. GASTON: Yes, Your Honor. So approximately 61 percent of what we have provided so far, or 7.8 million pages, are pages that came from entities associated with the defendant, either in political action committees or the campaign, from the National Archives, from publicly available litigation documents, open-source materials like tweets, materials from the House Select Committee, the vast majority

of which were already publicly available, and then some data associated with a consultant to the defendant in some of the election litigation.

So what is in the other 5 million pages, which is what we're really talking about, is things like every grand jury transcript in this case up to indictment and the accompanying exhibits. The defendant has all of those already.

THE COURT: And those exhibits -- excuse me. If an exhibit was produced but shown to a witness during the grand jury testimony, then it's been duplicated. Is that correct?

MS. GASTON: Yes, Your Honor.

THE COURT: It's listed twice.

MS. GASTON: Exactly. So for instance, if a witness in this case received a grand jury subpoena and produced documents to the government, and the government went though the documents, and then that person testified in the grand jury and the government used documents from the document production, those documents would be reproduced to the defendant both in terms of the grand jury production and as -- the subpoena production, and the testimony and the documents shown to the witness in the grand jury.

The same thing is true of all of our witness interviews in the course of the investigation.

THE COURT: That's what I was going to ask you next. How much of the discovery could be categorized as witness

statements and notes?

MS. GASTON: One moment, Your Honor.

Your Honor, approximately 58,000 pages are from witness interview folders. That includes the transcripts of those interviews. Most of them were audio recorded. So the defense has been provided audio recordings as well as transcripts created for convenience of review. And then all of the exhibits that were used in the course of those interviews, and those were provided in an organized fashion.

So, basically, there's a folder or a Bates range associated with each witness. It includes the transcript of either the grand jury testimony or of the interview, the agent notes if it was an interview, and then the exhibits associated or any interview report of the interview.

THE COURT: Do you have an idea of how much of the discovery is material that Mr. Trump actually created, such as tweets or other...

MS. GASTON: The open-source material, Your Honor, would include things like the publicly available litigation. So I'm not sure I have a breakdown exactly of his tweets, but I could get that for you.

THE COURT: All right. That's fine.

Now, you also said, at least in your response, that more than 3 million pages, or 25 percent of the first production, and 20 percent of the second production, came from, in quotes,

entities associated with Mr. Trump. And you mentioned a PAC, a political action committee. Are there other -- what do you mean by that?

MS. GASTON: There's the defendant's campaign, Your Honor, and then a few different political action committees.

THE COURT: Okay.

MS. GASTON: And let me correct myself, Your Honor. In terms of the open-source material that includes campaign statements, tweets, Truth Social posts, that's about 27,000 pages.

THE COURT: Okay. Now, in your key documents list, do you have an approximation of how many documents are included in that list?

MS. GASTON: Yes, Your Honor. One moment, please.

The key documents are approximately 47,000 pages. And let me take a moment just to describe what the key documents are.

THE COURT: Yes.

MS. GASTON: So it includes all of our case agent's summary testimony as well as any exhibits introduced through her to the grand jury. And so that includes things like transcripts of witness testimony or testimony before the House Select Committee. It also includes a file that is essentially an annotation of the indictment. It is almost 3 00 different documents that are labeled and named according to the

paragraph of the indictment that they support. So it is essentially a road map to our case, Your Honor. And it includes other key documents that the government believes that it may use at trial as well.

The other thing that we did through case agent testimony, and have pointed the defense to in our cover letter and through that case agent testimony, is we identified material that we believe is arguably favorable to the defendant. Of course, that is simply the government's guess at what the defense might find favorable, and it is of course a duty for the defense to also identify potentially exculpatory material in materials --

THE COURT: But your *Brady* obligations are constitutional and ongoing and that's what -- that's the material you're talking about.

MS. GASTON: Yes, Your Honor.

THE COURT: And as you know, I think we take a -- if there's a doubt, the government's encouraged to take an overinclusive position on that.

MS. GASTON: Yes, Your Honor. And, in addition, the defense has spoken in interviews and such about various defenses that they may raise in this case. And all of the materials that we have provided, the grand jury subpoena returns, the search warrant returns, it is all searchable in their electronic database for purposes of identifying that

material as well.

THE COURT: Okay. Thank you for answering a couple of my questions, including how the information is organized. And so -- and it's substantially complete.

All right. And that key documents list, was that just for the first production or has that been supplemented for the entire production?

MS. GASTON: The key documents list was an entirely duplicative collection of material in the very first production so that we could say to the defense in our very first production, here's what we view as the most important evidence in this case. Here it is, it's all in one place for you in a very organized fashion.

THE COURT: Okay. Thank you.

Well -- thanks.

MS. GASTON: Thank you, Your Honor.

THE COURT: I'll note that many years ago when I was trying murder and conspiracy cases across the street in Superior Court, we got witness names on the day of trial and witness statements and grand jury testimony before the witness testified and sometimes after the witness testified. And while the discovery rules here in federal court provide for far more disclosure in advance, the manner in which the discovery in this case has been organized indicates that the government has made a considerable effort to expedite review,

certainly beyond their normal discovery obligations.

In cases involving large amounts of document discovery, initial review is usually done by electronic searches. The government represents that it has produced the discovery in load ready files so that the defense can review them quickly, in the same manner as the government did, through targeted keyword searches and electronic sorting.

So, Mr. Lauro, why won't that significantly speed up the review process?

MR. LAURO: Because Mr. Trump, President Trump, is entitled to a fair trial.

THE COURT: Absolutely.

MR. LAURO: He is entitled to an opportunity to have a defense lawyer who is reasonably prepared. This is a request for a show trial, not a speedy trial.

Your Honor, I respectfully and strongly disagree with the prosecution's presentation here. The concept that we would have access to materials in the archives, in Secret Service, in other government agencies, that that would somehow enable us to prepare for trial because we should have already been reading that material for the last two and a half years, is absurd and ridiculous.

We have to do our job as defense lawyers to represent a client. This is a solemn obligation of every defense lawyer, no matter if you're representing someone who's in a street buy

on a corner or a former president of the United States. I have a special obligation to make sure that my client is adequately represented. And I'm sorry, Your Honor, to suggest -- for a federal prosecutor to suggest that we could go to trial in four months is not only absurd but it's a violation of the oath to do justice. And let me just go through this organized material --

THE COURT: Okay. Let's take the temperature down for a moment here.

MR. LAURO: I take my obligation seriously as a defense lawyer. I've been doing this for 40 years. I know Your Honor has done it as well. It's a sacred obligation to represent a defendant. And it's not easy when you have the entire government amassed against you. But we need adequate time to prepare. President Trump stands before Your Honor as an innocent man right now. He's entitled to his Sixth Amendment protection. He's entitled not only to counsel, but under *Gideon*, the promise of *Gideon*, he's entitled to counsel that can prepare adequately.

What this case means, we're talking about 9 terabytes of information. I have to go through that information. I have to sort it by witnesses, over 250 witnesses. I have to organize it in a way that's reasonable. I have to look at all the information in terms of these key witnesses. I have to cross-reference against other witnesses that may have said

something about a particular witness. I need to think about impeachment material. I need to think about corroborative material. I need to think about my own Rule 17 subpoenas as well.

For the government to suggest that I can do that in four months is an outrage to justice, that not once have they talked about justice in this case, not once. So this is what I have to do.

Now, they can give me key documents. That's very nice of them. That's very kind of them. I'd like to know one defense lawyer in the United States that's going to rely on a government's proposal of key documents.

THE COURT: Mr. Lauro, as I said, let's take the temperature down. I understand you have a sacred obligation. I understand Mr. Trump is presumed innocent, as is every defendant. But let's not overlook the fact that Mr. Trump has considerable resources that every defendant -- criminal defendant does not usually have.

And what I want -- my question to you is, given how the discovery in this case has been produced, in an electronic searchable form, and given the fact that a substantial portion of the discovery has already been reviewed by Mr. Trump's counsel as part of documents produced by archives -- hold on -- why won't that speed it up?

I mean, we're not talking -- discovery in 2023 is not

sitting in a warehouse with boxes of paper looking at every page at the first cut. You and I both know that that is not how the first cut of discovery in a complex case is reviewed; it's reviewed by electronic searches. So why won't the manner in which this discovery has been turned over speed up your review process?

MR. LAURO: For a number of reasons. First of all, we've not had access as criminal defense counsel to what's in the archives, what's in the Secret Service, what's in DOJ, what's in political action committees. We have not had that access. We as criminal defense lawyers now, for the first time looking at these charges, have to assess these charges in terms of what the actual relevance is.

They have given us what they represent is Rule 16 material that's relevant to the defense. We are now the defense and we're looking at all the material they've given us.

THE COURT: All right. But some of that material is not new to you --

MR. LAURO: It is new to me, Your Honor.

THE COURT: Whether or not you're looking at it through the eyes of a criminal defense lawyer, certainly it was reviewed by Mr. Trump's counsel before, before this case came in.

MR. LAURO: Who were not criminal defense lawyers. How is that new to me, Your Honor? I just have to work through --

THE COURT: In other words, this is not brand-new information. Some of it are statements, some of it are materials of your client's own creation. In other words, none of this -- you're not seeing this for the -- you personally may be, this may be new to you, but this is material that has been reviewed, at least for privilege -- some of this material are statements of your client and materials created by your client or entities associated with him. Why -- that's not brand-new information, is it?

MR. LAURO: Of course it is. Of course. To a criminal defense lawyer, it's brand-new information. That's like saying if a CEO of a public company was before Your Honor and had responsibility for running a company, oh, they've seen all the information that the company has, why do they need time to prepare? They've already had it for years.

THE COURT: No, that's a different point. Because it's information from the company doesn't mean that the defendant had seen it. But a lot of this material is material your client created or material that your client's lawyers, maybe not you specifically, saw and reviewed and had possession of before this case.

MR. LAURO: Your Honor, the statements of my client are minuscule compared to the avalanche of information here. Minuscule. And by the way, I need to look at all the statements, Mr. Blanche needs to look at all the statements

as a criminal defense lawyer, not from a client's perspective. That's the teaching of *Gideon*. It would be a miscarriage of justice if a lawyer were expected to absorb all the information that a client already knew and not look at it anew and not look at it from the perspective of a criminal defense?

THE COURT: Absolutely. And certainly you have to look at your client's statements, you have to look at -- there's a lot that you may personally have to eyeball. But you don't need to look at -- you personally, at least at the first cut, are not going to review all 12 million pages, right? Some of those documents are going to be reviewed electronically. Am I correct?

MR. LAURO: No documents get reviewed electronically. They get assembled electronically, and we can do searches for documents, but, Your Honor, all I can tell you is I've worked these large cases. Maybe -- I don't know what the prosecution has done in a former life, but these cases are enormously complex and they go something like this. As you know, Your Honor, I'm not telling you anything; you've been through it. You have to do searches, maybe with key terms.

THE COURT: Right.

MR. LAURO: You have to organize those documents typically by witnesses and issues. You have to cross-reference them with respect to what other people say and what other people have mentioned. Then you have to organize

a narrative. I like to do witness outlines. Some lawyers are different. I like to be prepared for trial. I have an obligation to a client.

Then, in addition, you have to look for evidence that corroborates witnesses that are favorable to you. You have to look for impeachment evidence with respect to witnesses that say something bad about you.

In this case we have not only documents we're searching for, we have videos and recordings that can't be searched electronically.

THE COURT: But you have --

MR. LAURO: This is a massive undertaking.

THE COURT: But you have the transcripts of those recordings.

MR. LAURO: I don't think in all respects we do, and not certainly with respect to every single video I don't think we do. This is over 12 million pages, 9 terabytes of information. This is an overwhelming task. Never in the history of the United States have we seen a case of this magnitude go to trial in four months, let alone a year, let alone less than two years.

If we were big corporations in America, where the only thing was money at stake, no one would blink an eye at a two-and-a-half or three-year trial schedule. But this man's liberty and life is at stake and he deserves an adequate

representation, as every American does. He's no different than any American.

THE COURT: Mr. Lauro.

MR. LAURO: I'm sorry, Your Honor. For a defense lawyer to hear these arguments from a prosecutor who took an oath to do justice, I'm sorry, it has to be spoken. Every single person in this courtroom, every single person in the United States deserves a fair and adequate defense.

And I'm telling you, as an experienced trial lawyer, an experienced defense lawyer, we cannot do this in the time frame that the government has outlined, and we cannot do this in the time frame that would be suggested by anything less than what we have. We need this time to prepare.

THE COURT: I understand, Mr. Lauro, but I can tell you, you are not going to get two more years. This case is not going to trial in 2026. It's not going to trial in --

MR. LAURO: Your Honor, I can only give you my best estimate based on the fact that, you know, we're looking at this discovery right now. We just got a discovery at three o'clock in the morning today.

THE COURT: I understand. But Mr. Lauro, for one thing -- okay. You suggest that the defense needs a substantial amount of time to investigate, for example. The existence of the grand jury investigating in this case has been known for -- since September 2022, almost a year, has been

public knowledge. The identity of many of the witnesses who have testified in the grand jury, and potential trial witnesses, have been a matter of public record. And given that Mr. Trump likely knows most of the witnesses the government -- or many of the witnesses the government would call, several of whom, according to at least page 7 of the indictment, may be staff and associates. So why would the defense need two years to investigate?

MR. LAURO: Because there's no obligation for any American citizen to start conducting their own defense during a grand jury investigation and prepare for a trial when we don't even know what the issues are, what the charges are.

THE COURT: There may not be an obligation, but certainly a defense attorney, a good defense attorney, knowing that their client was under investigation by a grand jury, knowing who the witnesses -- some of the witnesses were in the grand jury, would already start. Right? Isn't that what a good defense attorney would do?

MR. LAURO: Your Honor, I was not hired during that period of time. The government never communicated, as far as I know, to President Trump's counsel regarding the theories of investigation, the matters under investigation, the statutes at issue, the witnesses. None of that was ever provided. They could have done that. They could have said, yes, here's what we're doing --

THE COURT: I'm not sure if they could commensurate with --

MR. LAURO: -- the fact that they didn't puts us at a disadvantage because how can we go into a dark room and figure out what they are investigating? That would be absurd. We can't be charged and hindered because we didn't do an investigation during the grand jury period when they wouldn't tell us what that investigation was about.

I mean, this case, Your Honor, looking at it from a defense lawyer's perspective, is an enormous, an enormous factual issue. We haven't even talked about the novel issues of law we're going --

THE COURT: I'm coming to those.

MR. LAURO: -- to have to address. And I know you're going to get to that. But this is an enormous, overwhelming task. We have two law firms, two small law firms here working around the clock, and you see how diligent we are in responding to Your Honor. Whenever anything is asked, we respond right away. Even if the rules are shortened for President Trump, we're making sure we're responding immediately, we're doing everything that a diligent defense lawyer can do.

But Mr. Trump is entitled, entitled to a defense that's reasonably prepared. It would be a miscarriage of justice if that truth is not sustained in this court, and every single

court. Whether it's Mr. Trump or anyone else deserves that kind of defense.

THE COURT: And they're going to get it. The point I'm asking you is about the review necessary for this case. And Mr. Lauro, I'm well acquainted with *Gideon*. I'm well acquainted with the defendant's Sixth Amendment rights, his right to a fair trial, and I intend to ensure he gets it. But I'm not going to give -- as I said, this trial is not -- this case isn't going to trial in 2026.

And I want to know, despite the rhetoric in your response to the government's proposed trial date, realistically, why you think that you need this time when, although there are 12 million pages of discovery, you and I both know and the government knows that that's not -- again, nobody's sitting there going through page by page. A significant amount of this discovery is duplicative. A significant amount of it you already have in your possession or know about. And whether or not you, the defense lawyer, are seeing it for the first time, Mr. Trump has been ably represented by experienced counsel during the whole pendency of this investigation.

This is not -- you know, it's not an unveiling -- a surprise he's been indicted. You've known this was coming. Mr. Trump's counsel has known this was coming for some time. And I'm sure any able, diligent, zealous defense counsel would not have been sitting on their hands waiting for an

indictment. Certainly -- yes, an indictment signifies the beginning of a case, and you're looking at the indictment and you're looking at what you need to prepare. But a lot of this material was in the hands of Mr. Trump and his counsel for a significant period of time before the grand jury was convened. And that's what I'm asking you about.

You can keep talking about 12 million pages and his right to a fair trial. He has a right to a fair trial, but what is a fair amount of time to prepare? And the 12 million pages we talk about here are not truly indicative of how much time he needs to prepare because a lot of that is simply a belt and suspenders approach by the government, for example, in releasing duplicative documents, exhibits that were referred to in witness testimony and grand jury testimony that are also disclosed to you in production.

So a lot of this is duplicative, a lot of this may not even be relevant, and I realize there has to be some searches to categorize that, but that does not, in this court's estimation, need to take two years.

All right. Let me ask you this --

MR. LAURO: Your Honor, may I respond to that?

THE COURT: Yes.

MR. LAURO: And respectfully, what I'm saying is not rhetoric, it's in defense of the Constitution and my client and with respect to trying to explain to Your Honor what's

necessary to defend somebody under these circumstances.

I doubt, I doubt that -- you can't push a button these days and get documents sorted. You have to go through those documents. No person who is charged with a crime should be in some way disadvantaged because they didn't do or anticipated what that crime would be in connection with a grand jury proceeding, and they didn't do or whether or not they did do any kind of research or examination or defense prior to the charge.

We start at the time of the charge. It would be highly prejudicial if Your Honor took into account any time before the charge was entered and suggest that the defense had some obligation to conduct investigation prior to the time the charges were brought.

THE COURT: I'm not suggesting you had an obligation. I'm simply suggesting you had an opportunity.

MR. LAURO: I didn't. I was hired, you know, a month and a half ago, Your Honor, and I'm going to be trial counsel along with Mr. Blanche. Not only do we have to review this material, we have to absorb it. You know what it's like as a trial lawyer. Sure, you know, a firm can help, paralegals can help, they can read documents, they can look at documents. But at the end of the day, Your Honor, we stand before the jury and we have to make our case before a jury. We have to know the facts. Mr. Blanche and I have to absorb a gargantuan

amount of facts in this case in order to adequately represent a client.

Cross-examining a witness is not an easy task. You have to make sure that you understand all the documents that might be related. This is a question of whether or not -- and I'm pleading with Your Honor as an experienced defense lawyer, having done this over 40 years -- this is a question of whether or not one man, one United States citizen, gets a fair trial or not. And I am telling you, Your Honor, based on what I've seen so far, it is a gargantuan task.

I understand we have modern search tools. Years ago maybe there would be 50 boxes, right, in a room, and we'd look through the boxes one by one. Now there's 12 million pages. Sure, we sort them in some way by computerized searches, but at the end of the day I have to read the grand jury transcripts, I have to read the FBI 302s, I have to go through all of the text messages.

THE COURT: That's a much smaller universe of documents, Mr. Lauro.

MR. LAURO: I don't think so, Your Honor.

THE COURT: You and I both know that.

MR. LAURO: 250 witnesses in this case, and counting, that might be witnesses in this case so far is the estimate we have. And that's to say nothing of our opportunity to file and seek Rule 17 subpoenas, to do our own witness interviews,

to conduct our own investigation. All of that will be eviscerated. All of that will be eviscerated.

And if the goal here is to truly do justice, truly do justice, then every American citizen is entitled to counsel with a reasonable time to prepare. No one, no one, is suggesting that we're not being diligent. No one is suggesting that we're not taking these obligations seriously, because we are, Your Honor. We have an enormous responsibility here, not just to one client but to the system, and to ensure that the system works for every American.

Mr. Trump is not above the law but he's not below the law. He should not be treated any differently than any other person who appears before Your Honor and asks and pleads for justice. And I am saying, without question, that we cannot be ready under the circumstances of this case until we have a reasonable amount of time, consistent with justice, so we can prepare and we can also present.

Your Honor, candidly, the jury is entitled to an organized defense. The jury is entitled to a presentation that makes sense, a defense narrative that shows that counsel is prepared. The worst thing for a jury to see is a lawyer that gets up there are starts asking questions, they don't even know what they're talking about because they haven't been prepared. And we've been there, we've seen that, and none of us here in this courtroom would do that, and I'm certainly

not.

THE COURT: Thank you, Mr. Lauro. And I will say that I don't doubt for a minute that you're working diligently, but I will say that you and I have a very, very different estimate of the time that's needed to prepare for this case. But as you have mentioned several times, Mr. Trump will be treated exactly, with no more or less deference, than any other defendant would be treated.

All right. With regard to the complexity of the case, the defense says this is a complicated, unusual case that might require the Court to address novel questions of fact or law, but you don't explicitly state what those novel questions are. I mean, some of the January 6 cases, all of which have been brought in this court, have involved conspiracies related to the Electoral Count Act.

Now, a former president being charged for crimes while in office, or the prosecution of a presidential candidate may be points of historic note about this case, but they aren't legal issues. This case involves one defendant and four counts. The charges are not multijurisdictional. The alleged conduct occurred over the period of a few months. Why is this case complex, other than the historic aspect of it?

MR. LAURO: We've outlined the factual complexity to some extent. The legal complexity, number one, is we have a very initial issue of executive immunity which we're going to

raise with the Court likely this week or early next week, which is a very complex and sophisticated motion regarding whether or not this court would even have jurisdiction over this case in light of the fact that, as the indictment essentially indicts President Trump for being President Trump and faithfully executing the laws and executing on his take care obligations, so we're going to have a very, very unique and extensive motion that deals with executive immunity.

We also anticipate a selective prosecution motion, given the fact that this prosecution provides an advantage to these prosecutors' boss, who is running a political campaign against President Trump, which everybody knows about, and this selective prosecution motion will go directly to the core of criticisms that Mr. Trump made historically against President Biden and his son and whether or not this is a retaliatory action as a result of that. So we expect that there's going to be a selective prosecution motion as well.

We also have core First Amendment issues that are going to be litigated in this case. We also have a number of Rule 17 subpoenas that we anticipate serving. There might be some litigation about that.

So there's going to be an enormity of unique legal issues. None of these have been decided yet. To say nothing of the core question of whether or not 18 U.S.C. 371 should be used in a political context. That's going to be a novel issue

because historically it's not been used against a political opponent. This is the first time where the Biden administration has used that statute against a political opponent. We're going to be dealing with whether or not the obstruction statute should be applied under the circumstances of this case.

So all of those are novel issues, Your Honor, and I will say that this court -- I know Your Honor is going to look at all those issues seriously, but they're going to be briefed completely and fully by the defense. And not only are we going to be dealing with a host of very significant factual issues, but I'm afraid, Your Honor, we're going to be back many, many times arguing some of these complex motions. And I --

THE COURT: Can't wait.

MR. LAURO: I see you smiling, Your Honor, that you're looking to enjoy these novel issues, but they've never been decided. And certainly the question of executive immunity is a very important one. It's not been decided in the criminal context by the Supreme Court. It has with respect to civil litigation, but everything in the indictment, it's a speaking indictment, 45 pages of essentially a prosecutorial theory.

All of that really embraces executive action or items within the penumbra of executive action, within the outer perimeter, as the legal definition is, of what President Trump

was required to do as president. That's going to present an incredibly important *ab initio* legal issue for Your Honor to decide.

So we're going to be busy with very, very complex, novel issues without question in this case. This is one of the most unique cases from a legal perspective ever brought in the history of the United States. Ever. And we're going to have to deal with those issues. And we will.

But we're already starting that at the same time that we have this massive factual investigation under way. So it's a dual issue. And that's why I'm so adamant about the time to prepare. It's not just looking through 18 million pages of documents, it's also looking through legal theories and legal issues that will be presented, and some of these have never touched a court before, and Your Honor's time and effort are going to have to be devoted to that as well.

So all of this presents a clear reason to handle this as if President Trump were any other person coming before Your Honor and needing the time necessary to prepare adequately both on the legal side and on the factual side.

THE COURT: All right.

Ms. Gaston. Could you respond to Mr. Lauro's discussion of the time needed to review the documents in this case.

MS. GASTON: Yes, Your Honor. I think there is a reason why Mr. Lauro resisted answering your specific question

about what the exact time would be needed to review the materials in this case, and it's because he doesn't want to admit that through electronic searches and through the reasonable due diligence used in modern criminal trials, it is possible to be ready much sooner than April of 2026.

Let me first address a few of Mr. Lauro's points that suggest that the defense is starting fresh at indictment. So, first, in advance of indictment in this case, the Select Committee made public a large amount of the evidence in this case, and the defendant himself published video and written defenses in response, which demonstrate that the defendant was observing the Select Committee's investigation and work, and defending himself against it.

In fact, in an interview the night the indictment was unsealed in this case, Mr. Lauro called the indictment "a regurgitation of the J6 committee report."

In terms of pre-indictment litigation, the government and the defendant engaged in extensive pre-indictment litigation regarding executive privilege. It took place in five sealed proceedings starting in August 2022 and lasting through March of 2023. And it concerned the scope of grand jury testimony for 14 witnesses. And I'll just note that we asked for and received permission from the chief judge to provide that information to you today.

In terms of witnesses, a number of people on our potential

witness list are not a surprise to the defense either. The defendant's political action committee paid attorneys' fees for more than a dozen witnesses during the course of our investigation. And since indictment, Mr. Lauro has a team of experienced attorneys working for him. There are four counsel of record, two additional attorneys who attended the arraignment, one of whom was intimately involved in the pre-indictment litigation that I just mentioned, another at the last hearing.

And when Mr. Lauro appeared on multiple news programs and podcasts following the indictment, he described a number of the defenses he plans to raise, motions he plans to file, and he stated that he had read Vice President Pence's book twice and was already planning his cross-examination.

Just a week or so ago, the defendant claimed publicly to have created a robust report on the stolen presidential election of 2020 that contained irrefutable and overwhelming evidence of election fraud that his attorneys would use in service of a motion to dismiss. We are not starting fresh at indictment in this case.

Other things that Mr. Lauro mentioned are not a reason not to proceed promptly to trial. With respect to Rule 17 subpoenas, as the Court knows, those are not intended as a discovery tool, and the defense has to meet exacting standards of relevancy, admissibility, and specificity. And the best way to find out if

the defense can meet those standards is to set a schedule based off of a trial date and move forward with them.

The same goes, Your Honor, with respect to the complexity that Mr. Lauro just mentioned. So, first of all, Mr. Lauro mentioned that they are prepared to file a motion regarding executive immunity this week. Let's have that motion. The government will respond to that motion and the Court can consider it. But let's set a trial date and set a schedule.

Other things that Mr. Lauro mentioned are not novel questions. Selective prosecution motions are common in this district. I'm sure that Your Honor receives them all the time. Similarly, Rule 17 subpoenas, there's a lot of case law on those. And First Amendment issues in the context of fraud is not a new legal issue and that won't be complex either. And §371 has been challenged in a number of ways in the course of more than a decade, and that is not a complex legal issue either.

But I think the thing that all of this shows is the importance of setting a trial date and working backwards with a schedule. I think all of us, Your Honor, Mr. Lauro, we know that a trial date really sort of focuses the mind and enables everybody to work towards a common date.

And so the question before the Court today is, under the Speedy Trial Act, what is the balance of the defendant's right and need to prepare for a fair trial and, on the other hand,

the public's exceedingly and unprecedentedly strong interest in a speedy trial here. The defendant, formerly the senior-most official in our federal government, is accused of historic crimes: attempting to overturn the presidential election, disenfranchise millions of Americans, and obstruct the peaceful transfer of power.

There is an incredibly strong public interest in a jury's prompt and full consideration of those claims in open court. And there's also a strong public interest in a fair trial, which means that we need to proceed to trial as soon as the defense can be ready, reasonably, because on a near daily basis the defendant posts on social media about this case. He has publicly disparaged witnesses, he has attacked the integrity of the courts and of the citizens of the District of Columbia who make up our jury pool, and this potentially prejudices the jury pool.

So under the Speedy Trial Act, Your Honor, we need to find a time for trial when -- as soon as the defense can reasonably be ready. The government's trial date estimate was an estimate of when, based on our knowledge of the discovery, the public nature of the evidence in this case, the pre-indictment litigation, Mr. Lauro's experience and ability to prepare, and the organization of the discovery, that was our estimate. But the government urges the Court to set the soonest possible trial date when the Court believes that the defense can reasonably

be ready.

THE COURT: Okay. Thank you.

So I'm going to digress for a moment and talk about CIPA. The parties agreed to hold a conference today on the Classified Information Procedures Act, CIPA, to discuss the small amount of classified information that may be subject to discovery in this case. Because such procedures might affect the trial date and the parties' readiness, I think it might make sense to discuss CIPA now, or we can wait till the end of the hearing. What's your preference? Mr. Windom?

MR. WINDOM: I think now makes sense, Your Honor.

THE COURT: Mr. Lauro?

MR. LAURO: Yes, Your Honor. Mr. Blanche will take care of that.

THE COURT: All right.

So, as I understand it, CIPA does not create any additional rights to discovery or disclosure but rather establishes procedures for how and when certain procedures relating to classified information will be handled during the discovery process and the lead-up to trial.

The government filed a consent motion in what may be our last joint unopposed filing -- such a nice beginning to the case. The government filed a consent motion to appoint a classified information security officer pursuant to CIPA Section 2, which was ECF No. 33, and an unopposed motion for a

protective order regarding classified materials pursuant to CIPA Section 3, which was ECF No. 35. I granted both motions on August 22 and entered a sealed order designating the classified information security officer, and that was ECF Nos. 36 and 37.

Now, CIPA Section 4 provides that the Court upon a sufficient showing may authorize the United States to delete specified items of classified information from documents to be made available to the defendant through discovery under the Federal Rules of Criminal Procedure, to substitute a summary of the information for such classified documents, or to substitute a statement admitting the relevant facts that classified information would tend to prove.

Pursuant to the discovery process under Section 4, there are three steps governing the handling of classified information under Sections 5 and 6 of CIPA.

First, under Section 5, the defense must file a pretrial notice precisely identifying the classified information they want to use at trial; second, upon motion of the government, the Court shall hold a hearing pursuant to Section 6(a) to determine the use, relevance, and admissibility of the proposed evidence; and third, following the Section 6(a) hearing and formal findings of admissibility by the Court, the government may move to substitute redacted versions of classified documents for the originals or to prepare an

admission of certain relevant facts or summaries for classified information that the Court has ruled admissible.

So, Mr. Windom, are you handling this?

MR. WINDOM: Yes, Your Honor.

THE COURT: The government has noted that it does not anticipate introducing classified documents in its case-in-chief. Is this still the case?

MR. WINDOM: Yes, ma'am.

THE COURT: I realize this is dependent on the trial date, but does the government have an estimated schedule for producing classified information to the defense and/or moving for deletion or substitution under Section 4?

MR. WINDOM: Yes, ma'am.

THE COURT: How much material are we talking about here?

MR. WINDOM: Sure. So top line, whatever happens with CIPA we don't anticipate will affect any trial date Your Honor sets, whatever the date may be.

There are two things to talk about here. First, there is the limited amount of classified information that the government is going to make available to the defense. And second is the CIPA Section 4 process.

With respect to the information that is going to be made available to the defense, the universe of what we're talking about is five to ten nonduplicative classified documents

totaling less than a hundred pages of material. Those are the documents.

There's also a transcript. The transcript will be about 125 pages long. It's a transcript of a witness interview. We have already provided the relevant part of the transcript in a nonclassified form. In fairness, we are going to provide the rest of the transcript as well. That is in classification review. That will be provided to the defense as well.

So in total, between the documents and the transcript, we're talking about 225, 250 pages total.

THE COURT: Okay.

MR. WINDOM: This is information that the defense can review as soon as it gets its final security clearance. Mr. Blanche currently has an interim top secret clearance. He is allowed to review only a small part of the material at this point. We anticipate Mr. Blanche may have a better understanding of when he'll get his final security clearance, but we anticipate that will be fairly soon. Within the next few weeks is our best estimate. That's not something we control.

As I said at the beginning, we do not anticipate introducing classified information in our case-in-chief. To the extent that the defense reviews the material and wants to give notice under CIPA Section 5 that they intend to use the material, first of all, based on my knowledge and information, I don't

think they will do that. If they do do that, we would recommend a date for that CIPA 5 notice, a deadline for the CIPA 5 notice of 30 days after Mr. Blanche gets his final security clearance. That would give him time to review the material.

Mr. Lauro, my understanding, he does not have a security clearance at this point, but there are ways -- to the extent that Mr. Blanche needs to discuss the material with Mr. Lauro, the government believes that there are ways to do that either in a unclassified form or in a classified form available to Mr. Lauro should he get an interim security clearance, which is a much faster process than a final security clearance.

If the defense does move under Section 5 of CIPA, which again we recommend 30 days after Mr. Blanche gets his final clearance, the government would then be in a position to move very quickly for a CIPA 6 hearing.

THE COURT: I was going to ask you, how long do you estimate you'd need for the Section 6(a) hearing?

MR. WINDOM: I'll say top line two weeks to make the motion. It's somewhat dependent on which documents, if any, which would then implicate which equity holders would be involved that the defense wants notice. That said, there's a universe in which the government doesn't move for a CIPA 6 hearing.

THE COURT: You said does not?

MR. WINDOM: Correct. There's a universe in which that happens, in which the government does not move for a CIPA 6 hearing.

THE COURT: Okay.

MR. WINDOM: But I think, in fairness, you can set a date two weeks after the CIPA 5 notice deadline for the government to move under CIPA 6.

THE COURT: And I assume that after the 6(a) hearing, if there is one, the government will not need much time -- or how much time will the government need to prepare redacted versions? Substitute redacted versions.

MR. WINDOM: Sure. Again, with the variable that it's highly dependent on what the document is, we believe that that can be accomplished very quickly, in a matter of weeks, and I think it's fine if you want to put a two-week deadline on that given the nature of the documents.

THE COURT: All right.

MR. WINDOM: That's with respect -- so that's the first bucket of the information that the defense will be getting in classified discovery. CIPA 4 is separate. The government anticipates filing a motion under CIPA Section 4 which we will request that the Court hear on an ex parte basis. It involves a limited amount of information for the Court to review on a discrete issue. And we anticipate, if Your Honor would like to set a deadline for that, September 25, which is four weeks

away, is more than enough time. If you want it to be sooner, that will be --

THE COURT: September 25 is fine.

MR. WINDOM: Thank you, Your Honor. And thereafter, once we file that, then Your Honor can consider that in whatever due course Your Honor believes appropriate.

THE COURT: All right. Mr. Blanche. Good morning.

MR. BLANCHE: Good morning, Your Honor.

THE COURT: All right. I realize, again, this is dependent on the trial date. But does the defense have an estimated time -- obviously, you don't have your final clearance yet, so it would depend on that -- by which it plans to file its notice identifying the classified information it plans to use?

MR. BLANCHE: So, Your Honor, just as far as my security clearance is concerned and also my counsel who is here today, the process is ongoing, and I do not believe that there's a lot of time left in the process, but it's completely out of my control.

In the case in the Southern District of Florida, there's a tremendous amount of key events in September and October around the CIPA discovery in that case. So I anticipate spending a fair amount of time between whenever I get a security clearance and into October with the CIPA discovery in that case. My understanding from the government is that the

number of documents in this case is small.

THE COURT: It's relatively small.

MR. BLANCHE: The issue I have is -- about when we will make Section 5 motions, if we make Section 5 motions at all, is I would certainly have to speak about that with my counsel who I don't believe has even interim clearance yet.

THE COURT: Well, remember, at least according to Mr. Windom, the government isn't even planning on using any classified documents in its case-in-chief. So this would sort of be dependent on whether you wanted to introduce that information.

MR. BLANCHE: And even beyond that, there's other potential litigation -- beyond just whether the government chooses to use anything in their case-in-chief, there's litigation that the defense can initiate under CIPA depending on what the documents show, whether it's requests for additional documents or for the government to do additional searches for additional documents. I don't know. There may not be any of that litigation, but I won't know that until I review the documents.

So the only contention or issue I have with the schedule proposed by the government is I think the triggering date for a Section 5 filing should be 30 days after co-counsel gets security clearance, not me.

THE COURT: But why does that have anything to do with

you? It's an ex parte filing they're proposing giving to me by September 25. Are we talking about the same thing?

MR. BLANCHE: No, that's Section 4.

THE COURT: Okay.

MR. BLANCHE: That's the government, and that's fine. The proposed date by the government for our motions was 30 days after --

THE COURT: That's based on their proposed trial date, though. Right?

MR. BLANCHE: I don't know what it's based on. It's just what they suggested. My request would be that any motions we need to file under CIPA, to the extent it's triggered, it's triggered off of the date that Mr. Lauro and his team receive security clearances. It's not supposed to take that long. For example, I believe I started the process in the Southern District of Florida about 45 days ago, and so it's nearly complete. My understanding, not from anybody sitting at this table --

THE COURT: Excuse me. When did you get your interim clearance?

MR. BLANCHE: Oh, that's within a day or two. It's very quick. However, Your Honor, my understanding is there's not -- well, I don't want to speak to the documents. But my understanding is that the special counsel's office was able to accelerate the process in the Florida case, and I'm assuming

they can do the same here.

THE COURT: Oh, I'm sure they will try.

MR. BLANCHE: They apparently have the ability. So I would just respectfully request, Your Honor -- I can certainly look at the documents as soon as I have clearance, and I appreciate the government making them available as soon as I do have clearance, but that doesn't help my strategy and whether we need to file Section 5 motions without counsel being able to look at them.

So that would be my only adjustment. The other proposed dates for the Section 4 filing, I don't have an objection to that.

THE COURT: Okay. Thank you.

All right. Mr. Lauro, you've already touched on -- do you want to respond, Mr. Windom?

MR. WINDOM: Just briefly, Your Honor.

THE COURT: Yes.

MR. WINDOM: What I would propose is that the Court keep that deadline for the CIPA 5 notice of 30 days after Mr. Blanche gets his final clearance. Based on what I believe to be able to happen, if Mr. Blanche is able to review that material, he may be able to make determinations on his own with respect to notice, or he may be able to actually speak to Mr. Lauro with an interim clearance regarding the nature of the documents such that they can make a determination soon.

What I don't want to happen is for us to key things off of a date which we cannot know as to when Mr. Lauro will get a final clearance. Maybe we're lucky, maybe that's only two months, but then we're talking about three months from now is when a CIPA 5 notice would be filed.

THE COURT: I'm inclined to keep the schedule, and if there's a delay in the clearance process, I'll adjust it on motion of the parties.

MR. WINDOM: Thank you, Your Honor.

THE COURT: Now, motions schedule. Mr. Lauro, you've already talked about some of the motions you might file. And again, I won't hold you to this, but can you give me a sense of what if any dispositive motions or motions requiring significant briefing you intend to file? You've mentioned the executive immunity, you've mentioned selective prosecution. What else are we talking about here?

MR. LAURO: Thank you, Your Honor. We'll have motions addressed to each conspiracy that's alleged in the indictment as well.

THE COURT: What kind of motions are you talking about?

MR. LAURO: Motions to dismiss based on the flawed legal theory, and the fact that in our view this is a political prosecution. And as a result we're going to have to raise that issue squarely with Your Honor and do it justice. So we anticipate those motions to be filed.

My understanding is that the selective prosecution motion may involve a request for an evidentiary hearing as well, and I anticipate that the executive immunity argument will also come with a motion to stay as well which we may be entitled to under existing law.

So all of those are motions that we anticipate filing as quickly as possible. Needless to say, it's a significant task. We want to make sure we get all the issues before Your Honor in a way that does justice to these important motions.

THE COURT: All right. Thank you.

Ms. Gaston, I'm assuming there may be in limine motions from both sides, but does the government plan on filing any other motions that will require a significant briefing schedule?

MS. GASTON: No, Your Honor. We're thinking in limine motions and then depending on Rule 17 subpoenas and such, responding.

THE COURT: All right. I am going to take a very brief recess, a few minutes, five or 10 minutes, and we'll reconvene for the trial date.

(Recess from 11:14 a.m. to 11:20 a.m.)

THE COURT: All right. I understand all too well the need for counsel to have enough time to investigate and prepare for trial. That need is even more compelling in a case such as this where the defendant faces serious charges

carrying significant penalties, and where the government has had ample time and resources to investigate and bring these charges.

I take seriously the defense's request that Mr. Trump be treated like any other defendant appearing before this court, and I intend to do so. But I also want to point out that most defendants do not receive this level of assembled, organized and summarized discovery, as well as other concessions made because of the historic nature of the case.

Nonetheless, the government's requested date of January 2, 2024, does not in my opinion give the defense enough time to get ready for trial. Even with the considerable resources at his disposal, Mr. Trump, who faces trial in several other matters, needs more than five months to prepare.

On the other hand, the defense's proposed date of April 2026 is far beyond what is necessary. The offense giving rise to this case occurred at the end of 2020 and the beginning of 2021. To propose trying this case over five years later risks the real danger that witnesses may become unavailable or their memories may fade. And while Mr. Trump has a right to time to prepare, the public has a right to a prompt and efficient resolution of this matter.

The defense cites to *Powell v. State of Alabama*, 287 U.S. 45 at 49, for the proposition that while prompt disposition of criminal cases is to be commended and encouraged, a defendant

charged with a serious crime must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense.

Quoting the case, the defense argues that scheduling a too speedy trial is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob. In that landmark decision in *Powell*, which is also known as the Scottsboro Boys case, the Supreme Court reversed the convictions of several young black men for allegedly raping two white women.

The court noted that after their arrest the defendants were met at Scottsboro by a large crowd and that the attitude of the community was one of great hostility. That's at 51. The defendants' trials began six days after indictment. The Supreme Court found that there was a clear denial of due process because the trial court failed to give the defendants reasonable time and opportunity to secure counsel and the defendants were incapable of adequately making their own defense. That's at 71.

This case, for any number of reasons, is profoundly different from *Powell*. Mr. Trump is represented by a team of zealous, experienced attorneys and has the resources necessary to efficiently review the discovery and investigate, and, as the government points out, a great deal of the discovery provided has already been available to the defense or is

duplicative.

The grand jury investigating the events in this case was convened in September of 2022, meaning that Mr. Trump has known about the government's investigation for nearly a year.

I have seen many cases unduly delayed because a defendant lacks adequate representation or cannot properly review discovery because they are detained. That is not the case here.

Consequently, after considering the parties' briefs and arguments, I find that a trial beginning on March 4, 2024, would give the defense adequate time to prepare for trial and ensure the public's interest in seeing this case resolved in a timely manner.

I realize that Mr. Trump's criminal case in New York is scheduled for trial on March 25. I did speak briefly with Judge Merchan to let him know that I was considering a date that might overlap with his trial.

A trial start date of March 4, 2024, gives Mr. Trump seven months between indictment and trial, which I believe is sufficient time to advise with counsel and prepare his defense. Indeed, I have considered all of the relevant factors under the Speedy Trial Act, many of which I've already discussed. This timeline does not move the case forward with the haste of the mob. The trial will start three years, one month, and 27 days after the events of January 6, 2021.

The trial involving the Boston Marathon bombing began less than two years after the events. The trial involving Zacarias Moussaoui for his role in the September 11 attacks was set to begin one year after the attacks; but due to continuances, appeals, and voluminous discovery, it began roughly four years later.

My primary concern here, as it is in every case, is the interest of justice, and that I balance the defendant's right to adequately prepare with my responsibility to move this case along in the normal order. Accordingly, trial will commence on March 4, 2024, meaning jury selection will begin then. I will issue an order with a schedule for pretrial matters, including motions deadlines, status hearing, a pretrial conference, and other interim deadlines.

If the parties have conflicts or other issues with the schedule other than the trial date, you may file a motion to alter those dates after consulting with opposing counsel regarding alternative dates.

Do the parties have a proposed date for our next status hearing? Ms. Gaston, Mr. Lauro?

MR. LAURO: I don't, Your Honor.

THE COURT: Ms. Gaston?

MS. GASTON: No, Your Honor.

MR. LAURO: Your Honor, I do need to put on the record.

THE COURT: Yes. Go ahead.

MR. LAURO: On behalf of President Trump, we will certainly abide by Your Honor's ruling as we must, but we will not be able to provide adequate representation to a client who has been charged with serious offenses as a result of that trial date. The trial date will deny President Trump the opportunity to have effective assistance of counsel in light of the enormity of this case.

I feel I need to put that on the record so there's no doubt that in our judgment that trial date is inconsistent with President Trump's right to due process and his right to effective assistance of counsel under the Sixth Amendment.

THE COURT: I understand, and your objection is noted for the record.

Does it make sense for us to have a status hearing -- to set a date for a status hearing now, or why don't I issue a minute order with a proposed pretrial schedule and then maybe the parties can meet and confer and propose a status date. Is that agreeable to you, Mr. Lauro?

MR. LAURO: I don't see any need for a status hearing.

THE COURT: All right. I'm sure we'll be back. Okay. I'll issue a minute order with the pretrial schedule. Ms. Gaston?

MS. GASTON: Your Honor, very briefly, one last matter. In -- the government knows that in some cases in this district attorneys have sent out polls to the general public in advance

of trial to gather material for change of venue motions. I believe Mr. Lauro has suggested in interviews both that the defense might file such a motion and that they might conduct some polling.

THE COURT: By file such a motion, you mean a change of venue motion?

MS. GASTON: Yes, Your Honor. Based on the wording of the questions, the government has some concern about whether a polling could affect the jury pool in the District, and so we would just request that before either party does any such polling, that the parties be allowed to brief the issue.

THE COURT: Mr. Lauro?

MR. LAURO: I'm not quite sure why that's necessary, Your Honor, in light of fact that that is a core defense function.

THE COURT: Well, here's the problem I see. The District of Columbia is the site of the events at issue. The citizens of the District of Columbia have a right -- an interest in seeing that this matter is -- moves forward in a fair manner.

I don't know whether you intend to file a motion to transfer or what the grounds for such a motion to transfer would be, but certainly based on statements that have been made outside of this courtroom regarding the defense's view of the ability of the citizens of the District of Columbia to provide a fair jury

pool, I'm watching carefully for any -- anything that might affect that jury pool or poison that jury pool or in any way affect the ability of the parties to select a fair jury in this case.

So I guess I am concerned about what -- you know, if you file a motion to transfer -- and you haven't, on one hand -- but are doing polling on the other, that might affect the same jury pool you're claiming is not fair, there's a problem. And so I can't tell you what pretrial -- you know -- what investigation you can do or what information you can gather, but I am concerned that, in terms of gauging the views of the venire, of the jury pool, you may actually affect their ability to render a fair verdict by virtue of the kinds of questions you're asking, because questions can be phrased in all kinds of ways.

That's what I'm concerned about. So I would ask -- well, are you intending to conduct that kind of polling, first of all?

MR. LAURO: We intended to address this issue as we get closer to trial, and now in terms of the expedited trial schedule, we'll likely need to do it sooner rather than later. Those motions are typically done with the assistance of some sort of public assessment of views and positions among a jury pool generally. I've never seen a court deny the opportunity for defense counsel to do that in order to obtain a fair trial.

THE COURT: I'm not planning to restrict your ability

to do that. But I do think it's fair to find out, for you to let the Court know whether you're going to do that.

MR. LAURO: Well, perhaps we could submit something *in camera* to Your Honor if that issue does come up. But I'm certainly not going to share it with the United States government in terms of what we're doing or the questions we're asking. I don't think that would be appropriate.

THE COURT: I'm going to ask that if you intend to do that kind of polling, that you notify the Court ex parte, should you decide to do that, and then I'll consider it. Ms. Gaston?

MS. GASTON: Yes, Your Honor. Our request was simply that that polling not begin before we have an opportunity to brief the issue.

THE COURT: Well, there may not be an issue to brief. It's going to be -- if there's a motion to change venue and polling, those two things may be interconnected. So let's not get ahead of ourselves and find more motions and more briefing that we need to do. But I'll ask Mr. Lauro to notify the Court, and it can be done ex parte, if and when the defense decides to undertake such activities.

MS. GASTON: Thank you, Your Honor.

THE COURT: All right. Thank you all.

(Proceedings adjourned at 11:32 a.m.)

* * * * * *

CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Bryan A. Wayne
Bryan A. Wayne

EXHIBIT 3

Blanche Law
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August 30, 2023

By E-mail
Hon. Juan Merchan
New York State Supreme Court
Criminal Term, Part 59
100 Centre Street, Room 1602
New York, New York 10013

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

Dear Judge Merchan:

I respectfully write regarding a scheduling conflict between this case and a criminal case brought by Special Counsel Jack Smith.

As Your Honor is aware, trial in this case is scheduled to begin March 25, 2024, and all parties are prohibited from entering into any commitments, whether personal or professional, that would interfere with that trial date. However, at a conference on Monday, August 28, 2023 in *United States v. Donald J. Trump*, 23-cr-257 (D.D.C.), the Hon. Tanya S. Chutkan, U.S.D.J., set a trial date in that case of March 4, 2024, over President Trump's strong objection. When setting that date, Judge Chutkan said that she "realize[s] that Mr. Trump's criminal case in New York is scheduled for trial on March 25," but that she "did speak briefly with Judge Merchan to let him know that I was considering a date that might overlap with his trial." Tr. at 55, attached as Ex. A.

The Special Counsel's Office, in that case, has estimated that just "its case-in-chief will take no longer than four to six weeks." *Id.* at 4. That estimate does not include jury selection, openings and summations, the defense case, and jury deliberations. Thus, the trial in that case will necessarily conflict with the scheduled trial in this case, as Judge Chutkan herself acknowledged. The foregoing conflict is not one that will arise simply in March when the two trials overlap, but one that already exists now. In order for President Trump's trial team to be ready for the D.C. trial in March 2024 – one that involves millions of documents, complex factual and legal issues, and is a mere 6 months away – it will require the full attention of President Trump's full legal team.

The timing is further exacerbated by the fact that, President Trump has another federal trial scheduled to begin on May 20, 2024 in *United States v. Donald J. Trump*, 23-cr-80101 (S.D. Fla.). Note that the undersigned is counsel of record in all three of these cases.

Hon. Juan Merchan
August 30, 2023

Given all the above, we respectfully request a status conference to discuss the current trial date, and other deadlines, in this case.

sRespectfully submitted,
/s/

Blanche Law
Todd Blanche
Stephen Weiss

NechelesLaw LLP
Susan R. Necheles
Gedalia M. Stern

CC: Assistant District Attorneys of record

EXHIBIT 4

Supreme Court
of the
State of New York

JUAN M. MERCHAN
JUDGE OF THE COURT OF CLAIMS
SUPREME COURT, CRIMINAL TERM
FIRST JUDICIAL DISTRICT

CHAMBERS
100 CENTRE STREET
NEW YORK, N.Y. 10013

Via E-mail

September 1, 2023

Todd Blanche, Esq.
Blanche Law
99 Wall Street, Suite 4460
New York, NY 10005

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

Dear Mr. Blanche:

I write as a follow-up to your letter of August 30, 2023, and our ensuing e-mails. In light of the many recent developments involving Mr. Trump and his rapidly evolving trial schedule, I do not believe it would be fruitful for us to conference this case on September 15 to discuss scheduling. Rather, I have decided to adhere to the existing schedule. We can discuss scheduling and make any necessary changes when we next meet on February 15, 2024, for decision on motions. We will have a much better sense at that time whether there are any actual conflicts and if so, what the best adjourn date might be for trial.

Very truly yours,

Juan M. Merchan
Judge Court of Claims
Acting Justice Supreme Court

HON. J. MERCHAN

CC: Susan R. Necheles
Gedalia M. Stern
Assistant District Attorneys of record
Court file

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