

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

THE PEOPLE OF THE STATE OF NEW YORK

- against -

DONALD J. TRUMP,

Defendant.

DECISION AND ORDER
ON PUBLIC FILINGS

Ind. No. 71543/2023

HON. JUAN M. MERCHAN A.J.S.C.:

BACKGROUND

On March 10, 2024, the Defendant filed a pre-motion letter seeking leave to file a motion for the “(1) unsealing and public access to all pleadings, orders, and written communications that have involved the Court and the parties, including communications sent by letter and substantive email, and (2) simultaneous public access of all future pleadings, orders, and written communications except to the extent redactions are required by the protective order or law.” Defendant’s March 10, 2024, Pre-Motion Letter for Unsealing and Public Access. The Defendant’s motion, which was attached to his Pre-Motion Letter as an exhibit, was accepted by this Court. On March 12, 2024, the People responded to the motion. On March 26, 2024, this Court issued a Decision and Order (hereinafter “Public Proceedings Decision”) on Defendant’s March 10, 2024, motion.

After the People’s response and prior to the Public Proceedings Decision, a Discovery Hearing was conducted on March 25, 2024, whereupon the parties were to submit certain materials to assist the Court with its decision. This hearing was ordered after the People’s March 14, 2024, letter disclosing that they had received an additional 31,000 pages of documents from the United States Attorney’s Office for the Southern District of New York (hereinafter “USAO-SDNY”) on March 13, 2024 and that they expected to receive an additional voluminous production in the following days. People’s March 14, 2024, Letter. As a result, this Court ordered, among other things, that a hearing be conducted on March 25, 2024, to determine why this production arrived at such a late hour. The Court also directed the parties to submit exhibits *specifically* related to the subject of the hearing. Court’s March 15, 2024, Letter. On March 20, 2024, in response to the People’s request for a clarification of the Court’s March 15, 2024, letter, the Court informed the parties that submissions for the March 25,

2024, hearing would be reviewed *in camera* and that the parties should make necessary redactions if they intended to introduce any exhibit at the Discovery Hearing. The People filed their exhibits on March 18, 2024, and the Defendant filed his on March 21, 2024. Neither party introduced any of the exhibits into evidence at the Discovery Hearing.

On March 27, 2024, the Defendant filed a letter with the Court seeking the public filing of 46 documents¹, some of which were previously submitted for *in camera* review in connection with the hearing of March 25, 2024. Defendant's May 1, 2024 Letter Regarding Public Filing. On March 29, 2024, the People responded to Defendant's letter of March 27, 2024, indicating that the parties were able to reach agreement as to some of the 46 items but, they could not agree on the rest. On April 5, 2024, this Court asked the parties to provide, by May 1, 2024, their respective positions as to the documents that remained in dispute.² On May 1, 2024, the parties filed their respective positions.

CONTENTIONS OF THE PARTIES

Items 1 and 3 are the timelines and supporting exhibits the parties were asked to submit prior to the March 25, 2024, Discovery Hearing. The Defendant argues that these Items should be filed in the public docket as they constitute materials the Court relied upon in its Decision. Defendant's May 1, 2024 Letter at pg. 1. The People argue that Items 1 and 3 should not be placed in the public docket because they "reveal core work product and sensitive communications between law enforcement agencies." People's May 1, 2024 Letter at pg. 3. Further, the People argue that because no exhibits were offered into evidence at the Discovery Hearing, nothing from Items 1 and 3 were made part of the record.

The remaining items in dispute consist of correspondence among and between the parties and the Court covering such topics as adjournment requests, requests to file replies and general scheduling issues. The People argue that these remaining Items should not be made part of the public docket as they (1) discuss only procedural issues, (2) do not discuss substantive matters and (3) undermine the May 8, 2023, Protective Order regarding redactions. Defendant argues that these Items should be

¹ The documents were attached to Appendix A of Defendant's March 27, 2024, letter and listed as Item Numbers 1-46. For purposes of this Decision, the Court will refer to each of the documents as "Item," followed by the applicable number as provided in Appendix A.

² The documents that remained in dispute were Items: 1, 2, 3, 10,11, 12, 13, 21, 34, 24, 27, 29, 32, 33, 34, 36, 37, 40, 42, 44, 45, 46.

made part of the public docket as they are communications constituting rulings by the Court as well as correspondence that includes relevant information regarding the proceeding.

DISCUSSION

After reviewing the 22 Items in dispute, this Court disagrees with Defendant and finds none of the disputed Items should be in the public docket. The Discovery hearing on March 25, 2024, addressed two primary issues: (1) Defendant's March 8, 2024, motion for discovery sanctions³ against the People and (2) the People's March 14, 2024, letter regarding the delayed document production by the USAO-SDNY.

Regarding the first issue, the motions and accompanying documents submitted in connection with Defendant's motion of March 8, 2024, *are* part of the public docket. The second issue, regarding the *in camera* examination of certain documents submitted by the parties prior to the Discovery hearing presumably to assist the Court in identifying "who, if anyone, is at fault for the late production of documents..." Court's March 15, 2024 Letter. The Court directed that the documents be submitted for *in camera* review so as to not reveal any work product by either party, sensitive communications among various state and federal law enforcement agencies and to not compromise any potential defense strategy. Items 1 and 3 constitute the *in camera* submissions. Further, the parties could have introduced exhibits into evidence at the Discovery Hearing but elected not to do so. As a result, the exhibits are not a part of the record and should therefore, not be in the public court file.

Turning to the remaining Items, this Court relies on its reasoning from its March 26, 2024, Decision and Order on Defendant's Motion for Public Proceedings (hereinafter "Public Proceeding Decision"). The remaining Items are not of the type normally maintained in the public file. Public Proceeding Decision at pg. 1. Contrary to Defendant's assertion, the e-mails and communications in question do not constitute rulings. The topics covered are not substantive in nature but instead deal with routine matters such as scheduling. In some cases, the Court resolved disputes among the parties regarding redaction procedures in connection with this Court's May 8, 2023 Protective Order. For example, Item 44 is a three-sentence email from the People to the Court and Defense alerting this Court that Defendant's motion to remand the instant matter to federal court had been denied by the

³ The Court notes that the Defendant's March 8, 2024 motion for discovery sanctions covered areas of dispute that overlapped with the People's March 14, 2024 Letter: i.e. the late disclosure of materials from the USAO-SDNY.

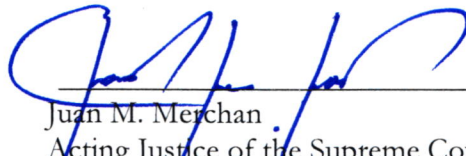
Southern District of New York⁴. Item 11 is an email from Defendant to the People and the Court alerting the Court that the People responded to Defendant's March 4, 2024, open letter regarding District Attorney Alvin Bragg⁵. Item 37 is an email from Defendant seeking permission to file a reply to the People's omnibus response, a request that was granted. As a separate matter, requiring that such routine communications be made a part of every public court file would create an insurmountable and unnecessary burden upon the Courts. If such were the case, it is likely that courts would have no choice but to cease e-mail and other routine communications to avoid what would become an unmanageable task. To put an end to such communications would certainly not advance the courts responsibility to the efficient, prompt and fair administration of justice.

The parties are directed to file their respective letters of May 1, 2024, in the public docket, subject to redactions as per this Court's Protective Order. Consistent with this Decision and Order, the parties are directed not to attach any of the exhibits or affidavits that accompanied the letters of May 1, 2024.

The foregoing constitutes the Decision and Order of this Court.

May 16, 2024
New York, New York

MAY 16 2024



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

JUAN M. MERCHAN

⁴ Said decision and all subsequent documents related to that decision, are already publicly filed on the electronic docket of the SDNY. See *People v. Donald Trump*, 23cv3773 AKH (SDNY July 19, 2023)

⁵ The Court notes that Defendant's March 4, 2024 Letter was immediately disseminated to the media by the Defendant for publication shortly after Defendant sent it to the People and the Court.