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Honorable Juan M. Merchan,
Acting Justice - Supreme Court, Criminal Term

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

Dear Justice Merchan:

We respectfully submit this letter to notify the Court that on August 29, 2024, President Donald J. Trump filed a Second Removal Notice, pursuant to 28 U.S.C. §§ 1442(a)(1), 1455, and 1653, in the United States District Court for the Southern District of New York. *See* ECF Nos. 46-47, *New York v. Trump*, No. 23 Civ. 3773 (AKH) (S.D.N.Y. Aug. 29, 2024). We will transmit a courtesy copy of the filing to the Court tomorrow.

In order to allow adequate time for the U.S. District Court and DANY to address President Trump's recent federal submission, and to avoid the forms of prejudice and irreparable harm detailed in that filing, President Trump respectfully requests that this Court refrain from deciding the pending Presidential immunity motion until after the U.S. District Court has had an opportunity to resolve the Second Removal Notice with input from all parties. That is the only appropriate course in light of the gravity of the Presidential immunity violations that occurred in this Court and the resulting harm to the institution of the Presidency, as well as the significance of the Supremacy Clause issues and other concerns raised in the Second Removal Notice. Moreover, as indicated in the Second Removal Notice, the Court may not sentence President Trump during the removal litigation because that step would result in a prohibited "judgment of conviction" under 28 U.S.C. § 1455(b)(3). *See* CPL § 1.20(15) (defining "judgment" to include "a conviction and the sentence").

For the reasons set forth in our August 14, 2024 premotion letter, no undue prejudice to any valid interest would result from Your Honor waiting for the federal courts to address the Second Removal Notice before issuing further substantive decisions. In response to that adjournment request, DANY did not provide any meaningful opposition, and they hardly suggested that Your Honor's current schedule was necessary or appropriate. For example, DANY acknowledged in their August 16, 2024 letter that the schedule would present appellate courts with the impossible task of "receiv[ing] briefing and decid[ing] certain issues of first impression in one day." The Supreme Court made clear that interlocutory review of matters relating to Presidential immunity is necessary, and expressed concern about prior efforts in the District of Columbia to proceed "on a highly expedited basis." *Trump v. United States*, 144 S. Ct. 2312, 2333 (2024). The first post-*Trump scheduling* conference in that case will not occur until September 5, 2024. And the Special Counsel's Office announced this week that they had obtained a superseding indictment from a "new grand jury that had not previously heard evidence in this case." ECF No. 228, *United States v. Trump*, No. 23 Cr. 257 (D.D.C. Aug. 27, 2024). Those prosecutors' unsuccessful efforts to purge the taint of the Presidential immunity violations identified by the Supreme Court in *Trump*, by obtaining a new charging instrument from a different grand jury, are consistent with President Trump's position in this case that DANY's use of official-acts evidence in grand jury proceedings requires dismissal.

There is no good reason to sentence President Trump prior to November 5, 2024, if there is to be a sentencing at all, or to drive the post-trial proceedings forward on a needlessly accelerated timeline relative to the manner in which similar issues are being addressed by the Special Counsel's Office and the Department of Justice. Accordingly, the Court should hold the Presidential immunity motion in abeyance, adjourn the sentencing *sine die*, and refrain from issuing substantive orders until the Second Removal Notice is resolved.