

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

PART 59 SEP 04 2024



ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

September 3, 2024

Hon. Juan M. Merchan
New York State Supreme Court, Criminal Term, Part 59
100 Centre Street
New York, New York 10013

Dear Justice Merchan:

Defendant's August 29, 2024 letter-motion sought a stay of all proceedings based on a second notice of removal he filed with the United States District Court for the Southern District of New York. On August 30, defendant's notice of removal was rejected by the federal court as deficient for having been filed without leave of that court. *See* Ex. 1. This morning, defendant filed a notice of motion and motion for leave to file his removal notice. *See* Ex. 2, Ex. 3. This afternoon, the district court denied defendant's motion for leave to file. That order and opinion is attached. *See* Ex. 4.

Because there is no pending notice of removal with the federal court, there is no basis for the relief sought in defendant's August 29 letter-motion.

Respectfully Submitted,

/s/ Matthew Colangelo

Matthew Colangelo

Christopher Conroy

Susan Hoffinger

Becky Mangold

Joshua Steinglass

Assistant District Attorneys

Ex. 1

From: NYSD_ECF_Pool@nysd.uscourts.gov
To: CourtMail@nysd.uscourts.gov
Subject: [EXTERNAL] Activity in Case 1:23-cv-03773-AKH People of The State of New York v. Trump Notice to Attorney Regarding Deficient Pleading
Date: Friday, August 30, 2024 4:16:49 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. Forward suspect email to phish@otl.nyc.gov as an attachment (Click the More button, then forward as attachment).

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*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 8/30/2024 at 4:15 PM EDT and filed on 8/30/2024

Case Name: People of The State of New York v. Trump

Case Number: [1:23-cv-03773-AKH](#)

Filer:

WARNING: CASE CLOSED on 07/19/2023

Document Number: No document attached

Docket Text:

*****NOTICE TO ATTORNEY REGARDING DEFICIENT PLEADING. Notice to Attorney Emil Bove to RE-FILE re: Document No. [46] Notice of Removal. The filing is deficient for the following reason(s): the PDF attached to the docket entry for the pleading is not correct; the wrong event type was used to file the pleading; Court's leave has not been granted; the order granting permission to file the pleading was not attached. Re-file the pleading using the event type Amended Notice of Removal found under the event list Complaints and Other Initiating Documents - attach the correct signed PDF - select the individually named filer/filers - select the individually named party/parties the pleading is against. File the Exhibit to Pleading event found under the event list Other Documents and attach either opposing party's written consent or Court's leave. (vf)**

1:23-cv-03773-AKH Notice has been electronically mailed to:

Susan D. Hoffinger hoffingers@dany.nyc.gov

Susan Rose Necheles srn@necheleslaw.com

Matthew Colangelo colangelom@dany.nyc.gov

Todd Blanche toddblanche@blanchelaw.com

Philip Vyse Tisne tisnep@dany.nyc.gov

Emil Bove emil.bove@blanchelaw.com, USANYS.ECF@USDOJ.GOV

Steven Chiajon Wu wus@dany.nyc.gov

Catherine McCaw mccawc@dany.nyc.gov

Katherine Caldwell Ellis ellisk@dany.nyc.gov

Christopher Conroy, I conroyc@dany.nyc.gov

1:23-cv-03773-AKH Notice has been delivered by other means to:

Ex. 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

- v. -

DONALD J. TRUMP,

Defendant.

NOTICE OF MOTION

No. 23 Civ. 3773 (AKH)

PLEASE TAKE NOTICE that upon the accompanying September 3, 2024 memorandum of law, and the August 29, 2024 affirmation of Emil Bove and the exhibits appended thereto, *see* ECF No. 47, the undersigned hereby move the Court for an order granting leave to file on ECF the August 29, 2024 Second Removal Notice, *see* ECF No. 46, pursuant to 28 U.S.C. §§ 1455(b)(1), 1455(b)(2), and 1653.

Dated: September 3, 2024
New York, N.Y.

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

Attorneys for President Donald J. Trump

Ex. 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

- v. -

DONALD J. TRUMP,

Defendant.

MEMORANDUM OF LAW

No. 23 Civ. 3773 (AKH)

**PRESIDENT DONALD J. TRUMP'S MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR LEAVE TO FILE SECOND REMOVAL NOTICE ON ECF**

President Donald J. Trump respectfully submits this memorandum of law in support of his September 3, 2024 motion for leave to file on ECF the Second Removal Notice docketed at ECF No. 46.

President Trump filed the Second Removal Notice and an accompanying evidentiary Affirmation on August 29, 2024. *See* ECF Nos. 46-47. The Second Removal Notice is attached hereto as Exhibit A. A courtesy copy of the Second Removal Notice and the Affirmation were delivered to Your Honor's chambers the following day.

On August 30, 2024, an ECF notice was entered directing President Trump to "RE-FILE" the Second Removal Notice with, *inter alia*, the "Court's leave." Based on conversations with the Clerk's Office this morning, September 3, 2024, President Trump is submitting this motion seeking that relief. For the reasons set forth in paragraphs 12 and 116–146 of the Second Removal Notice, President Trump respectfully submits that (1) there is "good cause" for the filing of the Second Removal Notice under 28 U.S.C. §§ 1455(b)(1) and 1455(b)(2); and (2) in the alternative, leave to amend the First Removal Notice based on intervening Supreme Court decisions and DANY's trial presentation is appropriate pursuant to 28 U.S.C. § 1653.

Accordingly, President Trump respectfully requests that the Court authorize the filing of the Second Removal Notice on ECF.

Dated: September 3, 2024
New York, N.Y.

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

Attorneys for President Donald J. Trump

Ex. 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
THE PEOPLE OF THE STATE OF NEW YORK, :
:
-against- :
:
DONALD TRUMP, :
:
Defendant. :
:
----- X

**ORDER AND OPINION
DENYING MOTION FOR
LEAVE TO FILE REMOVAL
PAPERS**

23 Civ. 3773 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Former President Donald Trump again seeks removal of the criminal case against him, from the Supreme Court of New York to this Court.¹ Upon removal, as the district judge to whom this case was assigned, my task, pursuant to 28 U.S.C. § 1455(b)(4), is to “examine the notice promptly,” and if it “clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted,” I am to “make an order for summary remand.” If summary remand is not appropriate, I am to “order an evidentiary hearing to be held promptly and, after such hearing, [to] make such disposition of the prosecution as justice shall require.” 28 U.S.C. § 1455(b)(5). Since Defendant filed his notice after he was tried, he must show “good cause” and seek “leave” from the district court “to file the notice at a later time.” 28 U.S.C. § 1455(b)(1). The second notice may argue only “grounds not existing at the time of the original notice,” or show “good cause” why the district court should “grant relief from the limitations” above stated. 28 U.S.C. § 1455(b)(2).

Defendant seeks leave from this Court to file a second notice of removal. As to “good cause,” he advances two grounds. First, he asserts that the New York courts were biased against

¹ Mr. Trump requests, in the alternative, that he be permitted to amend the First Removal Notice. Because the prosecution was completed through trial, this request is denied as academic.

him, resulting in an improper trial. As support for this argument, Trump writes that Judge Merchan had a conflict of interest in presiding over the trial, as evidenced by his daughter's statements concerning her father's views on politicians' use of twitter; by Judge Merchan's daughter's involvement in Vice President Kamala Harris's 2019 presidential campaign; and by Judge Merchan's prior financial contributions to Democratic politicians. Mr. Trump also states that Judge Merchan failed to conduct the proper pretrial review of the presidential immunity issue in light of intervening Supreme Court decisions, and prohibited Mr. Trump from pursuing interlocutory review of that decision. Second, Mr. Trump argues that *Trump v. United States*, 603 U.S. ___ (No. 23-939, July 1, 2024) grants him immunity from prosecution.

This Court does not have jurisdiction to hear Mr. Trump's arguments concerning the propriety of the New York trial. "The jurisdiction possessed by the District Courts is strictly original." *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923). District courts may not reverse or modify state judgments, even those containing constitutional infirmities, because "[t]o do so would be an exercise of appellate jurisdiction." *Id.* at 415-16; *see also Hoblock v. Albany County Board of Elections*, 422 F.3d 77, 84 (2d Cir. 2005) (discussing how federal courts generally lack jurisdiction over suits that are, in essence, appeals from state court judgments). Instead, the proper recourse for parties seeking to remedy alleged errors made during a state trial is to pursue a state appeal or, at the highest level, to seek review from the Supreme Court of the United States. *Id.* It would be highly improper for this Court to evaluate the issues of bias, unfairness or error in the state trial.² Those are issues for the state appellate courts. Accordingly, only the second ground argued by Mr. Trump deserves attention.

² Mr. Trump also implicitly requests that this Court enjoin the state sentencing set for September 18, 2024. For the same reasons set out in this paragraph under the Rooker-Feldman doctrine, this request is improper and outside of the district court's jurisdiction.

I. DISCUSSION

In *Trump*, the Supreme Court held that a former President is entitled to absolute immunity from criminal prosecution for actions taken in exercise of his core constitutional powers, to at least presumptive immunity for acts within the outer perimeter of his official responsibility, and to no immunity for his unofficial acts. Criminal courts trying the former President are required to evaluate his actions to distinguish official from unofficial conduct. *Trump*, 603 U.S. at 17. The outer perimeter of the former President’s official responsibilities extends to those actions that were “not manifestly or palpably beyond his authority.” *Id.* (citing *Blassingame v. Trump*, 87 F. 4th 1, 13 (D.C. Cir. 2023)). Private schemes with private actors, unconnected to any statutory or constitutional authority or function of the executive, are considered unofficial acts. *See id.* at 27-28.

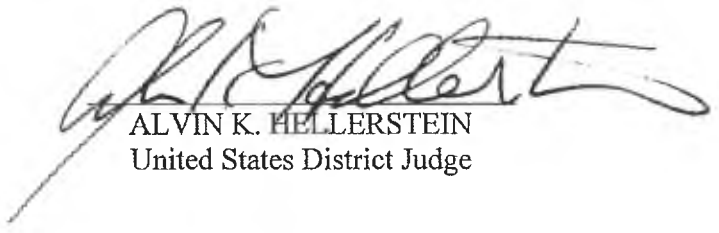
I held in my Order and Opinion of July 19, 2023 (ECF No. 43) that “[h]ush money paid to an adult film star is not related to a President’s official acts. It does not reflect in any way the color of the President’s official duties.” *Id.* at 13. My holding followed an evidentiary hearing where The People showed conclusively that Mr. Trump reimbursed Michael Cohen for advancing the hush money payments, including two checks signed in the White House by Mr. Trump. I held that Mr. Trump had not satisfied the burden of proof required to show the basis of removal. My holding of a hush money reimbursement remains true regardless of who has the burden, whether the People or Mr. Trump. Nothing in the Supreme Court’s opinion affects my previous conclusion that the hush money payments were private, unofficial acts, outside the bounds of executive authority.

II. CONCLUSION

It “clearly appears on the face of the notice and . . . exhibits attached thereto” that removal should not be permitted. Good cause has not been shown, and leave to remove the case is not granted. The Clerk shall terminate ECF No. 48.

SO ORDERED.

Dated: September 3, 2024
New York, New York



ALVIN K. HELLERSTEIN
United States District Judge