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PART 59 NOV 19 2024



ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

November 19, 2024

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

RE: *People v. Trump*, Ind. No. 71543/23

Dear Justice Merchan:

As a result of the election held on November 5, 2024, Defendant's inauguration as President will occur on January 20, 2025. In light of that development, Defendant asked the District Attorney by letter dated November 8 to dismiss this prosecution and consent to a stay of these proceedings pending consideration of his dismissal request. Ex. 1. The People requested a brief adjournment to evaluate this request, which the Court granted on November 10. Ex. 2. In doing so, the Court ordered the People to provide, by 10:00 a.m. on November 19, 2024, our view of the appropriate steps going forward. Ex. 2.

For the reasons more fully explained below, the People believe that the Court should set a motion schedule for Defendant's forthcoming motion to dismiss, which the People intend to oppose. Assuming Defendant is permitted by the Court to file a motion to dismiss and does so promptly, the People ask that their response to Defendant's motion be due on Monday, December 9. The People believe that further proceedings before this Court should be adjourned to permit litigation of Defendant's forthcoming motion to dismiss and, therefore, the People would not oppose a defense motion for a stay of further proceedings before this Court while Defendant's motion is adjudicated.

A. The People Intend to Oppose Defendant's Motion to Dismiss

The People have carefully considered the arguments in Defendant's correspondence. Defendant's letter argues that: (1) this criminal proceeding must be immediately dismissed because Defendant has legal immunity from criminal prosecution based on his current status as President-elect; and (2) his appeal to the Second Circuit from the district court's denial of leave to file a second notice of removal supports a stay before this Court. We believe these arguments are incorrect.

Defendant's letter also argues that the case should be dismissed now because the case and all appeals "cannot be timely concluded" before Defendant's inauguration, when the President will be "completely immune from indictment or any criminal process" and dismissal will be required. Ex. 1 at 3. The People deeply respect the Office of the President, are mindful of the demands and obligations of the presidency, and acknowledge that Defendant's inauguration will raise unprecedented legal questions. We also deeply respect the fundamental role of the jury in our constitutional system. *See generally United States v. Gilliam*, 994 F.2d 97, 101 (2d Cir. 1993) ("The public listens with rapt attention to the jury's pronouncement of guilt or innocence.").

No current law establishes that a president's temporary immunity from prosecution requires dismissal of a *post-trial* criminal proceeding that was initiated at a time when the defendant was not immune from criminal prosecution and that is based on unofficial conduct for which the defendant is also not immune. Rather, existing law suggests that the Court must balance competing constitutional interests and proceed "in a manner that preserves both the independence of the Executive and the integrity of the criminal justice system." *Trump v. Vance*, 591 U.S. 786, 810 (2020) (citing *United States v. Burr*, 25 F. Cas. 30, 34 (No. 14,692D) (C.C.D. Va. 1807)).

Given the need to balance competing constitutional interests, consideration must be given to various non-dismissal options that may address any concerns raised by the pendency of a post-trial criminal proceeding during the presidency, such as deferral of all remaining criminal proceedings until after the end of Defendant's upcoming presidential term. Indeed, one corollary of the temporary nature of presidential immunity is that immunity should not lead to consequences that "forever thwart[] the public's interest in enforcing its criminal laws." U.S. Dep't of Justice, Office of Legal Counsel, *A Sitting President's Amenability to Indictment and Criminal Prosecution*, 24 Op. OLC 222, 255 n.32 (2000).

We anticipate more fully briefing these issues in response to Defendant's motion.

B. The People Do Not Intend to Object to a Stay of Further Proceedings Pending Disposition of Defendant's Motion to Dismiss

In addition to intending to file a motion to dismiss, Defendant has also expressed his intent to seek a stay of further proceedings. In response to any such motion, the People expect that we would not oppose Defendant's request for a stay of further proceedings pending this Court's disposition of a motion to dismiss.

The People note two reasons for this position. First, as a practical matter, Defendant's stated plan to pursue immediate dismissal and file interlocutory appeals will likely lead to a stay of proceedings in any event; staying proceedings now until this Court's resolution of the motion to dismiss would thus avoid unnecessary litigation. Second, proceeding to sentencing now would not avoid the new immunity question that Defendant intends to raise.

The People thank the Court for its consideration of this matter.

Respectfully Submitted,

/s/ Alvin L. Bragg, Jr.

Alvin L. Bragg, Jr.

District Attorney

Matthew Colangelo

Christopher Conroy

Katherine Ellis

Susan Hoffinger

Becky Mangold

Joshua Steinglass

Assistant District Attorneys

Ex. 1

November 8, 2024

District Attorney Alvin Bragg
New York County District Attorney's Office
One Hogan Place
New York, New York 10013

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

Dear District Attorney Bragg:

On behalf of our client President Donald J. Trump, we respectfully request that you dismiss the above-referenced case with prejudice, and consent to a stay of all deadlines in the case while you consider this request and during the pendency of the appeal in *People v. Trump*, 24-2299-cv (2d Cir.). DOJ is reportedly preparing to dismiss the federal cases against President Trump,¹ and we were informed by the Special Counsel's Office last night that they plan to seek a stay of the federal case-related deadlines until December 2, 2024 while those deliberations are under way. Consistent with those actions, dismissal of this case is necessary under the Constitution and federal law to facilitate the orderly transition of Executive power—and in the interests of justice—following President Trump's victory in the Electoral College and the popular vote in the 2024 Presidential election.

I. Dismissal Is Required Because A Sitting President May Not Be Prosecuted

In addition to DANY's violations of the Presidential immunity doctrine in grand jury proceedings and at the trial, the case should be dismissed due to new, fatal Presidential immunity problems based on President Trump's current status and his ongoing official acts in connection with the transition of Executive power. *See* CPL § 210.40; *see also* CPL § 210.20(3).

A sitting President is completely immune from indictment or any criminal process, state or federal, and the same immunity extends to a President-elect during his transition into the Presidency. *See Trump v. United States*, 603 U.S. 593, 616 n.2 (2024) (citing OLC, *A Sitting President's Amenability to Indictment and Criminal Prosecution* ("OLC Memo"), 2000 WL 33711291, at *29 (2000) ("[A] sitting President is constitutionally immune from indictment and criminal prosecution.")). This doctrine has been well-recognized since the dawn of the Republic. "The president cannot . . . be liable to arrest, imprisonment, or detention, while he is in the discharge of the duties of his office . . ." 3 J. Story, *Commentaries on the Constitution of the United States*, § 1563, pp. 418-19 (1st ed. 1833). After reviewing historical sources and case law, DOJ reinforced this conclusion in 2000: "Given the potentially momentous political consequences for the Nation at stake, there is a fundamental, structural

¹ Hugo Lowell, *US special counsel to wind down criminal cases against Donald Trump*, *The Guardian* (Nov. 6, 2024), <https://www.theguardian.com/us-news/2024/nov/06/special-counsel-trump-criminal-cases>.

incompatibility between the ordinary application of the criminal process and the Office of the President.” OLC Memo, 2000 WL 33711291, at *28.

The same complete immunity from criminal process of any kind extends to a President-Elect during the transition period. There is no material difference between President Trump’s current status after his overwhelming victory in the national election and that of a sitting President following inauguration. Federal law provides for the “orderly transfer of Executive powers in connection with the expiration of the term of office of a President and the inauguration of a new President.”² Specifically, the Presidential Transition Act requires “all officers of the Government” to “take appropriate lawful steps to avoid or minimize disruptions that might be occasioned by the transfer of the executive power,” and to “promote orderly transitions in the office of President.” 3 U.S.C. § 102 note.

The national interest requires that such transitions in the office of President be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both domestic and foreign. Any disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the United States and its people.

Id. President Trump has already commenced this complex, sensitive, and intensely time-consuming process, which is a “monumental undertaking.”³ See *United States v. Cisneros*, 169 F.3d 763, 764 (D.C. Cir. 1999) (“For a smooth transition, the selection of potential nominees, the investigations of their backgrounds, and the adjudications of their security clearances must begin well before the President takes the oath on January 20th.”).

To require President Trump to address further criminal proceedings at this point would not only violate the federal Constitution, but also disrupt the Presidential transition process. “States have no power . . . to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress,” including the Presidential Transition Act. *McCulloch v. Maryland*, 4 Wheat. 316, 436 (1819); see also *Mayo v. United States*, 319 U.S. 441, 445 (1943) (“[T]he activities of the Federal Government are free from regulation by any state.”); *In re Tarble*, 80 U.S. 397, 401 (1871) (“[W]hensoever any conflict arises between the enactments of the two sovereignties, or in the enforcement of their asserted authorities, those of the national government have supremacy until the validity of the different enactments and authorities are determined by the tribunals of the United States.”). “There . . . exists the greatest public interest in providing the President with the maximum ability to deal fearlessly and impartially with the duties of his office.” *Trump*, 603 U.S. at 611 (cleaned up). This interest attaches to the ongoing transition activities, which are “an integral part of the presidential administration,” in the “national interest,” and part of President Trump’s “public function,” as he prepares to govern based on the powerful national mandate established by this week’s election. OLC, *Reimbursing Transition-Related Expenses Incurred*

² OMB, No. M-24-13, Memorandum for Heads of Executive Departments and Agencies (Apr. 26, 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/04/M-24-13-Implementing-the-Presidential-Transition-Act.pdf>.

³ GSA, Presidential Transition Directory: Ethics & Accountability, <https://www.gsa.gov/governmentwide-initiatives/presidential-transition-2024/ethics-and-accountability>.

Before The Administrator Of General Services Ascertained Who Were The Apparent Successful Candidates For The Office Of President And Vice President, 2001 WL 34058234, at *3.

In short, the Constitution forbids “plac[ing] into the hands of a single prosecutor and grand jury the practical power to interfere with the ability of a popularly elected President to carry out his constitutional functions.” OLC, *A Sitting President’s Amenability to Indictment and Criminal Prosecution*, 2000 WL 33711291, at *19; *see also Trump v. Vance*, 140 S. Ct. 2412, 2447 (2020) (Alito, J., dissenting) (“If a sitting President is intensely unpopular in a particular district—and that is a common condition—targeting the President may be an alluring and effective electoral strategy. But it is a strategy that would undermine our constitutional structure.”). Continuation of this case would result in just that, causing dangerous and impermissible “intrusion on the authority and functions of the Executive Branch.” *Trump*, 603 U.S. at 615 (cleaned up). Accordingly, DANY should dismiss the charges, with prejudice, forthwith.

II. Dismissal Is Required Because The Case Cannot Be Timely Concluded

Dismissal is also required because of DANY’s inability to timely conclude the case in a timely and lawful fashion. *Cf.* CPL § 380.30(1) (requiring sentencing “without unreasonable delay”); *People v. Drake*, 61 N.Y.2d 359, 364 (1984). The investigation took years, the charges were not filed until after President Trump declared his candidacy, and pre-sentencing appeals concerning federal law issues would unacceptably continue long into President Trump’s second term in office.

For example, last month, DANY strategically chose a post-election date of January 13, 2025 to file a responsive brief in the pending Second Circuit appeal relating to President Trump’s Second Removal Notice. *See* ECF No. 53, *People v. Trump*, 24-2299-cv (2d Cir. Oct. 18, 2024). In order to vindicate President Trump’s right to a federal forum for litigation of Presidential immunity and preemption defenses, which is even stronger following the election, Justice Merchan must not decide the pending Presidential immunity motion or conduct a sentencing before the appeal is resolved. *See* 28 U.S.C. § 1455(b)(3) (prohibiting entry of judgment); CPL § 1.20(15) (judgment complete when “sentence [is] imposed”). To proceed otherwise “would defeat the very purpose of permitting an appeal,” and leave President Trump “holding an empty bag.” *Forty Six Hundred LLC v. Cadence Educ., LLC*, 15 F.4th 70, 79 (1st Cir. 2021). The result would be “illogical” in any case, *id.*, but all the more so in this one involving “question[s] of lasting significance,” *Trump*, 603 U.S. at 641. As a result of DANY’s strategic choices, including the decision to bring the charges against President Trump *after* he declared his candidacy for the Presidency and to wait until next year to file their brief in the Second Circuit, DANY is responsible for the extended and inexcusable delay that will result. *See Drake*, 61 N.Y.2d at 366 (“[I]f the delay is the result of judicial or prosecutorial negligence or mistake, a loss of jurisdiction results and the indictment must be dismissed.”).

Moreover, regardless of the outcome of the Second Circuit appeal, should Justice Merchan deny the pending Presidential immunity motion, the federal Constitution requires that President Trump be permitted to pursue an interlocutory appeal before the case moves forward in any other respect. *See Trump*, 603 U.S. at 635. Although President Trump may initiate that appeal in the First Department, the first-impression issues presented could ultimately merit review by the U.S. Supreme Court. That process, including intermediate appellate steps, would likely take a year or more.

Finally, to state what should be obvious, Justice Merchan cannot impose any restrictions whatsoever on President Trump prior to or during his second term in office. Thus, even if there was to be a sentencing—despite DANY’s violations of Presidential immunity in grand jury proceedings and at trial, as well as other Constitutional and legal errors—it could not take place until late-January 2029. Such timing is impermissible, including under the CPL. Collectively, these issues threaten “the possibility of an extended proceeding,” which “alone may render” the President “unduly cautious in the discharge of his official duties.” *Trump*, 603 U.S. at 636 (cleaned up). “The Constitution does not tolerate such impediments to the effective functioning of government.” *Id.* at 636-37 (cleaned up). “The enfeebling of the Presidency and our Government that would result from such a cycle of factional strife is exactly what the Framers intended to avoid.” *Id.* at 640. This is another reason that dismissal is required and in the interests of justice.

III. A Stay Is Necessary

The foregoing considerations establish the need for dismissal. However, to the extent you are unable to take steps necessary to dismiss the case before the end of the week, we intend to file a motion for a stay of proceedings before Justice Merchan on Monday, November 11, 2024, while DANY considers the requests in this submission and until the appeal is resolved in *People v. Trump*, 24-2299-cv (2d Cir.). Please let us know your position regarding the motion by Saturday, November 9, 2024.

Respectfully Submitted,

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

Attorneys for President Donald J. Trump

Cc: Matthew Colangelo
Susan Hoffinger
Rebecca Mangold
Joshua Steinglass
Steven Wu
(Via Email)

Ex. 2

PART 57 NOV. 12 2024

From: Stephen Suhovsky
To: Emil Bove; Colangelo, Matthew; Hon. Juan M. Merchan; Michele D. Hendricks; Todd Blanche; Kendra Wharton; Stephen Weiss; Susan Necheles; Gedalia Stern; Steinglass, Joshua; Hoffinger, Susan; Conroy, Christopher; Mangold, Rebecca; Ellis, Katherine; [REDACTED]
Subject: [EXTERNAL] RE: People v. Trump, Ind. No. 71543-23, request for adjournment
Date: Sunday, November 10, 2024 2:32:39 PM

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Mr. Colangelo and Mr. Bove, the Court is in receipt of your e-mails.

The joint application for a stay of the current deadlines, including decision on the Defendant's CPL 330.30 motion, until November 19, 2024, is granted. As per the People's request, the People are to file with the Court, off calendar, your view of appropriate steps going forward. Please make such filing no later than 10:00am on the requested date.

Please file a copy of this correspondence, including Mr. Bove's e-mail, on the Court docket first thing Tuesday.

Best,
Steve

From: Emil Bove [REDACTED]
Sent: Sunday, November 10, 2024 9:36 AM
To: Colangelo, Matthew [REDACTED]; Hon. Juan M. Merchan
[REDACTED]; Stephen Suhovsky [REDACTED]; Michele D. Hendricks
[REDACTED]; Todd Blanche [REDACTED]; Kendra Wharton
[REDACTED]; Stephen Weiss [REDACTED]; Susan
Necheles [REDACTED]; Gedalia Stern [REDACTED]; Steinglass, Joshua
[REDACTED]; Hoffinger, Susan [REDACTED]; Conroy, Christopher
[REDACTED]; Mangold, Rebecca [REDACTED]; Ellis, Katherine
[REDACTED]; [REDACTED]
Subject: Re: People v. Trump, Ind. No. 71543-23, request for adjournment

Dear Justice Merchan,

President Trump joins DANY's request to stay the existing scheduled dates, including the dates for a decision on the pending Presidential immunity motion and sentencing. There are strong reasons for the requested stay, and eventual dismissal of the case in the interests of justice, under the US Supreme Court's decision in Trump v. United States and the Presidential Transition Act of 1963, 3 USC 102 note. The Special Counsel's Office recently sought and obtained the same stay relief in the District of Columbia, and they are reportedly considering dismissing both of their prosecutions. The stay, and dismissal, are necessary to avoid unconstitutional impediments to President Trump's ability to govern, which is the broader argument that we made to DANY on Friday. We are prepared to make a submission regarding these authorities in support of DANY's stay request by noon tomorrow

if that would assist the court in evaluating the importance of a complete stay while DANY decides on their position regarding the dismissal that is warranted here.

Respectfully submitted,
Emil Bove

From: Colangelo, Matthew [REDACTED]
Sent: Sunday, November 10, 2024 8:33:55 AM
To: Hon. Juan M. Merchan [REDACTED]; Stephen Suhovsky
[REDACTED] Michele D. Hendricks
[REDACTED]; Todd Blanche [REDACTED]; Emil Bove
[REDACTED]; Kendra Wharton [REDACTED]; Stephen
Weiss [REDACTED]; Susan Necheles [REDACTED]; Gedalia Stern
[REDACTED]; Steinglass, Joshua [REDACTED]; Hoffinger, Susan
[REDACTED] Conroy, Christopher [REDACTED]; Mangold, Rebecca
[REDACTED]; Ellis, Katherine [REDACTED]; [REDACTED]
[REDACTED]
Subject: People v. Trump, Ind. No. 71543-23, request for adjournment

Dear Justice Merchan,

We are writing to advise the Court that on Friday, defendant asked the People to agree to a stay of these proceedings in order to provide time to review and consider a number of arguments based on the impact on this proceeding from the results of the Presidential election; defendant's forthcoming certification as President-elect on January 6, 2025; and his inauguration on January 20, 2025. In the alternative, the defense represented that they intend to file a motion on Monday, November 11, to stay all proceedings before this Court.

The People agree that these are unprecedented circumstances and that the arguments raised by defense counsel in correspondence to the People on Friday require careful consideration to ensure that any further steps in this proceeding appropriately balance the competing interests of (1) a jury verdict of guilt following trial that has the presumption of regularity; and (2) the Office of the President. Accordingly, the People respectfully request that the Court adjourn the upcoming scheduled dates to afford the People time to assess these recent developments, and set November 19, 2024 as a deadline for the People to advise the Court regarding our view of appropriate steps going forward.

The People have consulted with defense counsel, who consent to this request.

Respectfully submitted,
Matthew Colangelo

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