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.	Ind. No. 71543-23

PEOPLE'S MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Alvin L. Bragg, Jr.
District Attorney
New York County
One Hogan Place
New York, NY 10013

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INTRODUCTION

This Court should reject defendant's motion to "immediately" dismiss the indictment and vacate the jury's guilty verdict based on the outcome of the recent presidential election. Def.'s Mem. 1.[1] There are no grounds for such relief now, prior to defendant's inauguration, because President-elect immunity does not exist. And even after the inauguration, defendant's temporary immunity as the sitting President will still not justify the extreme remedy of discarding the jury's unanimous guilty verdict and wiping out the already-completed phases of this criminal proceeding. As defendant does not dispute, the 34 felonies of which he stands convicted involved purely unofficial conduct, not any official presidential acts. "[F]or a President's unofficial acts, there is no immunity." *Trump v. United States*, 603 U.S. 593, 615 (2024). At most, defendant should receive temporary accommodations during his presidency to prevent this criminal case from meaningfully interfering with his official decision-making. But multiple accommodations well short of dismissal and vacatur would satisfy that objective, including a stay of proceedings during his term in office if judgment has not been entered before presidential immunity attaches. By contrast, defendant's requested relief would go well beyond what is necessary to protect the presidency and would subvert the compelling public interest in preserving the jury's unanimous verdict and upholding the rule of law.

Defendant's remaining arguments do not come close to supporting dismissal and vacatur. The vast majority of defendant's claims involve objections that this Court and others have repeatedly rejected, including defendant's persistent and baseless attacks on the integrity of this Court and on the People's conduct during this prosecution. Defendant provides no basis

[1] Citations to "Def.'s Mem. __" are to the December 2, 2024 memorandum of law supporting defendant's motion to dismiss.

whatsoever for this Court to revisit these rewarmed complaints. Instead, the overwhelming evidence of defendant's guilt and the critical importance of preserving public confidence in the criminal justice system, among many other factors, weigh heavily against dismissal. This Court should accordingly deny defendant's motion.

PROCEDURAL BACKGROUND

Defendant was indicted by the grand jury on March 30, 2023, on 34 felony counts of falsifying business records to conceal a criminal conspiracy to undermine the integrity of the 2016 presidential election. He was arraigned on April 4, 2023. Trial began with jury selection on April 15, 2024. Defendant was convicted by the jury on May 30, 2024, of all 34 felony counts. Tr. 4947-4952; *see* CPL §§ 1.20(12); 1.20(13); 310.40(1); 310.80. The Court then adjourned the matter for sentence to July 11, 2024. *See* Tr. 4957.

On July 1, 2024, the Supreme Court decided *Trump v. United States*, 603 U.S. 593 (2024), regarding the scope of presidential immunity from criminal prosecution for conduct alleged to involve official acts during his tenure in office. *Id.* at 601-02. That day, defendant sought leave to file a motion to set aside the jury's verdict pursuant to CPL § 330.30 based on the Supreme Court's immunity ruling. On July 2, 2024, the Court granted defendant's motion; set a July 10 deadline for defendant's CPL § 330.30 motion and a July 24 deadline for the People's opposition; set September 6, 2024 as the date for decision on the motion; and adjourned the sentencing hearing to September 18, 2024, "if such is still necessary." *See* Order (July 2, 2024). Defendant's CPL § 330.30 motion has been fully briefed since July 31, 2024.

On July 31, 2024, defendant filed a motion seeking the Court's recusal and requested that the motion be resolved "prior to the resolution of the pending Presidential immunity motion." Def.'s Ltr. 1 (July 31, 2024). The People opposed recusal on August 1. *See* People's Ltr. (Aug. 1, 2024). On August 5, 2024, the Court entered a new scheduling order setting August 11, 2024 as

the date for decision on the recusal motion; setting September 16 as the date for decision on the CPL § 330.30 motion; and retaining the September 18 appearance for "the imposition of sentence or other proceedings as appropriate." Order 2 (Aug. 5, 2024). The Court denied the recusal motion on August 13, 2024. *See* Decision on Def.'s Mot. for Recusal (Aug. 13, 2024).

On August 14, 2024, defendant moved to adjourn the sentencing "until after the 2024 Presidential election" and to allow "adequate time to assess and pursue state and federal appellate options" in response to any adverse ruling on the pending CPL § 330.30 motion. Def.'s Ltr. (Aug. 14, 2024). That motion argued, among other things, that any adverse ruling on defendant's CPL § 330.30 motion would be immediately appealable before sentence because immunity questions must be resolved as early as possible in any litigation. *See id.* On August 16, the People filed a response stating that the People "defer to the Court on the appropriate post-trial schedule that allows for adequate time to adjudicate defendant's CPL § 330.30 motion while also pronouncing sentence 'without unreasonable delay.'" People's Ltr. (Aug. 16, 2024) (quoting CPL § 380.30(1)).

On August 29, 2024, while defendant's motion to adjourn was pending with this Court, defendant purported to file a second notice of removal in federal court.[2] *See* Def.'s Second Notice of Removal, *New York v. Trump*, No. 23 Civ. 3773, ECF No. 46 (S.D.N.Y. Aug. 29, 2024). That filing was rejected for failure to seek leave pursuant to 28 U.S.C. § 1455(b)(1), and on September 3 defendant filed a motion for leave to file a second removal notice. *See* Def.'s Mot. for Leave to

[2] Defendant filed his first notice of removal pursuant to 28 U.S.C. § 1442(a)(1) on May 4, 2023. The district court held an evidentiary hearing on June 27, 2023, and remanded the matter to this Court on July 19, 2023. *See New York v. Trump*, 683 F. Supp. 3d 334, 342, 345-50 (S.D.N.Y. 2023) (rejecting defendant's claim that the charges were for or related to any action he took under color of federal office, and holding that defendant had not identified any colorable federal defense to the charges, including on the basis of presidential immunity). Defendant filed a notice of appeal challenging the district court's decision, but he then moved to dismiss his appeal, which the Second Circuit granted on November 15, 2023. *See People v. Trump*, No. 23-1085, 2023 WL 9380793 (2d Cir. Nov. 15, 2023).

File, *New York v. Trump*, No. 23 Civ. 3773, ECF No. 49 (S.D.N.Y. Sept. 3, 2024). The district court denied that motion on September 3. *See New York v. Trump*, No. 23 Civ. 3773, 2024 WL 4026026 (S.D.N.Y. Sept. 3, 2024). Defendant sought a stay from the district court, which the district court denied on September 6. *See* Order & Opinion Denying Mot. for Stay, *New York v. Trump*, No. 23 Civ. 3773, ECF No. 54 (S.D.N.Y. Sept. 6, 2024). Defendant also filed a Second Circuit appeal and motion for stay and emergency stay on September 4, 2024.

While defendant's Second Circuit stay motion was pending, on September 6, 2024, this Court granted defendant's August 14 motion to adjourn. *See* Order (Sept. 6, 2024). The Court noted that the original sentencing date of July 11 was necessarily delayed when, on July 1, the Supreme Court "rendered a historic and intervening decision in *Trump v. United States* . . . which this Court must interpret and apply as appropriate." *Id.* at 2. The Court then explained that because "[t]he public's confidence in the integrity of our judicial system demands a sentencing hearing that is entirely focused on the verdict of the jury and the weighing of aggravating and mitigating factors free from distraction or distortion," and because "[t]he Court is a fair, impartial, and apolitical institution," the Court would grant a further adjournment to "avoid any appearance—however unwarranted—that the proceeding has been affected by or seeks to affect the approaching Presidential election in which the Defendant is a candidate." *Id.* at 3. The Court set a new schedule ordering that decision on defendant's CPL § 330.30 motion would be handed down off-calendar on November 12, 2024, and adjourning sentencing (if necessary) to November 26, 2024. *Id.* at 4.

On September 12, 2024, the Second Circuit denied defendant's motion for a stay "[i]n light of the state court's adjournment of sentencing until November 26, 2024." Order Denying Stay, *New York v. Trump*, No. 24-2299, Dkt. 31.1 (2d Cir. Sept. 12, 2024). Defendant then filed his appellate brief on the merits on October 14, 2024, and the People's response brief is due January

13, 2025. *See* Br. for Def.-Appellant, *New York v. Trump*, No. 24-2299, Dkt. 47.1 (2d Cir. Oct. 14, 2024); Scheduling Order, *New York v. Trump*, No. 24-2299, Dkt. 55.1 (2d Cir. Oct. 22, 2024)

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. The People asked the Court for an adjournment to evaluate that request, which defendant joined, and which the Court granted on November 10. *See* Email from Mr. Suhovsky (Nov. 10, 2024). The People then advised the Court on November 19 that after carefully evaluating defendant's request, the People believed the appropriate course was for the Court to set a briefing schedule for defendant to present his arguments for dismissal to the Court, and for the Court to adjourn further proceedings pending resolution of that motion. People's Ltr. 1 (Nov. 19, 2024). That day, defendant filed a premotion letter "to request permission to file a motion to dismiss . . . pursuant to CPL § 210.40." Def.'s Ltr. (Nov. 19, 2024).

By order dated November 22, 2024, the Court granted defendant's motion for leave to file a motion to dismiss pursuant to CPL § 210.40; stayed decision on defendant's fully-briefed CPL § 330.30 motion "pending receipt of the papers from all parties submitted in accordance with the motion schedule" for defendant's CPL § 210.40 motion; and stayed sentencing "to the extent that the November 26, 2024, date is adjourned." Decision & Order (Nov. 22, 2024). Defendant then filed his motion to dismiss on December 2, 2024.

ARGUMENT

I. Legal standard for dismissal in the interest of justice under CPL § 210.40.

The law sets a high bar for dismissal of an indictment in the interest of justice. CPL § 210.40 authorizes dismissal only when "some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would

constitute or result in injustice." *Id.* § 210.40(1). In determining whether the statutory standard for dismissal is met, the Court "must, to the extent applicable, examine and consider, individually and collectively," the following factors:

(a) the seriousness and circumstances of the offense;

(b) the extent of harm caused by the offense;

(c) the evidence of guilt, whether admissible or inadmissible at trial;

(d) the history, character and condition of the defendant;

(e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;

(f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;

(g) the impact of a dismissal upon the confidence of the public in the criminal justice system;

(h) the impact of a dismissal on the safety or welfare of the community;

(i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;

(j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

Id. In considering these factors (the "*Clayton* factors," *see People v. Clayton*, 41 A.D.2d 204 (2d Dep't 1973)), the Court must "strike a sensitive balance" between the interests of the defendant and the State. *People v. Pittman*, 228 A.D.2d 225, 226 (1st Dep't 1996) (citing *Clayton*, 41 A.D.2d at 208). Although "the statute does not compel catechistic on-the-record discussion of items (a) through (j), . . . the need to show that the ultimate reasons given for the dismissal are both real and compelling almost inevitably will mean that one or more of the statutory criteria, even if only the catchall (j), will yield to ready identification." *People v. Rickert*, 58 N.Y.2d 122, 128 (1983).

Dismissal in the interest of justice is committed to the trial court's discretion, but "[t]he power to grant such relief is not absolute." *People v. Harmon*, 181 A.D.2d 34, 36 (1st Dep't 1992).

Rather, appellate courts repeatedly caution that dismissal under CPL § 210.40 is an "extraordinary remedy" that "should be exercised sparingly." *People v. Hernandez*, 198 A.D.3d 545, 545 (1st Dep't 2021). Dismissal should be reserved for "that rare and unusual case where it cries out for fundamental justice beyond the confines of conventional considerations." *People v. Williams*, 145 A.D.3d 100, 107 (1st Dep't 2016) (quoting *Harmon*, 181 A.D.2d at 36); *see also People v. Keith R.*, 95 A.D.3d 65, 67 (1st Dep't 2012). Motions to dismiss in the interest of justice are therefore "granted only in exceptional circumstances," and "trial courts granting such motions are routinely reversed and reminded by appellate tribunals that their discretion is 'not absolute.'" Lawrence K. Marks et al., New York Pretrial Criminal Procedure § 5:27 at 459 & nn.94-96 (7 West's N.Y. Prac. Series, 2d ed. 2007 & Supp. 2024) (citing cases).

Dismissal in furtherance of justice is "neither an acquittal of the charges nor any determination of the merits. Rather, it leaves the question of guilt or innocence unanswered." *Ryan v. N.Y. Tel. Co.*, 62 N.Y.2d 494, 504-05 (1984) (citing *Rickert*, 58 N.Y.2d at 126, and *Clayton*, 41 A.D.2d at 206-07).

Because defendant's request for leave to seek dismissal in the interest of justice was based on his claims of presidential and pre-presidential immunity arising on and after November 5, 2024, *see* Def.'s Ltr. 1-2 (Nov. 19, 2024), and because—as described further below—the remaining arguments in defendant's December 2 motion to dismiss largely rehash failed arguments that he has presented unsuccessfully to this and other courts many times, the People's opposition begins by addressing defendant's claims of immunity. *See infra* Parts II, III; CPL § 210.40(1)(j).[3] The People then address the remaining *Clayton* factors. *See infra* Part IV; CPL §§ 210.40(1)(a)-(i).

[3] Defendant characterizes his immunity arguments as a basis for dismissal pursuant to CPL § 210.20(1)(h). That motion is time-barred for the reasons described in Part V below, but the Court

II. Defendant does not currently have immunity as President-elect.

The Court may readily reject defendant's argument that his "status as President-elect" requires immediate dismissal under Article II or the Supremacy Clause. Def.'s Mem. 35, 41-43.

A. Presidential immunity under Article II does not extend to the President-elect.

As an initial matter, presidential immunity under Article II of the Constitution does not extend to the President-elect. Article II vests the entirety of the executive power in the incumbent President, *see Trump*, 603 U.S. at 607 (quoting U.S. Const. art. II, § 1, cl. 1), and the Supreme Court has long recognized that "only the incumbent is charged with performance of the executive duty under the Constitution." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 448 (1977). The President-elect is, by definition, not yet the President. The President-elect therefore does not perform any Article II functions under the Constitution, and there are no Article II functions that would be burdened by ordinary criminal process involving the President-elect.

The rationales that support presidential immunity from prosecution for official conduct also do not apply to the President-elect. "The 'justifying purposes'" of presidential immunity for official actions "are to ensure that the President can undertake his constitutionally designated functions effectively, free from undue pressures or distortions." *Trump*, 603 U.S. at 615-16 (quoting *Clinton v. Jones*, 520 U.S. 681, 694 & n.19 (1997), and *Nixon v. Fitzgerald*, 457 U.S. 731, 755 (1982)). But only the incumbent President has any "constitutionally designated functions," *id.*, *see Nixon*, 433 U.S. at 448; and because the President-elect is not the President, there is no risk that "the President's decisionmaking is . . . distorted" by a pre-existing criminal case against a defendant who later becomes the President-elect. *Trump*, 603 U.S. at 615.

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may fully consider defendant's immunity arguments pursuant to CPL § 210.40(1)(j) as part of defendant's *Clayton* motion.

Finally, the criminal charges for which defendant was convicted in this case stem exclusively from defendant's "unofficial acts"—conduct for which "there is no immunity" under Article II in any event. *Id.* Defendant's request that this Court create a doctrine of pre-presidential immunity under Article II that attaches *before* a President-elect becomes President—and that applies where the defendant's criminal conduct is wholly based on unofficial, not official, acts—has no grounding in Article II of the Constitution.

B. Intergovernmental immunity under the Supremacy Clause does not apply.

Nor is defendant correct that the demands of the presidential transition immunize him from all state criminal process during the period before his inauguration. Def.'s Mem. 33-34, 41-43.

Defendant appears to be making an argument based on the Supremacy Clause doctrine of intergovernmental immunity, which provides that a state may not "regulate[] the United States directly or discriminate[] against the Federal Government or those with whom it deals." *North Dakota v. United States*, 495 U.S. 423, 435 (1990); *see also M'Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 436 (1819) ("The States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government."). This rule "finds its reason in the principle that the States may not directly obstruct the activities of the Federal Government." *North Dakota*, 495 U.S. at 437-38. But a state "does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them." *Washington v. United States*, 460 U.S. 536, 544-45 (1983). Expecting a criminal defendant who has become the President-elect to comply with pre-existing court deadlines—just as a state criminal court expects of every other criminal defendant—does not discriminate against the federal government or "treat[] someone else better than it treats them." *Id.*

Nor would the limited remaining steps in this criminal case "directly obstruct" the federal government in any event. *North Dakota*, 495 U.S. at 437-38. Trial ended more than six months ago with the jury's guilty verdict on May 30, 2024, so there is no risk that a time-consuming trial would require defendant's full-time presence in court and unduly burden the presidential transition process. Indeed, the only remaining steps before sentencing are for this Court to adjudicate defendant's two pending motions to dismiss under CPL §§ 210.40 and 330.30. Having filed those motions to dismiss and then sought repeated adjournments of sentencing to permit their determination by this Court, it is particularly brazen for defendant to argue that the Supremacy Clause bars the Court from taking any action on the motions defendant himself filed.

Defendant cites a range of authorities, including the Presidential Transition Act and internal Justice Department guidance on the reimbursement of transition-related expenses, for the proposition that the period between an election and inauguration is important to the orderly transfer of executive power. Def.'s Mem. 32, 41-43. The People acknowledge the importance of an orderly executive transition and the peaceful transfer of power, but those interests do not require the extraordinary step of abating post-trial motion practice in a pre-existing criminal case. The Supreme Court has repeatedly recognized that routine judicial process such as that imposed by a criminal subpoena or civil suit imposes only a limited time burden that would not create a constitutionally-impermissible distraction for the President himself. *See Trump v. Vance*, 591 U.S. 786, 802 (2020) ("Just as a 'properly managed' civil suit is generally 'unlikely to occupy any substantial amount of' a President's time or attention, two centuries of experience confirm that a properly tailored criminal subpoena will not normally hamper the performance of the President's constitutional duties." (quoting *Clinton*, 520 U.S. at 702)); *see also id.* at 793-99 (surveying history of criminal process involving a sitting President). Given those holdings, this Court's adjudication

off calendar of defendant's fully-briefed motions—during the period when defendant is the President-elect and not yet President—cannot be said to "directly obstruct the activities of the Federal Government." *North Dakota*, 495 U.S. at 437-38.

III. Defendant's forthcoming presidential immunity does not require dismissal.

In addition to relying on the (nonexistent) theory of pre-presidential immunity, defendant also asserts that, upon his inauguration on January 20, 2025, his status as the President will require dismissal of this case. Def.'s Mem. 35-41. This claim is technically not yet ripe, since any presidential immunity will not exist until defendant is actually inaugurated. The People nonetheless address the impact of defendant's forthcoming presidential immunity now given the imminence of defendant's inauguration.

Defendant is wrong to argue that presidential immunity will require the dismissal and vacatur of the jury's verdict here once he is inaugurated. His sweeping arguments disregard the careful limits that the Supreme Court and the Department of Justice's Office of Legal Counsel (OLC) have placed on presidential immunity, as well as critical distinctions between this case and others where immunity has been raised.[4] *See infra* Parts III.A, III.B, III.C.

To be sure, the People do not dispute that presidential immunity requires accommodation during a President's time in office. But the extreme remedy of dismissing the indictment and vacating the jury verdict is not warranted in light of multiple alternative accommodations that would fully address the concerns raised by presidential immunity. For example, if judgment has not been entered before presidential immunity attaches, the Court could at that point stay further proceedings for the duration of defendant's presidency, which—as discussed below—would

[4] "OLC's views are not binding, nor are they entitled to deference"; rather, courts consider OLC's opinions "for their persuasive value." *Ctr. for Biological Diversity v. U.S. Int'l Dev. Fin. Corp.*, 77 F.4th 679, 689 (D.C. Cir. 2023).

appropriately balance the competing interests here, would not run afoul of Article II immunity, and would not impair defendant's rights to a speedy trial or prompt sentencing. *See infra* Part III.D.1. If the Court concludes that even this approach would impermissibly interfere with the presidency, the Court could instead terminate these proceedings with a notation that the jury verdict has not been vacated and the indictment has not been dismissed, *see infra* Part III.D.2, or adopt limitations on any future sentencing that would minimize any impact of this pending criminal case, *see infra* Part III.D.3. Given the availability of these alternatives to dismissal, this Court should deny defendant's request to dismiss the indictment and vacate the jury verdict.

A. For unofficial conduct, presidential immunity is not a permanent exemption from criminal accountability, but only a temporary immunity that goes no further than necessary to protect official decision-making.

Contrary to some of defendant's characterizations, presidential immunity has never been held to be an absolute bar to all criminal or civil liability for a sitting President "because he is the President." *Trump*, 603 U.S. at 615. "The President is not above the law." *Id.* at 642; *see also Zervos v. Trump*, 171 A.D.3d 110, 121 (1st Dep't 2019) ("[T]he President is still a person, and he is not above the law."). Accordingly, the Supreme Court has been careful to limit presidential immunity to serve its "justifying purpose[]": namely, "to ensure that the President can undertake his constitutionally designated functions effectively, free from undue pressures or distortions." *Trump*, 603 U.S. at 615.

The fact that defendant will become the sitting President is thus not dispositive. Rather, the appropriate analysis involves a balancing of competing public interests. The first step is a *practical* inquiry into whether further judicial process will in fact meaningfully interfere with the President's official functions. *See* Memorandum from Randolph D. Moss, Assistant Att'y Gen., Office of Legal Counsel, *A Sitting President's Amenability to Indictment and Criminal Prosecution*, 24 Op. OLC 222, 244-45 (Oct. 16, 2000) ("OLC Mem."), *at* 2000 WL 33711291 ("the proper inquiry

focuses on the extent to which [a criminal proceeding] prevents the Executive Branch from accomplishing its constitutionally assigned functions") (quotation marks omitted). Even when there is such interference, the next step of the balancing analysis considers whether there are "legitimate governmental objectives" that may justify further judicial proceedings nonetheless, including "the important interest in maintaining the 'rule of law,'" *id.* at 245, 257, and the heightened public interest in "criminal prosecutions," *Nixon*, 457 U.S. at 754 n.37.

Applying this practical focus, the Supreme Court and OLC have limited the scope of presidential immunity in several ways that defendant ignores but that are critical to this case. First, the Supreme Court has drawn a sharp distinction between official and unofficial conduct. For official acts—i.e., actions performed under the President's official authority—the President has absolute immunity from civil liability, *Nixon*, 457 U.S. at 755-56, and at least presumptive immunity from criminal liability, *Trump*, 603 U.S. at 616. But "[a]s for a President's unofficial acts, there is no immunity"—whether from criminal liability, *id.* at 615, or from civil liability, *Clinton*, 520 U.S. at 695.

This distinction recognizes the radically different impact that criminal liability has on the President depending on the basis for such liability. "[L]iability predicated on his official acts" threatens to "distract a President from his public duties." *Fitzgerald*, 457 U.S. at 753. But defendant's claim that the same "unacceptable diversions and distractions" exist for unofficial conduct, Def.'s Mem. 36, is incorrect. "Although Presidential immunity is required for *official* actions to ensure that the President's decisionmaking is not distorted by the threat of future litigation stemming from those actions, that concern does not support immunity for *unofficial* conduct." *Trump*, 603 U.S. at 615. Put simply, potential criminal liability for unofficial conduct—which by definition has no relationship to the President's formal powers—does not lead to the

same "diversion of the President's attention during the decisionmaking process" because such liability would not turn on "any particular official decision." *Clinton*, 520 U.S. at 694 n.19. Indeed, the lack of any protection for unofficial conduct is so clear that the Supreme Court has held that a President can even be "subject to criminal prosecution for unofficial acts committed *while in office*." *Trump*, 603 U.S. at 606 (emphasis added).

Here, as defendant does not dispute, the charges in this case all involve purely personal and unofficial conduct, rather than official presidential acts. The U.S. District Court for the Southern District of New York—in addressing the closely related question of whether the charged conduct involved "any act under color of office" for purposes of federal-officer removal, 28 U.S.C. § 1442(a)(1)—rightly concluded that the conduct charged "was purely a personal item of the President—a cover-up of an embarrassing event. Hush 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." *New York v. Trump*, 683 F. Supp. 3d 334, 345 (S.D.N.Y. 2023). Criminal liability in this case thus does not, on its own, threaten the type of interference with official decision-making that would trigger the concerns animating presidential immunity.

Second, because immunity is concerned only with protecting the President's ability to exercise his official functions, any immunity from criminal process is necessarily limited in duration: as OLC has explained, it is "a temporary immunity from such criminal process while the President remains in office." OLC Mem. 238. This temporal restriction means that there is no immunity before a President is inaugurated. *See supra* Part II. And it also means that there is no immunity after a President leaves office. "Recognizing an immunity from prosecution for a sitting President would not preclude such prosecution once the President's term is over or he is otherwise

removed from office by resignation or impeachment." OLC Mem. 255; *see also Vance*, 591 U.S. at 803 (holding that a "sitting President" may be charged "after the completion of his term").

The importance of preserving a President's ability to be held criminally accountable after the expiration of his term has led the Supreme Court to reject applications of presidential immunity that would "forever thwart[] the public's interest in enforcing its criminal laws." OLC Mem. 255 n.32. Specifically, in *United States v. Nixon*, 418 U.S. 683 (1974), the Court rejected a sweeping claim of absolute immunity that would have allowed a sitting President to disregard a criminal subpoena probing into his official acts. Quashing the subpoena there, the Court held, would mean that a pending "criminal prosecution may be totally frustrated." *Id.* at 713. Such permanent interference with the criminal process was an intolerable result given that presidential immunity is supposed to protect a President's official decision-making only while in office, not to forever insulate the President from criminal liability—especially for his unofficial conduct.

Third, as *Nixon* demonstrates, the Supreme Court has consistently allowed the criminal process to go forward during a sitting President's term, despite claims that doing so would impede the President's official functions. *Nixon* thus found no categorical barrier to requiring a sitting President to respond to a criminal subpoena in a pending prosecution where the President was an unindicted co-conspirator based on his official acts. *Id.* at 687. And in *Vance*, the Court similarly held that this Office could also compel a sitting President to respond to a criminal subpoena regarding his unofficial acts. 591 U.S. at 810.

As particularly relevant here, *Vance* rejected the argument that the mere "prospect of [the President's] future criminal *liability*" was a reason to extend immunity to block the state criminal subpoena at issue there, "even when the President is under investigation." *Id.* at 803. And in response to defendant's argument in that case that the criminal process there "would necessarily

divert the Chief Executive from his duties," the Court explained that it had already "expressly rejected immunity based on distraction alone" in *Clinton* and other cases. *Id.* at 801-02. Future criminal liability alone thus does not "render [the President] unduly cautious in the discharge of his official duties," *Fitzgerald*, 457 U.S. at 752 n.32.

Beyond what the Supreme Court has held, OLC has further opined that "the indictment and criminal prosecution of a sitting President would unduly interfere with the ability of the executive branch to perform its constitutionally assigned duties." OLC Mem. 260. But with the exception of one passage (which is discussed below, *see infra* at 26-27), OLC's conclusion rested on the assumption that any "criminal prosecution" would involve the imposition of active obligations on the sitting President. For example, OLC identified "[t]hree types of burdens" that could follow from criminal prosecution: "the *actual imposition* of a criminal sentence of incarceration" (not, as defendant rephrases it, merely "potential incarceration," Def.'s Mem. 38); stigma from "the *initiation* of criminal proceedings"; and the burdens of "*assisting* in the preparation of a defense." OLC Mem. 246 (emphasis added). Only such concrete compulsions forcing a President to participate in active criminal proceedings during his tenure would risk causing "so serious a physical interference with the President's performance of his official duties that it would amount to an incapacitation." *Id.* at 230 (quotation marks omitted).

B. Defendant's request for dismissal and vacatur ignores the limitations of presidential immunity for unofficial conduct.

Neither the Supreme Court nor OLC has addressed the impact of presidential immunity in the precise circumstances of this case: a state prosecution, based on crimes consisting wholly of unofficial acts, where a jury has already found the defendant guilty beyond a reasonable doubt.[5]

[5] Defendant wrongly suggests, *e.g.*, Def.'s Mem. 37, that OLC's "categorical rule against indictment or criminal prosecution," OLC Mem. 254, was meant to cover criminal proceedings

The principles outlined above, however, demonstrate that defendant's request to vacate the jury's verdict and dismiss the indictment goes far beyond the well-recognized limitations of presidential immunity.[6]

First, defendant's requested relief here would effectively give him immunity *beyond* his presidential term for his *unofficial* criminal conduct—in stark conflict with the Supreme Court's repeated holding that there is no immunity at all for unofficial conduct, and with OLC's recognition that any presidential immunity in this context is necessarily temporary. Dismissal and vacatur would effectively extend the period of defendant's immunity to a time *before* his presidency, by wiping out the effects of an indictment and jury verdict that took place before he was even reelected President. In addition, outright dismissal would have persistent consequences *after* the presidency, thereby "thwart[ing] the public's interest in enforcing its criminal laws." OLC Mem. 255 n.32. In effect, dismissal would convert "a temporary immunity from . . . criminal process while the President remains in office," OLC Mem. 238, into an exemption from criminal charges for unofficial conduct that would extend beyond the duration of his presidential term—and would not just post-date his term but *pre*-date it as well. Such an outcome would be inconsistent not only

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regardless of their procedural posture. But OLC's approach was "categorical" because it was indifferent to the nature or gravity of the "particular criminal charge." *Id.* By contrast, the procedural posture of a case plainly did make a difference: hence OLC's separate "[b]alancing [of] competing concerns" in the distinct scenario where a President is indicted but the case is held in abeyance, *id.* at 259, and the Supreme Court's subsequent recognition that no immunity applies at the earlier procedural stage of a state criminal subpoena, *Vance*, 591 U.S. at 810-11; *compare id.* at 836 (Alito, J., dissenting) (asserting that search warrants, subpoenas, and indictments are all examples of "a State's exercise of its criminal law enforcement powers").

[6] Given the unique posture of this case, defendant is simply wrong to assert that the People already "conceded" the issue here in *Trump v. Vance*. Def.'s Mem. 3-4, 45-46. As the full context of defendant's carefully selected quotations show, the People were referring to prosecutions for a President's "official acts," none of which are the basis of the criminal charges here; and with "real burden[s]" on a President's decision-making rather than "a speculative mental distraction claim," which is the principal claim that defendant raises here. *See* Ex. 67 at 54, 63.

with Supreme Court precedent and OLC's analysis but also with defendant's own concession in *United States v. Trump* that "the president is subject to prosecution for all personal acts, just like every other American for personal acts." Tr. of Oral Argument 51-52, *Trump v. United States*, No. 23-939 (Apr. 25, 2024).

Second, the Supreme Court's recent conclusion that immunity for a President's official acts was necessary "to ensure that the President can undertake his constitutionally designated functions effectively, free from undue pressures or distortions," *Trump*, 603 U.S. at 615, does not warrant dismissal here. The Court's concern in that case was the overlap between the President's official duties and future criminal liability; given that overlap, a "President inclined to take one course of action based on the public interest may instead opt for another, apprehensive that criminal penalties may befall him upon his departure from office." *Id.* at 613. But there is no similar nexus between defendant's future presidential duties and the criminal charges and convictions here because falsifying business records to cover up personal payments to an adult film star "is not related to a President's official acts." *Trump*, 683 F. Supp. 3d at 345. Given the unofficial conduct underlying the criminal charges and convictions in this case, the mere pendency of this proceeding will not prevent defendant from "perform[ing] [his] designated functions effectively without fear that a particular decision may give rise to personal liability." *Clinton*, 520 U.S. at 693.[7]

The advanced stage of the criminal proceedings here also diminishes any interference with the President's official role. In discussing "the burdens of criminal defense," OLC emphasized the many pretrial and trial proceedings that "would require the President's personal attention and attendance at specific times and places"—including, critically, "his personal appearance

[7] To the extent defendant is concerned that any future sentencing proceeding may be affected by his conduct during his term in office, this Court may adopt a number of remedies short of dismissal to ameliorate that concern. *See infra* Part III.D.

throughout the duration of [the] criminal trial" in order to provide an effective defense. OLC Mem. 253. Here, by contrast, essentially all of those proceedings have already taken place since the jury trial is complete. With the exception of sentencing—which could be adjourned if judgment is not entered before immunity attaches, *see infra* Part III.D.1—there are no more proceedings where defendant would be compelled to personally appear in a manner that would remove him from his presidential duties altogether. And to the extent defendant chooses to continue litigating issues related to his criminal conviction, such as pursuing motion practice in this Court or interlocutory or final appeals, there is no reason to believe that "flexibility in scheduling" would be unable to accommodate defendant's official duties. OLC Mem. 252; *Clinton*, 520 U.S. at 691-92; *cf.* 22 N.Y.C.R.R. § 1250.9(a)-(b) (allowing multiple extensions beyond the default six months to perfect an appeal). Defendant is thus simply wrong to assert that this pending criminal proceeding, given its advanced stage, will mandate undue expenditure of his "personal time and energy." Def.'s Mem. 39.

Despite the absence of any concrete interference with defendant's official presidential functions, defendant claims that, under OLC's analysis, "the stigma associated with an ongoing criminal prosecution" itself imposes a cognizable burden. Def.'s Mem. 38. But OLC was focused on "the public stigma and opprobrium occasioned by the *initiation* of criminal proceedings." OLC Mem. 246 (emphasis added); *see also id.* at 249 ("stigma arising . . . from the initiation of a criminal prosecution"). In other words, OLC's concern was with *additional* criminal process during a President's time in office that would create—or, at minimum, amplify—"public stigma and opprobrium." *Id.* at 246. But nothing in OLC's analysis suggested that presidential immunity would allow a sitting President to reach back in time to vacate *preexisting* sources of such stigma that originated at a time when no presidential immunity existed. Here, any stigma that defendant

faces from this criminal proceeding already manifested when he was indicted and found guilty by a jury of his peers. *See Herrera v. Collins*, 506 U.S. 390, 399 (1993) ("Once a defendant has been afforded a fair trial and convicted of the offense for which he was charged, the presumption of innocence disappears."). Allowing a President's "temporary immunity," OLC Mem. 238, to retroactively invalidate such pre-existing sources of stigma would lead to absurd results: a President could argue, for example, that he has a right to vacate long-finalized criminal convictions (or even civil liability for, say, defamation or financial fraud) because such convictions or judgments would subject him to public criticism. Neither OLC nor the Supreme Court has ever endorsed such a far-reaching application of presidential immunity.

Defendant's only remaining argument is that—even if he is not subject to any immediate obligations in this criminal proceeding during his presidency—the mere prospect of returning to this Court for sentencing after his presidency would "create[] unconstitutional and unacceptable diversions and distractions." Def.'s Mem. 36. As explained above, however, the Supreme Court has already rejected the idea that this defendant's fear of future criminal liability based on his unofficial conduct warrants any special defense from criminal process during his presidency. *Vance*, 591 U.S. at 810. And the Court did so despite the fact that, at the preliminary stage of a criminal investigation, a defendant likely feels *greater* apprehension about the future actions of a prosecutor than during subsequent stages. After all, during an investigation, a defendant will not know whether he is definitively a target, what charges may or may not be brought, or what the full range of criminal penalties might be.[8] Yet the Supreme Court in *Vance* squarely held that no

[8] Defendant distorts the record by claiming that the People's accurate description of an early criminal investigation somehow included "a false suggestion" that defendant "was not the target of their investigation." Def.'s Mem. 48. The People made no such representation. Rather, as the People's Supreme Court brief and the entirety of the cited footnote from the dissenting opinion

distraction or influence on official decision-making from such uncertainty warranted insulating the President from a criminal investigation during his term or from criminal prosecution afterward. *Id.* at 803. That conclusion applies all the more forcefully here, when the criminal case has already been narrowed by the proceedings that have already taken place. In other words, unlike at the investigation stage, nothing that defendant does during his presidency could possibly influence the charges, the evidence at trial, or the guilty verdict that has already transpired. And to the extent that defendant still faces sentencing after his presidency, the range of available penalties is now constrained by defendant's felony convictions, and this Court can adopt various measures to blunt defendant's concerns on that front in any event, as explained below. *See infra* Part III.D.3.

Third, even assuming that the mere pendency of this criminal case during defendant's presidency could cause some concrete interference with his official duties, any such minimal interference would still be outweighed by "legitimate governmental objectives" in preserving the indictment and jury verdict here. OLC Mem. 245. In considering defendant's immunity arguments, 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." *Vance*, 591 U.S. at 810 (citing *United States v. Burr*, 25 F. Cas. 30, 34 (No. 14,692D) (C.C.D. Va. 1807)). As the Supreme Court recognized in rejecting defendant's previous attempt to resist criminal process from this Office on presidential immunity grounds, there is a compelling "public interest in fair and effective law enforcement." *Vance*, 591 U.S. at 808. And under our constitutional

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makes clear, the People made the point that a grand jury subpoena does not identify someone as a "target" of an investigation; and in any event the People do not use the terms "target" and "subject" in the same way as defined in the Justice Manual for federal prosecutors. Regardless, the People directly advised the Court that there was a grand jury investigation "into conduct that involves petitioner and multiple other persons and entities." Br. of Respondent 29 n. 10, *Trump v. Vance*, No. 19-635 (S. Ct. filed Feb. 26, 2020); *see also Vance*, 591 U.S. at 838 n.9 (Alito, J. dissenting).

system of dual sovereignty, "[p]erhaps the clearest example of traditional state authority is the punishment of local criminal activity." *Bond v. United States*, 572 U.S. 844, 858 (2014). Within that domain, "[t]he guilt or innocence determination in state criminal trials is a decisive and portentous event." *Herrera*, 506 U.S. at 401 (quotation marks omitted). Jurors are "representatives of the people," and there is a compelling public interest in "the jury's pronouncement of guilt or innocence, for in that singular moment the convictions and conscience of the entire community are expressed." *United States v. Gilliam*, 994 F.2d 97, 101 (2d Cir. 1993). Discarding a jury's verdict thus severely undermines the public interest in a manner that weighs heavily against dismissal here. *See Commonwealth v. Hernandez*, 118 N.E.3d 107, 120 (Mass. 2019) ("the State, as the representative of the community, continues to have an interest in maintaining a conviction").[9]

C. The disposition of the Special Counsel's federal prosecutions is not dispositive here in light of critical distinctions between the cases.

Finally, defendant asserts that this Court should follow the lead of the federal Special Counsel in defendant's D.C. and Florida prosecutions. Def.'s Mem. 31-32, 37. Following the results of the presidential election, the Special Counsel moved to dismiss the D.C. indictment without prejudice; in Florida, where the district court had already dismissed the case against defendant, the Special Counsel moved to dismiss its appeal from that order. In taking these actions, the Special Counsel acknowledged that it was balancing "two fundamental and compelling national interests": the interest in not interfering with the President's official responsibilities; and

[9] Defendant's suggestion that his subsequent election "superseded" the jury's verdict, Def.'s Mem. 50, is deeply misguided. As this Court carefully and correctly instructed the jury, it was the empaneled jurors who were "deciding whether the Defendant is guilty or not guilty" (Tr. 4818) because only these jurors—not the general electorate—heard all the evidence in this trial, were instructed on the relevant principles of law, and were charged with the solemn responsibility of determining whether the People had satisfied their burden of proof beyond a reasonable doubt. *See also infra* Part IV.D.

"the Nation's commitment to the rule of law." Gov't's Mot. to Dismiss 2-3, *United States v. Trump*, No. 23-cr-257, ECF No. 281 (D.D.C. Nov. 25, 2024) (the "SCO Mot."). To resolve that balance, the Special Counsel relied on a passage in OLC's 2000 memorandum concluding that a sitting President could not be indicted "even if all subsequent proceedings were postponed until after the President left office." OLC Mem. 259. The Special Counsel further represented that, upon further consultation, OLC had concluded that the same reasoning applies even "where a federal indictment was returned before the defendant takes office." SCO Mot. 6. The federal district court in D.C. granted the Special Counsel's motion and dismissed the indictment without prejudice. Order, *United States v. Trump*, No. 23-cr-257, ECF No. 283 (D.D.C. Nov. 25, 2024). The Eleventh Circuit likewise granted the motion to dismiss the appeal. Order, *United States v. Trump*, No. 24-12311, ECF No. 81 (11th Cir. Nov. 26, 2024).

For several reasons, the disposition of defendant's federal prosecutions does not dictate a similar result here. First, there are significant procedural and substantive differences between the two proceedings. As a procedural matter, unlike this case, both the D.C. and Florida prosecutions were at the earliest stages. The parties were still engaged in pretrial motion practice, including (in D.C.) to resolve the threshold immunity questions remanded by the Supreme Court; no jury had been impaneled; and no jury verdict had been reached, meaning that defendant still had the presumption of innocence against the criminal charges there. Given the nascent stage of those prosecutions, dismissal without prejudice was minimally disruptive, particularly because doing so did not require the court to vacate a jury verdict. Here, by contrast, the criminal proceeding is significantly more advanced, and dismissal would unwind completed phases of the criminal proceeding that the public has an interest in preserving. *See supra* at 21-22. Given these

differences, the Special Counsel's particular balancing of "fundamental and compelling national interests" (SCO Mot. 2) simply does not extend to this case.

As a substantive matter, the D.C. prosecution was also distinct because, as originally charged, it was based in significant part on defendant's official acts during his prior term as President, *see Trump*, 603 U.S. at 606, and on remand, the parties had briefed—but the district court had not yet resolved—the extent to which the superseding indictment that was returned after the Supreme Court's remand was based on any official acts. As the Supreme Court has now held, prosecution based on such official conduct raises serious concerns about "distort[ing] Presidential decisionmaking" by potentially making a President "apprehensive that criminal penalties may befall him" if he makes certain official choices. *Id.* at 613. By contrast, as discussed, the criminal charges in this proceeding are not based on official conduct at all. This case thus does not raise the same concerns about interference with official decision-making as the D.C. prosecution did.

Second, if anything, the Special Counsel's actual reasoning supports a different disposition here. The Special Counsel's explanation for its requested relief largely agreed with the analysis presented above: it acknowledged that presidential immunity is "temporary"; it endorsed the "longstanding principle that '[n]o man in this country is so high that he is above the law'"; and, in D.C., it resulted in a disposition—dismissal without prejudice—that would still allow defendant to be prosecuted on his federal charges after the end of his forthcoming presidential term. SCO Mot. 3, 5-6. Defendant's request to dismiss the indictment and vacate the jury verdict respects none of these principles. Thus, far from supporting defendant's request for extraordinary relief here, the Special Counsel's reasoning instead supports far less extreme remedies that would acknowledge the important public interests weighing against dismissal and vacatur here.

D. Assuming that judgment has not been entered before presidential immunity attaches, lesser remedies than dismissal would adequately address any legitimate concerns about the effect of this pending prosecution on presidential decision-making.

As noted, the People do not dispute that, upon his inauguration, a sitting President should receive accommodations during his time in office from state criminal proceedings that follow a trial conviction based on unofficial conduct. But multiple options well short of dismissing the indictment and vacating the jury verdict would satisfy the concerns raised by the Supreme Court and OLC. The People outline several such options here.

1. This proceeding could be stayed until the end of defendant's forthcoming presidential term.

First, any remaining steps in this criminal proceeding could simply be stayed from the date of defendant's inauguration until the end of his term of office. If defendant is sentenced before his inauguration, such a stay would merely place appellate proceedings in abeyance. If defendant takes future steps to stay his sentencing and succeeds in doing so, such a stay would delay his sentencing until after the end of his presidential term.

Either way, a stay would appropriately "reflect[] a balance of competing interests," OLC Mem. 245, by entirely exempting defendant from any immediate obligations in this case during his time in office, while at the same time respecting the public interest in upholding the rule of law and preserving the meaningful aspects of the criminal process that have already taken place, including the trial and the jury verdict. And such a stay would be consistent with OLC's recognition that "the immunity from indictment and criminal prosecution for a sitting President would generally result in the delay, but not the forbearance," of criminal proceedings. OLC Mem. 257; *see also id.* at 256 ("At most, therefore, prosecution would be delayed rather than denied."). For those reasons, if judgment has not been entered before presidential immunity attaches, this type of time-limited accommodation is far more appropriate than the sweeping relief that defendant

requests here, which would render the indictment and jury verdict in this case a nullity and eliminate his accountability for the crimes that a jury of his peers found he committed by proof beyond a reasonable doubt.

To be sure, OLC concluded in its 2000 memorandum that "a grand jury should not be permitted to indict a sitting President even if all subsequent proceedings were postponed until after the President left office." OLC Mem. 259. For several reasons, however, that conclusion is inapplicable here. First, that recommendation was based in part on OLC's concerns that "indictment alone will spur the President to devote some energy and attention to mounting his eventual legal defense." *Id.* Here, however, the advanced stage of this case means that defendant has *already* mounted his legal defense at the criminal trial and in dozens of legal filings. And although defendant remains to be sentenced, the demands in preparing for a sentencing hearing (particularly if sentencing would not take place until after defendant leaves office) are categorically less burdensome than for a trial, given that sentencing in this case would not involve a jury, witness testimony, or the presentation of documentary evidence.

Second, although OLC raised concerns about "[t]he stigma and opprobrium attached to indictment" in concluding that an abeyance would not be sufficient, it was plainly concerned with the *creation* of stigma from "indict[ing] a sitting President," OLC Mem. 259—harms that could be redressed by simply forbearing from initiating such criminal process during the President's term. By contrast, as discussed, here any stigma was created at a time when defendant enjoyed no presidential immunity at all. And, for the reasons already discussed, there is a categorical difference between retroactively invalidating already-completed phases of the criminal process and refraining from engaging in further criminal proceedings. OLC's concerns about creating (or

amplifying) stigma during a sitting President's term can be fully accommodated by a status here that would impose no new criminal obligations while defendant is in office.

Separately, defendant contends that there would be some legal barrier to a stay of proceedings here, Def.'s Mem. 53-54, but he is wrong. If defendant is sentenced and only his appeals remain pending at the time of his inauguration, there are no limitations whatsoever on an abeyance. New York's appellate courts provide generous deadlines for briefing, *see* 22 N.Y.C.R.R. § 1250.9(a)-(b), and it is routine for appeals to be decided years after sentencing even without a formal stay of proceedings. *See, e.g.*, *People v. Foreman*, 223 A.D.3d 418, 418 (1st Dep't 2024) (affirming conviction more than six years after sentencing). With regard to defendant's federal appeal, the Second Circuit "unquestionably" has the power to hold appeals in abeyance, *United States v. Outen*, 286 F.3d 622, 631 (2d Cir. 2002), and further provides a procedure under which an appeal can be dismissed without prejudice to reinstatement at a later time, *see* Second Circuit Local Rule 42.1.

If defendant is not sentenced before his inauguration, there is also no legal barrier to deferring that sentencing until after the end of his presidency. CPL § 380.30(1) requires the Court to pronounce sentence "without unreasonable delay," and a failure to do so "results in a loss of jurisdiction over the defendant." *People v. Drake*, 61 N.Y.2d 359, 364 (1984). However, "the passage of time standing alone does not bar imposition of sentence or require a defendant's discharge." *Id*. at 365. Rather, it is only "*inexcusable* delay that does so." *Id.* at 366 (emphasis added). But if the delay "is caused by legal proceedings . . . it is excusable." *Id*. Even "relatively long delays occasioned by the State have been excused for good cause." *Id*. Similarly, courts have assumed that the "Sixth Amendment guarantee to a speedy trial applies to sentencing." *United States v. Bryce*, 287 F.3d 249, 256 (2d Cir. 2002). Like the CPL § 380.30(1) analysis, the speedy

trial right requires a "court to determine whether [a] delay" in sentencing "has been unreasonable in light of the peculiar circumstances of the case." *Id.* (citing *United States v. DeLuca,* 529 F. Supp. 351, 354 (S.D.N.Y. 1982)).

Under those well-settled standards, an adjournment that resulted in sentencing being held after the end of defendant's presidential term would be reasonable. Courts routinely approve of yearslong delays in sentencings when the delay is attributable to the defendant's own conduct, or when it is attributable to factors outside of the People or the Court's control. *See, e.g., People v. Murphy*, 215 A.D.3d 1075, 1076-78 (3d Dep't 2023) (dismissal not warranted where the People "offered plausible excuses" for 25-month delay in sentencing, including defendant's consent to an adjournment "pending resolution of his postconviction motion" and delays caused by the COVID-19 pandemic); *People v. Ruiz*, 44 A.D.3d 428, 428 (1st Dep't 2007) (two-year delay reasonable where "the People made reasonable efforts to bring defendant to court for sentencing" but "it would have been futile for the People to make an extradition request prior to the expiration of defendant's Connecticut sentence");[10] *People v. Savino*, 267 A.D.2d 174, 174 (1st Dep't 1999) (14-year delay reasonable where it was "entirely attributable to defendant's conduct").

Here, defendant can hardly complain about a delay in sentencing when he has affirmatively sought such delay—both before and after his reelection. Sentencing in this case was originally scheduled for July 11, 2024. Tr. 4957. On July 1, the day that the Supreme Court decided *Trump*, defendant filed a CPL § 330.30 motion that led this Court to reschedule sentencing for September 18. On August 14, defendant moved to adjourn sentencing until after the election, leading this Court to reschedule the sentencing for November 26. And on November 8, in light of the election,

[10] The length of the delay in *Ruiz* is not mentioned in the court's opinion but is reflected in the briefs. *See* Resp.'s Br., *People v. Ruiz*, 44 A.D.3d 428 (1st Dep't 2007), *at* 2007 WL 5071981.

defendant asked the District Attorney to dismiss this prosecution and consent to a stay of proceedings; he subsequently filed the motion currently under consideration, leading this Court to grant a further adjournment of proceedings. Defendant's current motion indicates that he will continue pursuing litigation to defer his sentencing through interlocutory state-court appeals, existing federal litigation, or new federal litigation. Def.'s Mem. 53, 68-69.

It is well-settled that delays in sentencing caused by a defendant's own postconviction motions are "reasonable" because they cannot be attributed to neglect on the part of either the People or the Court. *Murphy*, 215 A.D.3d at 1076-78 (dismissal not warranted where the People "offered plausible excuses" for 25-month delay in sentencing, including defendant's consent to an adjournment "pending resolution of his postconviction motion"). For the same reason, defendant's own litigation tactics rebut his related assertion that a delay in sentencing here would violate his "Sixth Amendment speedy trial right." Def.'s Mem. 53. Defendants may not rely on delays wrought by their own litigation in order to claim a violation of their speedy trial rights, whether under the constitution or under state statute. *People v. Bellamy*, 226 A.D.3d 623, 624 (1st Dep't 2024) (defendant not deprived of constitutional speedy trial right, despite "five-year delay," where "defendant largely contributed to the delay by, among other things, repeatedly seeking assignment of new counsel"); *People v. Bradshaw*, 206 A.D.3d 518, 518 (1st Dep't 2022) (defendant not deprived of constitutional speedy trial right, despite "extraordinarily long delay of almost 12 years," because the delay was "mostly caused by defendant"); *cf.* CPL § 30.30(4)(a) (reasonable periods of delay stemming from "other proceedings concerning the defendant" are excludable under CPL § 30.30).

In addition, to the extent that sentencing is delayed because of the claims of presidential immunity that defendant has raised here, the source of that delay would be a constitutional doctrine

intended to protect the official functions of the presidency—not any "judicial or prosecutorial negligence or mistake." *Drake*, 61 N.Y.2d at 366. Delay for these reasons would hardly be the type of "inexcusable delay," *id.*, that would warrant the extreme remedy of dismissal.

Finally, even assuming that defendant had a claim of unreasonable delay in sentencing or a violation of speedy trial rights, the proper time to raise such a claim would be when this Court seeks to reinstitute proceedings following his presidential term—not now. Speedy trial motions and applications pursuant to CPL § 380.30 necessarily address delays that have already transpired and rely on the reasonableness (or not) of such delays based on immediately preceding events. *See People v. Allard*, 28 N.Y.3d 41, 43-45 (2016); *Murphy*, 215 A.D.3d at 1076-78. Here, the parties can only speculate about the state of this criminal case four years from now. For example, courts may resolve defendant's many pending motions or future motions in any number of ways that may affect whether and when sentencing can take place. In other words, the mere possibility that defendant may have a delay claim four years from now is not a reason for this Court to decline to stay proceedings now. Defendant would be free to raise, and this Court would be able to consider, any such claim if and when proceedings are reinstituted after his presidency ends.[11]

[11] Defendant perfunctorily claims that "a delay in this case that is wholly disproportionate to the actual sentencing exposure would also violate the Eighth Amendment." Def.'s Mem. 53. The only case he cites for that proposition, a 35-year-old criminal court decision, *People v. Harper*, 137 Misc. 2d 357 (Crim. Ct., N.Y. Cnty. 1987), did not actually rule that the Eighth Amendment applied. It merely left open the possibility. *Id.* at 364. ("Imposition of sentence after an unreasonable delay *could well* constitute cruel and unusual punishment.") (emphasis added). In any event, as discussed in the main text, any delay on account of defendant's election would be eminently reasonable.

2. This Court could adopt a remedy that some courts have followed in the abatement-by-death context to terminate proceedings without vacating the jury verdict or dismissing indictment.

Even if this Court were to believe that the mere pendency of this criminal proceeding were somehow inconsistent with defendant's future official duties as President, dismissal and vacatur would still not be warranted. Under the abatement doctrine, courts have considered an analogous question of what to do with a jury verdict and indictment when further criminal proceedings are no longer possible because of the defendant's death. Although New York currently follows an abatement *ab initio* rule that, in that circumstance, "the judgment of conviction [is] vacated and the indictment dismissed" on the ground that the defendant's death makes any further appeal impossible, *People v. Mintz*, 20 N.Y.2d 770, 771 (1967), a large majority of states no longer follow such a rule and instead have adopted less disruptive remedies that better respect the important public interests in preserving a jury verdict despite the inability to proceed further in a criminal case.[12]

This Court could likewise adopt one of the alternatives to abatement *ab initio* here in place of the extreme remedy of dismissal and vacatur that defendant has proposed. Specifically, under the so-called "Alabama rule," when a defendant dies after he is found guilty, but before the conviction becomes final through the appellate process, the court places in the record of the case a notation to the effect that the conviction removed the presumption of innocence but was neither affirmed nor reversed on appeal because the defendant died. *See Wheat v. State*, 907 So. 2d 461,

[12] The People recently urged the Appellate Division, First Department, to reject the abatement *ab initio* doctrine as well and follow the lead of the majority of other states, in two appeals that are currently pending before that court: *People v. Cruciani*, Appellate Case No. 2023-01371, and *People v. Nowell*, Appellate Case No. 2023-04545. The People are willing to provide the briefing in those pending appeals or any other briefing that this Court may request on this alternative disposition.

464 (Ala. 2005); *see also State v. Gleason*, 349 So. 3d 977, 983 (La. 2022). In this way, the Alabama rule abates the criminal proceedings without vacating the underlying conviction or dismissing the indictment. As applied here, this Court could similarly terminate the criminal proceeding by placing a notation in the record that the jury verdict removed the presumption of innocence; that defendant was never sentenced; and that his conviction was neither affirmed nor reversed on appeal because of presidential immunity.

It makes sense to borrow from the manner in which courts address abatement because many of defendant's arguments here parallel the arguments made in favor of dismissal and vacatur upon a defendant's death. For example, defendant argues that the Court cannot subject him to "further criminal proceedings" or incarceration during his second term in office. Def.'s Mem. 35-38. This mirrors the "punishment" rationale for abating criminal cases when a defendant passes away: namely, abatement is warranted because a defendant's death obviates any penal purpose in further appellate proceedings. *Mintz*, 20 N.Y.3d at 771 ("[i]f affirmed, the judgment of conviction could not be enforced and, if reversed, there is no person to try"). Defendant also argues that the instant case cannot be brought to its conclusion because his appeals will not be resolved before his second term in office begins, and he cannot be required to pursue those appeals during his presidency. Def.'s Mem. 52-53. This parallels the "finality" rationale for abatement: because appellate proceedings cannot run their course following a defendant's death, it can "never be determined whether the judgment of conviction would stand" following an appeal. *Mintz*, 20 N.Y.3d at 771.

Adopting something like the Alabama rule in this case would better balance the competing interests here than defendant's request to dismiss the indictment and vacate the jury verdict. On the one hand, this remedy would prevent defendant from being burdened during his presidency by an ongoing criminal proceeding. On the other hand, this remedy would not precipitously discard

aspects of this criminal proceeding that predated defendant's presidency, including the meaningful fact that defendant was indicted and found guilty by a jury of his peers, while also acknowledging that the proceedings were not subject to appellate review before defendant's immunity arose.

To be sure, New York law does not expressly provide for this remedy. But Judiciary Law § 2-b(3) authorizes this Court to "devise and make new process and form of proceedings" that are "necessary to carry into effect the powers and jurisdiction possessed by it." Although the Legislature "has primary authority to regulate court procedure," courts have "latitude" to fashion "innovative procedures" needed to align with "constitutional, statutory, and decisional law." *People v. Wrotten*, 14 N.Y.3d 33, 37 (2009) (quoting *People v. Ricardo B.*, 73 N.Y.2d 228, 232 (1989)). And the Court of Appeals has endorsed the adoption of even novel procedures in order to accommodate new constitutional rights recognized by intervening Supreme Court decisions. *See, e.g.*, *Ricardo B.*, 73 N.Y.2d at 232-33 (endorsing the empanelment of two juries for a joint trial to comply with *Bruton v. United States*, 391 U.S. 123 (1968), even though "nothing" in New York law "expressly authorize[d]" the use of multiple juries); *People v. Huntley*, 15 N.Y.2d 72 (1965) (devising the new procedure of a suppression hearing to ensure statewide compliance with Supreme Court's new Fourth Amendment cases); *People v. Krieg*, 139 A.D.3d 625, 627 (1st Dep't 2016) (upholding trial court's decision to allow a defendant to appear by videoconference to preserve his constitutional right to be present at his own trial, notwithstanding CPL § 182.20's specific disallowance of such electronic appearance). Especially given the novelty of defendant's own immunity claims, it would hardly be improper for this Court to exercise its inherent authority to consider novel remedies such as adopting a version of the Alabama rule in the context of this unique case.

3. Limitations on future proceedings could also fully address defendant's concerns about interference with presidential decision-making.

Finally, to the extent that this Court finds persuasive any of defendant's claims about how the mere pendency of future criminal proceedings in this case could interfere with his presidential functions, this Court could also address those concerns by adopting certain limitations on those proceedings, including any future sentencing.

In particular, this Court could determine that any evidence of defendant's conduct during his presidency—whether official or unofficial—will not play a part in his future sentencing. Although courts generally have the authority to consider any evidence pertaining to the defendant's character up to and including the time of sentencing, *cf. People v. Alvarez*, 33 N.Y.3d 286, 292 (2019), such consideration is not mandatory. Here, a decision by this Court to disregard defendant's conduct during his forthcoming presidency would substantially diminish or entirely eliminate any prospect that the mere pendency of a future sentencing hearing would affect his official decisions.

In addition, many of defendant's concerns stem from the possibility that he will face "potential incarceration" here. Def.'s Mem. 38. Here, however, because defendant has no prior criminal convictions and was convicted of Class E felonies, this Court is not required to impose a sentence of incarceration at all, and could even impose an unconditional discharge. Penal Law §§ 60.01(2)(a)(i), 60.01(3)(b), 60.01(3)(d), 65.05, 65.20(1), 70.00(4). The Court could therefore conclude that presidential immunity, while not requiring dismissal, nonetheless would require a non-incarceratory sentence in these circumstances. Such a constitutional limitation on the range of available sentences would further diminish any impact on defendant's presidential decision-making without going so far as to discard the indictment and jury verdict altogether.

IV. The remaining *Clayton* factors weigh heavily against dismissal.

In considering defendant's motion to dismiss, the Court must also "examine and consider" the remaining factors at CPL § 210.40(1). These factors weigh decisively against dismissal.

A. The seriousness and extent of harm caused by defendant's offenses.

First, the crimes that the jury convicted defendant of committing are serious offenses that caused extensive harm to the sanctity of the electoral process and to the integrity of New York's financial marketplace. *See* CPL §§ 210.40(1)(a), (b).

In convicting defendant of 34 counts of Falsifying Business Records in the First Degree, a jury of defendant's peers concluded unanimously that defendant made or caused false entries in the business records of an enterprise, and that he did so with the intent to defraud that included an intent to commit or conceal the commission of another crime—specifically, a conspiracy to promote his own election by unlawful means in violation of New York Election Law § 17-152. *See* Tr. 4841, 4846-4847; *see also infra* Part IV.B.

In New York—the financial capital of the world—falsifying business records is a serious offense because honest recordkeeping is essential to maintaining the very integrity of the marketplace. *See People v. Bloomfield*, 6 N.Y.3d 165, 171 (2006); *People v. Dove*, 15 Misc. 3d 1134(A), at *6 n.6 (Sup. Ct. Bronx Cnty. 2007) (the statute's "evident purpose" is "to maintain the integrity of business records and prevent business-related crime"); *see also* Richard A. Greenberg *et al.*, New York Criminal Law § 17:1 (4th ed. 2016 & Supp. 2024) ("The brevity of N.Y. Penal Law Article 175 belies its importance to New York's criminal justice system. . . . [It] is one of the most important prosecutorial tools in so-called white collar cases."). And falsifying business records to conceal an illegal election fraud scheme erodes public confidence in the integrity of democratic elections, implicating interests of the highest importance. *See, e.g.*, *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 788-89 (1978) ("Preserving the integrity of the electoral process,

preventing corruption, and sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government are interests of the highest importance." (cleaned up)). Compounding the seriousness of defendant's offense is the fact that—as established by the trial record, *see infra* Part IV.B—"defendant's criminal act was not a sudden collapse of judgment overborne by severe financial pressures, but a complex premeditated undertaking." *People v. Perez*, 156 A.D.2d 7, 10 (1st Dep't 1990) (reversing trial court's CPL § 210.40 dismissal).

Indeed, this Court previously recognized that the People's allegations—now proven beyond all reasonable doubt at trial—were "severe" and "serious." *See* Decision & Order Denying Omnibus Mots. 6 (Feb. 15, 2024). And a federal court has described the very election fraud scheme at issue in this prosecution as "a matter of national importance" with "weighty public ramifications." Mem. & Order Granting Unsealing Requests 2-3, *United States v. Cohen*, No. 18 Cr. 602, ECF No. 47 (S.D.N.Y. July 17, 2019). As that court also recognized, the harms caused by the violations at issue here—which were committed "on the eve of the 2016 presidential election with the intent to influence the outcome of that election"—"threaten the fairness of elections" and "implicate a far more insidious harm to our democratic institutions." Sentencing Tr. 32-35, *United States v. Cohen*, No. 18 Cr. 602, ECF No. 31 (S.D.N.Y. Dec. 12, 2018).

Defendant argues that the crimes he committed are not serious because he was not convicted of homicide or sexual assault. Def.'s Mem. 55. But it is black-letter law that interest-of-justice dismissal is warranted only in "that rare and unusual case," *Williams*, 145 A.D.3d at 107, not in every case involving all but the most serious Class A felonies. And the Appellate Division routinely finds that the serious nature of an offense weighs *against* dismissal where defendants are charged with or convicted of Class B misdemeanors—a categorically less serious offense than the 34 felony counts that defendant was convicted of committing here. *See, e.g.*, *Keith R.*, 95 A.D.3d

at 66 (attempted assault in the third degree); *see also People v. Howell*, 139 A.D.3d 484, 484 (1st Dep't 2016) (attempted criminal possession of a controlled substance in the seventh degree).

Defendant also criticizes this Office's charging policies more generally, contending incorrectly and without reference to any facts that the People "routinely" dismiss "more serious" indictments to avoid immigration or predicate sentencing consequences. Def.'s Mem. 55. Defendant's attack on this Office is not a legitimate basis for dismissal. Even if defendant's fact-free supposition were correct, it is well-settled that a trial court may not exercise its interest-of-justice power because it disagrees with the People's plea and charging practices. *See Harmon*, 181 A.D.2d at 39 ("Needless to say, an interest of justice dismissal is not a vehicle for the expression of judicial displeasure with a prosecutor's plea policies."); *see also Williams*, 145 A.D.3d at 107 ("[I]nterest of justice review . . . applies on a case-by-case basis, and is not designed or intended to be used to resolve public policy concerns or for a system-wide fix."); *Keith R.*, 95 A.D.3d at 67.

Defendant separately claims that his offenses are not serious because the People did not charge other defendants. Def.'s Mem. 55. But other participants in defendant's criminal scheme did face consequences, including criminal consequences. Michael Cohen went to jail; David Pecker and AMI were found to have committed knowing and willful violations of federal law; and AMI paid a civil penalty.[13]

The Court has likewise already rejected defendant's claim (Def.'s Mem. 56) that the federal government's decision not to prosecute him for campaign finance crimes has anything to do with

[13] *See* Tr. 1247:8-1248:7, 1254:7-1255:6, 1262:11-1264:3 (Pecker); Tr. 3620:3-12, 3621:9-13 (Cohen); Judgment of Conviction, *United States v. Cohen*, No. 18 Cr. 602, ECF No. 29 (S.D.N.Y. Dec. 12, 2018); Factual & Legal Analysis 2, 10-16, *In re A360 Media, LLC f/k/a American Media, Inc., & David J. Pecker*, Federal Election Comm'n Matter Under Review 7324, 7332, & 7366 (Apr. 13, 2021), https://www.fec.gov/files/legal/murs/7324/7324_22.pdf; Conciliation Agreement, *In re American Media, Inc.*, Federal Election Comm'n Matter Under Review 7324, 7332, & 7366 (May 18, 2021), https://www.fec.gov/files/legal/murs/7324/7324_26.pdf.

the seriousness of his offenses here. *See* Decision & Order on People's Mots. in Limine 4 (Mar. 18, 2024) ("That the FEC dismissed the complaint against Defendant and the DOJ decided against prosecuting Defendant for potential FECA violations are probative of nothing. . . . There are countless reasons why the FEC and DOJ could have decided not to pursue enforcement against Defendant, all having nothing to do with whether he is guilty of the charges here against him."); *see also* People's Mots. in Limine 19-24 (Feb. 22, 2024).

And defendant's emphasis on financial injury (Def.'s Mem. 56-57) is contrary to controlling law. Felony falsifying business records is "not limited to the causing of financial harm or the deprivation of money or property." Decision & Order Denying Omnibus Mot. 19 (Feb. 15, 2024) (citing *People v. Sosa-Campana*, 167 A.D.3d 464, 464 (1st Dep't 2018)); *see also* People's Mem. Opp. Omnibus Mot. 20 & n.4 (Nov. 9, 2023) (citing cases). Nor is financial harm required (Def.'s Mem. 57) for the government to be injured by defendant's intended tax crimes. *See* Decision & Order Denying Omnibus Opp. 17 (Feb. 15, 2024); *United States v. Greenberg*, 735 F.2d 29, 31-32 (2d Cir. 1984) (citing cases).

Finally, defendant cites post-trial public statements from his expert witness, Bradley Smith, for the proposition that Cohen's $130,000 payoff would not have been reportable before the 2016 presidential election. Def.'s Mem. 57-58. This contention is simply wrong on the law. FECA provides that in the final twenty days before a general election, contributions over $1000 must be disclosed within 48 hours. 52 U.S.C. § 30104(a)(6)(A); *see also* 11 C.F.R. § 104.5(f). Indeed, in a passage from Mr. Smith's congressional testimony that defendant declined to bring to the Court's attention in making this argument, Mr. Smith *conceded* that "in the last 20 days before the election, campaigns are required to report contributions in excess of $1000 within 48 hours," and therefore that "the contribution from Cohen" "would have been reported." Def.'s Ex. 76 at 5.

The evidence showed, and the jury determined, that defendant sought to corrupt the 2016 presidential election by falsifying business records over a lengthy period of time to conceal a criminal conspiracy. The "seriousness" and "extent of harm" caused by defendant's offense weigh heavily against dismissal. CPL §§ 210.40(1)(a), (b).

B. The evidence of defendant's guilt.

In addition, the evidence of defendant's guilt is overwhelming. *See* CPL § 210.40(1)(c). The jury unanimously found defendant guilty of all 34 felony counts, *see* Tr. 4947-4952, and the trial record conclusively supports the jury's determination. *See, e.g.*, *Pittman*, 228 A.D.2d at 226 (reversing trial court's order dismissing indictment where "[t]he evidence of defendant's guilt was overwhelming"); *People v. Insignares*, 109 A.D.2d 221, 232 (1st Dep't 1985) (reversing trial court's post-verdict order dismissing indictment where "[o]ur review of the record at trial leads us to conclude that overwhelming evidence supports the jury verdict").

The People's opposition to defendant's CPL § 330.30 motion explained in detail that the trial record conclusively established defendant's guilt, and the People incorporate that discussion by reference here. *See* People's Mem. Opp. Post-Trial Mot. 39-60 (July 24, 2024). The discussion that follows in Parts IV.B.1 and IV.B.2 is excerpted from the People's July 24, 2024 opposition.

1. Defendant made and caused false entries in the business records of an enterprise.

The first element of Falsifying Business Records in the First Degree—that defendant made or caused false entries in the business records of an enterprise, *see* PL § 175.10; Tr. 4838:7-12—is overwhelmingly established by the trial record.

1. First, the evidence establishes beyond a reasonable doubt that the invoices, general ledger entries, and checks with check stubs contain false entries. The invoices request payment for services rendered for a given month pursuant to a retainer agreement. *See* People's 1, 5, 8, 11, 14,

17, 20, 23, 26, 29, 32. The general ledger entries also record payments pursuant to a retainer for a given month. *See* People's 2, 3, 6, 9, 12, 15, 18, 21, 24, 27, 30, 33. The signed checks with check stubs likewise record that the payments were made pursuant to a retainer. *See* People's 4, 7, 10, 13, 16, 19, 22, 25, 28, 31, 34.

Those entries are false. There was no retainer agreement; Cohen was not paid for legal services rendered; and the $420,000 payments were instead a reimbursement. People's 35 and People's 36—Weisselberg's handwritten notes on the shell company bank statement grossing up the $130,000 expense to a $420,000 repayment, and McConney's notes calculating how the total $420,000 obligation was to be repaid based on future invoices—establish that the $420,000 Cohen received was not payment for legal services rendered in a given month pursuant to a retainer, but was instead a reimbursement for the wire to Keith Davidson for the Stormy Daniels payoff, plus the Red Finch expense, the extra bonus, and the grossed-up additional amount to cover for taxes. People's 35, 36; Tr. 2290:11-2307:24 (McConney). Jeff McConney testified that he understood the payments were reimbursements, as People's 35 and People's 36 show. Tr. 2290:11-2291:16, 2299:6-9, 2302:9-13, 2304:4-7. McConney also testified that he never saw a retainer agreement and did not get approval from the Trump Organization's legal department to reimburse Cohen, as would be typical if the Trump Organization were actually paying a legal expense instead of a reimbursement. Tr. 2316:10-11, 2317:18-22. Cohen likewise testified that there was no retainer agreement, and that the payments totaling $420,000 that he received in 2017 were not for services rendered in a given month but were instead a grossed-up reimbursement for the Daniels payoff and the other expenses. *See* Tr. 3442:3-6, 3495:14-19, 3500:24-3501:2, 3518:15-16, 3520:17-20, 3521:22-25, 3523:11-13, 3525:11-15, 3526:1-7, 3527:7-12, 3527:25-3528:3, 3528:19-3529:2,

3529:12-18, 3530:6-11, 3531:12-15, 3532:7-14, 3533:2-5, 3533:22-3534:1, 3535:3-8, 3535:21-24, 3536:12-14, 3537:1-4, 3537:19-25, 3538:15-18, 3539:8-12, 3540:4-7, 3541:2-14, 3959:20-23.

This evidence is corroborated by testimony that Cohen performed some personal legal services for defendant in 2018 but was never paid for those services. Tr. 2357:5-13, 2359:24-2360:4 (McConney); Tr. 3546:10-18, 4134:15-23 (Cohen); People's 43–45, 54, 55. It is further corroborated by testimony from both Pecker and Davidson that Cohen complained to them in December 2016 that defendant had not yet reimbursed him for the Stormy Daniels payoff. Tr. 1208:9-1209:3 (Pecker); Tr. 1855:17-1857:1 (Davidson). And the evidence of falsity is further supported by defendant's concession in court papers in civil litigation involving Stormy Daniels that he reimbursed the $130,000 payment in 2017. *See* Tr. 2913:1-16 (Daniels).

2. Next, the stamped invoices, general ledger entries, and checks with check stubs are all business records of an enterprise. These documents are business records because they were kept or maintained by the Trump Organization and they reflect its condition and activity. PL § 175.00(2). Specifically, the invoices reflect an obligation to pay, and the Trump Organization required invoices for that exact purpose. Tr. 2280:22-24, 2295:25-2296:3 (McConney); Tr. 2426:7-11, 2429:22-2431:10 (Tarasoff); Tr. 2924:22-2925:7 (Manochio); *see People v. Kisina*, 14 N.Y.3d 153, 159-60 (2010); *People v. Dove*, 85 A.D.3d 547, 548 (1st Dep't 2011). The general ledger entries reflect that a payment had been made to Cohen for a purported retainer for a particular month or months in 2017. Tr. 2319:14-21, 2360:12-25, 2362:1-3 (McConney); Tr. 2447:18, 2449:21, 2456:24, 2462:11, 2467:4, 2475:4 (Tarasoff); *see Kisina*, 14 N.Y.3d at 159-60. And the signed checks and check stubs were maintained in the Trump Organization's files to reflect its satisfaction of its repayment obligations. Tr. 2451:4-8 (Tarasoff); Tr. 2285:4-6 (McConney); *see Kisina*, 14 N.Y.3d at 159-60. McConney further testified that these business

records—and in particular, the general ledger entries—were examined by the Trump Organization's outside accounting firm at tax time to determine the appropriate tax treatment. Tr. 2275:5-13, 2320:9-2321:10 (McConney).

The evidence also shows beyond a reasonable doubt that the Trump Organization is an enterprise because it was a conglomerate of nearly 500 entities engaged in real estate, property management, leisure, and other commercial and business activities. Tr. 2260:20-2262:5 (McConney); *see* PL § 175.00(1). The Trump Organization's accounting staff of ten managed the general ledger and bank accounts for the "DJT" account, which was used as the main operating account to reallocate cash between Trump Organization entities and to advance funds to pay an entity's bills. Tr. 2270:5-9, 2277:3-2278:19 (McConney); Tr. 2431:18-24 (Tarasoff). The Donald J. Trump Revocable Trust is an enterprise as well. *See* People's 86; Tr. 2263:1-2267:6 (McConney).

3. Defendant made or caused the false entries in his business records. Defendant himself personally signed every one of the nine falsified checks from the DJT account, and therefore clearly made those false entries. People's 10, 13, 16, 19, 22, 25, 28, 31, 34; Tr. 2468:11-16, 2470:10-13, 2473:11-14, 2475:19-22, 2480:25-2481:3, 2482:18-21, 2484:20-21, 2486:20-23 (Tarasoff); Tr. 3528:6-23, 3530:12-18, 3531:25-3532:3, 3533:13-17, 3534:19-24, 3536:3-7, 3537:8-15, 3538:22-3539:4, 3540:17-22 (Cohen). As to the false entries in the remaining business records, the trial evidence proved beyond a reasonable doubt that defendant made or caused those entries as well. A person "causes" a false entry when, even if he does not prepare the relevant business record himself, the creation of a false entry in the business record is a reasonably foreseeable consequence of his conduct. *People v. Barto*, 144 A.D.3d 1641, 1643 (4th Dep't 2016); *see also People v. Park*, 163 A.D.3d 1060, 1063 (3d Dep't 2018); *People v. Myles*, 58 A.D.3d 889,

892 (3d Dep't 2009). The trial record proved that defendant set the fraudulent repayment scheme in motion, and that the creation of business records to carry out that scheme was a predictable consequence of his decision. Tr. 3418:9-19, 3421:1-10, 3431:20-3432:23, 3491:14-3494:22, 3514:1-18 (Cohen); Tr. 2282:5-18 (McConney); Tr. 2430:16-2431:10, 2434:4-17 (Tarasoff); People's 256, 349.

The trial record also included defendant's own admission that he reviewed and signed checks carefully, both for the purpose of "seeing what's really going on inside your business" and because "if people see your signature at the bottom of the check, they know you're watching them, and they screw you less because they have proof that you care about the details." People's 414-F at xii. David Pecker also personally saw defendant reviewing invoices before he signed his checks. Tr. 1009:7-21. Extensive additional evidence proved both that defendant paid careful attention to his finances and that he was a micromanager. Tr. 1010:3-11, 1117:24-1118:7 (Pecker); Tr. 1784:10-11 (Davidson); Tr. 2130:15-18 (Hicks); Tr. 2279:6-2280:4 (McConney); Tr. 2427:24-2428:1, 2430:16-2431:10, 2435:8:19, 2436:23-2437:3, 2441:4-17 (Tarasoff); Tr. 3279:21-25 (Cohen); People's 71, 75, 413-B, 414-A, 414-B, 414-C, 414-D, 414-F, 415-A.

2. Defendant acted with intent to defraud which included an intent to commit or conceal the commission of another crime.

The second element of the offense—that defendant acted with an intent to defraud that included the intent to commit, aid, or conceal the commission of another crime, *see* PL § 175.10; Tr. 4838:7-12—is also overwhelmingly supported by the trial record.

1. Regarding intent to defraud, there is overwhelming evidence that defendant intended the false business records to obscure the repayment to Cohen for the Stormy Daniels payoff. People's 35 and People's 36 conclusively show that the $420,000 payments were to reimburse Cohen for the wire to Keith Davidson, contrary to how the payments were then recorded in the Trump

Organization's business records. People's 35, 36; Tr. 2290:11-2307:24 (McConney). And the evidence of the Trump Tower conspiracy and the steps taken to effectuate it—established by testimony from David Pecker, Keith Davidson, Stormy Daniels, Michael Cohen, and Gary Farro, as well as by the dozens of emails, text messages, phone calls, recorded conversations, business documents, and other records that corroborate that testimony—prove that hiding information and concealing the underlying conspiracy was the entire point of the scheme. *See, e.g.*, Tr. 1019:4-1026:4, 1091:21-1092:20, 1133:8-13, 1146:11-18, 1194:4-7, 1199:16-1200:12 (Pecker); Tr. 1743:21-1744:3 (Davidson); Tr. 2275:5-13, 2320:9-2321:10 (McConney); Tr. 2913:9-16 (Daniels); Tr. 3294:23-3296:1, 3492:4-3493:24, 3514:1-18, 3615:14-20 (Cohen); Tr. 1558:10-19, 1562:16-21, 1565:22-1566:7, 1570:16-1572:19 (Farro); People's 35, 36, 81, 156, 157, 161, 162, 164, 182, 202, 248, 260, 265, 276, 364, 366, 368, 369, 376.

The evidence also proved that defendant was motivated to conceal the sexual encounter with Stormy Daniels because he was concerned that its public disclosure would damage his standing with female voters and harm his chances for election, particularly after the release of the Access Hollywood Tape. *See, e.g.*, Tr. 1180:3-1185:7 (Pecker); Tr. 1755:13-1758:16 (Davidson); Tr. 2146:11-2175:6, 2203:10-12 (Hicks); Tr. 2651:24-2654:4 (Daniels); Tr. 2976:4-17, 3122:22-3123:10 (Westerhout); Tr. 3367:10-3381:8, 3953:2-6, 4049:15-19 (Cohen); People's 167, 176-A, 218, 404-C, 407-A, 407-B, 407-C, 407-D, 407-E, 409-A, 409-B, 409-C. All of this evidence overwhelmingly proves that defendant intended to conceal information from government regulators, tax professionals, or the voting public. *See, e.g.*, *People v. Lang*, 36 N.Y.2d 366, 371 (1975); *Morgenthau v. Khalil*, 73 A.D.3d 509, 510 (1st Dep't 2010); *People v. Pymm*, 151 A.D.2d 133, 135, 141 (2d Dep't 1989), *aff'd*, 76 N.Y.2d 511 (1990); *People v. Kase*, 76 A.D.2d 532, 537-38 (1st Dep't 1980), *aff'd*, 53 N.Y.2d 989 (1981).

2. Regarding the intent to conceal another crime, the admissible evidence established beyond a reasonable doubt that defendant intended to conceal the conspiracy to promote his election by unlawful means. Testimony from Pecker and Cohen establishes that a conspiracy to influence the election was formed in August 2015 in Trump Tower. Tr. 1019:4-1026:4 (Pecker); Tr. 3294:23-3296:1 (Cohen). That testimony is supported by the documentary evidence of the Sajudin, McDougal, and Daniels transactions, as well as by testimony from Davidson regarding the execution of that conspiracy. *See, e.g.*, People's 154–158, 160, 162–164, 276; Tr. 1709:12-1800:24, 1836:10-1850:17 (Davidson). Extensive additional evidence proved that defendant sought to conceal both the fact of his sexual encounter with Daniels and the broader Trump Tower conspiracy. *See, e.g.*, Tr. 1091:19-1092:23, Tr. 1112:21-1115:18, 1199:6-1200:12, 1211:18-1219:11, 1228:7-1231:25, 1237:4-1239:20, 1241:1-16 (Pecker); Tr. 2205:8-2205:20 (Hicks); Tr. 3431:20-3433:5, 3465:13-3466:2, 4189:13-4190:3 (Cohen); People's 179, 259.

This evidence also proves that the participants intended to and ultimately did advance that conspiracy by unlawful means, including through violations of FECA, the falsification of other business records, and violations of tax laws. Tr. 4843:9-4846:15 (jury charge). As to the evidence of FECA violations, the evidence established that the $150,000 payment to Karen McDougal was a prohibited corporate contribution that violated FECA. Tr. 1133:8-13, 1146:2-25 (Pecker); People's 182. Pecker testified that his principal purpose in entering into the non-disclosure agreement with McDougal was to suppress her story so as to prevent it from influencing the election; that he did so because of the Trump Tower conspiracy; that he knew at the time that corporate expenditures in coordination with or at the request of a candidate were unlawful; and that he only made the payments on the understanding that defendant would reimburse him. *See, e.g.*, Tr. 1114:22-1115:1, 1115:18-1116:11, 1119:22-1120:20, 1124:17-1128:16, 1132:5-1133:13,

1144:4-14, 1146:2-25, 1148:13-20, 1456:13-1457:13 (Pecker); Tr. 3311:7-14, 3318:11-3320:15, 3327:4-3328:23 (Cohen).

The evidence also proved that the $130,000 payment to Stormy Daniels was an excessive individual contribution by Michael Cohen in violation of FECA, because it was the payment of a candidate's personal expenses that he would not have made irrespective of defendant's candidacy. Tr. 3446:19-25, 3614:21-23 (Cohen). Cohen made this payment to Daniels on the eve of the election to bury her account of her sexual interaction with defendant, and he did so at defendant's direction and for the principal purpose of influencing the election. *See, e.g.*, Tr. 1190:12-17, 1483:1-25 (Pecker); Tr. 1775:23-1777:10, 1784:14-25, 1841:23-1842:1, 1855:2-8, 1975:16-24 (Davidson); Tr. 2691:14-22 (Daniels), Tr. 3389:6-3392:8, 3432:9-3433:4, 4193:7-18 (Cohen); People's 63–65, 176-A, 177-A, 178-A, 265, 267, 276, 281–285, 361–379.

The unlawful means also include the falsification of other business records committed in the course of the conspiracy, including:

- the invoice from Investor Advisory Services to Resolution Consultants, falsely describing the expected payment as "'flat fee' for advisory services," *see* People's 161; Tr. 1154:3-1158:2 (Pecker); Tr. 3362:18-3363:22 (Cohen);
- false statements in bank records that accompanied Cohen's request to open a bank account for Resolution Consultants LLC around October 13, 2016, *see* People's 366; Tr. 1562:4-1567:5 (Farro); Tr. 3405:6-3407:4 (Cohen);
- false statements in the account opening paperwork for the Essential Consultants LLC account on October 26, 2016, *see* People's 368; Tr. 1569:9-1572:22 (Farro); Tr. 3434:18-3435:24 (Cohen);
- false statements in the wire transfer form authorizing the wire to Keith Davidson the next day, see People's 376; Tr. 1604:9-1609:7 (Farro); Tr. 3440:25-3442:15 (Cohen); and
- false statements in the 1099 Forms that the Trump Organization prepared and submitted to the IRS as a record of payments to Cohen that were falsely described as income when in fact they were reimbursements, *see* People's 93; Tr. 2363:7-2365:17 (McConney).

The evidence of unlawful means also includes evidence of federal, state, and city tax law violations. Defendant agreed to gross up the reimbursement to Cohen so it could be disguised as income. *See* People's 35, 36; Tr. 2299:6-16 (McConney); Tr. 3484:18-3486:12, 3488:23-3489:2, 3490:4-3494:22 (Cohen). The Trump Organization then followed through on that deception and reported the repayment to the IRS as compensation to Cohen on two 1099 Forms. *See* People's 93; Tr. 2363:5-6, 2365:15-17 (McConney). Cohen explained that the reimbursement was grossed up specifically so it could be described as income, and that defendant approved that repayment plan. Tr. 3484:18-3486:12, 3488:23-3489:2, 3490:4-3494:22 (Cohen); *see also* Tr. 2299:13-16 (McConney); People's 35. Under federal law, it is unlawful to submit false or fraudulent documents or to aid anyone in doing so; and under New York State and City law, it is unlawful to submit false information in connection with any tax return. *See* 26 U.S.C. §§ 7206(1), 7206(2); Tax Law §§ 1801(a)(3), 1802; Tr. 4846:5-15.

The trial record therefore overwhelmingly establishes every element of Falsifying Business Records in the First Degree and supports defendant's guilt on all 34 counts, and this factor supports denying defendant's motion to dismiss the indictment. *See* CPL § 210.40(1)(c); *Pittman*, 228 A.D.2d at 226; *Insignares*, 109 A.D.2d at 232.

3. Defendant's challenges to the evidence of his guilt are unpersuasive.

Defendant contends that Michael Cohen's trial testimony is unreliable because of his criminal history. Def.'s Mem. 58. The People rebutted this argument at length in our opposition to defendant's CPL § 330.30 motion, and we incorporate that discussion by reference here. *See* People's Mem. Opp. Post-Trial Mot. 52-57 (July 24, 2024). And the evidence supported defendant's guilt beyond a reasonable doubt even if the jury disregarded Cohen's testimony. Tr. 4620:1-4623:4 (summation); *see supra* Parts IV.B.1, IV.B.2.

Defendant also argues that the People improperly relied on official-acts evidence at trial. Def.'s Mem. 58-59. But the evidence of defendant's guilt described above does not rely on any of the evidence that defendant has argued should have been excluded on his claim of official-acts immunity.[14] And in any event, the *Clayton* factors permit consideration of evidence of defendant's guilt "whether admissible or inadmissible at trial." CPL § 210.40(1)(c).

C. The history, character, and condition of the defendant.

Defendant's contemptuous conduct during this criminal proceeding—which is consistent with his long history of threatening, abusing, and attacking participants in other legal proceedings in which he is involved—bears directly on the "history, character and condition of the defendant," CPL § 210.40(1)(d), and weighs heavily against dismissal.

1. Defendant's attacks on this criminal proceeding and repeated violations of this Court's orders.

This Court previously reviewed the extensive evidence of defendant's "threatening, inflammatory, [and] denigrating" public attacks on "local and federal officials, court and court staff, prosecutors and staff assigned to the cases, and private individuals including grand jurors performing their civic duty," and found that "[t]he consequences of those statements include not only fear on the part of the individual targeted, but also the assignment of increased security resources to investigate threats and protect the individuals and family members thereof. Such inflammatory extrajudicial statements undoubtedly risk impeding the orderly administration of this Court." Decision & Order 2 (Mar. 26, 2024). In a subsequent opinion, the Court further noted that defendant's "pattern of attacking family members of presiding jurists and attorneys assigned to his cases serves no legitimate purpose," and instead "injects fear in those assigned or called to

[14] This is so even though all of the evidence defendant challenged in his CPL § 330.30 motion was in fact properly admitted at trial. *See* People's Mem. Opp. Post-Trial Mot. 12-33 (July 24, 2024).

participate in the proceedings, that not only they, *but their family members as well*, are 'fair game' for Defendant's vitriol." Decision & Order 2-3 (Apr. 1, 2024) (emphasis in original). The Court correctly recognized that defendant's conduct "constitutes a direct attack on the Rule of Law itself." *Id.* at 3.

Defendant has engaged in multiple such attacks on this criminal proceeding—before, during, and after the trial. While the grand jury was hearing evidence in early 2023, defendant began making a series of comments on social media attacking the anticipated charges against him and the participants in the investigation, including witnesses, the District Attorney, and staff of the District Attorney's Office. He threatened "death and destruction" if he was indicted and posted a photo of himself wielding a baseball bat at the back of the District Attorney's head. Ex. 1 at 46, 48.[15] He made other statements directly addressing the grand jury; calling the District Attorney an "animal," a "degenerate psychopath," and "HUMAN SCUM"; calling prosecutors in this case "ANIMALS AND THUGS"; referring to multiple potential witnesses in pejorative and violent terms; threatening "years of hatred, chaos, and turmoil" if he was indicted; and exhorting his followers that "[w]e must stop them cold!" *See, e.g.*, Ex. 1 at 39, 42-43, 47-48, 50, 53-54, 58. These and other statements—before defendant was even indicted—had an immediate impact on public safety in the city and on the personal safety of participants in this proceeding, requiring an extensive and continuing response by multiple law enforcement agencies.

Defendant's attacks continued after he was indicted and persisted during pre-trial proceedings, jury selection, the trial itself, and since his conviction by the jury. Those attacks have

[15] Exhibit 1 is a compilation of selected social media posts by defendant that the People have cited in prior filings during these proceedings. It necessarily consists only of a selection of defendant's voluminous social media posts and does not contain every example of online statements or other public remarks by defendant attacking this proceeding, the participants in this proceeding, or the participants in defendant's other criminal and civil legal matters.

been documented at length in the People's prior filings, which we expressly incorporate by reference here.[16] That record includes frequent attacks on witnesses and their families. Ex. 1 at 7-8, 10, 33, 35, 40-41, 87. It includes attacks on the Court and the Court's family members based on transparent falsehoods. Ex. 1 at 62, 106-113. It includes attacks on the District Attorney's family as well, and on individual prosecutors in this Office—also based on lies. Ex. 1 at 34, 52, 55-57, 59-60, 106. Defendant's language is often ominous and violent—he referred to one potential trial witness as "death" just weeks before the trial was scheduled to start. Ex. 1 at 106; *see also id.* at 36, 38-39, 50, 54, 58, 72, 77-78, 80, 105. Following these attacks, there have been numerous credible threats of violence, harassment, and intimidation directed at witnesses, the Court, the District Attorney, his family members, and employees of the District Attorney's Office. *See, e.g.*, June 20, 2024 Pistilli Aff. ¶¶ 3-8 (Ex. 2); Feb. 22, 2024 Pistilli Aff. ¶¶ 3-14 (Ex. 3); Indictment, *United States v. Gear*, No. 2:24-cr-152, ECF No. 1 (D. Nev. July 16, 2024); Felony Complaint, *United States v. Robertson*, No. 2:23-mj-722 (D. Utah Aug. 9, 2023) (charging a Utah resident with transmitting interstate death threats against the District Attorney through a series of communications that began on March 18, 2023—hours after defendant posted a call on social media for his followers to "PROTEST, TAKE OUR NATION BACK!").

In addition, defendant willfully violated this Court's orders on extrajudicial speech multiple times during his criminal trial, resulting in ten findings of criminal contempt by this Court. First, on April 30, 2024, this Court held defendant in criminal contempt for nine willful violations

[16] *See* People's Response to Def.'s Mot. to Terminate (June 20, 2024); People's Supp. Filing Regarding the Court's Order on Extrajudicial Statements (Apr. 1, 2024); People's Mot. for an Order Restricting Extrajudicial Statements (Feb. 22, 2024); People's Mot. for a Protective Order Regulating Disclosure of Juror Addresses and Names (Feb. 22, 2024); People's Mot. to Quash Def.'s Subpoena and for a Protective Order (Nov. 9, 2023); People's Mot. for a Protective Order (Apr. 24, 2023); Tr. of Arraignment 5-8, 12-13 (Apr. 4, 2023).

of this Court's orders "by making social media posts about known witnesses pertaining to their participation in this criminal proceeding and by making public statements about jurors in this criminal proceeding." Decision & Order on Contempt, *People v. Trump*, 2024 N.Y. Slip Op. 24148, at *2 (Sup. Ct. N.Y. Cnty. Apr. 30, 2024). Then on May 6, 2024, this Court again held defendant in criminal contempt—for a tenth time—for "making public statements about the jury and how it was selected" that "not only called into question the integrity, and therefore the legitimacy of these proceedings, but again raised the specter of fear for the safety of the jurors and of their loved ones." Decision & Order on Contempt, *People v. Trump*, 83 Misc. 3d 1202(A), at *3 (Sup. Ct. N.Y. Cnty. May 6, 2024).

2. Defendant's history of threatening witnesses, investigators, prosecutors, judges, jurors, court staff, and their family members.

Defendant's conduct in this case parallels his treatment of the legal system in multiple other proceedings. As the People have previously documented, defendant has a long history of public statements that attack judges, jurors, lawyers, witnesses, prosecutors, investigators, and other individuals involved in legal proceedings against him. *See supra* at 50 n.16.

For example, during an investigation and subsequent prosecution by a federal Special Counsel into defendant's efforts to subvert the results of the 2020 presidential election, defendant used social media to make repeated personal attacks on the Special Counsel; attacked the Special Counsel's wife and sister-in-law; attacked potential witnesses in that case, including former Vice President Mike Pence and former Attorney General William Barr; and attacked the presiding judge (who was then the subject of racist death threats, including one that led to a federal prosecution). Ex. 1 at 22, 23, 27-28, 61, 65-68, 73, 79-80, 84, 86, 105; *see* Aff. in Support of Criminal Complaint, *United States v. Shry*, No. 4:23-cr-00413, ECF No. 1 (S.D. Tex. Aug. 11, 2023).

In a civil fraud action brought by the New York Attorney General Letitia James, defendant repeatedly targeted Attorney General James, witnesses, the presiding judge, and the judge's wife and son. Ex. 1 at 44, 50, 81-83, 85, 87-104. Defendant also attacked the judge's law clerk, leading to "hundreds of threatening and harassing voicemail messages" and other threats against her. Hollon Aff. ¶ 5, *Trump v. Engoron*, Case No. 2023-05859 (1st Dep't 2023) (Ex. 4). Although the court ordered defendant to cease those attacks, defendant willfully violated those orders and was sanctioned twice for doing so. *See* Order, *People by James v. Trump*, No. 452564/2022, NYSCEF Doc. No. 1598 (Sup. Ct. N.Y. Cnty. Oct. 26, 2023) (holding that defendant intentionally violated a court order by making public attacks on that court's principal law clerk despite two prior orders not to do so, and further holding that defendant lied under oath when defendant claimed that his public comments about the law clerk were instead about a witness) (Ex. 5); Order, *People by James v. Trump*, No. 452564/2022, NYSCEF Doc. No. 1584 (Sup. Ct. N.Y. Cnty. Oct. 20, 2023) (holding that defendant violated a court order by failing to remove an "untrue, disparaging, and personally identifying post" about the court's principal law clerk from defendant's website) (Ex. 6).

Defendant's much lengthier history of attacks has been extensively documented not only in the People's prior filings but in written orders of many federal and state judges. *See, e.g.*, *United States v. Trump*, 88 F.4th 990, 997-99, 1010-16 (D.C. Cir. 2023).[17] This Court itself has

[17] *See also, e.g.*, *United States v. Trump*, 698 F. Supp. 3d 178, 179-180 (D.D.C. 2023); Order, *Carroll v. Trump*, No. 20-cv-7311 (S.D.N.Y. Nov. 3, 2023); *Carroll v. Trump*, No. 22-cv-10016, 2023 WL 2871045, at *1-2 (S.D.N.Y. Apr. 10, 2023); *Carroll v. Trump*, 663 F. Supp. 3d 380, 382 & n.7 (S.D.N.Y. 2023); *In re Sealed Search Warrant*, 622 F. Supp. 3d 1257, 1263 (S.D. Fla. 2022); Order Denying Mot. for Access to Juror Questionnaires 9 & n.6, *In re: Juror Questionnaires in United States v. Stone*, No. 1:20-mc-00016-ABJ, ECF No. 20 (D.D.C. Nov. 23, 2022); *Matter of Trump v. Merchan*, 227 A.D.3d 518 (1st Dep't 2024); *Matter of Goodlawgic, LLC v. Merchan*, 227 A.D.3d 612 (1st Dep't 2024); Order, *People by James v. Trump*, Index No. 452564/2022, NYSCEF Doc. No. 1631 (Sup. Ct. N.Y. Cnty. Nov. 3, 2023).

acknowledged defendant's dangerous pattern of harassment and intimidation in no fewer than six written orders.[18]

3. Defendant's history of malicious conduct and abuse of process in other adjudicated matters.

Defendant has also been the subject of multiple adjudicated findings of sexual assault, defamation, breach of fiduciary duty, and abuse of the legal process.

On May 9, 2023, a jury found in a civil case that defendant sexually abused E. Jean Carroll, and awarded her $2,020,000 in damages, including compensatory damages for her injuries as well as punitive damages on the ground that "Mr. Trump's conduct was willfully or wantonly negligent, reckless, or done with a conscious disregard for the rights of Ms. Carroll, or was so reckless as to amount to such disregard." Verdict Form 1-2, *Carroll v. Trump*, No. 22-cv-10016, ECF No. 174 (S.D.N.Y. May 9, 2023). Also on May 9, 2023, the same jury found that defendant defamed Ms. Carroll in a public statement made on October 12, 2022 by making a false statement with actual malice. *See id.* at 2. The jury awarded Ms. Carroll $2,980,000 in damages, including compensatory damages for her injuries as well as punitive damages on the ground that "Mr. Trump acted maliciously, out of hatred, ill will, spite, or wanton, reckless, or willful disregard of the rights of another." *See id.* at 2-3.

On September 7, 2023, a court found in a civil case that defendant defamed Ms. Carroll in public statements on June 21 and June 22, 2019, by making false statements with actual malice. *See Carroll v. Trump*, 690 F. Supp. 3d 396, 400-01, 404-09 (S.D.N.Y. 2023). On January 26, 2024,

[18] *See* Order on Def.'s Mot. to Terminate (June 25, 2024); Order on Contempt (May 6, 2024); Order on Mot. to Restrict Extrajudicial Speech (Apr. 1, 2024); Order on Mot. to Restrict Extrajudicial Speech (Mar. 26, 2024); Order on Mot. for Protective Order Regulating Disclosure of Juror Information (Mar. 7, 2024); Order on People's Mot. to Quash and for a Protective Order (Dec. 18, 2023).

a jury in that civil case awarded Ms. Carroll $83,300,000 in damages for defendant's June 2019 defamatory statements, including compensatory damages for her injuries as well as punitive damages on the ground that "Mr. Trump acted maliciously, out of hatred, ill will, or spite, vindictively, or in wanton, reckless, or willful disregard of Ms. Carroll's rights." Verdict Form 1-2, *Carroll v. Trump*, No. 20-cv-7311, ECF No. 280 (S.D.N.Y. Jan. 26, 2024).

On January 19, 2023, a court sanctioned defendant in a civil case and ordered him to pay $937,989 in fees for filing a frivolous, bad-faith lawsuit, holding: "Here, we are confronted with a lawsuit that should never have been filed, which was completely frivolous, both factually and legally, and which was brought in bad faith for an improper purpose. Mr. Trump is a prolific and sophisticated litigant who is repeatedly using the courts to seek revenge on political adversaries. He is the mastermind of strategic abuse of the judicial process, and he cannot be seen as a litigant blindly following the advice of a lawyer. He knew full well the impact of his actions." *Trump v. Clinton*, 653 F. Supp. 3d 1198, 1210, 1233 (S.D. Fla. 2023); *see also id.* at 1207 ("A continuing pattern of misuse of the courts by Mr. Trump and his lawyers undermines the rule of law, portrays judges as partisans, and diverts resources from those who have suffered actual legal harm.").

And on November 7, 2019, a court held in a civil case that defendant breached his fiduciary duty to the Donald J. Trump Foundation by illegally allowing his 2016 presidential campaign to orchestrate a fundraiser for the Foundation, direct distribution of the funds, and use the fundraiser and distribution of the funds to further defendant's political campaign. *People by James v. Trump*, 66 Misc. 3d 200, 204 (Sup. Ct. N.Y. Cnty. 2019). The court ordered defendant to pay $2,000,000 for breach of fiduciary duty and waste. *See id.*

4. Defendant's efforts to hinder the administration of justice weigh heavily against dismissal.

The abbreviated discussion above recites defendant's pervasive history of attempting to interfere with the administration of justice in this case and others—a history this Court has both observed first-hand and sanctioned with ten findings of criminal contempt. The Appellate Division has specifically held that this kind of conduct weighs heavily against interest-of-justice dismissal. *See, e.g.*, *People v. Natarelli*, 154 A.D.2d 769, 770 (3d Dep't 1989) (reversing interest-of-justice dismissal where, among other factors, the defendant "chose to disregard a specific order of the court," and noting that "[t]he act of hindering the legal process strikes at the very heart of our system for the administration of justice"); *People v. Belkota*, 50 A.D.2d 118, 122 (4th Dep't 1975) (reversing interest-of-justice dismissal and noting that "[t]his court has had occasion to comment on the conduct of those participating in the legal process who . . . hinder the courts in the lawful performance of their duties. We have condemned such acts, for they strike at the very heart of our system for the administration of justice." (citing cases)).

Defendant asserts that he has no prior criminal record. Def.'s Mem. 59. But it is well-established that "[t]he fact that a defendant may have had no prior criminal record and an exemplary background, standing alone, is insufficient to justify a dismissal in the interest of justice." *People v. Diggs*, 125 A.D.2d 189, 191 (1st Dep't 1986); *see also, e.g.*, *Harmon*, 181 A.D.2d at 37; *People v. Reyes*, 174 A.D.2d 87, 90 (1st Dep't 1992); *Perez*, 156 A.D.2d at 10; *People v. Varela*, 106 A.D.2d 339, 340 (1st Dep't 1984). And in holding defendant in criminal contempt during trial for repeated violations of the Court's orders, the Court found beyond a reasonable doubt that defendant willfully violated court orders on no fewer than ten separate occasions, and that sanctions were necessary to "protect the dignity of the judicial system and to compel respect for its mandates," and "to punish the contemnor for disobeying a court order."

Trump, 2024 N.Y. Slip Op. 24148, at *2-3 (quoting *Matter of McCormick v. Axelrod*, 59 N.Y.2d 574, 583 (1983), and *Rush v. Save My Home Corp.*, 145 A.D.3d 930, 931 (2d Dep't 2016)); *see also Trump*, 83 Misc. 3d 1202(A), at *3; Judiciary Law §§ 750(A)(3), 751. The fact that defendant violated the Court's orders during the pendency of this very case militates against dismissal. *Cf. People v. Smith*, 217 A.D.2d 671, 673 (2d Dep't 1995) (fact that defendant engaged in continued criminal conduct during the pendency of the case "militates against" dismissal); *Harmon*, 181 A.D.2d at 38 (reversing trial court's interest-of-justice dismissal and holding that failure to consider the defendant's subsequent criminal history was clear error); *People v. Howard*, 151 A.D.2d 253, 256 (1st Dep't 1989). And the adjudicated findings of sexual assault, defamation, breach of fiduciary duty, and abuse of the legal process described in Part IV.C.3 above establish that defendant's criminal conviction was not "an isolated aberrational act on his part." *Varela*, 106 A.D.2d at 340.

Defendant also cites his public service as a factor in support of his motion to dismiss. Def.'s Mem. 59. A defendant's professional circumstances—however laudable—are not a compelling factor warranting dismissal. *See, e.g.*, *People v. Marshall*, 106 A.D.3d 1, 11-12 (1st Dep't 2013) (affirming trial court's denial of *Clayton* motion and holding that the defendant's "public service is laudable, but it does not rise to the level of an extraordinary or special circumstance"); *Varela*, 106 A.D.2d at 340 (defendant's "'exemplary' background . . . does not immunize him from the normal processes of the criminal law"); *cf. Belkota*, 50 A.D.2d at 122 ("Surely a crime becomes no less a crime when performed by a public officer, and may well be considered by some to be worse."); *People v. Norman*, 6 Misc. 3d 317, 352-54 (Sup. Ct. Kings Cnty. 2004) (Marcus, J.).

Defendant's exhaustively-documented history of disrespect for the judicial process—which this Court previously recognized as "a direct attack on the Rule of Law itself," Decision & Order 3 (Apr. 1, 2024)—supports denial of his motion to dismiss. CPL § 210.40(1)(d).

D. Public confidence in the criminal justice system.

Vitiating the jury's verdict would undermine public confidence in the criminal justice system. CPL § 210.40(1)(g). As discussed above, a jury verdict is a solemn "pronouncement of guilt or innocence" that there is a compelling public interest in maintaining. *Gilliam*, 994 F.2d at 101. Defendant seeks dismissal of the indictment based on a circumstance that arose months after his conviction on May 30, 2024—namely, his election to public office and his future inauguration. Those developments have nothing to do with his guilt or innocence; the fairness of the trial; or the strength of the evidence against him. Dismissing this indictment notwithstanding the jury's verdict of guilt would thus undermine the jury's fundamental role in our criminal justice system.

Defendant's apparent argument (Def.'s Mem. 25, 50) that the election itself has any bearing on the legitimacy of the jury's verdict is of course misplaced. "Legal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper." *United States v. Trump*, 88 F.4th 990, 1022 (D.C. Cir. 2023) (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966)). Dismissing an indictment after a trial and guilty verdict because the defendant later wins an election would undermine the public's perception of fairness in the criminal justice system. *See People v. Reyes*, 174 A.D.2d 87, 90 (1st Dep't 1992) (reversing interest-of-justice dismissal because "public confidence in the criminal justice system . . . can only be undermined when justice is administered in less than an evenhanded fashion"); *People v. Aleynikov*, 2013 N.Y. Slip Op. 34209(U), at *35-36 (Sup. Ct. N.Y. Cnty. 2013) (denying interest-of-justice dismissal where prosecution "can serve to remind the Public that no one is above the law"). This is particularly so where the crimes defendant was convicted of committing relate to his illegal efforts to promote his

own election in 2016. *See People v. Hadnott*, 74 Misc. 3d 509, 513 (Sup. Ct. N.Y. Cnty. 2022) ("A dismissal would have an adverse effect upon the public's confidence in the criminal justice system's ability to prosecute instances of public corruption").

Reprising an argument he already presented unsuccessfully to both this Court and the Appellate Division, defendant argues that seating an impartial jury in this jurisdiction was impossible. Def.'s Mem. 64. In denying defendant's pretrial motion to adjourn the trial because of prejudicial publicity, this Court rejected that claim and held not only that effective voir dire could identify impartial jurors, but also that defendant's own pretrial survey indicated that 70% of the respondents in New York County could "'definitely or probably' be fair and impartial."[19] Decision & Order on Def.'s Mot. for Further Adjournment Based on Pre-Trial Publicity 3 (Apr. 12, 2024). The Appellate Division likewise denied defendant's motion for venue change pursuant to CPL § 230.20 based on similar arguments. *See* Order, *People v. Trump*, No. 2024-02646 (1st Dep't May 23, 2024). Defendant's observation (Def.'s Mem. 64) that many potential jurors asked to be excused on the ground that they could not be impartial undermines his own point—this fact plainly shows that the Court's voir dire process did in fact identify and remove prospective jurors who could not be impartial.[20] Dismissal based on defendant's flawed claims about the New York

[19] The Court also noted that defendant's survey did not explain its methodology enough to demonstrate that its results were at all reliable. *Id.* ("The Court is skeptical of the reliability and interpretation of Defendant's commissioned Survey and Media Study.").

[20] The seated jurors were subject to an exhaustive voir dire process that included an initial instruction during which any juror who self-identified as being unable to be fair and impartial was excused (Tr. 123-130, 412-418); an extensive questionnaire that asked several questions about each prospective juror's ability to judge this case fairly and impartially; and extended individualized questioning by the judge and counsel for both sides about the particulars of certain jurors (*e.g.*, Tr. 282-285, 293-297, 565-570, 578-587, 732-740). The Court also provided the parties with more time than usual to question each panel. This robust process is precisely the type of "thorough voir dire" that courts have recognized can identify jurors who are able to dispassionately evaluate the evidence in a case, whatever their initial beliefs. *People v. Govan*, 64

County jury pool would not promote "confidence of the public in the criminal justice system." CPL § 210.40(1)(g).

Defendant also contends (Def.'s Mem. 64-66) that his allegations of law enforcement and judicial misconduct support dismissal in order to bolster public confidence. But as described below, those claims are categorically false and have been rejected by every one of the many courts to consider them. *See infra* Part IV.E. Dismissing an indictment to accommodate a defendant's repeated lies about the Court and the prosecution would undermine, not strengthen, confidence in the judicial system. *See* People's Mem. Opp. Recusal 8-9 (June 14, 2023).

This Court previously acknowledged that "[t]he members of this jury served diligently on this case, and their verdict must be respected." Order 3 (Sept. 6, 2024). To dismiss the indictment after defendant was "found guilty of crimes by a unanimous jury of his peers," *id.* at 2, would disregard those citizens' diligent service and undermine the state's core, foundational prerogative to enforce its own criminal law and to vindicate the judgment of its citizens that a defendant is guilty of violating that law. This factor weighs strongly against dismissal. CPL § 210.40(1)(g).

E. Defendant's allegations of misconduct by the Court and the People are categorically false and have been repeatedly rejected by this and other courts.

The thrust of defendant's motion (Def.'s Mem. 1-24, 59-66) is an effort to relitigate false claims of misconduct by the Court and the People that have already been examined and rejected by this and many other courts.[21] Apart from defense counsel's disingenuous and repeated efforts

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Misc. 3d 389, 395 (Sup. Ct. Kings Cnty. 2019); *see Skilling v. United States*, 561 U.S. 358, 387-392 (2010) (voir dire process adequately ensured impartial jury despite pretrial publicity).

[21] The Court has repeatedly admonished defense counsel not to make and relitigate these and other false and unsupported allegations. *See, e.g.*, Decision on Def.'s Mot. for Recusal 3 (Aug. 13, 2024) ("Defense Counsel's reliance, and apparent citation to his own prior affirmation, rife with inaccuracies and unsubstantiated claims, is unavailing"; and defense "counsel has been warned repeatedly that [zealous] advocacy must not come at the expense of professional responsibility in

to malign and menace the People, the Court, and their families with inflammatory falsehoods and conspiracy theories, there is no misconduct here—much less any showing of the "exceptionally serious misconduct" required to support dismissal in the interest of justice. CPL § 210.40(1)(e).

1. The Court's impartiality cannot reasonably be questioned. Defendant's crusade against this Court and the Court's family (Def.'s Mem. 5-6, 21-24, 65-66) has been rejected in no fewer than seven different orders by state and federal courts. This Court evaluated and rejected defendant's arguments in three orders denying defendant's motions to recuse. *See People v. Trump*, 82 Misc. 3d 1233(A), at *2-4 (Sup. Ct. N.Y. Cnty. 2023) (denying defendant's first motion for recusal); Trial Tr. 2:17-7:24 (Apr. 15, 2024) (denying motion to renew or reargue); Decision on Def.'s Mot. for Recusal (Aug. 13, 2024) (denying third motion to recuse).[22] The Appellate

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one's role as an officer of the court"); Tr. 991-992 (Apr. 23, 2024); Tr. 73 (Apr. 15, 2024); Decision & Order on Def.'s Mot. for Further Adjournment Based on Pre-Trial Publicity 3-4 (Apr. 12, 2024) ("The People's justifiable concern" with defense counsel's false allegations "compels the Court again to express its continuing and growing alarm over counsel's practice of making serious allegations and representations that have no apparent basis in fact—or at least are unsupported by a legitimate basis of knowledge."); Decision & Order on People's Mot. to Clarify 3 (Apr. 1, 2024) ("The arguments [defense] counsel makes are at best strained and at worst baseless misrepresentations which are uncorroborated and rely upon innuendo and exaggeration," resulting in "accusations that are disingenuous and not rational"); Decision & Order on Def.'s Mot. to Vacate 3-4 (Mar. 26, 2024) (noting what "what appears to be an attempt to circumvent the Court's Order" by defense counsel and admonishing that "the Court expects that the line between zealous advocacy and willful disregard of its orders will not be crossed"); Hearing Tr. 35-36, 45-49, 53 (Mar. 25, 2024); Order on Def.'s Mots. in Limine 2 (Mar. 18, 2024) ("Rearguing the Court's prior rulings in this manner is procedurally and professionally inappropriate and a waste of this Court's valuable resources."); Order on Redactions (Dec. 6, 2023) ("Counsel is cautioned that this Court expects all parties to adhere to the highest ethical standards, particularly when making representations which this Court obviously relies upon."); Decision on Def.'s Mot. for Recusal 4 (Aug. 11, 2023) ("The Court finds the allegations in [defense counsel's] affirmation inaccurate and the conclusions drawn therefrom misleading.").

[22] Those decisions were correct for the reasons set out in the Court's three orders and in the People's five prior submissions to this Court opposing defendant's motions to recuse. *See* People's Ltr. Opposing Renewed Mot. to Recuse (Aug. 1, 2024); People's Opp. to Def.'s Renewed Mot. for Recusal (Apr. 5, 2024); People's Ltr. Opposing Leave to File Renewed Mot. for Recusal (Apr. 2, 2024); People's Opp. to Def.'s Mot. for Recusal (June 14, 2023); People's Aff. in Opp. to Def.'s Mot. for Recusal (June 14, 2023).

Division likewise rejected defendant's request for relief regarding recusal three separate times. *Trump v. Merchan*, 227 A.D.3d 569, 570 (1st Dep't 2024) (dismissing article 78 challenge); Order, *Trump v. Merchan*, No. 2024-02413 (1st Dep't Apr. 30, 2024) (panel order denying stay); Order, *Trump v. Merchan*, No. 2024-02413 (1st Dep't Apr. 10, 2024) (interim order denying stay). All told, by those three Appellate Division orders, *ten different justices* of the First Department have considered and declined to disturb this Court's recusal determinations. The federal district court also rejected defendant's demand for that court to examine this Court's impartiality. *See New York v. Trump*, No. 23 Civ. 3773, 2024 WL 4026026, at *1 (S.D.N.Y. Sept. 3, 2024) ("It would be highly improper for this Court to evaluate the issues of bias, unfairness or error in the state trial."); *see also New York v. Trump*, 683 F. Supp. 3d 334, 350-51 (S.D.N.Y. 2023) (declining to assert protective jurisdiction and holding that "there is no reason to believe that the New York judicial system would not be fair and give Trump equal justice under the law"). And all of this occurred after the Advisory Committee on Judicial Ethics determined more than 18 months ago that defendant's claims provide no basis for recusal. *See* Opinion of the Advisory Committee on Judicial Ethics, Op. 23-54 (May 4, 2023).

In this Court's August 13, 2024 order denying recusal, the Court observed that although it welcomes "zealous advocacy and creative lawyering," defense counsel "has been warned repeatedly that such advocacy must not come at the expense of professional responsibility in one's role as an officer of the court." Decision on Def.'s Mot. for Recusal 3 (Aug. 13, 2024). Re-raising these failed arguments again and claiming that they show "exceptionally serious misconduct" by the Court, CPL § 210.40(1)(e)—when twelve different judges on three state and federal courts have now rejected or declined to consider these claims in seven separate court orders—is the dictionary definition of frivolous.

2. The Court's orders protecting the integrity of the proceeding are constitutional. Equally frivolous is defendant's claim that this Court's orders regarding extrajudicial speech are not just unconstitutional but also somehow evidence of misconduct by either the Court or the People. Def.'s Mem. 5-6, 24, 66. As described in Part IV.C above, those orders were based on extensive and uncontested factual support.[23] *See* Decision & Order (June 25, 2024); Decision & Order (Apr. 1, 2024); Decision & Order (Mar. 26, 2024); *see also* People's Response to Def.'s Mot. to Terminate (June 20, 2024); People's Mot. for Clarification (Mar. 28, 2024); People's Mot. for Order Restricting Extrajudicial Statements (Feb. 22, 2024). And the Court modified its pretrial orders to make them even more narrowly tailored when circumstances changed after trial. *See* Decision & Order (June 25, 2024).

The Court's orders were then upheld against defendant's challenges at every level of the state courts—including in *eight* different orders and opinions from the Court of Appeals and the Appellate Division. *See Trump v. Merchan*, 42 N.Y.3d 956 (Sept. 12, 2024) (dismissing appeal "upon the ground that no substantial constitutional question is directly involved"); *Trump v. Merchan*, 42 N.Y.3d 903 (Sept. 12, 2024) (denying leave to appeal); *Trump v. Merchan*, 41 N.Y.3d 1013 (June 18, 2024) (dismissing appeal "upon the ground that no substantial constitutional question is directly involved"); *Trump v. Merchan*, 230 A.D.3d 413 (1st Dep't Aug. 1, 2024) (denying article 78 challenge); Order, *Trump v. Merchan*, No. 2024-02298 (1st Dep't May 23, 2024) (denying motion for leave to appeal); *Trump v. Merchan*, 227 A.D.3d 518 (1st Dep't May 14, 2024) (denying article 78 challenge); Order, *Trump v. Merchan*, No. 2024-02369 (1st Dep't

[23] The Court's orders followed an opinion from the U.S. Court of Appeals for the D.C. Circuit affirming similar relief against the same defendant that had already been ordered by the federal district court in that case. *See United States v. Trump*, 88 F.4th 990 (D.C. Cir. 2023), *reh'g en banc denied*, 2024 WL 250647 (D.C. Cir. Jan. 23, 2024).

Apr. 23, 2024) (panel order denying stay); Order, *Trump v. Merchan*, No. 2024-02369 (1st Dep't Apr. 9, 2024) (interim order denying stay). There is no good-faith argument that the Court's orders are evidence of anything other than an effort to preserve the integrity of these proceedings.

3. The People independently investigated and prosecuted this case. As to the canard that the Justice Department directed this prosecution (Def.'s Mem. 1, 8-9, 61), the Court already collected and reviewed every single interoffice communication and internal DANY record regarding the People's interactions with the Justice Department about this investigation dating back to 2021—reflected in two detailed attorney affirmations, more than 170 exhibits spanning over 1,000 pages, and a timeline containing 335 entries[24]—and the Court concluded after a fact hearing that "there was no coordinated, joint investigation being conducted by the New York County District Attorney's Office and USAO-SDNY." Decision on Def.'s Mot. for Discovery Sanctions 3 (May 23, 2024); *see also* Hearing Tr. 36:10-21, 54:09-55:12 (Mar. 25, 2024) ("[The Court]: [T]he exhibits and the evidence that I reviewed are clear that the U.S. Attorney's Office and the District Attorney's Office never, during the course of their respective investigations, collaborated in any way, shape, or form on either investigation.").

Defendant's contention that "DOJ sent Colangelo to DANY . . . to target" the defendant (Def.'s Mem. 9) is knowingly false. As defendant knows from the People's sworn attorney affirmation opposing defendant's omnibus motions, the People were investigating this case and preparing for a possible grand jury presentation—in part by beginning the process of impaneling an additional grand jury in October 2022—long before ADA Colangelo was hired by this Office.

[24] *See* Conroy Aff. Appending Timeline & Correspondence (Mar. 21, 2024); People's Timeline & Exs. 1-170 (Mar. 21, 2024, corrected Mar. 23, 2024); People's Mem. Opp. Def.'s Mot. Regarding Discovery of USAO-SDNY Documents (Mar. 18, 2024, corrected Mar. 20, 2024); Conroy Aff. Supp. People's Opposition & Exs. 1-9 (Mar. 18, 2024).

See Conroy Aff. ¶¶ 6-15, 33-35 (Nov. 9, 2023). And the United States Attorney General categorically denied this conspiracy theory during sworn testimony before a congressional committee on June 4, 2024. *See Oversight of the U.S. Dep't of Justice: Hearing Before the H. Comm. on the Judiciary*, Hearing Tr. at 22, 66, 93 (June 4, 2024) ("[Attorney General Garland]: The Justice Department did not send [Mr. Colangelo] to New York. Those decisions in New York are made by the DA of New York.") (Ex. 7).[25]

The Department of Justice then further responded to the congressional committee in writing to make clear that although "[t]he Department does not generally make extensive efforts to rebut conspiratorial speculation, including to avoid the risk of lending it credibility, . . . the Department has taken extraordinary steps to confirm what was already clear: there is no basis for the[] false claims" that the Justice Department is "behind the District Attorney's so-called 'politicized prosecution.'" Letter from Hon. Carlos Felipe Uriarte, Assistant Attorney General, Office of Legislative Affairs, U.S. Dep't of Justice, to Hon. Jim Jordan, Chair, H. Comm. on the Judiciary (June 10, 2024) (Ex. 8).[26] That letter confirmed, again, that "Department leadership did not dispatch Mr. Colangelo to the District Attorney's office, and Department leadership was unaware of his work on the investigation and prosecution involving the former President until it was reported in the news." *Id.* The Department also explained that "[a]s the Attorney General stated at his hearing, the conspiracy theory that the recent jury verdict in New York state court was somehow controlled by the Department is not only false, it is irresponsible. Indeed, accusations of wrongdoing made without—and in fact contrary to—evidence undermine confidence in the justice

[25] *At* https://www.govinfo.gov/content/pkg/CHRG-118hhrg55952/pdf/CHRG-118hhrg55952.pdf.

[26] *At* https://s3.documentcloud.org/documents/24740955/doj-letter.pdf.

system and have contributed to increased threats of violence and attacks on career law enforcement officials and prosecutors." *Id.* It is bad faith for defense counsel to perpetuate this lie.[27]

4. The People's examination of Michael Cohen was proper. The People's opposition to defendant's CPL § 330.30 motion responded at length to defendant's contention that Michael Cohen's testimony was unreliable or false (Def.'s Mem. 4-5, 17-18, 62-63), and we incorporate that discussion by reference here. *See* People's Mem. Opp. Def.'s Post-Trial Mot. 52-57 (July 24, 2024). Regarding defense counsel's inflammatory accusation that the People "elicited perjury from Cohen" regarding the October 24, 2016 phone call (Def.'s Mem. 63), that claim is categorically untrue. On cross examination, Cohen firmly rejected defense counsel's assertion that Cohen lied about speaking to defendant on that call, and testified that "[b]ased upon the records that I was able to review, in light of everything that was going on, I believe I also spoke to Mr. President Trump and told him everything regarding the Stormy Daniels matter was being worked on and it's going to be resolved." Tr. 3896:9-3898:8. Cohen's testimony was corroborated both by photographic evidence of Schiller standing next to defendant mere minutes before the phone call in question, *see* People's 417-B; Tr. 4187:8-14 (Cohen), and by testimony from Cohen and other witnesses that they sometimes contacted Schiller in order to reach defendant by phone. Tr. 3276:2-

[27] Defendant's bizarre detour into ADA Colangelo's other assignments at DANY (Def.'s Mem. 9) is also factually false. Among other matters, ADA Colangelo's docket since joining this Office in December 2022 has included not just this case—with its hundreds of court filings, six-week trial, and ancillary litigation and hearings in multiple other federal and state courts—but also economic justice matters, including assisting in the development of DANY's Worker Protection Unit; sex crimes investigations and prosecution; appellate matters; and multiple other matters that by law cannot be publicly disclosed. CPL § 190.25(4). Quite obviously, most of those matters are not reported in Westlaw or announced by press release. However much defense counsel believes it helps defendant's public crusade against this Office and its prosecutors to falsely claim otherwise, an ADA who in the past two years has worked on serious and complex matters involving nearly every Division in this Office can hardly be said to have a "singular purpose" relating to this defendant. Def.'s Mem. 8.

10, 3313:21-24 (Cohen); Tr. 1008:14-18 (Pecker); Tr. 2141:1-8 (Hicks). And the defense offered no testimonial or other evidence to rebut Cohen's testimony that he in fact spoke with defendant about the Daniels payoff on that October 24, 2016 call. The Court should reject—again—defense counsel's baseless accusations of suborning perjury. Tr. 4955:2-4956:15 (denying motion for judgment of acquittal) ("THE COURT: I'm sure you misspoke when you said 'knowing.' You're not suggesting that I 'know' anybody committed perjury; right?").

Defense counsel's claim that the People "ignor[ed] Cohen's perjury" at an October 2023 civil fraud trial (Def.'s Mem. 17-18, 63) against defendant is also false. As this Court knows, Justice Engoron—sitting as the finder of fact in the New York Attorney General's civil fraud trial—expressly found that "Michael Cohen told the truth" and that "the Court found his testimony credible." Decision & Order After Non-Jury Trial 43, *People by James v. Trump*, Index No. 452564/2022, 2024 NYLJ LEXIS 582, at *100 (Sup. Ct. N.Y. Cnty. Feb. 16, 2024); *see also* People's Mem. Opp. Post-Trial Mot. 53 (July 24, 2024); Tr. 3746:15-3747:1. Nothing about Mr. Cohen's testimony or the People's examination of this witness supports any claim of misconduct.

5. The People's examination of Stormy Daniels was proper. Defense counsel's meritless accusations that the People elicited false testimony from Stormy Daniels or intentionally violated the Court's orders regarding the scope of her testimony (Def.'s Mem. 5, 13, 17, 63) are contradicted by the trial record. After considering argument concerning defense counsel's objections to expected testimony by Ms. Daniels, the Court directed the People: "You can get into the sexual act, that there was a sexual act. Of course, you can talk about how she got there; how she ended up in the room. Just the facts. You can get into the facts." Tr. 2558:16-20. The People then elicited testimony to that effect. Tr. 2608:5-2615:25, 2616:12-13. In denying defendant's motion for a mistrial following that testimony, the Court expressly held—after reviewing the trial

transcripts and the Court's decisions on the omnibus motions and both motions in limine—that the Court "came away satisfied" that "everyone had followed my guidelines," "there were no inconsistencies," and "no one had violated my rulings." Tr. 3073:21-3074:8; *see generally* Tr. 3073:21-3080:8 (order denying mistrial). In particular, the Court explained that the People had the right to elicit details about the sexual encounter in response to defense counsel's opening statement denying that encounter:

> [I]n your opening statement, you deny that there was ever a sexual encounter between Stormy Daniels and the defendant. . . . Your denial puts the jury in a position of having to choose who they believe: Donald Trump, who denies there was an encounter, or Stormy Daniels, who claims that there was. Although the People do not have to prove that a sexual encounter actually did occur, they do have the right to rehabilitate Ms. Daniels' credibility and to corroborate her story, which was immediately attacked on opening statements. The more specificity Ms. Daniels can provide about the encounter, the more the jury can weigh to determine whether the encounter did occur and, if so, whether they choose to credit Ms. Daniels' story.

Tr. 3074:20-3075:11; *see also* 3079:22-3080:8.

Defense counsel's allegation that the People "persisted" in eliciting improper testimony despite sustained objections (Def.'s Mem. 17) is also patently false. In each example cited by defense counsel where the Court sustained defense objections, the People either rephrased the question to avoid leading, asked questions to clarify the testimony as requested by defense counsel, or moved on to ask a different question—for which there was then no objection. Tr. 2592, 2611-2615, 2618, 2620-2621, 2630, 2633, 2647, 2650-2651, 2653. To the extent the People asked some leading questions, the Court recognized that the People were "trying to direct [the witness]," which for that witness "might be the safer course," Tr. 2619:9-11, because "[i]n fairness to the People, . . . the witness was a little difficult to control." Tr. 2677:20-21. Indeed, the People proactively asked to approach the bench in order to seek the Court's guidance on several instances in order to comply with the Court's directives. *See, e.g.*, Tr. 2643:18-2646:1, 2717:2-2718:3, 2892:5-2895:18. And the People did not "wrongly elicit[] false testimony" that Ms. Daniels' encounter with

defendant was non-consensual (Def.'s Mem. 17); instead, the People elicited testimony that Ms. Daniels was not intoxicated, was not threatened, and never said "no" to the encounter. *See* Tr. 2611:2-2613:24, 2616:12-13. The Court expressly held that the witness made clear that she was not "coerced or forced in any way." Tr. 3077:17-19. Nothing about Ms. Daniels' testimony or the People's examination of this witness supports any claim of misconduct.

6. The People have been candid and accurate with every court. The People did not "misrepresent[] to the Court that Weisselberg was unavailable to testify based on his severance agreement." Def.'s Mem. 5, 18-19, 63. The People and defense counsel had a full colloquy with the Court about Mr. Weisselberg's circumstances as part of the People's application to admit Mr. Weisselberg's severance agreement, and there is no good-faith argument that the People misled the Court in any way about any aspect of Mr. Weisselberg's incarceration or the People's ability to subpoena him to testify. Tr. 3240:20-3252:16, 3257:20-3258:5. The People argued that the severance agreement was relevant and admissible to explain why the People were not calling Weisselberg as a witness: not because the agreement prohibited him from being subpoenaed but because it made clear he was still beholden to defendant financially and otherwise. Tr. 3244:10-3246:4, 3250:3-17. Defendant's claim that the People misled the Court about Mr. Weisselberg's availability (Def.'s Mem. 18-19, 63) is yet another tortured misrepresentation of the trial record, and one that is expressly contradicted by defense counsel's own concession to this Court that "Mr. Weisselberg's absence from this trial is a very complicated issue. I wouldn't be surprised if there ends up being a foundation for a missing witness instruction about the uncalled witnesses being equally unavailable to both sides." Tr. 3241:22-3242:2; *see also* Tr. 3243:4-10 (objecting to admission of the severance agreement because Mr. Weisselberg is "not available to anyone").

Nor did the People "argue[] falsely" (Def.'s Mem. 4, 19-21, 62-63) during the 2023 removal proceedings before the federal district court. During that proceeding, the People accurately characterized the charges in the indictment as being "for or related to" defendant's personal conduct, not his official acts as President. That characterization was true when the People made it and when the district court found that the charges related to "a purely a personal item of the President" that was "not related to [the] President's official acts" and did not "reflect in any way the color of the President's official duties." *Trump*, 683 F. Supp. 3d at 345. And that characterization about the nature of the charges remains true today: the People have never amended the indictment to charge defendant with crimes based on his official conduct, and defendant has never argued that presidential official-acts immunity shields him from liability for the charges in the indictment.

The People also did not make any false statement about defendant's preemption defense. Def.'s Mem. 19-21. The People accurately disclosed (and accurately described in the removal proceeding) *every* possible basis for finding that defendant falsified business records with the intent to commit or conceal another crime; the People's subsequent decision to tailor their theory of liability at trial was proper. *People v. Seignious*, 41 N.Y.3d 505, 511-12 (2024). And contrary to defendant's contention (Def.'s Mem. 21), this Court's instructions did not mention—let alone require the jury to find—anything about "specific disclosures" required by FECA. Tr. 4843:16-4845:4. The Court's instructions simply explained that it was unlawful to exceed federal campaign contribution limits—a true fact, to which defendant made no objection at trial. Tr. 4843:19-23.

7. The Court has exhaustively considered and rejected defendant's arguments. Finally, the Court has already considered and rejected each of the many other meritless allegations of

misconduct defendant rehashes in his motion to dismiss. In response to the dozens of other times defendant has raised the same false claims, the Court has concluded that:

- there is no evidence of selective prosecution (Def.'s Mem. 1-2, 6, 59-61), because defendant's "claims are devoid of evidence that the law has not been applied to other similarly situated individuals prosecuted by DANY," and defendant "failed to demonstrate that the People proceeded on an impermissible standard," *see* Decision & Order Denying Omnibus Mots. 20-22 (Feb. 15, 2024); *see also* Decision & Order on People's Mots. in Limine 4-5 (Mar. 18, 2024);

- the District Attorney's public comments before he became District Attorney (Def.'s Mem. 7-8, 60) also do not support any claim of selection prosecution, *see* Decision & Order Denying Omnibus Mots. 20-22 (Feb. 15, 2024) (denying defendant's claim); People's Mem. Opp. Omnibus Mots. 64-66 (Nov. 9, 2023); Def.'s Mem. Supp. Omnibus Mots. 30 (Sept. 29, 2023); *see also* People's Mem. Opp. Def.'s Mot. for a Further Adjournment 17 (Apr. 1, 2024);

- the District Attorney's public comments after defendant was indicted (Def.'s Mem. 13-14, 62) were completely appropriate and caused no prejudice, because "the DA, the district attorney of New York county has an obligation, literally an obligation to report on why charges were brought, what charges were brought, and to explain to the public why that's being done. . . . [E]specially, whereas here, [defendant] had put out messages regarding date of arrest, alleged charges, and speaking on what he felt was a politically driven prosecution. I think that in light of those statements that were put out there, there is no denying that the district attorney has an absolute obligation then to clarify for the people that he represents what the charges are and why he brought them." Tr. of Protective Order Hearing 24:18-25:8 (May 4, 2023); *see also* People's Mem. Opp. Def.'s Mot. for a Further Adjournment 16 (Apr. 1, 2024);

- there were no violations of grand jury secrecy (Def.'s Mem. 4, 9-10, 61-62), including through any of the newspaper articles defendant cited in his omnibus motion and re-cites in seeking dismissal, *see* Decision & Order Denying Omnibus Mots. 27-28 (Feb. 15, 2024) ("The Court has considered the arguments of the respective parties in tandem with careful examination [of] the Grand Jury minutes and finds that Defendant's claims are without merit."); *see also* Decision & Order on Def.'s Mot. for Further Adjournment Based on Pre-Trial Publicity (Apr. 12, 2024) (rejecting the same argument); People's Mem. Opp. Omnibus Mots. 71-73 (Nov. 9, 2023) (explaining that former Special ADA Mark Pomerantz's invocation of the Fifth Amendment in testimony before a congressional committee did not support that he violated grand jury secrecy);

- Mark Pomerantz's book did not cause or pressure the District Attorney to charge this case (Def.'s Mem. 4, 7, 9-13, 60, 62), because "[t]he People have demonstrated that the investigation and ensuing prosecution commenced following public reporting of Defendant's ties to criminal conduct that took place in New York prior

to the 2016 presidential election," Decision & Order Denying Omnibus Mots. 22 (Feb. 15, 2024) ("Defendant's allegations here strain credulity.");

- defendant's effort to establish any bias by former DANY Investigator Jeremy Rosenberg (Def.'s Mem. 4-5, 61) was improper because defendant failed to call any witness to establish that bias, see Tr. 2050:4-13, and because defense counsel falsely suggested to the jury that Mr. Rosenberg had violated grand jury secrecy, for which the Court directed defense counsel to correct his misrepresentations, Tr. 3771:9-3776:4, 3846:14-3849:9, 3902:1-3904:21, 3905:19-3907:9;

- the People did not "coerc[e]" Allen Weisselberg into pleading guilty to perjury or select the date of his sentencing to prejudice this defendant (Def.'s Mem. 4, 14, 62), holding that Weisselberg "answered under oath, in open court, under the penalties or perjury, that no one had forced him to plead guilty," and that in contending otherwise "defense counsel clearly ignores the words contained in the official transcript," Decision & Order on Def.'s Mot. for Further Adjournment Based on Pre-Trial Publicity 3-4 (Apr. 12, 2024);

- the People did not "allow[]" Michael Cohen or Stormy Daniels to "seek financial benefits" or "publicly market their status as witnesses" (Def.'s Mem. 14-17, 62), noting that witnesses like Cohen and Daniels "are not parties to this action. They're not within the control of the People." Tr. of Protective Order Hearing 39:23-25 (May 4, 2023); and in any event the People repeatedly advised all witnesses not to speak publicly about the case, *see* Tr. 3657:8-19, 3662:21-24, 3669:6-21 (Cohen) (agreeing that going back to January 2021, "the Prosecutors with the Manhattan District Attorney's Office have repeatedly asked [Cohen] to stop publicly commenting about this case"); Tr. 3254:2-5 (People: "[W]e have repeatedly instructed all of the witnesses in this case, to the extent that we have any control over it, to refrain from making public statements."); Hoffinger Aff. ¶ 21 (Mar. 18, 2024) ("To minimize the risk of pretrial publicity, we have periodically requested, both directly and through her attorney, that Ms. Daniels not discuss the case publicly."); Tr. of Arraignment 13:17-20 (Apr. 4, 2023) (People "note for the record that we have done so and will continue to do so, and do everything we can to clamp down on any witness comments in public").

- Stormy Daniels did not time the release of a documentary about her to maximize prejudicial publicity (Def.'s Mem. 16-17); in fact, a sworn affirmation from NBCUniversal established that Daniels "had no right to approve the content of the Documentary or the timing of its release," and the Court therefore held that defendant's claims to the contrary "are purely speculative and unsupported," Decision & Order on Mot. to Quash 3-4 (Apr. 5, 2024); *see also* Reply Mem. of NBCUniversal 1-2 (Apr. 1, 2024); Aff. of Erica Forstadt ¶¶ 2-4 (Apr. 1, 2024);

- the limited portions of the People's timeline and exhibits for the March 25, 2024 discovery hearing that were submitted in camera were properly sealed (Def.'s Mem. 14) because they contained work product and law-enforcement sensitive information; because defendant himself submitted sealed, ex parte exhibits in

> connection with that hearing so as "to not compromise any potential defense strategy"; and because "the parties could have introduced exhibits into evidence at the Discovery Hearing but elected not to do so," *see* Decision & Order on Public Filings 3 (May 16, 2024).

As to all of these arguments, dismissal is particularly unwarranted not only because defendant's claims are spurious but also because he "fully litigated" these arguments in extensive trial and appellate motion practice over the past year and a half. *Harmon*, 181 A.D.2d at 38. There is no evidence of any misconduct by the Court or the People in connection with this case at all. CPL § 210.40(1)(e).

F. The remaining *Clayton* factors.

The remaining Clayton factors do not support dismissal.

Defendant contends that "no sentence can be timely imposed." Def.'s Mem. 63, *see* CPL § 210.40(1)(f). But as discussed above, no principle of immunity precludes further proceedings before defendant's inauguration. And even if judgment has not been entered at the time of defendant's inauguration, there is no legal barrier to deferring sentencing until after defendant's term of office concludes. *See supra* Part III.D.1. In either event, sentencing would serve the important purpose of deterring future crime. *See People v. Snowden*, 160 A.D.3d 1054, 1057 (3d Dep't 2018) (reversing order granting defendant's *Clayton* motion and holding that deterrence "is a goal served by sentencing a defendant who has been convicted of a crime"). This is so even where the available or likely sentence is non-incarceratory. *See Harmon*, 181 A.D.2d at 39 (holding that even where the appropriate sentence is non-incarceratory, the purposes served by sentencing weigh against interest-of-justice dismissal because dismissal "would only serve to reinforce defendant's perception . . . that he can continue to flout this State's . . . laws with impunity"); *Aleynikov*, 2013 N.Y. Slip Op. 34209(U), at *35 ("[T]he citizens of New York have an interest in having a guilty defendant sentenced for . . . offenses which are serious offenses.

Deterrence is a legitimate State purpose. That the People offered defendant a plea to a non-jail sentence is of no moment as to whether the indictment should be dismissed."). The possibility that presidential immunity may require a "favorable disposition" that "entail[s] no . . . incarceration" thus weighs against interest-of-justice dismissal. *Hernandez*, 198 A.D.3d at 545.

The "impact of a dismissal on the safety or welfare of the community," CPL § 210.40(1)(h), weighs neither in support of nor against dismissal in this case. *See Reyes*, 174 A.D.2d at 90; *Aleynikov*, 2013 N.Y. Slip Op. 34209(U), at *35. However, defendant's claim that the People previously told the Supreme Court that "there is no real public interest at stake here," Def.'s Mem. 66, is incorrect and deeply misleading. Defendant quotes from the People's brief opposing certiorari in *Trump v. Vance*, where the People were contesting defendant's claim that presidential immunity prohibited a third party from complying with a grand jury subpoena for defendant's personal records. In that context, the People wrote that "there is no real *public* interest at stake here at all; this case instead involves Petitioner's *private* interest in seeking his own and others' immunity from an ordinary investigation of financial improprieties independent of official duties." *See* Resp.'s Br. in Opposition 1, *Trump v. Vance*, No. 19-635 (S. Ct. filed Nov. 21, 2019)) (Def.'s Ex. 78). The reference to the public and private interest in defendant's personal tax returns (which are not at issue in this prosecution in any event) was, obviously, not a reference to the public interests served by the People's subsequent prosecution of defendant for falsifying business records to conceal a criminal election conspiracy. The public interest in both honest elections and honest financial bookkeeping is—as the People have argued through this proceeding—both self-evident and of the highest importance.

The final factor—"the attitude of the complainant or victim with respect to the motion"—is pertinent only "where the court deems it appropriate." CPL § 210.40(1)(i). This factor is

typically considered in cases involving an individual victim or victims, *see Harmon*, 181 A.D.2d at 39, and the Court may disregard it here. If the Court does consider this factor, it does not support dismissal. To the extent defendant argues that his crime is a "victimless" offense because it did not target a specific individual for injury, *see* Def.'s Mem. 67-68, courts routinely reject that reasoning. *See, e.g.*, *Harmon*, 181 A.D.2d at 34 (crime that affects "society as a whole" is not victimless); *Reyes*, 174 A.D.2d at 90 (court considering CPL § 210.40 motion must consider the effect of the criminal conduct "on the rest of society").

V. Defendant's motion to dismiss pursuant to CPL § 210.20(1)(h) is procedurally barred.

Defendant's effort to seek dismissal pursuant to CPL § 210.20(1)(h) is time-barred. The Court may consider defendant's immunity arguments as part of his CPL § 210.40 motion, which is the only motion the Court granted—or should grant—leave to file in these circumstances.

Defendant sought leave to file a motion "pursuant to CPL § 210.40" to raise his arguments of presidential and pre-presidential immunity in light of the results of the November 5, 2024 election and defendant's upcoming inauguration on January 20, 2025. Def.'s Ltr. (Nov. 19, 2024). The Court granted "Defendant's request for leave to file a motion to dismiss pursuant to [CPL] § 210.40." Decision & Order (Nov. 22, 2024). Defendant then filed a motion seeking dismissal pursuant to both CPL § 210.40 *and* CPL § 210.20(1)(h). *See* Def.'s Notice of Mot. (Dec. 2, 2024). But the Court's order granting leave to file a late CPL § 210.40 motion did not provide defendant *carte blanche* to submit other pretrial motions too.

Any motion to dismiss under CPL § 210.20(1)(h) was due 45 days after arraignment, absent leave to file late for good cause shown. *See* CPL §§ 210.20(2), 255.20(1), (3). The Court found good cause, and granted leave, only to file a late CPL § 210.40 motion. *See* Decision & Order (Nov. 22, 2024). The Court did not find, and could not have found, that defendant has shown the requisite good cause for a late CPL § 210.20(1)(h) motion in these circumstances. That statute allows a defendant

to seek dismissal based on a "jurisdictional or legal impediment to conviction of the defendant for the offense charged"; and here, defendant has of course already been convicted. *See* Tr. 4947-4952; CPL § 1.20(13) (defining "conviction" as "the entry of a plea of guilty to, or a verdict of guilty upon, an accusatory instrument other than a felony complaint"); CPL § 1.20(12) (defining "verdict" as "the announcement by a jury in the case of a jury trial . . . of its decision upon the defendant's guilt or innocence of the charges submitted to or considered by it"). Because defendant was convicted more than six months ago, on May 30, 2024, a purported jurisdictional impediment that arose for the first time on November 5, 2024 (for defendant's claim of pre-presidential immunity)—or that has not even arisen yet (for defendant's claim of presidential immunity)—cannot *nunc pro tunc* void his prior conviction. The supposed "impediment" did not even exist at the time of the jury's verdict.

As noted above, defendant's contentions regarding presidential and pre-presidential immunity—based on developments that arose after November 5, 2024—may be considered as factors under CPL § 210.40(1)(j), the "catch-all" provision in the interest-of-justice dismissal statute that requires the Court to consider "any other relevant fact" as part of its analysis. Indeed, the fact that the Court may address these arguments as part of defendant's CPL § 210.40 motion is another compelling reason to deny his improper CPL § 210.20(1)(h) motion. Subsection (h) "is to be used only when none of the other eight paragraphs" in CPL § 210.20(1) "sufficiently sets forth a specific defendant's ground for dismissal." *People v. Frisbie*, 40 A.D.2d 334, 336 (3d Dep't 1973). Here, one of those other eight paragraphs—CPL § 210.20(1)(i), which permits a defendant to make a motion to dismiss an indictment in the interest of justice pursuant to CPL § 210.40—affords defendant a sufficient vehicle for his arguments.

For these reasons, defendant's effort to file a belated motion to dismiss under CPL § 210.20(1)(h) is procedurally improper and should be denied.

VI. The pending Second Circuit appeal does not warrant a stay or any other relief.

Defendant's pending Second Circuit appeal does not present any basis for a stay of proceedings before this Court.

Defendant made a second attempt to remove this case to federal court on August 29, 2024, three months after the end of trial. The district court denied defendant's request for leave to file a second notice of removal because he failed to show good cause for attempting to remove after trial and more than thirty days after arraignment. *See Trump*, 2024 WL 4026026, at *1-2. Both the district court and the Second Circuit then denied defendant's requests to stay the order denying leave. *See* Order & Opinion Denying Mot. for Stay, *New York v. Trump*, No. 23 Civ. 3773, ECF No. 54 (S.D.N.Y. Sept. 6, 2024); Order Denying Stay, *New York v. Trump*, No. 24-2299, Dkt. 31.1 (2d Cir. Sept. 12, 2024). Defendant's appeal from the order denying leave is pending.

Defendant argues that the Court should "refrain" from deciding his fully-briefed CPL § 330.30 motion pending defendant's Second Circuit appeal, on the ground that the Court must not show "an improper lack of respect to the federal Court of Appeals." Def.'s Mem. 68. This suggestion is exactly backwards as a matter of basic constitutional law. In our federalist system, the states delegated certain powers to the federal government but reserved all remaining powers for state and local governments. *See* U.S. Const. amend. X. And "[b]ecause the regulation of crime is pre-eminently a matter for the States," there is a "'strong judicial policy against federal interference with state criminal proceedings.'" *Arizona v. Manypenny*, 451 U.S. 232, 243 (1981) (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 600 (1975)). State courts with jurisdiction over a state criminal prosecution thus need not and should not defer to hypothetical future action by a

federal court; to do so would be to abdicate "[p]erhaps the clearest example of traditional state authority" in our constitutional system. *Bond*, 572 U.S. at 858

Nor does the federal removal statute bar the Court from deciding any of defendant's pending motions or otherwise concluding this case. Congress provided that "[t]he filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded." 28 U.S.C. § 1455(b)(3). As an initial matter, § 1455(b)(3) does not apply here at all because defendant's effort to file a notice of removal failed for lack of good cause. As the district court clearly held, defendant has not filed a notice of removal because his request for leave to file a belated second notice was denied. *See* Order & Opinion Denying Mot. for Stay, *New York v. Trump*, No. 23 Civ. 3773, ECF No. 54 (S.D.N.Y. Sept. 6, 2024) ("Since I denied leave to file for removal, and thus there has been no removal petition properly filed, there is no action in my order of [September] 3, 2024 to stay."). Thus, because "there has been no removal petition properly filed," *id.*, defendant's pending Second Circuit appeal creates no obstacle to any further action by this Court. And even if § 1455(b)(3) did apply right now, it would operate at most to bar this Court from pronouncing sentence, not from adjudicating defendant's pending motions under CPL § 210.40 and CPL § 330.30. The federal removal statute prohibits this Court from entering "a judgment of conviction" before the case is remanded, 28 U.S.C. § 1455(b)(3); and the CPL provides that "[a] judgment is comprised of a conviction and the sentence imposed thereon and is completed by imposition and entry of the sentence," CPL § 1.20(15). But again, even that bar does not apply here because "there has been no removal petition." Order & Opinion Denying Mot. for Stay, *New York v. Trump*, No. 23 Civ. 3773, ECF No. 54 (S.D.N.Y. Sept. 6, 2024).

Defendant's claim that adjudicating the pending defense motions would leave him "holding an empty bag," Def.'s Mem. 69, is nonsensical. Even if defendant is later successful in his appeal from the denial of leave to file a second removal notice, federal law *still* would not deprive this Court of jurisdiction to resolve any of the pending defense motions for the reasons described above. *See* 28 U.S.C. § 1455(b)(3). And if defendant had wanted a prompt resolution of his Second Circuit appeal as a way to avoid further proceedings in this Court, he had every opportunity to expedite that appeal. Instead, he took nearly six weeks to file his merits brief after filing his notice of appeal. *See* Br. for Defendant-Appellant, *New York v. Trump*, No. 24-2299, Dkt. 47.1 (2d Cir. Oct. 14, 2024). At the People's request, the Second Circuit then ordered the standard 91-day deadline for the People's response brief, which is consistent with the local rules. Scheduling Order, *New York v. Trump*, No. 24-2299, Dkt. 55.1 (2d Cir. Oct. 22, 2024); Second Circuit Local R. 31.2(a)(1)(B). And defendant has made no effort to expedite his appeal at any point in the three months since he initiated it, notwithstanding that both the district court and the Second Circuit denied his requests to stay the district court's order pending appeal. Defendant's strategic delay in resolving his Second Circuit appeal is not a reason for this Court to voluntarily abdicate its jurisdiction.

Finally, claiming that the Court must not show "improper lack of respect . . . to the Executive Branch," defendant makes a novel request for advance notice of the Court's intent to issue any decision or calendar other dates—before the Court acts—so defendant may consider potential next steps. Def.'s Mem. 68-69. Criminal defendants do not set the Court's calendar. And the Court's most recent scheduling order was clear as to the extent and duration of the Court's adjournment of previously-scheduled dates. Right now there is no barrier to concluding these proceedings in the regular course as this Court would in any other case. Indeed:

> [T]he just resolution of criminal prosecutions is the purview of the judiciary. Our constitutional scheme contemplates each actor performing its respective role in the

> manner it best sees fit, within the boundaries imposed by the Constitution and Congress. The defendants ask this Court to do something extraordinary: to defray the execution of its own constitutional duties [based on speculative future steps by other actors]. The Court declines that invitation.

United States v. Slaughter, No. 22-cr-354, 2024 WL 4903808, at *2 (D.D.C. Nov. 27, 2024).

CONCLUSION

The Court should deny defendant's motion to dismiss.

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Respectfully submitted,

ALVIN L. BRAGG, JR.
District Attorney, New York County

By: */s/ Christopher Conroy*
Christopher Conroy
Matthew Colangelo
Katherine Ellis
Susan Hoffinger
Becky Mangold
Joshua Steinglass
Assistant District Attorneys
New York County District Attorney's Office
1 Hogan Place
New York, NY 10013

Steven C. Wu
Alan Gadlin
John T. Hughes
Of Counsel