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December 5, 2024

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

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

Dear Justice Merchan:

We are in receipt of a letter signed by Mr. Blanche and Mr. Bove dated December 3, 2024 ("Dec. 3 Letter") and received at 7:39 pm that night. In their letter, counsel raise vague allegations of juror misconduct [redacted]. They also submit a redacted version of their letter which they believe should be filed publicly. Along with their letter, counsel sent a second letter that they requested be kept under seal in which they identify [redacted]

As a preliminary matter, allegations of juror misconduct are extremely serious and should, under appropriate circumstances, be thoroughly investigated. *See* CPL §§ 330.30(2); 330.40(2). This is so because jury trials are the cornerstone of our system of criminal justice, and jury verdicts are typically accorded great deference.

Notwithstanding the import of their allegations, counsel do not request and in fact oppose a hearing at which their allegations could be fully examined, referring to such a hearing as "invasive factfinding." *See* Dec. 3 Letter 6. They incorrectly suggest that during the Presidential transition period, such a hearing would be disruptive and constitutionally unacceptable. *Id.* Rather, counsel urges this Court to accept their untested, unsworn allegations as true and to "consider the foregoing evidence of juror misconduct in connection with the pending arguments under CPL § 210.40(1), because such misconduct harms 'the confidence of the public in the criminal justice system,' CPL § 210.40(1)(g)." *Id.*, at 7.

Counsel's allegations fall far short of the standard required to request such a hearing in any event. CPL § 330.40(2) sets forth the mechanism by which a motion to set aside the verdict upon grounds of juror misconduct may be brought. Among other requirements, "[t]he moving papers must contain sworn allegations, whether by the defendant or by another person or persons, of the occurrence or existence of all facts essential to support the motion." CPL § 330.40(2)(a). The Dec.

3 Letter contains no sworn allegations of fact whatsoever; that alone would constitute grounds for summary denial if defendant were indeed seeking relief under CPL § 330.30. CPL § 330.40(2)(e)(ii).[1] The letter refers to a series of email exchanges between counsel and [redacted], but fails to append these email exchanges, including their own language which might contextualize the ostensible allegations. Similarly, the letter references a "draft declaration" prepared by counsel for [redacted] to review, edit, and sign but fails to append any such declaration, despite having appended more than 80 exhibits to their pending motion to dismiss.

Moreover, the excerpts of the communications that counsel did share included a communication from [redacted] in which [redacted] plainly stated that counsel's recitation of the purported juror misconduct—the same misconduct chronicled in the Dec. 3 letter—"**contains inaccuracies** and does not contain additional information that I never shared" [*sic*].[2] Dec. 3 Letter 4 (emphasis added). According to counsel's own recitation of events, [redacted] rejected several attempts to get [redacted] to endorse the factual allegations that serve as the basis of the Dec. 3 Letter. *Id.*, at 4-5. The [redacted] repeatedly declined to do so and abandoned plans for further communication with counsel. *Id.* As such, it cannot be determined which of the allegations counsel believe they heard are accurate. This is precisely why the law requires sworn allegations of fact to seek dismissal on a claim of juror misconduct. *See, e.g., People v. Johnson*, 54 A.D.3d 636 (1st Dept. 2008); *People v. Barizone*, 201 A.D.3d 810 (2nd Dept. 2022)(upholding summary denial of motion to set aside verdict where moving papers did not contain sworn allegations of facts but rather "motion was supported by the hearsay allegations of defense counsel, which were insufficient to meet the threshold requirement of CPL 330.40(2)(a)"); *People v. Degree*, 186 A.D.3d 501 (2nd Dept. 2020)(same); *People v. Meredith*, 220 A.D.3d 1201 (4th Dept. 2023).

It is on this record that defendant asks this Court to credit these unsworn, unsupported, hearsay allegations—that the declarant has refused to endorse and has at least partially disclaimed—to bolster their pending motion to dismiss under CPL § 210.40. The Court should decline the invitation to do so unless and until defendant is prepared to provide an adequate record to support the requested relief.

In addition to defendant's failure to provide an adequate record, defendant's preemptive refusal to participate in any further proceedings provides an independent basis for this Court to reject his current request. As defendant acknowledges, when there is a credible claim of juror misconduct, the usual procedure is for the court and the parties to inquire into the facts further. Defendant cannot short-circuit this process by insisting that this Court treat his unsworn and seemingly inaccurate allegations of jury misconduct as true, while refusing to participate in the CPL's procedures to verify the allegations and determine what, if any, relief would be appropriate.

Furthermore, according to both the transmittal email to the Court and the accompanying letter defendant requested be filed under seal, counsel believes their Dec. 3 Letter should be filed publicly. To the transmittal email they attached a version containing proposed redactions that

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[1] The letter references a brief November 15 conversation with certain Assistant District Attorneys. During that conversation, counsel informed those Assistant District Attorneys that the preliminary information they were pursuing regarding possible juror misconduct was "not actionable" at that time. During that phone call, counsel did not identify [redacted] The information provided during that call was considerably less detailed than the three bullet points on page 2 of the Dec. 3 Letter.

[2] Because counsel elected not to append the actual email exchange, it is unclear whether this seeming grammatical error is an error on their part or on the part of [redacted].

eliminate the section labeled "I. Background" in its entirety, but otherwise leaves unredacted details concerning the nature of [redacted] unsubscribed and partially contradicted allegations. *See, e.g.*, Dec. 3. Letter 1, 4-5. Included within the proposed redactions, however, are the statements attributed to [redacted] which indicate that counsel's recitation of their allegations is inaccurate.

Had defendant provided the sworn allegations required to make a proper motion pursuant to CPL § 330, a hearing at which [redacted] allegations could be fully explored in a public forum might indeed be warranted. What he seeks instead is to inject his unsworn, untested, and at least partially inaccurate allegations into the public domain while simultaneously opposing any endeavor to properly evaluate them. The Court should not countenance such tactics for at least three reasons. First, as counsel has acknowledged, this Court has gone to considerable lengths to protect the identities and privacy of the jurors in this case. Indeed, such concerns are what motivated counsel to seek to file under seal the letter partially identifying [redacted]. The Court should continue to protect the seated jurors and alternates from the unwarranted harassment that publicizing these unsubstantiated allegations would likely garner. As noted in the People's Motion for a Protective Order to safeguard juror names, judges have a special duty to protect jurors from threats, including not just physical threats but also harassment and intimidation. *See People v. Lavender*, 117 A.D.2d 253, 256 (1st Dept. 1986) (recognizing trial court's "duty to protect those citizens of the State who are 'drafted' and properly respond to a subpoena summoning them for jury service" from "unnecessary personal risk"). This is particularly so where defendant is relying upon the allegations contained in their letter to support the bald assertion that "the jury in this case was not anywhere near fair and impartial." Dec. 3 Letter 1. Second, relatedly, defendant should not be permitted to advance his longtime, multi-pronged campaign to undermine the integrity of these proceedings by pursuing a strategy designed to expose—but not evaluate the veracity of [redacted] ostensible allegations. Third, public filing risks significantly impeding any subsequent factfinding hearing should one become warranted. Seated jurors should not be privy to public, unsworn, vague, and at least partially contradicted accusations before being questioned in a proper forum about any potential misconduct—if a hearing is ultimately warranted on the basis of any future defense submissions here. If truth is the goal, as counsel's representations to [redacted] suggest, *see id.*, at 2-5, publicly filing portions of the Dec. 3 letter would undoubtedly interfere. For these reasons, the People respectfully request that counsel's Dec. 3 letter and this response be kept under seal, whether or not the Court considers the Dec. 3 letter in connection with defendant's pending *Clayton* motion.

Should the Court disagree, we would be prepared to submit alternate redactions to the Dec. 3 letter which remove the specific factual allegations of misconduct (as counsel has requested) but which do not excise the portions that cast serious doubt upon the extent to which the [redacted] endorses counsel's summary.

Respectfully Submitted,

/s/ Joshua Steinglass
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