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SUPREME COURT
CRIMINAL TERM
NEW YORK COUNTY

TODD BLANCHE
ToddBlanche@blanchelaw.com
(212) 716-1250

December 3, 2024

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

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

Dear Justice Merchan:

We write regarding evidence of grave juror misconduct during the trial, which further illustrates the manifest unfairness of these proceedings and serves as yet another reason that the verdicts in this case cannot and should not stand. As foreshadowed by the pre-trial polling that President Trump submitted to the Court in April 2024 and the extraordinary level of bias reflected in self-selecting and other successful for-cause challenges during jury selection—as well as common sense—the jury in this case was not anywhere near fair and impartial.

The extensive and pervasive misconduct at issue violated President Trump's rights under the federal Constitution and New York law. Under normal circumstances, unlike this politically-motivated lawfare, a defendant could file a motion to vacate the verdicts pursuant to CPL § 330.30(2). But these are not normal circumstances. If this case is not dismissed as it should be, President Trump is entitled to seek procedural relief for these violations in federal court, if and when the Second Circuit resolves *People v. Trump*, 24-2299-cv (2d Cir. 2024). *See* 28 U.S.C. §§ 1442(a)(1), 1447. We established yesterday that the Court must dismiss this case, long before the Second Circuit reaches those questions, in order to prevent further disruptions to the transition process and the operations of the federal government. While juror misconduct is relevant to President Trump's pending arguments relating to the interests of justice, Presidential immunity, the Presidential Transition Act, and the Supremacy Clause are dispositive for purposes of CPL §§ 210.40(1) and 210.20(1)(h). Under *Trump v. United States*, the threshold Presidential immunity considerations must be addressed right now. As we established yesterday in President Trump's motion to dismiss, these considerations require dismissal. However, the Court should not avert its eyes to the complete lack of fundamental fairness to President Trump throughout these proceedings while it considers the motion filed yesterday.

I. Background

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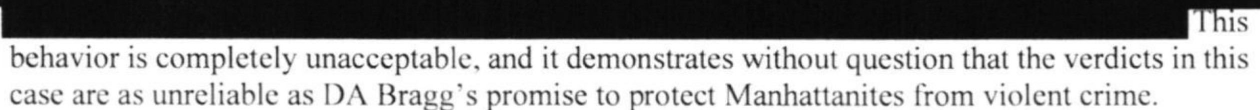
II. Discussion

The evidence discussed above in the Background section demonstrates that grave juror misconduct during the trial violated President Trump's rights under the federal Constitution and New York law. *See, e.g.*, *United States v. Haynes*, 729 F.3d 178 (2d Cir. 2013) ("Due process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen." (cleaned up)); *see also* CPL § 330.30(2).

For example, the Court repeatedly instructed the jurors not to



This behavior is completely unacceptable, and it demonstrates without question that the verdicts in this case are as unreliable as DA Bragg's promise to protect Manhattanites from violent crime.

In a normal case, unlike this politically-motivated lawfare, a defendant could seek appropriate remedies for these blatant rights violations through a motion to vacate the verdicts pursuant to CPL § 330.30(2). However, as explained at pages 68-69 of President Trump's December 2, 2024 motion, the Court may not proceed with such litigation—just as the Court must refrain from ruling on the pending CPL § 330.30(1) motion regarding DANY's Presidential immunity violations at the trial—unless and until the Second Circuit resolves the pending federal-officer removal appeal in *People v. Trump*, 24-2299-cv (2d Cir. 2024). It is unlikely that the Second Circuit will need to resolve that appeal because dismissal is plainly required for the separate reasons we explained yesterday. Moreover, in the exceedingly unlikely and unlawful event that the Second Circuit is required to move forward because this Court fails in its obligation to do justice, removal to the Southern District of New York would be necessary and the case would proceed under federal procedural rules rather than the CPL. *See Arizona v. Manypenny*, 451 U.S. 232, 241 (1981) ("[T]he federal court conducts the trial under federal rules of procedure while applying the criminal law of the State."); *see also* Fed. R. Crim. P. 33.

Even if there was a basis to ignore President Trump's right to pursue the removal appeal under 28 U.S.C. §§ 1442(a)(1) and 1447—and there is not—CPL § 330.30(2) would still not provide an appropriate procedural mechanism at this point in time because of the pending Presidential immunity issues. A CPL § 330.30(2) motion could require one or more hearings, which would likely mandate extensive, time-consuming, and invasive fact finding. *See, e.g.*, *People v. Amitrano*, 2007 WL 1203568, at *1 (Sup. Ct. N.Y. Cnty. 2007) (describing four-day, ten-witness "hearing to determine if juror misconduct, including predeliberation discussion of the evidence among jurors, and between jurors and alternate jurors, occurred"). In a high-profile case such as this one, the privacy risks posed by such a proceeding cannot be ignored. In addition, a hearing on a CPL § 330.30(2) motion is the type of "extended proceeding" that the Presidential immunity doctrine forbids, which would impose additional disruptive and constitutionally unacceptable resource burdens on President Trump during the transition process and following inauguration as he carries out his vital duties as President. *Trump v. United States*, 603 U.S. 593, 636 (2024). Presidential immunity must be resolved first, at the "outset." *Id.* Accordingly, although Presidential immunity concepts are dispositive of yesterday's motion, the Court should

also 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).

Respectfully Submitted,

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

Attorneys for President Donald J. Trump

Cc: Joshua Steinglass
Steven Wu
(Via Email)

TODD BLANCHE
ToddBlanche@blanchelaw.com
(212) 716-1250

December 5, 2024

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

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

Dear Justice Merchan:

We write briefly in response to DANY's letter of December 5, 2024. There is no legal basis to seal the entirety of the parties' submissions on this issue, including this letter specifically. This is yet another instance of DANY seeking to hide information they find inconsistent with their politically-motivated objectives by operating in what is tantamount to the Star Chamber, as they did through improper *ex parte* submissions in connection with the April 2024 hearing on their discovery violations, and to muzzle President Trump from making arguments that the state and federal Constitutions require him to have an opportunity to present. The only case DANY cites, *People v. Lavender*, 117 A.D.2d 253, 256 (1986), has nothing to do with the operative open-access principles. While we have no objection to redacting the submissions to withhold identifying information, and indeed have proposed that course of action, DANY's disagreement with the merits of our position is not a reason to violate President Trump's Sixth Amendment rights as well as his First Amendment rights and such corresponding rights of the press and the public. To proceed otherwise would add yet another Constitutional violation to the growing list of lawless behavior that DANY has urged upon the Court for over a year. DANY's request should be denied.

Respectfully Submitted,

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

Attorneys for President Donald J. Trump

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

B | Blanche Law PLLC

TODD BLANCHE
ToddBlanche@blanchelaw.com
(212) 716-1250

December 9, 2024

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

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

Dear Justice Merchan:

According to the New York Court system, "Court papers are public records."[1] On December 3, 2024, President Trump sent a presumptively public record to the Court and DANY, in letter form, describing specific evidence of severe juror misconduct during the trial, which presents yet another basis for vacating the verdicts and ultimately dismissing this case. Since that submission, DANY has endeavored, with no basis in law or fact, to hide the juror misconduct issue from public view. DANY has also resisted President Trump's more tailored approach to proposed redactions. In doing so, DANY has been characteristically focused on the politically-motivated objectives that have driven this failed case from the outset. Despite their obligations to do justice and to act as gatekeepers of the jury's critical function in the criminal justice system, DANY has not once expressed concern about the issues raised in President Trump's December 3 letter or the dubious validity of the highly suspect verdicts rendered by the jury. Just as DANY refused to investigate Michael Cohen's perjury while simultaneously preparing him for additional perjured testimony before Your Honor and drafting perjury charges against Allen Weisselberg, DANY has taken no steps to investigate or inquire about juror misconduct that should—as a matter of fundamental fairness—concern any just-minded prosecutor who encounters such issues.

Rather, DANY has urged the Court to keep all of this a secret: not only details regarding the evidence at issue and the source of that evidence, but also the arguments presented by President Trump concerning the legally cognizable juror-misconduct themes raised by that evidence, which are relevant to the pending motion to dismiss and other potential motion practice. Whereas DANY had no concerns with their star witnesses pumping prejudicial lies about President Trump into the public domain and pool of potential jurors prior to the trial, they now claim that general information regarding the presumptively-public legal arguments and types of juror misconduct at issue must be kept under wraps. Due to the delays in public filing, DANY's strategy has already violated President Trump's Sixth Amendment rights and the First Amendment rights of the public and the press. Those violations will only become more egregious if not promptly remedied.

In this submission, we write in response to DANY's two December 9, 2024 letters concerning their proposed redactions to the parties' submissions on December 3 (defense) and December 5 (DANY) regarding the juror misconduct. For the reasons set forth below, (1) we object to DANY's proposed additional redactions to President Trump's December 3 letter; (2) we object to certain of DANY's proposed redactions to their December 5 letter; (3) there is no basis

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[1] N.Y. State Unified Court System, Redaction Rules for Confidential Personal Information, https://iappscontent.courts.state.ny.us/NYSCEF/live/unrepresented/RedactedDocuments.html (last visited Dec. 9, 2024).

for redactions to President Trump's responsive December 5 letter (and DANY has not requested any), which should be publicly filed as soon as possible; (4) there is no basis for redactions or sealing of DANY's December 9 letters, which should be filed publicly as soon as possible; and (5) there is no basis for redactions to this letter, which should also be filed publicly as soon as possible.

I. Applicable Law

"The First Amendment to the United States Constitution guarantees the press and the public a right of access to trial proceedings. Without the right to attend trials, 'which people have exercised for centuries, important aspects of freedom of speech and of the press could be eviscerated." *Courtroom Television Network LLC v. State of New York*, 5 N.Y.3d 222, 229 (2005) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980)). "In New York, the press, like the public, has a right of access to criminal proceedings," and "[a]ny exception to a public trial should be narrowly construed." *Id.* at 231.

These rights of public access to criminal proceedings serve important interests in advancing the fair administration of justice, promoting public confidence in the judiciary, permitting public scrutiny of matters of great public interest, and defending the fundamental rights of the accused. *See* Judiciary Law § 4 ("The sittings of every court within this state shall be public . . . ."); Judiciary Law § 255-b; *cf.* 22 NYCRR § 216.1(a) ("[A] court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard.").

The Supreme Court has emphasized this point repeatedly:

> A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.

Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559-60 (1976) (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966)). "This Court has, therefore, been unwilling to place any direct limitations on the freedom traditionally exercised by the news media for 'what transpires in the court room is public property.'" *Sheppard*, 384 U.S. at 350 (quoting *Craig v. Harney*, 331 U.S. 367, 374 (1947) (cleaned up)). "The 'unqualified prohibitions laid down by the framers were intended to give to liberty of the press . . . the broadest scope that could be countenanced in an orderly society.'" *Id.* (quoting *Bridges v. State of California*, 314 U.S. 252, 265 (1941)). Thus, "where there was 'no threat or menace to the integrity of the trial,'" *id.* (quoting *Craig*, 331 U.S. at 337), the Supreme Court has "consistently required that the press have a free hand" in covering criminal proceedings. *Id.*

The Sixth Amendment's "public-trial guarantee" was "created for the benefit of the defendant." *Gannett Co. v. DePasquale*, 443 U.S. 368, 380 (1979). This and other Sixth Amendment rights, "applicable to the States through the Fourteenth [Amendment], surrounds a criminal trial with guarantees . . . that have as their overriding purpose the protection of the accused from prosecutorial and judicial abuses." *Id.* at 379. "[T]here can be little doubt that the explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and public. The central aim of a criminal proceeding must be to try the accused fairly." *Waller v. Georgia*, 467 U.S. 39, 46 (1984); *Mosallem v. Berenson*, 76 A.D.3d 345, 348-49 (1st Dep't 2010) ("We have recognized the broad constitutional presumption, arising from the First and Sixth Amendments, as applied to the States by the Fourteenth Amendment, that both the public and the press are generally entitled to have access to court proceedings.").

"The operations of the courts and the judicial conduct of judges are matters of utmost public concern." *Landmark Comm. v. Virginia*, 435 U.S. 829, 839 (1978). "The common-law right of access to judicial proceedings, an essential component of our system of justice, is instrumental in securing the integrity of the process." *Chicago Trib. Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311 (11th Cir. 2001).

"It has, of course, long been the law in this State that all judicial proceedings, both civil and criminal, are presumptively open to the public." *Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 715 (1980) (citing Judiciary Law § 4). "At the present time, in fact in most criminal cases, there are only pretrial proceedings. Thus if the public is routinely excluded from all proceedings prior to trial, most of the work of the criminal courts will be done behind closed doors." *Westchester Rockland Newspapers, Inc. v. Leggett*, 48 N.Y.2d 430, 440 (1979).

"New York has also recognized a common law right of access to court records, deriving from Federal decisional law . . . under which the public has a presumptive right, subject to the court's exercise of sound discretion, *to view all nonconfidential material in the court's file*." *People v. Arthur*, 178 Misc. 2d 419, 421 (Sup. Ct. N.Y. Cnty. 1998) (emphasis added); *see also People v. Allen*, 57 Misc. 3d 936, 939 (Livingston Cnty. Ct. 2017) ("[A]ny closure or sealing must be 'narrowly tailored to serve the asserted interests.'" (quoting *v. Arthur*, 178 Misc. 2d at 422)); *People v. Burton*, 189 A.D. 2d 532, 535 (3d Dep't 1993) ("There is a common-law presumption in favor of public access to court records."); *People v. Sullivan*, 168 Misc. 2d 803, 808 (Saratoga Cnty. Ct. 1996) ("The State of New York law seems to be that if the documents were filed in court, they would be subject to access by the media in the first instance.").

"[E]very part of every brief filed to influence a judicial decision qualifies as a 'judicial record.'" *League of Women Voters v. Newby*, 963 F.3d 130, 136 (D.C. Cir. 2020) (cleaned up); *see also, e.g.*, *United States v. Gerena*, 869 F.2d 82, 85 (2d Cir. 1989) (extending right of access to "briefs and memoranda" filed in connection with pre-trial and post-trial motions); *In re New York Times Co.*, 834 F.2d 1152, 1153-54 (2d Cir. 1987) (applying right of access to motion papers); *Application of NBC*, 635 F.2d 945, 949 (2d Cir. 1980) ("The existence of the common law right to inspect and copy judicial records is beyond dispute.").

II. Discussion

DANY has improperly urged the Court to violate the First and Sixth Amendments, as they did through improper *ex parte* submissions in connection with the April 2024 hearing on discovery violations. Below we address six court filings that are being hidden from public view with no valid basis: President Trump's opening submission regarding juror misconduct on December 3, DANY's December 5 response to that letter, President Trump's December 5 reply, DANY's two letters on December 9, and this letter. DANY would have the Court violate open-access principles with respect to each. Therefore, their proposals must be rejected.

President Trump's December 3 Letter. President Trump's December 3 letter contained three sections: an introduction, a Background section regarding particulars of the evidence at issue, and a Discussion section regarding the general themes of legal error arising from that evidence and the types of legal relief available to address those general thematic defects. On December 3, President Trump proposed to redact the entire Background section of the letter, based on privacy concerns, so that particulars of the evidence are not disclosed publicly, and to publicly file the remainder of the letter.

Today, DANY reiterated their contrary position that blanket sealing of the December 3 letter (and others) is necessary. That is plainly wrong as a matter of law. DANY referred to sealing the submissions only "temporarily," but without suggesting any sort of time limitation that they think would be sufficient. DANY also referred to general concerns about safety and the integrity of the proceedings, but they offered no details to substantiate those purported concerns. "[H]ypothetical risk of prejudice or taint cannot justify categorical denial of public access . . . ." *AP v. Bell*, 70 N.Y.2d 32, 38 (1987). "Specific findings" are required. *Id.* at 39 (cleaned up); *see also id.* at 40 ("By denying public access to the suppression hearing on a 'possibility' that there might be tainted, nonpublic evidence that might impair the selection of an impartial jury—which could very likely be said of every suppression hearing in every highly publicized case—the trial court improperly closed the door on petitioners' First Amendment rights.").

DANY also proposed, as an alternative to their blatantly unconstitutional position, additional redactions to President Trump's December 3 letter. This is essentially a concession that "alternatives" to blanket sealing are available. *Bell*, 70 N.Y.2d at 39. However, DANY's proposed additional redactions appear to target the juror-misconduct themes that are the bases for the types of relief President Trump is now seeking and may in the future seek. DANY offered virtually no explanation, much less the required evidentiary basis for "specific findings" under *Bell*, regarding why their additional proposed redactions are necessary. Instead, it is clear that DANY hopes to hide from the public the types of juror misconduct at issue as they desperately attempt to defend the unlawful verdicts and the deeply flawed proceedings that led to them.

There is no legal basis for that misguided and improper approach. The only potentially relevant citations provided by DANY were included in a three-case "see generally" string cite. None of those cases helps them. First, in *Waller*, the Supreme Court found that a courtroom closure was unconstitutional. 467 U.S. 39 (1984). The Supreme Court emphasized that "the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider

reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." *Id.* at 48. DANY has not done any of those things, particularly as to tailoring and consideration of reasonable alternatives. Second, *Karassik* is limited to the "clear and unequivocal words" of CPL § 160.50, which DANY has not suggested is relevant here. 47 N.Y.2d 659, 664 (1979). Third, in *Hodges*, the Kings County Supreme Court cited the relevant constitutional open-access principles, and then authorized public access to evidence of a confession but "prohibit[ed] photocopying or photographing" of that evidence. Misc. 2d 112, 117 (Sup. Ct. Kings Cnty. 1997). That is not a viable limitation under the circumstances presented here. More broadly, each of the three cases DANY cited supports public access rather than the suppression they hope to achieve.

Finally, in today's submissions, DANY mischaracterized the nature of the relief we sought in the December 3 letter. We have asked the Court to consider the evidence described in the letter in connection with the pending CPL § 210.40(1) motion. We have reserved our rights with respect to other potential procedural options, which should not be necessary in light of Presidential immunity, if the Second Circuit is required to resolve the pending dispute regarding the appropriate forum for such proceedings in *People v. Trump*, 24-2299-cv (2d Cir. 2024). This is not an issue, as DANY claimed today, of whether we "want" to participate in a hearing on a CPL § 330.30(2) motion. The Constitution and the Presidential Transition Act forbid such a proceeding right now, as we explained in our public filing on December 2. On the other hand, it is true, as DANY put it today, that we seek to litigate these issues in a "public forum." DANY apparently forgot, however, that the New York courts are such a forum. That is where we are proceeding by making the submissions in question, and the Constitution requires that the vast majority of the December 3 letter and the related submissions be made public regardless of how inconvenient DA Bragg or others at DANY may find the additional powerful defense arguments that the letters contain.

DANY's December 5 Letter. We object to DANY's proposed redactions to the December 5 letter except to the extent that they relate to the identity of the source of the juror-misconduct evidence.

DANY's proposal with respect to this letter reveals the strategic gamesmanship driving their positions and their continued willingness to play fast and loose with the First and Sixth Amendments. DANY very much wants to keep these issues hidden in the darkness of a sealed cabinet at the courthouse, but "[t]he Constitution deals with substance, not shadows." *Trump v. United States*, 603 U.S. 593, 631 (2024) (cleaned up). Specifically, DANY proposes to include a direct quotation from an aspect of the evidence that we candidly disclosed, in an abundance of caution, in the December 3 letter. DANY's reason for pursuing that course is obvious: they like that narrow, ambiguous part of the developing story of juror misconduct at their unconstitutional show trial. There is no good-faith basis for proposing to place that piece of the evidence into the public court file while hiding the more general information that DANY wrongly proposes to redact from President Trump's December 3 letter.

President Trump's December 5 Letter. DANY has not proposed redactions to our December 5 letter, which consisted of a single paragraph that contains no substantial details regarding the juror-misconduct evidence. Therefore, this letter should be filed publicly as soon as possible.

DANY's December 9 Letters. Similarly, the letters that DANY submitted to the Court today contain no material details regarding the juror-misconduct evidence. While DANY has an understandable interest in preventing the public from seeing the types of arguments they are making to keep all of this a secret, because those positions illustrate that DANY is acting contrary to the interests of the public that they are supposed to be protecting, DANY's preference for secrecy is not a basis for sealing or redaction. Therefore, both of DANY's December 9 letters should be filed publicly as soon as possible.

This Letter. There is no basis for sealing or redactions to this letter, which addresses ongoing unconstitutional malfeasance by DANY, but not the particulars of the juror-misconduct evidence. Therefore, this letter should be filed publicly as soon as possible.

Respectfully Submitted,

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

Attorneys for President Donald J. Trump

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

AFFIRMATION OF SERVICE

I, Todd Blanche, an attorney admitted to practice in the State of New York and counsel for President Donald J. Trump, hereby affirm, under the penalties of perjury that, on December 3, 2024, December 5, 2024, and December 9, 2024, my co-counsel, Emil Bove, and I served the enclosed letters by causing true copies of the same to be emailed to the Court and ADA Joshua Steinglass, among other counsel of record. I further affirm that the forgoing letters are redacted in compliance with the Court's Order dated December 16, 2024, directing this filing.

<u>/s/ Todd Blanche</u>
Todd Blanche