

**Supreme Court of the State of New York**  
**Appellate Division, First Judicial Department**

Oing, J.P., Shulman, Rosado, Michael, JJ.

2457  
M-1953

In the Matter of DONALD J. TRUMP,  
Petitioner,

Index No. 71543/23  
Case No. 2024-02413

-against-

HON. JUAN M. MERCHAN, etc., et al.,  
Respondents.

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CONSTITUTIONAL SCHOLARS, ETHICS EXPERTS  
AND FORMER PUBLIC OFFICIALS: TY COBB,  
STEPHEN GILLERS, BARBARA S. GILLERS, PHILIP  
LACOVARA, JOHN MCKAY, FERN M. SMITH,  
LAURENCE TRIBE, WILLIAM F. WELD AND ELLEN  
YAROSHEFSKY,  
Amici Curiae.

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Blanche Law PLLC, New York (Todd Blanche of counsel), for petitioner.

David Nocenti, Office of Court Administration, New York (Lisa Evans of counsel), for  
Hon. Juan M. Merchan, respondent.

Alvin L. Bragg, Jr., District Attorney, New York (Steven C. Wu of counsel), for the  
People of the State of New York and Alvin L. Bragg, Jr., respondent.

Bryan Cave Leighton Paisner LLP, New York (Eric Rieder of counsel), for amici curiae.

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Petition seeking relief in the nature of a writ of prohibition and an order finding that the court acted in excess of its jurisdiction by denying petitioner's motion seeking recusal, by issuing orders requiring pre-motion letters setting forth the basis of proposed motions and a conferral period for proposed redactions, and by denying petitioner's motion to exclude certain evidence based on the doctrine of presidential

immunity, unanimously denied, and the proceeding commenced pursuant to CPLR article 78, dismissed, without costs.

Petitioner's CPLR article 78 challenge to the court's August 11, 2023 order, which denied his motion seeking recusal, is time-barred (*see* CPLR 217[1]). The petition was also filed prior to the court's subsequent order denying his second motion seeking recusal, and thus, any challenge to the subsequent order was not ripe at the time of filing.

In any event, petitioner has failed to establish that the court acted in excess of its jurisdiction by denying his motion. The court had jurisdiction to consider and decide petitioner's recusal motion in the first instance, and a review of the court's discretionary determination may occur in a direct appeal (*see Matter of Herskowitz v Tompkins*, 184 AD2d 402, 403 [1st Dept 1992], *appeal dismissed* 80 NY2d 1023 [1992]; *Matter of Concord Assoc., L.P. v LaBuda*, 121 AD3d 1270, 1271-1272 [3d Dept 2014]; *Matter of Daniels v Lewis*, 95 AD3d 1011, 1012 [2d Dept 2012]). Petitioner also has not established that he has a clear right to recusal pursuant to Judiciary Law § 14 (*see Matter of Kyle v Lebovits*, 58 AD3d 521 [1st Dept 2009]; *Ralis v Ralis*, 146 AD3d 831, 833 [2d Dept 2017]).

As for the court's March 8, 2024 order, petitioner does not dispute that the court had authority to implement docket-management measures, including requiring the submission of pre-motion letters allowing the court to preview the parties' potential motions in advance of filing. Indeed, the court has general discretion to manage its docket in the interest of judicial economy (*see Favourite Ltd. v Cico*, — NY3d —, —2024 NY Slip Op 01496, \*5 [2024]). Any ambiguity in the court's initial order concerning whether it could deny petitioner the right to file a motion was later clarified when the

court specifically stated that its order did not deny either party the right to file any motion. Petitioner's remaining contentions concerning the March 8, 2024 order are not the proper subject of article 78 review. Without opining on the merits of the argument, to the extent petitioner argues that the court's discretionary docket-management measures constituted an improvident exercise of discretion, such argument may be raised in a direct appeal. Again, without opining on the merits of the argument, petitioner's contention that the court's docket-management measures either conflicted with CPL 255.20 or interfered with his ability to present a complete defense may also be raised in a direct appeal (*see Matter of Veloz v Rothwax*, 65 NY2d 902, 903-904 [1985]; *see also Matter of Lipari v Owens*, 70 NY2d 731, 733 [1987]).

Regarding petitioner's challenge to the court's April 5, 2024 order requiring a brief conferral period to address potential redactions in advance of motion filings, we find that the order constituted a discretionary docket management order.

As to petitioner's challenge to the court's order denying, as untimely, petitioner's motion to exclude evidence based on the doctrine of presidential immunity and for an adjournment of trial, the trial court had discretion whether to hear and decide petitioner's motion (*see CPL 255.20*[3]; *People v Marte*, 197 AD3d 411, 413 [1st Dept 2021]). The decision whether to grant an adjournment was also within the court's sound discretion (*see e.g. Schneyer v Silberg*, 156 AD2d 200, 201 [1st Dept 1989], *appeal dismissed* 77 NY2d 872 [1991]). Prohibition does not lie to review the exercise of discretion in this criminal matter (*see Matter of Blumen v McGann*, 18 AD3d 870, 870 [2d Dept 2005]; *Matter of Quackenbush v Monroe*, 87 AD2d 720, 720 [3d Dept 1982], *lv denied* 56 NY2d 505 [1982]).

Finally, even if petitioner had established that the court exceeded its jurisdiction in issuing one of these orders, the extraordinary remedy of prohibition is not granted as of right, but only in the court's sound discretion (*see Matter of Holtzman v Goldman*, 71 NY2d 564, 568-569 [1988]; *Matter of Brown v Schulman*, 246 AD2d 648, 648 [2d Dept 1998]). Exercise of such discretion would not be warranted in this case, where relief would interfere with the normal trial and appellate procedures, and, without opining on the merits, the matters herein identified by petitioner may be raised in a direct appeal (*Holtzman*, 71 NY2d at 569).

We have considered petitioner's remaining arguments and find them unavailing.

***M-1953 – Matter of Trump v The Honorable Juan M. Merchan, et al.***

Motion to file amicus curiae brief, granted.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 23, 2024



Susanna Molina Rojas  
Clerk of the Court