

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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March 22, 2023

Mr. Mark F. Pomerantz
Former New York County Special Assistant District Attorney
Free & Fair Litigation Group
128 E. Broadway, Unit 793
New York, NY 10002

Dear Mr. Pomerantz:

New York County District Attorney Alvin Bragg is reportedly about to engage in an unprecedented abuse of prosecutorial authority: the indictment of a former President of the United States and current declared candidate for that office. This indictment comes after years of the District Attorney's office aggressively pursuing charges, including by appointing you as an unpaid "special assistant district attorney" to lead the investigation into every facet of President Trump's finances.¹ Last year, you resigned from the office over Bragg's initial reluctance to move forward with charges, shaming Bragg in your resignation letter—which was subsequently leaked—into bringing charges.² Based on your unique role in this matter, and your subsequent public statements prejudicing the impartiality of any prosecution, we request your cooperation with our oversight of this politically motivated prosecutorial decision.

The New York County District Attorney's Office has been investigating President Trump since at least 2018, looking for some legal theory on which to bring charges.³ The facts surrounding the impending indictment have "been known for years."⁴ Michael Cohen, President Trump's disgraced former lawyer, pleaded guilty over four years ago to charges based on the

¹ William K. Rashbaum et al., *A former federal prosecutor has joined the Manhattan D.A.'s team investigating the Trump family business*, N.Y. TIMES (Feb. 19, 2021); Ben Protess et al., *How the Manhattan DA's investigation into President Donald Trump unraveled*, N.Y. TIMES (March 5, 2022).

² *Read the Full Text of Mark Pomerantz's Resignation Letter*, N.Y. TIMES (Mar. 23, 2022) [hereinafter "Pomerantz Letter"].

³ Andrew Feinberg, *New York prosecutors warn Trump of possible indictment, report says*, THE INDEPENDENT (Mar. 10, 2023).

⁴ Mark Berman et al., *The prosecutor, the ex-president and the 'zombie' case that came back to life*, WASH. POST (Mar. 17, 2023).

same facts at issue in the impending indictment.⁵ By July 2019, however, federal prosecutors determined that no additional people would be charged alongside Cohen.⁶

In January 2022, soon after Bragg took office, he expressed doubts about President Trump's case and suspended the investigation.⁷ This decision caused you and your colleague, Carey Dunne, to resign in protest.⁸ You penned a scathing resignation letter in which you baselessly accused President Trump of "numerous felony violations," and asserted it would be "a grave failure of justice" if Bragg did not pursue charges.⁹ You urged Bragg to hold President Trump "fully accountable for his crimes," asserting that Bragg's decision "will doom any future prospects" for prosecution.¹⁰ Your resignation letter found its way into the *New York Times*, word-for-word, and your criticisms of Bragg's investigation were widely reported by news outlets.¹¹ Your unrelenting pursuit of President Trump followed you into the private sector as you and Dunne started a law firm dedicated to "weighing ways" to bar President Trump from holding future office.¹² Just this month, you published a book excoriating Bragg for not aggressively prosecuting President Trump, laying bare the office's internal deliberations about the investigation and your personal animus toward President Trump.¹³

It now appears that your efforts to shame Bragg have worked as he is reportedly resurrecting a so-called "zombie" case against President Trump using a tenuous and untested legal theory.¹⁴ Even the *Washington Post* quoted "legal experts" as calling Bragg's actions "unusual" because "prosecutors have repeatedly examined the long-established details but decided not to pursue charges."¹⁵ In addition, Bragg's star witness—Michael Cohen—has a serious credibility problem as a convicted perjurer and serial fabricator with demonstrable prejudice against President Trump.¹⁶ Under these circumstances, there is no scenario in which Cohen could fairly be considered an unbiased and credible witness.

The inference from the totality of these facts is that Bragg's impending indictment is motivated by political calculations. The facts of this matter have not changed since 2018 and no new witnesses have emerged.¹⁷ The Justice Department examined the facts in 2019 and opted not

⁵ Shawna Chen, *Timeline: The probe into Trump's alleged hush money payments to Stormy Daniels*, AXIOS (Mar. 18, 2023).

⁶ *Id.*; see Berman et al., *supra* note 4.

⁷ Shayna Jacobs et al., *Prosecutor who resigned over stalled Trump probe says ex-president committed felonies*, WASH. POST (Mar. 23, 2022).

⁸ *Id.*

⁹ Pomerantz Letter, *supra* note 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² Shayna Jacobs, *Lawyers who investigated Trump form group to oppose anti-democratic policies*, WASH. POST (Jan. 11, 2023).

¹³ MARK POMERANTZ, *PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT* (2023).

¹⁴ Berman et al., *supra* note 4.

¹⁵ *Id.*

¹⁶ Christopher Lopez, *Progressive DA Alvin Bragg's case against Trump hinges on witnesses with 'credibility problems': Andy McCarthy*, FOX NEWS (Mar. 19, 2023); Marisa Schultz, *Jim Jordan, Mark Meadows ask Justice Department to probe Cohen for perjury*, N.Y. POST (Feb. 28, 2019); *Michael Cohen pleads guilty to lying to Congress*, ASSOC. PRESS (Nov. 29, 2018).

¹⁷ Berman et al., *supra* note 4.

to pursue further prosecutions at that time. Even still, according to reporting, the investigation “gained some momentum this year,” and Bragg’s office “convened a new grand jury in January to evaluate the issue.”¹⁸ The only intervening factor, it appears, was President Trump’s announcement that he would be a candidate for President in 2024.¹⁹

Your actions, both as a special prosecutor and since leaving the District Attorney’s office, cast serious doubt on the administration of fair and impartial justice in this matter. Your words in the *New York Times* have unfairly disparaged President Trump, an innocent and uncharged man, as a felon to millions of *Times* readers. Your book again unfairly disparaged President Trump, and now opens the door to examination about the District Attorney’s office commitment to evenhanded justice. In light of this unprecedented and overzealous partisan investigation, Congress has a keen interest in these facts to inform potential legislation to improve the functioning and fairness of our criminal justice system, and to better delineate prosecutorial authority between federal and local officials. In addition, because the circumstances of this matter stem, in part, from Special Counsel Mueller’s investigation,²⁰ Congress may consider legislative reforms to the authorities of special counsels and their relationships with other prosecuting entities.

Accordingly, to advance our oversight, please produce the following documents and information in your personal possession for the period January 1, 2017, to the present:

1. All documents and communications between or among the New York County District Attorney’s Office and the U.S. Department of Justice, its component entities, or other federal law enforcement agencies referring or relating to New York County District Attorney’s investigation of President Donald Trump;
2. All documents and communications between or among you and representatives of the New York County District Attorney’s Office referring or relating to President Donald Trump; and
3. All documents and communications between or among you and representatives of the New York County District Attorney’s Office referring or relating to your appointment and role as a Special Assistant District Attorney for New York County.

In addition, your testimony is necessary to advance our oversight and to inform potential legislative reforms. We therefore ask that you testify in a transcribed interview about these matters as soon as possible. Please provide this information and contact Committee staff to schedule your transcribed interview as soon as possible but not later than 10:00 a.m. on March 27, 2023.

Further, this letter serves as a formal request to preserve all existing and future records and materials relating to the topics addressed in this letter. You should construe this preservation

¹⁸ *Id.*

¹⁹ Max Greenwood, *Trump announces 2024 run for president*, THE HILL (Nov. 15, 2022).

²⁰ Ben Protess et al., *How Michael Cohen turned against President Trump*, N.Y. TIMES (Apr. 21, 2019).

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notice as an instruction to take all reasonable steps to prevent the destruction or alteration, whether intentionally or negligently, of all documents, communications, and other information, including electronic information and metadata, that are or may be responsive to this congressional inquiry. This instruction includes all electronic messages sent using your official and personal accounts or devices, including records created using text messages, phone-based message applications, or encryption software.

The Committee on the Judiciary has jurisdiction over criminal justice matters in the United States and matters involving threats to civil liberties pursuant to Rule X of the Rules of the House of Representatives.²¹ If you have any questions about this request, please contact Committee staff at (202) 225-6906. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jim Jordan". The signature is written in a cursive, flowing style.

Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member

²¹ Rules of the U.S. House of Representatives, R. X (2023).