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**D. John Sauer***John.Sauer@james-otis.com*

November 24, 2023

Mark J. Langer  
Clerk, U.S. Court of Appeals for the District of Columbia Circuit  
E. Barrett Prettyman United States Courthouse  
333 Constitution Avenue NW  
Washington, DC 20001

**Re: *United States v. Trump*, No. 23-3190 - Response to Special Counsel's Rule 28(j) Letter**

Dear Mr. Langer:

The prosecution's 28(j) letter cites a submission, in a completely separate case, to the New York Appellate Division containing "new" information that dates to October 3, 2023, *see* Rule 28(j) Letter, Ex. E, ¶ 5—two weeks before the Gag Order in this case was entered on October 17. The letter is an impermissible attempt to supplement the record on appeal with irrelevant information that could have been, but was not, submitted to the district court below.

To date, the prosecution has never submitted any evidence of alleged "threats" or "harassment" to any prosecutor, court staffer, or potential witness in *this* case. This falls short of the "solidity of evidence" required to justify a prior restraint. *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 845 (1978).

Moreover, the cited affirmation, albeit irrelevant, concedes that "Mr. Trump did not directly threaten Ms. Greenfield," *id.* ¶ 5, and instead describes speech by unidentified, independent third parties. *Id.* ¶ 9. This confirms that the prosecution seeks to impose "a speech burden based on audience reactions," which "is simply government hostility and intervention in a different guise." *Matal v. Tam*, 582 U.S. 218, 250 (2017) (Kennedy, J., concurring in part and concurring in the judgment).

The prosecution ignores that the New York trial judge and the Principal Law Clerk are judicial officers, and the Principal Law Clerk has violated New York law by engaging in forbidden partisan activity *while that case was pending*. Appellant's

Reply Br., at 8-9. “The operations of the courts and the judicial conduct of judges are matters of utmost public concern.” *Landmark Commc’ns*, 435 U.S. at 839.

The Special Counsel has brought an inflammatory, lawless indictment; has made false and misleading statements about President Trump; and has leaked confidential information in order to harm President Trump. Appellant’s Br. 9-10. Both the indictment and the Gag Order represent an unconstitutional attempt to silence President Trump; they are clearly election interference. *Cf. Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971) (“[T]he constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office”).

Dated: November 24, 2023

Respectfully Submitted,

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cc: Counsel for Appellee