



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
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November 16, 2023

Hon. Arthur Engoron  
Supreme Court, New York County  
60 Centre Street  
New York, NY 10007

RE: *People v. Trump*, et al., No. 452564/2022

Dear Justice Engoron:

We write in connection with the Court’s inquiry regarding the position of the Office of the Attorney General (“OAG”) on the proposed Order to Show Cause (“OSC”) (NYSCEF No. 1633) filed by Defendants.

OAG’s position is that – putting aside the total lack of merit to Defendants’ application for a mistrial – it is preferable to have the Court hear and decide the application on full briefing pursuant to the OSC in the interest of judicial economy. This approach would avoid the potential for motion practice before the Appellate Division under C.P.L.R. 5704(a), on an interlocutory basis, about whether the OSC should have been signed, permits the parties to develop their arguments before this Court, and allows this Court to address Defendants’ spurious allegations in the first instance. If the application is denied after full briefing and a decision on the merits, any appeal based on such arguments would occur after the trial has concluded and the Court has entered final judgment. *See Mehar v. City of New York*, 260 A.D.2d 554, 555 (2d Dep’t 1999) (“[T]he denial of a motion for a mistrial during the course of a trial is not appealable and review may be had on an appeal from the ensuing judgment.”); *Echeverria v. State*, 94 A.D.2d 690, 690 (1st Dep’t 1983) (“A ruling made during the course of trial is not separately appealable.”); *Prince v. O’Brien*, 256 A.D.2d 208, 212, 683 N.Y.S.2d 504, 507 (1st Dep’t 1998) (“Rulings made during the course of the trial would only be reviewable upon an appeal from the judgment.”); 10 Carmody–Wait 2d, N.Y. Prac §70:24 (“[N]o appeal can be taken from a trial ruling denying a motion for a mistrial.”).

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If the Court does order briefing, OAG requests until December 8, 2023 to submit its opposition given the demonstrable lack of urgency, the impending Thanksgiving holiday, and the fact that the ongoing trial necessitates considerable daily attention from OAG's trial team. No reply should be permitted based on the Court's general practice. *See* Uniform Rules of New York State Trial Courts, § 202.8-d (no replies generally permitted on orders to show cause absent leave of court).

Respectfully submitted,



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Kevin Wallace  
Senior Enforcement Counsel  
Division of Economic Justice