SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	NOTICE OF MOTION TO QUASH DEFENDANT'S SUBPOENA AND FOR A PROTECTIVE ORDER Ind. No. 71543-23

PLEASE TAKE NOTICE that the People will move this Court, located at 100 Centre Street, New York, New York, on a date and time to be set by the Court, to quash defendant's subpoena *duces tecum* to Michael Cohen pursuant to CPL § 610.20(4); in the alternative, to enter a protective order pursuant to CPL § 245.70 and the Court's inherent authority directing that any materials produced to defendant pursuant to the subpoena *duces tecum* to Cohen shall be subject to the restrictions on use and disclosure imposed by the Court's May 8 Protective Order; and for such other and further relief as the Court may deem just and proper. A supporting affirmation and memorandum of law with accompanying exhibits are attached to this notice of motion.

DATED: November 9, 2023

Respectfully submitted,

ALVIN L. BRAGG, JR.
District Attorney, New York County

By: */s/ Matthew Colangelo*
Matthew Colangelo
Christopher Conroy
Katherine Ellis
Susan Hoffinger
Becky Mangold
Assistant District Attorneys
New York County District Attorney's Office
1 Hogan Place
New York, NY 10013
212-335-9000

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	AFFIRMATION AND MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH DEFENDANT'S SUBPOENA AND FOR A PROTECTIVE ORDER Ind. No. 71543-23

AFFIRMATION

Matthew Colangelo, an attorney admitted to practice before the courts of this state, affirms under penalty of perjury that:

1. I am an Assistant District Attorney in the New York County District Attorney's Office. I am assigned to the prosecution of the above-captioned case and am familiar with the facts and circumstances underlying the case.

2. I submit this affirmation in support of the People's motion to quash defendant's subpoena *duces tecum* to Michael Cohen (Ex. 1).

3. Defendant is charged with thirty-four counts of falsifying business records in the first degree, PL § 175.10. These charges arise from defendant's efforts to conceal an illegal scheme to influence the 2016 presidential election. As part of this scheme, defendant requested that Cohen, an attorney who worked for his company, pay $130,000 to an adult film actress shortly before the election to prevent her from publicizing an alleged sexual encounter with defendant. Defendant then reimbursed the attorney for the illegal payment through a series of monthly checks. Defendant caused business records associated with the repayments to be falsified to disguise his and others' criminal conduct.

I. The May 8 Protective Order regarding defendant's use of materials produced in discovery in this case.

4. Defendant was arraigned on April 4, 2023.

5. Based on defendant's extensive history of publicly attacking individuals involved in investigations into his conduct, the People sought a protective order regarding defendant's use and dissemination of materials produced in discovery. *See* People's Mot. for a Protective Order (Apr. 24, 2023) (Ex. 2); CPL § 245.70(1).

6. Defendant filed a written opposition to the People's motion for a protective order, and this Court held a hearing on the People's motion on May 4, 2023.

7. After considering defense counsel's arguments, the Court granted the People's motion on May 8, holding that the People met the good cause requirement for a protective order. Protective Order 1 (Ex. 3); CPL § 245.70(4) (good cause exists where, among other factors, there is a "risk of intimidation, economic reprisal, bribery, harassment or unjustified annoyance or embarrassment to any person," or the "defendant has a history of witness intimidation or tampering and the nature of that history").

8. The May 8 Protective Order governs the use of "any materials and information provided by the People to the Defense in accordance with their discovery obligations as well as any other documents, materials, or correspondence provided to or exchanged with defense counsel of record" in this matter. Protective Order 1 (Ex. 3). In addition, it orders that "any person who receives the Covered Materials shall not copy, disseminate, or disclose the Covered Materials, in any form or by any means, to any third party . . . including, but not limited to, by disseminating or posting the Covered Materials to any news or social media platforms, including, but not limited, to Truth Social, Facebook, Instagram, WhatsApp, Twitter, Snapchat, or YouTube, without prior approval from the Court." *Id.* at 1-2.

9. On May 23, 2023, the Court convened a hearing to confirm on the record that defense counsel had reviewed and discussed with defendant each of defendant's obligations under the May 8 Protective Order, and to confirm that defendant understood that any violation of the court's order could result in a "wide range of sanctions," "up to a finding of contempt." May 23 Tr. 6 (Ex. 4).

10. The People made discovery productions to defendant in this case on May 23, June 8, June 9, June 15, and July 24, 2023. On July 24, 2023, the People served on defendant and filed with the Court a certificate of compliance ("COC") pursuant to CPL § 245.50(1).

11. Among other materials, the records that the People produced to defendant in discovery include all documents and communications between the People and Cohen that are within the People's custody or control and that relate to the subject matter of this case, including Cohen's grand jury testimony, CPL § 245.20(1)(b); notes of witness interviews, *id.* § 245.20(1)(e); any other written or recorded witness statements, *id.*; any material that relates to witness credibility or is even arguably exculpatory, *id.* § 245.20(1)(k); and any documents related to any promises, rewards, or inducements, *id.* § 245.20(1)(*l*).

12. Consistent with the People's continuing duty to disclose pursuant to CPL § 245.60, the People have made supplemental discovery productions to defendant regularly since July 24, and have served on defendant and filed with the Court supplemental COCs pursuant to CPL § 245.50(1) following each supplemental production.

II. Defendant's continued attacks on witnesses, investigators, prosecutors, jurors, judges, and others involved in legal proceedings against him.

13. The People's April 24, 2023 motion for a protective order catalogued facts demonstrating defendant's "longstanding and perhaps singular history of attacking witnesses, investigators, prosecutors, trial jurors, grand jurors, judges, and others involved in legal

proceedings against him." People's Mot. for a Protective Order 2-3, 7-12 (Apr. 24, 2023) (Ex. 2). This Affirmation incorporates by reference the factual averments and supporting exhibits in the People's April 24 motion for a protective order.

14. The well-documented factual evidence that supported the Court's good-cause finding for the May 8 Protective Order has become more extensive in the intervening six months. *See, e.g.*, Aaron Blake, *A Catalogue of Trump's Attacks on Judges, Prosecutors and Witnesses*, Wash. Post, Oct. 5, 2023, https://www.washingtonpost.com/politics/2023/10/05/catalogue-trumps-attacks-judges-prosecutors-witnesses/.

15. For example, on September 22, 2023, defendant falsely claimed on social media that the former Chairman of the Joint Chiefs of Staff, a witness in defendant's D.C. criminal case, *United States v. Trump*, No. 1:23-cr-00257-TSC (D.D.C. filed Aug. 1, 2023), had committed treason and suggested that he should be subject to the death penalty (Ex. 5).

16. On October 24, 2023, following reports that former White House Chief of Staff Mark Meadows was cooperating with the prosecution in the D.C. criminal case, defendant posted publicly on social media that Meadows would be a "weakling[] and coward[]" if Meadows testified against defendant in that case (Ex. 6).

17. Prosecutors, judges, and court staff involved in legal proceedings involving defendant have in recent weeks and months been subject to threats of death and physical injury following defendant's public attacks:

a. On August 9, 2023, the federal government filed a criminal complaint charging a Utah resident with transmitting interstate death threats against District Attorney Alvin Bragg through a series of communications that began on March 18, 2023—just a few hours after defendant falsely stated on social media that

he was about to be arrested in connection with this case and called for his followers to "PROTEST, TAKE OUR NATION BACK!" *See* Felony Complaint, *United States v. Robertson*, No. 2:23-mj-722 (D. Utah Aug. 9, 2023) (Ex. 7); Defendant's March 18 social media posts (Ex. 8).

b. On August 11, 2023, a Texas resident was charged with transmitting interstate death threats against the presiding judge in defendant's criminal case in the District of Columbia, after the defendant called the court's chambers, "threatened to kill anyone who went after former President Trump," and "stated 'You are in our sights, we want to kill you,'" among other threats. Aff. in Support of Criminal Complaint, *United States v. Shry*, No. 4:23-cr-00413 (S.D. Tex. Aug. 11, 2013) (Ex. 9).

c. On October 25, 2023, an Alabama resident was indicted on charges of transmitting interstate threats to injure Fulton County District Attorney Fani Willis and Fulton County Sheriff Patrick Labat because of their connections to the Fulton County, Georgia investigation and criminal prosecution of defendant. *See* Indictment, *United States v. Hanson*, No. 1:23-cr-0343 (N.D. Ga. Oct. 25, 2023) (Ex. 10).

d. On November 3, 2023, the presiding judge in the ongoing civil financial fraud trial against defendant in New York County entered an order noting that after defendant's public attacks on the court and court staff, his "chambers have been inundated with hundreds of harassing and threatening phone calls, voicemails, emails, letters, and packages." Order, *People v. Trump*, Index No. 452564/2022 (Sup. Ct. N.Y. Cnty. Nov. 3, 2023) (Ex. 11).

18. Three different judges have entered five different court orders in just the past few weeks imposing measures to protect witnesses, court staff, jurors, and the judicial process as a whole from defendant's public attacks:

a. Defendant was fined twice in recent weeks for violating an order of a New York State Supreme Court that prohibited him from publicly attacking that court's law clerk. *See* Order, *People v. Trump*, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Oct. 26, 2023) (Ex. 12) (imposing $10,000 fine for intentional violation of court order); Order, *People v. Trump*, No. 452564/2022 (Sup. Ct. N.Y. Cnty. Oct. 20, 2023) (imposing $5,000 fine for violation of court order) (Ex. 13).

b. Last week, the federal judge presiding over a defamation lawsuit against defendant ordered that the January 2024 trial in that action proceed before an anonymous jury—and directed that extensive additional protections be employed, including that the U.S. Marshals Service make arrangements to transport jurors to and from the courthouse from undisclosed locations—after finding that if jurors' identities were disclosed, "there would be a strong likelihood of unwanted media attention to the jurors, influence attempts, and/or harassment or worse by supporters of Mr. Trump and/or by Mr. Trump himself." Order 1-2, *Carroll v. Trump*, No. 22-cv-7311 (LAK) (S.D.N.Y. Nov. 3, 2023) (citing *Carroll v. Trump*, No. 22-cv-10016 (LAK), 2023 WL 2612260, at *4 (S.D.N.Y. Mar. 23, 2023)) (Ex. 14).

c. The federal court presiding over defendant's criminal case in the District of Columbia recently cited "[u]ndisputed testimony . . . demonstrat[ing] that when Defendant has publicly attacked individuals, including on matters related to this

case, those individuals are consequently threatened and harassed"; and found that defendant's attacks on "individuals involved in the judicial process, including potential witnesses, prosecutors, and court staff," "pose a significant and immediate risk that (1) witnesses will be intimidated or otherwise unduly influenced by the prospect of being themselves targeted for harassment or threats, and (2) attorneys, public servants, and other court staff will themselves become targets for threats and harassment." *United States v. Trump*, No. 23-cr-257 (TSC), 2023 WL 6818589, at *1 (D.D.C. Oct. 17, 2023)[1]; *see also United States v. Trump*, No. 23-cr-257 (TSC), 2023 WL 7121206, at *2-3 (D.D.C. Oct. 29, 2023) (denying defendant's motion to stay the October 17 order and citing additional factual evidence).

III. Defendant's $500 million lawsuit against Michael Cohen.

19. On April 12, 2023, eight days after he was arraigned in this case, Trump sued Cohen in federal court in Florida seeking $500 million in damages on claims of breach of fiduciary duty, unjust enrichment, and other causes of action based on the allegation that Cohen "reveal[ed] [Trump's] confidences" and "spread falsehoods about [Trump]." Complaint ¶¶ 1-2, *Trump v. Cohen*, No. 23-cv-21377 (S.D. Fla. Apr. 12, 2023) (Ex. 15). The allegations in the *Trump v. Cohen* complaint include claims based on Cohen's testimony before the New York County grand jury that indicted Trump in this case. *Id.* ¶¶ 111-117.

[1] On November 3, 2023, the D.C. Circuit entered an administrative stay of the district court's October 17 order, noting that "[t]he purpose of this administrative stay is to give the court sufficient opportunity to consider [defendant's] emergency motion for a stay pending appeal and should not be construed in any way as a ruling on the merits of that motion." Order, *United States v. Trump*, No. 23-3190 (D.C. Cir. Nov. 3, 2023).

20. The People's April 24 Motion for a Protective Order in this action noted that Trump had just filed a civil damages action against Cohen in federal court, and argued that the "suit against Cohen heightens the risk that Defendant will use the Covered Materials for purposes other than the defense of this case." People's Mot. for a Protective Order 13-14 (Apr. 24, 2023) (Ex. 2).

21. On September 29, 2023, after granting several adjournments of Trump's deposition in his federal lawsuit against Cohen, the federal court ordered Trump to sit for a deposition in that case on October 9, 2023, and held that "[n]o further continuances will be Granted with respect to this deposition." Order on Re-Scheduling of Plaintiff's Deposition 5, *Trump v. Cohen*, No. 23-cv-21377 (S.D. Fla. Sept. 29, 2023) (Ex. 16).

22. On October 5, four days before Trump's court-ordered deposition, Trump voluntarily dismissed his complaint without prejudice. *See* Notice of Voluntary Dismissal Without Prejudice, *Trump v. Cohen*, No. 23-cv-21377 (S.D. Fla. Oct. 5, 2023) (Ex. 17).

23. Trump publicly described the dismissal as a "temporar[y] pause" of the litigation and promised through a spokesman to refile the action against Cohen in the future. *See* Ben Protess & Maggie Haberman, *Trump Drops Lawsuit Against Michael Cohen, His Former Fixer*, N.Y. Times (Oct. 5, 2023); Brooke Singman, *Trump Drops Lawsuit Against Michael Cohen, Vows to Re-File After He Has 'Prevailed' in Other Cases*, Fox News (Oct. 5, 2023).

IV. Defendant's October 17 subpoena *duces tecum* to Michael Cohen.

24. On or about October 17, 2023,[2] defendant served a subpoena *duces tecum* on Michael Cohen in connection with this prosecution (Ex. 1).

25. Defendant's subpoena to Cohen seeks production on or before November 10, 2023, of "all documents and communications" falling under nine broad categories of requests (described

[2] The subpoena is dated October 17, 2023. The People do not know the specific date it was served.

more fully in the Memorandum of Law below) "that are stored on any medium . . . including but not limited to phones (including encrypted messaging applications), tablets, computers, and hard copy." Ex. 1.

MEMORANDUM OF LAW

Defendant's subpoena to Cohen is an extraordinarily broad document demand that exceeds every parameter on the allowable scope of a trial subpoena. Rather than seek specific documents tailored to the determination of defendant's guilt or innocence, the subpoena is a scattershot request for years and years of records that appears designed to ascertain the existence of evidence, fish for impeaching material, circumvent limits on discovery in this criminal case, and serve as discovery for the $500 million civil damages lawsuit defendant has promised to re-file against Cohen. The Court should quash the subpoena.

In the alternative, to the extent the Court does not quash the subpoena, the Court should grant a protective order providing that any material defendant obtains through the subpoena *duces tecum* to Cohen shall be subject to the same restrictions on use and disclosure as are imposed by the Court's May 8 Protective Order. Absent a protective order, defendant could use the Court's subpoena authority to compel Cohen to produce records that defendant may then disseminate without restriction, posing a serious risk of witness intimidation and harassment and evading the Court's existing protective order that governs the use of discovery materials in this case.

I. Defendant's subpoena to Cohen is overbroad in every respect and should be quashed.

A. Legal standard.

The Criminal Procedure Law permits an attorney for a defendant in a criminal proceeding to issue a subpoena of the court, including a subpoena *duces tecum*, to any witness that the defendant would be entitled to require to attend court. CPL §§ 610.10(3); 610.20(3). To sustain such a subpoena, a defendant must show "that the testimony or evidence sought is reasonably

likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome." CPL § 610.20(4). The defendant bears the burden to show that the standard required to sustain a defense subpoena has been met. *People v. Kozlowski*, 11 N.Y.3d 223, 242-43 (2008).

As this Court previously held, "the proper purpose of a subpoena *duces tecum* is to compel the production of specific documents that are relevant and material to the facts at issue in a judicial proceeding." Decision & Order on Defendant's Mot. to Quash Two Subpoenas 4, *People v. Trump*, Ind. No. 71543/2023 (Sup. Ct. N.Y. Cnty. July 7, 2023) (citing *Kozlowski*, 11 N.Y.3d at 242) (the "*Trump* Subpoena Order") (Ex. 18). Subpoenas may not be used to determine if evidence exists or as "an attempt to conduct a 'fishing expedition,'" *People v. Gissendanner*, 48 N.Y.2d 543, 547 (1979); or to circumvent the procedure for discovery, *see Constantine v. Leto*, 157 A.D.2d 376, 378 (3d Dep't 1990), *aff'd*, 77 N.Y.2d 975 (1991).

In addition, a defense subpoena should be quashed if it appears intended to harass or intimidate a witness. *See* Decision & Order 3-4, *People v. Manton*, No. CR-013873-22NY (Crim. Ct. N.Y. Cnty. 2022) (the "*Manton* Subpoena Order") (Ex. 19); *People v. Weiss*, 176 Misc. 2d 496, 499 (Sup. Ct. N.Y. Cnty. 1998); *People v. King*, 148 Misc. 2d 859, 860-62 (Crim. Ct. N.Y. Cnty. 1990).

The District Attorney has standing to move to quash defendant's subpoena *duces tecum*. *See Matter of Morgenthau v. Young*, 204 A.D.2d 118, 118 (1st Dep't 1994); *see also Brown v. Grosso*, 285 A.D.2d 642, 645 (2d Dep't 2001); *Manton* Subpoena Order 3 ("[T]his Court finds that the District Attorney, as an adverse party to the action, ha[s] standing to oppose defendant's subpoena

on behalf of the complainant as this subpoena would have an impact on the criminal case."); *People v. Ellman*, 137 Misc. 2d 946, 947-48 (Crim. Ct. Bronx Cnty. 1987).[3]

B. The subpoena should be quashed because it is overbroad, not narrowly tailored, and is being used for the purpose of improper general discovery.

None of the nine requests included in defendant's subpoena *duces tecum* to Cohen are permissible under the standard described above.

Request 1 seeks:

> For the period January 1, 2017, to the present, all communications, or documents memorializing or otherwise referencing such communications, between you and current or former prosecutors or other staff of: the Manhattan District Attorney's Office, including former ADA Mark Pomerantz and Detective Jeremy Rosenberg; the U.S. Attorney's Office for the Southern District of New York; the Federal Bureau of Investigation; and the New York Attorney General's Office; regarding or relating to Donald J. Trump, Melania Trump, the Trump Organization, Stephanie Clifford, or alleged "catch-and-kill" or hush money payment schemes.

This request is grossly overbroad and burdensome. First, it covers nearly *seven years* of records, and seeks "all communications" and "documents memorializing or otherwise referencing such communications" regarding various topics with any employee, current or former, of four different law enforcement agencies—local, state, and federal. Another court recently quashed a similar (but

[3] The trial court in *People v. Weiss* held that the People do not have standing to quash a defense subpoena served on a third party. 176 Misc. 2d at 497. That conclusion is inconsistent with the First Department's controlling decision to the contrary in *Young*, 204 A.D.2d at 118, which specifically upheld a prosecutor's standing "to move to quash subpoenas that would have an impact on the underlying criminal case." By contrast, the cases cited by *Weiss* all concerned a *defendant's* lack of standing to challenge a third-party subpoena. Moreover, denying the People standing here would be inconsistent with this Court's previous adjudication on the merits of defendant's motion to quash the People's subpoena *duces tecum* to Kaplan, Hecker & Fink, LLP (Ex. 18); defendant should have no greater standing to raise such claims than the People do. In any event, *Weiss* also held that the People could challenge a defense subpoena by motion for a protective order, as discussed in Point II below. 176 Misc. 2d at 497-500. Thus, if this Court concludes that the People do not have standing to move to quash, the People respectfully request that the Court provide the same relief by way of protective order for good cause shown.

far narrower) trial subpoena to a third party—which sought "[a]ll documents and written communications (including emails and text messages) to, from, or among the Manhattan District Attorney's Office"—on the ground that it "clearly falls under the rubric of a 'fishing expedition'" and "also suffers from being overbroad." Decision & Order 1, *People v. Bradley*, Ind. No. 2134-19 (Sup. Ct. N.Y. Cnty. July 26, 2023) (Ex. 20); *see also Trump* Subpoena Order 5 (quashing subpoena as overbroad that sought "all emails" between three individuals for a period covering 25 months).

Second, Request 1 would circumvent limits on criminal discovery. The request seeks to compel Cohen to produce "*all* communications" with this Office, as well as documents that memorialize or reference communications between Cohen and this Office, without regard to whether those records have anything to do with the subject matter of this case. The People have already produced to defendant in discovery all documents and communications between the People and Cohen that are within the People's custody or control and that relate to the subject matter of this case, including his grand jury testimony, CPL § 245.20(1)(b); notes of witness interviews, *id.* § 245.20(1)(e); any other written or recorded witness statements, *id.*; any material that relates to witness credibility or is even arguably exculpatory, *id.* § 245.20(1)(k); and any documents related to any promises, rewards, or inducements, *id.* § 245.20(1)(*l*). Because Request 1 is not limited to the subject matter of this case, it far exceeds both the scope of the People's automatic discovery obligations under CPL § 245.20(1), and the scope of any materials defendant could obtain from either the People or Cohen by motion to this Court. *See* CPL § 245.30(3) (authorizing discovery from the prosecution or any third party only where the defendant shows, among other requirements, that the information "relates to the subject matter of the case and is reasonably likely to be material"). A subpoena *duces tecum* may not be used to circumvent limits on discovery. *See Matter of Terry D.*, 81 N.Y.2d 1042, 1044-45 (1993); *Constantine*, 157 A.D.2d at 378; *People v.*

Chambers, 134 Misc. 2d 688, 690 (Sup. Ct. N.Y. Cnty. 1987) (citing cases). Request 1 should be quashed for this reason as well.

Third, Request 1 is overbroad because it seeks Cohen's communications with other agencies relating to different law-enforcement investigations that have nothing to do with this prosecution. Publicly-available information indicates that Cohen communicated with the New York Attorney General as part of that office's investigation under Executive Law § 63(12) into persistent fraud or illegality by Trump and the Trump Organization, *see People v. The Trump Org., Inc.*, 205 A.D.3d 625, 626-27 (1st Dep't 2022); with the FBI as part of an investigation into foreign interference in the 2016 presidential election, *see* U.S. Dep't of Justice, *Report on the Investigation into Russian Interference in the 2016 Presidential Election, Vol. I*, at 5, 9, 12, 76-80 (Mar. 2019); and with the U.S. Attorney's Office as part of civil litigation that Cohen filed against the federal government alleging retaliation for publishing a book critical of Trump, *see Cohen v. Barr*, No. 20 Civ. 5614, 2020 WL 4250342 (S.D.N.Y. July 23, 2020). By seeking all communications with these other agencies relating to Trump or the Trump Organization, Request 1 encompasses all of these totally unrelated matters (and potentially others). Because nothing about those matters is "reasonably likely to be relevant and material to the proceedings," CPL § 610.20(4), Request 1 should be quashed for this separate reason as well.

Request 2 seeks:

> For the period January 1, 2017, to June 1, 2018, all documents and communications regarding or relating to any legal or non-legal work done on behalf of Donald J. Trump or Melania Trump, including any press appearances or statements.

This request violates the basic standard that a subpoena *duces tecum* "may not generally be 'used for the purpose of discovery or to ascertain the existence of evidence.'" *Trump* Subpoena Order 4 (citing *Gissendanner*, 48 N.Y.2d at 549, 551). Far from being a "narrowly sculpted" request for "specific

documents," *id.*, defendant's demand that Cohen produce "*all* documents and communications" relating to "*any* legal or non-legal work" performed over a 17-month period (Ex. 1) is an effort at "an unrestrained foray" designed to locate "unspecified information." *Gissendanner*, 48 N.Y.2d at 549. And the request for "any press appearances or statements" (Ex. 1) should be quashed for the separate reason that any such records are by definition publicly available, and are therefore equally available to defendant without need for a subpoena. *See People v. Manning*, 2022 NYLJ LEXIS 297, at *3 (Sup. Ct. Kings Cnty. Apr. 4, 2022) (quashing defense subpoena for material that was publicly available); CPL § 245.30(3) (the court may order disclosure of material to the defendant only where, among other requirements, the defendant makes a showing that he "is unable without undue hardship to obtain the substantial equivalent by other means").

Request 3 seeks:

> All documents or communications regarding or relating to Stephanie Clifford, or alleged 'catch-and-kill' or hush money payment schemes.

This request has no durational limit at all and does not seek specific documents, and should for those reasons be quashed as an improper request "for the purpose of discovery or to ascertain the existence of evidence." *Gissendanner*, 48 N.Y.2d at 551. In addition, because Request 3 is not limited to records that relate to the subject matter of this case, it should be quashed for the separate reason that responsive documents are not "reasonably likely to be relevant and material to the proceedings." CPL § 610.20(4). Instead, the request appears designed to circumvent limits on discovery. *See Matter of Terry D.*, 81 N.Y.2d at 1044-45; *Constantine*, 157 A.D.2d at 378; *see also* CPL § 245.30(3).

Request 4 seeks:

> For the period January 1, 2015 to the present, documents sufficient to identify all clients that have retained you (i.e., in your individual capacity or as a member of any firm), or Michael D. Cohen & Associates, PC, or Essential Consultants LLC, including payments you received, and documents

> sufficient to demonstrate whether you entered into retainer agreements with each client, including copies of all retainer agreements between you and any client.

This request for nearly *nine years* of client records, payment information, and retainer agreements is—again—overbroad and burdensome on its face, *see Gissendanner*, 48 N.Y.2d at 549, and far exceeds the subject-matter limits that apply to defense requests for discovery from third parties under CPL § 245.30(3).

Even if this request were narrowed to seek only records related to retainer agreements, defendant could not meet his burden to show that those records are "relevant and material to the determination of guilt or innocence." *Gissendanner*, 48 N.Y.2d at 548. Defendant is charged here with falsely stating in the business records of New York enterprises that his 2017 payments to Cohen were for legal services rendered pursuant to a retainer agreement with Cohen, when the People allege that in truth and in fact those payments were not rendered pursuant to a retainer agreement, were not for legal services, and were instead reimbursements for the Stormy Daniels payoff. Thus, the relevant question is not whether Cohen had retainer agreements with any different clients, but whether defendant or his companies had retainer agreements with Cohen—information that is exclusively within defendant's control. Indeed, the Trump Organization's Chief Legal Officer, Alan Garten, testified at the evidentiary hearing on defendant's effort to remove this case to federal court that there was no retainer agreement with Cohen:

> Q. Now, in the case of Michael Cohen, when he left the Trump Organization and he became a personal attorney to President Trump, was there a retainer agreement that covered that retention?
>
> A. I'm not aware of a written retainer agreement.
>
> Q. Does that mean that there was no retainer agreement, sir?
>
> A. Not that I've ever seen, no.

Hearing Tr. 61, *People v. Trump*, No. 23 Civ. 3773 (AKH) (S.D.N.Y. June 27, 2023) (Ex. 21). No aspect of this prosecution turns on whether Cohen did or did not enter into retainer agreements with other clients for other work. Because there are no facts regarding Cohen's use (or not) of retainer agreements with different clients that would make defendant's false business records true, Request 4 seeks records that are irrelevant and immaterial to defendant's guilt or innocence. *See Gissendanner*, 48 N.Y.2d at 548.

Request 5 seeks:

> For the period January 1, 2017 to June 1, 2018, documents sufficient to demonstrate all statements made by you, or on your behalf, to any media outlet concerning the lawfulness of payments made to Stephanie Clifford.

As noted above in the opposition to Request 2, this request improperly seeks to burden a witness with compiling public-source information that is equally available to defendant and that defendant can therefore locate on his own. It is improper to use a trial subpoena to compel witnesses to conduct defendant's public-source research for him. *See Manning*, 2022 NYLJ LEXIS 297, at *3; CPL § 245.30(3).

Request 6 seeks:

> For tax years 2016, 2017 and 2018, all documents and communications relating to any tax liabilities—state or federal—owed by you or by any entity in which you hold or held, directly or indirectly, an ownership interest, including all federal and state tax returns you filed (including amended tax returns), all draft tax returns, all documents related to income calculations or deductions from income, all communications with accountants, and all accountant work papers.

This request for three years' worth of "all documents and communications" related to tax liabilities, tax returns, communications with accountants, and related records is strikingly overbroad and improper. It does not seek specific records and instead is a request for "general discovery," *Kozlowski*, 11 N.Y.3d at 242-43, "in the hope of finding something helpful to his defense." *Decrosta v. State Police Lab'y*, 182 A.D.2d 930, 931 (3d Dep't 1992). It should be quashed as "no more than

an attempt to conduct a 'fishing expedition' into confidential records." *Gissendanner*, 48 N.Y.2d at 547.

The fact that the People allege in this prosecution that defendant's intent to defraud under Penal Law § 175.10 included an intent to commit or conceal tax crimes, *see* People's Opp. to Omnibus Motions 37-40 (Nov. 9, 2023), does not change this conclusion. Even a narrowed version of Request 6 that sought only those records necessary to show how Cohen treated defendant's $420,000 repayment of the Stormy Daniels payoff on his tax returns would not be "relevant and material to the determination of guilt or innocence." *Gissendanner*, 48 N.Y.2d at 548. That is because "falsifying business records in the second degree is elevated to a first-degree offense on the basis of an enhanced intent requirement . . . not any additional actus reus element." *People v. Taveras*, 12 N.Y.3d 21, 27 (2009). Thus, establishing that a defendant intended to commit or conceal another crime does not require proof that the crime was in fact committed or resulted in a conviction, *see People v. Thompson*, 124 A.D.3d 448, 449 (1st Dep't 2015), and courts have upheld convictions under Penal Law § 175.10 even when the defendant was acquitted of the crimes that he intended to commit or conceal. *See, e.g.*, *People v. Holley*, 198 A.D.3d 1351, 1351-52 (4th Dep't 2021); *People v. Houghtaling*, 79 A.D.3d 1155, 1157-58 (3d Dep't 2010); *People v. McCumiskey*, 12 A.D.3d 1145, 1145 (4th Dep't 2004); *see also New York v. Trump*, No. 23 Civ. 3773 (AKH), 2023 WL 4614689, at *10 (S.D.N.Y. July 19, 2023) (citing cases).

It is therefore immaterial to the question of defendant's intent to defraud whether Cohen subsequently completed any tax crimes through his agreement with defendant and others that the Stormy Daniels reimbursement would be grossed up to account for the tax consequences of falsely treating that reimbursement as income. That is, in this case, defendant's intent is distinct from whether his intended result actually occurred. This is particularly so because the evidence shows

that the tax consequences of defendant's reimbursement payments to Cohen were explicitly discussed and factored in ahead of time, as explained (with citations to the grand jury record) in the People's opposition to defendant's omnibus motions. *See* People's Opp. to Omnibus Motions 37-40 (Nov. 9, 2023). This is not a case where defendant's intent to commit or conceal tax crimes must be inferred after the fact from a tax return; instead, the grand jury evidence shows that defendant agreed *ex ante* to structure the reimbursement payments specifically in response to the potential tax consequences of falsely characterizing those payments as income. *See id.*

Request 7 seeks:

> Documents sufficient to show which accountants prepared and filed your tax returns for the tax years 2016, 2017, and 2018.

This request should be quashed because the identity of Cohen's tax preparers is not "reasonably likely to be relevant and material to the proceedings." CPL § 610.20(4). Indeed, it is hard to see why defendant would seek this information if not to serve further subpoenas *duces tecum* on Cohen's accountants for any records in their possession related to Cohen's tax returns. This request should thus be quashed for the separate reason that it seeks "general discovery" and is "no more than an attempt to conduct a 'fishing expedition' into confidential records." *Gissendanner*, 48 N.Y.2d at 547.

Request 8 seeks:

> All draft manuscripts for the books *Disloyal* and *Revenge*.

And Request 9 seeks:

> [Cohen's] contract with the publisher for the books *Disloyal* and *Revenge*, as well as documents sufficient to show the compensation [Cohen] received from the books *Disloyal* and *Revenge*, and from the podcast Mea Culpa.

Both requests should be quashed. Defendant cannot meet his burden to show that draft manuscripts of books that were subsequently published are "reasonably likely to be relevant and material to the

proceedings." CPL § 610.20(4). Setting aside that both books address dozens of topics wholly unrelated to the subject matter of this case, the request for draft manuscripts is yet again an improper request "for the purpose of discovery or to ascertain the existence of evidence." *Gissendanner*, 48 N.Y.2d at 551. The published books are of course publicly available and contain any evidence defendant may want to review that is material to his guilt or innocence. And the "obvious purpose" of requesting records regarding Cohen's compensation from those books and a podcast is to "fish for impeaching material." *Constantine*, 157 A.D.2d at 379 (quoting *People v. DiLorenzo*, 134 Misc. 2d 1000, 1001 (Nassau Cnty. Ct. 1987)).

None of the nine broad requests in defendant's subpoena *duces tecum* meet the standard for a defense subpoena under CPL § 610.20(4). The Court should quash the subpoena.

C. The subpoena should be quashed because it appears to have been issued to harass the witness or for another improper purpose.

The Court should grant the People's motion to quash for the separate reason that the subpoena appears to have been issued to harass Cohen and for the improper purpose of generating discovery for a half-billion dollar civil damages action defendant has promised to re-file against Cohen in the future.

On April 12, 2023, eight days after he was arraigned in this case, defendant sued Cohen in federal court in Florida seeking $500 million in damages on claims of breach of fiduciary duty, unjust enrichment, and other causes of action based on the allegation that Cohen "reveal[ed] [Trump's] confidences" and "spread falsehoods about [Trump]," including through his grand jury testimony here and other disclosures about the Stormy Daniels hush money payment. Complaint ¶¶ 1-2, 111-117, *Trump v. Cohen*, No. 23-cv-21377 (S.D. Fla. Apr. 12, 2023) (Ex. 15). On October 5, 2023, four days before Trump's court-ordered deposition in that lawsuit, Trump voluntarily dismissed his complaint without prejudice. *See* Notice of Voluntary Dismissal Without Prejudice, *Trump v. Cohen*,

No. 23-cv-21377 (S.D. Fla. Oct. 5, 2023) (Ex. 17). Trump publicly described the dismissal as a "temporar[y] pause" of the litigation, and promised through a spokesman to refile the action against Cohen. *See* Ben Protess & Maggie Haberman, *Trump Drops Lawsuit Against Michael Cohen, His Former Fixer*, N.Y. Times, Oct. 5, 2023, https://www.nytimes.com/2023/10/05/nyregion/trump-michael-cohen-lawsuit-dropped.html; Brooke Singman, *Trump Drops Lawsuit Against Michael Cohen, Vows to Re-File After He Has 'Prevailed' in Other Cases*, Fox News, Oct. 5, 2023, https://www.foxnews.com/politics/trump-drops-suit-against-michael-cohen-vows-refile-prevailed-cases.

Just a few weeks after dismissing his lawsuit against Cohen, defendant served the subpoena *duces tecum* at issue here. A cursory comparison between the document requests in the subpoena and the complaint Trump filed against Cohen in Florida indicates that the subpoena is designed to locate discovery for Trump's civil damages claims rather than discrete evidence for this criminal matter. For example, Requests 8 and 9 of the subpoena seek all drafts of the books *Disloyal* and *Revenge*, as well as all publishing contracts for those books and all documents that show any compensation Cohen received (Ex. 1). Trump's civil complaint against Cohen sought (in addition to $500 million in damages) disgorgement of all compensation Cohen received as a result of the publication of those books, *see Trump v. Cohen* Complaint 31 (Prayer for Relief ¶ (b)) (Ex. 15); strongly suggesting that defendant issued a judicial subpoena here, on the authority of this Court, to take discovery in support of a future disgorgement claim against a witness in this prosecution. Similarly, the other requests in the subpoena—while having no relation to defendant's guilt or innocence in this prosecution—also appear designed to identify discovery for the civil action that defendant has publicly promised to re-file against Cohen.

Given this timing and sequence of events—and given the apparent connection between the documents sought in the subpoena and the civil claims defendant has promised to press against Cohen in federal court in the future—the Court should quash the subpoena on the ground that is intended to harass or serve the improper purpose of developing discovery for another case. *See Manton* Subpoena Order 3-4; *Weiss*, 176 Misc. 2d at 499; *King*, 148 Misc. 2d at 860-62.

II. In the alternative, the Court should order that any material defendant obtains through the subpoena to Cohen shall be subject to the Court's May 8 Protective Order.

If the Court does not quash defendant's subpoena to Cohen, the People respectfully request in the alternative that the Court enter a protective order pursuant to CPL § 245.70 and the Court's inherent authority providing that any material defendant obtains through the subpoena *duces tecum* to Cohen shall be subject to the same restrictions on use and disclosure as are imposed by the Court's May 8 Protective Order.

A. Legal standard.

Criminal Procedure Law § 245.70(1) provides that "[u]pon a showing of good cause," the Court may "at any time order that discovery or inspection of any kind of material or information . . . be denied, restricted, conditioned or deferred, or make such other order as is appropriate." Good cause determinations "are necessarily case-specific and therefore fall within the discretion of the trial court." *People v. Linares*, 2 N.Y.3d 507, 510 (2004). As the Court of Appeals has explained, "[b]y its very nature, good cause admits of no universal, black-letter definition. Whether it exists, and the extent of disclosure that is appropriate, must remain for the courts to decide on the facts of each case." *In re Linda F.M.*, 52 N.Y.2d 236, 240 (1981); *see also Matter of Molloy v. Molloy*, 137 A.D.3d 47, 52-53 (2d Dep't 2016) ("[G]ood cause should be read in context by considering the statute as a whole," and "should also be interpreted in accordance with legislative intent, as expressed in the legislative history.").

Section 245.70(4) sets forth a non-exhaustive list of factors that bear on the Court's determination of good cause to deny or restrict discovery, including danger to the safety of a witness and risk of witness intimidation or harassment; "whether the defendant has a history of witness intimidation or tampering and the nature of that history"; and any "risk of an adverse effect on the legitimate needs of law enforcement." CPL § 245.70(4). "Overall, the statute (CPL §§ 245.70(1) and (4)) provides a court with broad discretion to determine whether, and how . . . to protect from disclosure information for which there is 'good cause' to withhold . . . ." Donnino, Practice Commentary, McKinney's Cons. Laws of N.Y., Book 11A, Crim. Proc. Law § 245.10.

A protective order pursuant to Article 245 is the appropriate vehicle to regulate defendant's use of documents obtained pursuant to a subpoena *duces tecum*. In *People v. Weiss*, 176 Misc. 2d 496 (Sup. Ct. N.Y. Cnty. 1998), the court held that—even though a defendant's trial subpoena is "[s]trictly speaking, . . . not issued as part of discovery"—trial courts may regulate a defendant's subpoena through a protective order under the CPL discovery article because "[t]o answer this question in the negative would remove any meaningful oversight of the subpoena process by the court." *Id.* at 498-99. The court explained that "[i]t is difficult to conceive . . . that the court to which a judicial subpoena is returnable does not retain inherent authority and oversight over it, or that it cannot regulate the production of documents or items issued under its imprimatur." *Id.* at 499. And the court noted "the possibility that the defendant has no valid use for some, if not most, of the information contained in these extensive records and that he is using the subpoena at issue in part as a discovery device, . . . which may be fully regulated by means of a protective order." *Id.* at 499-500. For these reasons, "the mechanism of a protective order [should] be made available to encompass information sought by way of a subpoena as well as by way of the discovery article." *Id.* at 500; *see also People v. Winston*, 2023 N.Y. Misc. LEXIS 5407, at *6-7 (Crim. Ct. Bronx

Cnty. Sept. 11, 2023) ("The court can . . . impose reasonable conditions upon granting or denial of a motion to quash or modify." (citing CPLR § 2304)).

B. There is good cause for a protective order regarding defendant's use of any material obtained through the subpoena to Cohen.

There is good cause for a protective order directing that any material defendant obtains through the subpoena *duces tecum* to Cohen shall be subject to the same restrictions on use and disclosure imposed by the Court's May 8 Protective Order.

As an initial matter, this Court already found good cause to enter a narrowly-tailored protective order regulating defendant's use and dissemination of materials produced by the People in discovery. Protective Order 1 (Ex. 3). That good-cause finding alone supports application of the May 8 Protective Order to materials defendant obtains through a judicial subpoena to Cohen, because—as with materials produced in discovery—materials defendant obtains through a subpoena are available to defendant only because he is charged in this criminal proceeding, and the same considerations regarding witness safety and the integrity of these proceedings therefore continue to apply. CPL § 245.70(4).

To the extent more is required, the factual evidence cited above that post-dates the Court's May 8 Protective Order and that demonstrates defendant's continued pattern of conduct, *see supra* Aff. ¶¶ 14-18, amply supports the need to apply the order here to reduce the risk of witness harassment and intimidation, particularly in light of defendant's history in this and other cases. Defendant continues publicly attacking witnesses in the criminal cases against him, suggesting that one deserves "DEATH!" and that another is a "weakling[] and coward[]" if he cooperates with the prosecution. *See supra* Aff. ¶¶ 15-16. Prosecutors and judges involved in defendant's criminal cases, including DA Bragg, have been targeted in recent months with threats of death and physical injury following defendant's public attacks. *See supra* Aff. ¶ 17. And in just the last three weeks,

three different judges have entered five different court orders sanctioning defendant or imposing other measures to protect witnesses, court staff, jurors, and the judicial process as a whole from defendant's public attacks. *See supra* Aff. ¶ 18. This evidence more than meets the good cause showing required to support reasonable limits on defendant's use of materials obtained through the subpoena to Cohen. CPL § 245.70(4); *see, e.g.*, *People v. Griggs*, 180 A.D.3d 853, 855 (2d Dep't 2020); *People v. Cole*, 2020 NYLJ LEXIS 537, at *19-22 (Sup. Ct. Queens Cnty. Feb. 25, 2020); *People v. Phillips*, 67 Misc. 3d 196, 197-202 (Sup. Ct. Bronx Cnty. 2020); *People v. Harvey*, 66 Misc. 3d 867, 870-71 (Sup. Ct. Bronx Cnty. 2020).

In addition, absent application of the May 8 Protective Order, defendant could rely on a judicial subpoena—issued under this Court's imprimatur, *Weiss*, 176 Misc. 2d at 499—to evade this Court's existing order restricting the use and disclosure of materials produced through discovery, simply by using defense subpoenas to obtain materials that the People already produced in discovery. Indeed, as noted above, some of the document demands in defendant's subpoena to Cohen do in fact seek to duplicate material that the People already produced in discovery.

The Court should therefore direct that any materials defendant obtains through the subpoena *duces tecum* to Cohen shall be subject to the restrictions on use and disclosure imposed by the Court's May 8 Protective Order (Ex. 3). That Protective Order—entered after full briefing and argument—imposed carefully crafted guardrails permitting defendant to use materials produced to defendant in discovery "solely for the purposes of preparing a defense in this matter" and otherwise prohibiting any person who receives those materials from copying or disclosing them "in any form or by any means to any third party." *Id.* at 1-2. Applying the same guardrails to materials obtained pursuant to a defense subpoena to Cohen will allow defendant to make full use

of any subpoenaed materials to defend this matter in court, while still safeguarding against witness harassment and other improper uses of subpoenaed materials.

The People note that defendant's subpoena *duces tecum* to Cohen is the only defense subpoena we are aware of, but defense counsel has elsewhere advised the Court that the defense expects to seek discovery from "relevant third parties," suggesting that defendant may subpoena other third parties in this case as well. Oct. 3, 2023 Blanche Aff. 3 n.1. Because "subpoenaed materials are returnable to the court," *Trump* Subpoena Order 4, the Court may consider conducting an *in camera* review of materials returned in response to any other defense subpoenas in order to determine whether additional steps are warranted to prevent evasion of the Court's May 8 Protective Order. *See Chambers*, 134 Misc. 2d at 691.

Dated: November 9, 2023

Respectfully submitted,

/s/ Matthew Colangelo
Matthew Colangelo
Assistant District Attorney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	Ind. No. 71543-23

AFFIRMATION OF SERVICE

The undersigned affirms under penalty of perjury that on November 9, 2023, he served the People's Motion to Quash Defendant's Subpoena and for a Protective Order, with the supporting Affirmation and Memorandum of Law, and accompanying exhibits on counsel for defendant (Todd Blanche, Susan Necheles, Emil Bove, Chad Seigel, Gedalia Stern, Joe Tacopina, and Stephen Weiss) and on counsel for the third-party subpoena recipient (Danya Perry) by email with consent.

Dated: November 9, 2023
New York, New York

Respectfully submitted,

/s/ Matthew Colangelo
Matthew Colangelo
Assistant District Attorney

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

-against-

DONALD J. TRUMP,

Defendant.

MOTION TO QUASH DEFENDANT'S SUBPOENA AND FOR A PROTECTIVE ORDER
Indictment No. 71543-23

Alvin L. Bragg, Jr.
District Attorney
New York County
One Hogan Place
New York, New York 10013
(212) 335-9000

Exhibits to People's Motion to Quash
and for a Protective Order (Nov. 9, 2023)

Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,	
- against -	Index No. 71543-23
DONALD J. TRUMP,	**SUBPOENA DUCES TECUM**
Defendant.	

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK

To: Michael D. Cohen

Greetings:

YOU ARE HERBEY COMMANDED, that all business and excuses being laid aside, to produce, at the Supreme Court of the State of New York, of the County of New York, Part 59, 100 Centre Street, New York N.Y., 10013, on or before November 10, 2023, at 10:00 a.m., all documents and communications regarding the topics below that are stored on any medium under your possession or control, including but not limited to phones (including encrypted messaging applications), tablets, computers, and hard copy:

1. For the period January 1, 2017, to the present, all communications, or documents memorializing or otherwise referencing such communications,

including any transcripts, notes, emails, texts, or tapes, between you and current or former prosecutors or other staff of: the Manhattan District Attorney's Office, including former ADA Mark Pomerantz and Detective Jeremy Rosenberg; the U.S. Attorney's Office for the Southern District of New York; the Federal Bureau of Investigation; and the New York Attorney General's Office; regarding or relating to Donald J. Trump, Melania Trump, the Trump Organization, Stephanie Clifford, or alleged "catch-and-kill" or hush money payment schemes;

2. For the period January 1, 2017, to June 1, 2018, all documents and communications regarding or relating to any legal or non-legal work done on behalf of Donald J. Trump or Melania Trump, including any press appearances or statements.

3. All documents or communications regarding or relating to Stephanie Clifford, or alleged "catch-and-kill" or hush money payment schemes;

4. For the period January 1, 2015 to the present, documents sufficient to identify all clients that have retained you (*i.e.*, in your individual capacity or as a member of any firm), or Michael D. Cohen & Associates, PC, or Essential Consultants LLC, including payments you received, and documents sufficient to demonstrate whether you entered into retainer agreements with each client, including copies of all retainer agreements between you and any client;

5. For the period January 1, 2017 to June 1, 2018, documents sufficient to demonstrate all statements made by you, or on your behalf, to any media outlet concerning the lawfulness of payments made to Stephanie Clifford;

6. For tax years 2016, 2017 and 2018, all documents and communications relating to any tax liabilities—state or federal—owed by you or by any entity in which you hold or held, directly or indirectly, an ownership interest, including all federal and state tax returns you filed (including amended tax returns), all draft tax returns, all documents related to income calculations or deductions from income, all communications with accountants, and all accountant work papers;

7. Documents sufficient to show which accountants prepared and filed your tax returns for the tax years 2016, 2017, and 2018;

8. All draft manuscripts for the books *Disloyal* and *Revenge;* and

9. Your contract with the publisher for the books *Disloyal* and *Revenge*, as well as documents sufficient to show the compensation you received from the books *Disloyal* and *Revenge,* and from the podcast Mea Culpa.

Your failure to comply with this subpoena is punishable as a contempt of court.

October 17, 2023

NECHELESLAW LLP

/s/ Susan Necheles

By: _____

Susan R. Necheles
Gedalia M. Stern
1120 6th Ave., 4th Floor
New York, NY 10036
[redacted]
Attorneys for Donald J. Trump

Exhibit 2

PART 59 APR 25 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK	NOTICE OF MOTION
-against-	Ind. No. 71543-23
DONALD J. TRUMP, Defendant.	PARTIALLY EX PARTE AND UNDER SEAL

PLEASE TAKE NOTICE that the People will move this Court, located at 100 Centre Street, New York, New York on May 4, 2023, at 9:30 a.m., or as soon thereafter as counsel may be heard for the following relief: the issuance of a protective order pursuant to Criminal Procedure Law 245.70(1) to restrict or defer, and make such other orders as appropriate, regarding the discovery and inspection of material and information otherwise discoverable pursuant to Article 245 of the Criminal Procedure Law in the above-captioned case, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: _____
Catherine McCaw
Assistant District Attorney

Dated: New York, New York
April 24, 2023

PART 59 APR 25 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	PARTIALLY EX PARTE AND UNDER SEAL AFFIRMATION AND MEMORANDUM OF LAW IN SUPPORT OF A MOTION FOR A PROTECTIVE ORDER PURSUANT TO CPL 245.70(1) Ind. No. 71543-23

Catherine McCaw, an attorney admitted to practice before the courts of this state, affirms under penalty of perjury that:

1. I am an Assistant District Attorney in the New York County District Attorney's Office. I am assigned to the prosecution of the above-captioned case, and as such I am familiar with the facts and circumstances underlying the case.

2. I submit this affirmation in support of a motion for a protective order pursuant to CPL 245.70(1). Article 245 of the Criminal Procedure Law permits the court, for good cause shown, to enter a protective order that grants the Defense access to discovery materials subject to safeguards that will protect the integrity of the materials, avoid disruption of the proceedings, and reduce the risk of harassment to witnesses and participants in these proceedings. Initially, the People sought to negotiate the terms of a protective order with defense counsel. Defense counsel has since indicated that they will not consent to a protective order, so the People are now moving for such an order. As other courts have recognized, and as set forth in more detail below,

Defendant Donald J. Trump ("Defendant") has a longstanding and perhaps singular history of attacking witnesses, investigators, prosecutors, trial jurors, grand jurors, judges, and others involved in legal proceedings against him, putting those individuals and their families at considerable safety risk. See, e.g., Mem. & Order Denying Access to Juror Names, Carroll v. Trump, No. 22-cv-10016, 2023 WL 2871045, at *1 & nn.1-2 (S.D.N.Y. Apr. 10, 2023); Mem. Opinion re Anonymous Jury, Carroll v. Trump, No. 22-cv-10016, 2023 WL 2612260, at *1-2, 4-5 & nn. 7, 15-16 (S.D.N.Y. Mar. 23, 2023) ("Mr. Trump repeatedly has attacked courts, judges, various law enforcement officials and other officials, and even individual jurors in other matters.") (collecting examples). The People therefore respectfully submit that good cause is shown for the reasonable restrictions requested in this application.

3. Defendant is charged with thirty-four counts of Falsifying Business Records in the First Degree, PL § 175.10. These charges arise from Defendant's efforts to conceal an illegal scheme to influence the 2016 presidential election. As part of this scheme, Defendant requested that an attorney who worked for his company pay $130,000 to an adult film actress shortly before the election to prevent her from publicizing an alleged sexual encounter with the Defendant. Defendant then reimbursed the attorney for the illegal payment through a series of monthly checks. Defendant caused business records associated with the repayments to be falsified to disguise his and others' criminal conduct including violations of New York Election Law § 17-152 and violations of the individual and corporate campaign contribution limits under the Federal Election Campaign Act, 52 U.S.C. § 30101 et seq.

4. The statements in this affirmation are made upon information and belief, the sources of which include a review of the records and files of the New York County District Attorney's Office ("DANY"), a review of the grand jury minutes, and a review of publicly available material, including Defendant's social media posts, court filings, and news articles.

5. I respectfully submit portions of this affirmation and memorandum of law ex parte, and request that the unredacted version of this motion be sealed and remain under seal upon filing. See People v. Bonifacio, 179 A.D.3d 977, 979 (2d Dept. 2020) ("Article 245 logically and expressly permits a court, when appropriate, to consider evidence and arguments ex parte when considering whether to issue a protective order."). A redacted version of the People's papers, which does not reveal the nature of sensitive discovery materials in advance of the entry of a protective order, will be provided to the Defense. In the copy of this submission provided to the Court, information that is redacted in the defense copy is highlighted in green. Should witness testimony be necessary, it is further requested that such testimony occur ex parte and in camera, and that the resulting transcript be sealed pursuant to CPL 245.70(1).

PROTECTIVE ORDER REQUESTS UNDER CPL 245.70(1)

6. The People seek the following restrictions, deferrals, and/or other orders limiting the discovery and inspection of information and materials otherwise discoverable pursuant to Article 245 of the Criminal Procedure Law:

a. REQUIRING that any materials and information provided by the People to the Defense in accordance with their discovery obligations as well as any other

documents, materials, or correspondence provided to or exchanged with defense counsel of record on the above-captioned matter ("Defense Counsel"), in any form or component part, with the exception of any materials provided to the People by Defendant, the Trump Organization, or any company owned in part or entirely by Defendant or the Donald J. Trust Revocable Trust (the "Covered Materials") shall be used solely for the purposes of preparing a defense in this matter;

b. REQUIRING that any person who receives the Covered Materials shall not copy, disseminate, or disclose the Covered Materials, in any form or by any means, to any third party (except to those employed by counsel to assist in the defense of the above-captioned criminal proceeding) including, but not limited to, by disseminating or posting the Covered Materials to any news or social media platforms, including, but not limited, to Truth Social, Facebook, Instagram, WhatsApp, Twitter, Snapchat, or YouTube, without prior approval from the Court;

c. DELAYING until the commencement of jury selection disclosure of the names and identifying information of New York County District Attorney's Office personnel, other than sworn members of law enforcement and assistant district attorneys, and permitting the People to redact such names and identifying information from any of the Covered Materials;

d. REQUIRING that those of the Covered Materials that are designated by the People as limited dissemination (the "Limited Dissemination Materials"), whether in electronic or paper form, shall be kept in the sole possession and exclusive control of Defense Counsel and shall not be copied, disseminated, or disclosed in any form, or by any means, by Defense Counsel, except to those employed by Defense Counsel to assist in the defense of the above-captioned criminal proceeding;

e. REQUIRING that Defendant is permitted to review the Limited Dissemination Materials only in the presence of Defense Counsel, but Defendant shall not be permitted to copy, photograph, transcribe, or otherwise independently possess the Limited Dissemination Materials; and

f. REQUIRING that forensic images of witness cell phones shall be reviewed solely by Defense Counsel and those employed by Defense Counsel to assist in the defense of the above-captioned criminal proceeding, except that, after obtaining consent from the People, Defense Counsel may show Defendant portions of the forensic images that relate to the subject matter of the case.

7. Although the People seek limitations before providing the Covered Materials to the Defense, the limitations largely relate to how the Defense must handle the materials and what they may do with them. In this application, the People seek to defer the Defense only from learning the identity of DANY support staff. Thus, this application is narrowly tailored to assure the integrity of the discovery materials, the integrity of these proceedings, and witness

safety, while still allowing the Defense to use and review the materials to prepare a defense at trial.

FACTUAL BACKGROUND[1]

8. Defendant and his associates have been the subject of several investigations during and after his time in office, including a special counsel investigation into allegations that his campaign coordinated with the Russian government, two impeachment inquiries, two additional special counsel investigations into allegations of mishandling of classified documents and concerning the events of January 6, 2021, and a Georgia grand jury investigation into allegations of improper influence on the 2020 Georgia presidential election results. Defendant has posted extensively regarding these investigations on social media and has discussed these investigations in speeches, at political rallies, and during television appearances. His posts have included personal attacks on those involved in the investigation, including witnesses, jurors, and those involved in conducting or overseeing the investigations. In many instances, he has even posted regarding their family members. Defendant has begun to mount similar attacks against those involved in the instant criminal case, publicly disparaging witnesses associated with the case, as well as the District Attorney, District Attorney's Office personnel, and the Court. This pattern, particularly given that Defendant is currently under federal investigation for his handling of classified materials, gives rise to

[1] The facts and circumstances of this case are summarized for the specific purpose of establishing good cause for a protective order and do not constitute a comprehensive summary of all facts gathered during the investigation and prosecution of the case.

significant concern that Defendant will similarly misuse grand jury and other sensitive materials here.

I. Defendant's History of Attacking Those Associated with Prior Investigations

9. On May 5, 2017, Robert S. Mueller III ("Mueller") was appointed to serve as Special Counsel to investigate "any links and/or coordination between the Russian government and individuals associated with the campaign of President Donald Trump" and other associated matters, an inquiry that came to be known as the Mueller Investigation. Exhibit 1. Dep't of Justice Order No. 3915-2017, Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters.

10. During the course of the Mueller Investigation, Defendant launched numerous social media attacks on individuals associated with the investigation, ranging from the prominent to the obscure. He posted frequently regarding James Comey ("Comey"), the former director of the Federal Bureau of Investigation ("FBI"), a witness in the investigation who alleged that Defendant had pressured him to end the FBI's probe into Russian campaign interference. On April 13, 2018, Defendant referred to Comey as an "untruthful slime ball" in a social media post.[2] On December 9, 2018, a day after Comey testified before Congress, Defendant stated in another post, "Leakin' James Comey must have set a record for who lied the most to Congress in one day. His Friday testimony was so untruthful!"

[2] All social media posts referenced in this document are collected in Exhibit 2.

11. Less prominent individuals associated with the probe were also the subject of attacks. For example, Defendant repeatedly attacked Bruce Ohr ("Ohr"), a Department of Justice ("DOJ") attorney involved with the investigation into Russian campaign interference. On August 14, 2018, he posted regarding both Ohr and his wife, stating, "Bruce Ohr of the 'Justice' Department (can you believe he is still there) is accused of helping disgraced Christopher Steele 'find dirt on Trump.' Ohr's wife, Nelly, was in on the act big time – worked for Fusian GPS on Fake Dossier." He also regularly posted regarding Lisa Page and Peter Strzok, two FBI employees associated with the investigation. On June 5, 2018, for example, Defendant posted, "Wow, Strzok-Page, the incompetent & corrupt FBI lovers, have texts referring to a counter-intelligence operation into the Trump Campaign dating way back to December, 2015. SPYGATE is in full force! Is the Mainstream Media interested yet? Big stuff!"

12. In September 2019, the United States House of Representatives began an impeachment inquiry into Defendant, based on allegations that Defendant attempted to use military aid to Ukraine as a bargaining chip in return for Ukraine to begin investigations into his political rival, Joseph Biden. Again, Defendant launched public social media attacks on those associated with the investigation, including two public servants who testified in connection with the inquiry, Marie Yovanovitch and Alexander Vindman ("Vindman"). On November 15, 2019, Defendant posted, "Everywhere Marie Yovanovitch went turned bad. She started off in Somalia, how did that go? Then fast forward to Ukraine, where the new Ukrainian President spoke unfavorably about her in my second phone call with him. It is a U.S. President's absolute right to appoint ambassadors." On February 8, 2020, he posted regarding Vindman, "[H]e was very

insubordinate, reported contents of my 'perfect' calls incorrectly & was given a horrendous report by his superior, the man he reported to, who publicly stated that Vindman had problems with judgement [sic], adhering to the chain of command and leaking information. In other words, 'OUT'."

13. Following the 2020 presidential election, Defendant became the subject of several inquiries involving his response to the election results. These included an inquiry by the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol (the "House Select Committee") into the events of January 6, 2021; a separate federal criminal investigation into the events of January 6 currently headed by Special Counsel Jack Smith; and a Fulton County, Georgia grand jury investigation into efforts by Defendant and his allies to interfere with the Georgia election results. In connection with these events, Defendant and his allies repeatedly publicly attacked two Fulton County poll workers, Ruby Freeman ("Freeman") and Wandrea ArShaye Moss, accusing them of election malfeasance. Freeman was a temporary poll worker who worked to tabulate ballots in Fulton County, including for the 2020 presidential election. Freeman Interview 12:13-17 (May 31, 2022), Exhibit 3.

14. Defendant and his allies accused Freeman and her daughter of election misconduct involving suitcases full of ballots, beginning soon after the election and continuing through this year. For example, on January 3, 2023, Defendant queried on social media, "What will the Great State of Georgia do with the Ruby Freeman MESS?" On January 10, 2023, he posted, "Ruby, her daughter, and others who ran back into the counting room, grabbing cases from under the

'skirted' table, and then back to their counting machines where they came from prior to hearing 'water main break' (which never happened) have got a lot of explaining to do..."

15. Freeman described to the House Select Committee how these attacks from Defendant and his allies affected her personally. She stated that on the advice of the FBI, she was forced to vacate her home "for safety" for approximately two months, beginning around January 6, 2021. Freeman Interview 25:25-26:4 (May 31, 2022), Exhibit 3. She "received hundreds of racist, threatening, horrible calls and messages." Freeman Interview 7:23-24. She even stated that she was afraid to use her name in public: "Now I won't even introduce myself by name anymore. I get nervous when I bump into someone I know in the grocery store who says my name. I'm worried about who's listening. I get nervous when I have to give my name for food orders. I'm always concerned about who's around me." Freeman Interview: 6:17-20.

II. Defendant Has Begun to Launch Similar Attacks in this Case

16. In early 2023, press reports began to circulate that a New York County grand jury was conducting an investigation into Defendant. In response, Defendant began to launch a series of attacks against individuals who may testify at trial, including Stephanie Clifford (a/k/a Stormy Daniels) ("Clifford") and Michael Cohen ("Cohen"), and other personnel associated with this investigation. On March 15, 2023, he posted to social media, "I did NOTHING wrong in the 'Horseface' [*i.e.*, Clifford] case. . . . She knows nothing about me other than her conman lawyer, Avanatti, and convicted liar and felon, jailbird Michael Cohen, may have schemed up." On March 27, 2023, he posted, "I won a Federal lawsuit for almost $500,000 against Stormy 'Horseface' Daniels. Never had an 'affair' with her, and would never have wanted to!"

17. Defendant has also launched attacks against the District Attorney, referring to him on March 23, 2023 as a "SOROS BACKED ANIMAL," and a "degenerate psychopath that truely [sic] hates the USA" on March 24, 2023. On March 23, 2023, he posted two images side-by-side that gave the appearance that he was taking aim at the District Attorney's head with a baseball bat. He has directed attacks at the Court and his family after he became aware of the commencement of these proceedings. Defendant has also repeatedly referenced an Assistant District Attorney assigned to this prosecution in his posts, including on March 16, 2023, March 27, 2023, March 31, 2023, and April 3, 2023.

III. Allegations that Defendant Mishandled Classified Materials

18. According to information publicly filed by the DOJ, after Defendant left office in 2021, the National Archives and Records Administration ("NARA") began to communicate with Defendant's representatives to request the return of documents relating to his presidential administration. Dep't of Justice Response to Motion filed August 30, 2022, 22-Civ-81294, S.D. Fla, Exhibit 4 at 4. In response to a request from NARA, Defendant ultimately produced fifteen boxes of materials. Id. Upon reviewing materials, officials from NARA referred the matter to DOJ, observing that a review of the materials revealed that "highly classified records were unfoldered, intermixed with other records and otherwise unproperly [sic] identified." Exhibit 4 at 5. The FBI began an investigation and later obtained a warrant authorizing the search of Defendant's property at Mar-a-Lago for additional documents. Exhibit 4 at 12. As a result of the execution of the warrant, the FBI seized thirty-three items consisting mostly of boxes. Id. Upon review of the material, investigators concluded that the materials included

more than a hundred unique documents with classification markings. Exhibit 4 at 13. Since the execution of the warrant, the investigation has been referred to Special Counsel Jack Smith. Recent press reports relay that the investigators have been asking witnesses about allegations that Defendant displayed a map with sensitive information to "aides and visitors." Exhibit 5.

IV. Procedural History

19. In the days leading up to Defendant's April 4, 2023 arraignment, the People reached out to Defense Counsel in an attempt to negotiate the terms of a protective order on consent. Both sides spoke on the phone on several occasions, and the People made several modifications to their original proposed order in response to the Defense Counsel's requests. On the afternoon before Defendant's arraignment, the parties reached an agreement in principle. Following the arraignment, the People learned that Defense Counsel would not consent to a protective order.

20. On April 12, 2023, Defendant filed a civil complaint in Florida against Cohen, eight days after Defendant was arraigned in this case. Exhibit 6. The complaint alleges that Cohen, an attorney formerly employed by Defendant's business, damaged Defendant by speaking about matters including the allegations that gave rise to the instant criminal case, alleging causes of action including breach of fiduciary duty and breach of contract. E.g., Exhibit 6, ¶¶ 111-14. He also alleges conversion with respect to a portion of the payment that related to the falsified business records in this case. Exhibit 6, ¶¶ 161-65.

21. The protective order that the People now seek is substantially similar to the order that the parties agreed to in principle, with a couple of important modifications. The parties

had originally agreed that they would litigate separately the issue of how to handle the public filing of references to discovery materials. The People are now of the view that whatever protective order the Court enters will govern the filing of materials on the public docket. In addition, Defendant's subsequently-filed suit against Cohen heightens the risk that Defendant will use the Covered Materials for purposes other than a defense of this case. The People therefore seek additional limitations regarding who may be present when Defendant views the materials and additional protections for the contents of witness cell phones.

22. The People anticipate turning over a substantial number of materials in discovery. These materials include grand jury minutes, grand jury exhibits, materials received in response to grand jury subpoenas, materials obtained voluntarily from witnesses, and other materials relating to the case. These materials also include forensic images of two cellular telephones obtained from a witness.

MEMORANDUM OF LAW

Criminal Procedural Law Article 245 provides that, upon a showing of "good cause," the court may "at any time order that discovery or inspection of any kind of material or information . . . be denied, restricted, conditioned or deferred, or make such other order as is appropriate." CPL 245.70(1). It is well-settled that "[g]ood cause determinations are necessarily case-specific and therefore fall within the discretion of the trial court." People v. Linares, 2 N.Y.3d 507, 510 (2004). As the Court of Appeals has explained, "By its very nature, good cause admits of no universal, black-letter definition. Whether it exists, and the extent of disclosure that is appropriate, must remain for the courts to decide on the facts of each case."

In re Linda F.M., 52 N.Y.2d 236, 240 (1981). The judicial interpretation of "good cause" varies based upon the context in which it is used. See Matter of Molloy v. Molloy, 137 A.D.3d 47, 52-53 (2d Dept. 2016) ("Good cause should be read in context by considering the statute as a whole [and] should also be interpreted in accordance with legislative intent, as expressed in the legislative history").

CPL 245.70(4) sets forth a flexible list of factors that bear on the Court's determination of good cause, including, for example, danger to the safety of a witness and risk of witness intimidation or harassment, as well as lesser impositions such as "unjustified annoyance or embarrassment," risk of an "adverse effect on the legitimate needs of law enforcement," and whether the defendant has a history of witness intimidation or tampering. CPL 245.70(4). The statute is non-exhaustive, and also authorizes the Court to consider the "nature of the stated reasons" for the relief sought and other "similar factors" that "outweigh the usefulness of the discovery" to the defense. Id. Thus, at its core, the protective order statute embodies a discretionary balancing test that asks the Court to weigh the prosecutorial and public safety interests raised by the People in support of a protective order with the utility to the Defense of the subject information and materials.

Given the plain language of CPL 245.70 and its stated purpose in the legislative history, the statute's good cause requirement should be broadly interpreted and protective orders should be liberally granted. Regarding the plain language, a comparison of the factors listed in CPL 245.70(4) and the former CPL 240.50(1) confirms that the statute expands the use of protective orders to protect witnesses and the integrity of the criminal justice system. Both

sections list factors to consider in determining whether good cause exists; however, CPL 245.70(4) incorporates the factors included in the predecessor section while simultaneously reducing the threshold for determining risk to others and expanding the list of relevant factors. For example, while former CPL 240.50(1) authorized the Court to consider "a substantial risk of physical harm, intimidation, economic reprisal, bribery, or unjustified annoyance or embarrassment to any person," CPL 245.70(4) omits the word "substantial" and includes "harassment"—a fairly low level of impact—as a relevant factor. And, while the current and predecessor statutes each authorize the Court to consider "danger to the integrity of physical evidence," CPL 245.70(4) also authorizes the Court to consider "danger to the . . . safety of a witness."

It is clear from the text of CPL 245.70(4), which expands the non-exhaustive list of factors that may be considered by the Court in weighing good cause, that the statute imposes a more favorable standard on the movant than its predecessor. The legislative history confirms that such a result was intended by the statute's drafters. During floor debates, Senator Jamal Bailey, who served as a leader of the discovery reform efforts, noted that "there is a broader protective order under this bill than there is in the [then] current law." Senate Debate Transcript of Senate Print 1509C, Mar. 31, 2019, at 2602. Senator Bailey further stated that a protective order could be obtained under CPL Article 245 for good cause shown, which he described as a "very reasonable and . . . [l]enient standard." Id. at 2604. This language evinces an obvious intent on the part of the Legislature to establish an expanded protective order practice to counterbalance the statute's otherwise liberal discovery obligations in cases where

the non-exhaustive factors in CPL 245.70(4) outweigh the benefit of early disclosure. Cf. People v. Phillips, 67 Misc.3d 196, 201 (Sup. Ct., Bronx Co. 2020) ("[I]t seems that the legislature eased the 'good cause' showing required where a risk of witness safety or harassment is alleged in part to balance the new requirement that witness names and contact information and other sensitive discovery [such as grand jury testimony] be provided long before a trial begins").[3]

The People seek a protective order that grants the Defense access to the Covered Materials, while employing certain safeguards to protect the integrity of those materials and of the proceedings. Specifically, the People seek to shield the identity of DANY support staff to prevent them from experiencing public harassment. The People seek to prevent the Defense from discussing or disseminating the Covered Materials publicly. The People seek to prevent Defense Counsel from leaving materials designated as Limited Dissemination Materials with the Defendant. And finally, the People seek to make forensic images of witness cell phones viewable only to Defense Counsel in the first instance. There is good cause to grant this motion under CPL 245.70. At bottom, the Defense will have near-complete access to the People's discovery

[3] As one appellate justice has observed on expedited review, the presumption of openness found in CPL 245.20(7) does not apply to protective order motions. People v. Bonifacio, 179 A.D.3d 977, 978 (2d Dept. 2020). The presumption, by its own terms, applies exclusively to CPL 245.10 (setting forth the timing of the parties' automatic disclosures), 245.20(1) (setting forth the scope of automatic disclosures), and 245.25 (pertaining to disclosures prior to guilty pleas). It does not apply to CPL 245.70, which is the section of the statute that deals with protective orders. On the contrary, CPL 245.70 was designed to offset the presumption of openness and serve a broad license for a court to limit the People's discovery obligations when factors such as witness safety outweigh the benefit of early disclosure. The fact that the main proponent of the new legislation described CPL Article 245 as embracing a more "lenient" standard for protective orders confirms that the omission of the protective order section from the presumption of openness is an intentional feature of the statute.

materials pursuant to the People's proposed protective order. This access will allow the Defense to defend this matter in Court, while still safeguarding against the improper use of the materials.

I. The People Seek Permission to Shield the Identities of DANY Support Staff

The People request that they be allowed to delay disclosure of the names and identifying information for DANY personnel, other than sworn members of law enforcement and assistant district attorneys, until the commencement of jury selection and that they be permitted to redact such names and identifying information from any of the discovery materials. As described above, Defendant has an extensive history of publicly attacking individuals with connections to investigations into his conduct, including some who are only tangentially related.

Freeman's moving testimony highlights how Defendant's use of his bully pulpit can completely upend the lives of ordinary private citizens who were simply doing their jobs. When Defendant posts on social media, he commands a large audience, and certain of his followers have been willing to take action against those Defendant mentions online. Freeman, a temporary poll worker, had to leave her home upon the advice of the FBI for two months, so great was the risk posed by Defendant's followers. Indeed, in recognition of the unique risks posed by Defendant's "repeated" attacks against "courts, judges, various law enforcement officials and other public officials, and even individual jurors in other matters," Judge Lewis A. Kaplan, presiding over the civil trial between Defendant and E. Jean Carroll, took the unusual step of preventing even attorneys assigned to the case from learning the identities of potential jurors. Mem. Opinion re Anonymous Jury, Carroll v. Trump, No. 22-cv-

10016, 2023 WL 2612260, at *2 & n.7 (S.D.N.Y. Mar. 23, 2023); see also Mem. & Order Denying Access to Juror Names, Carroll v. Trump, No. 22-cv-10016, 2023 WL 2871045 (S.D.N.Y. Apr. 10, 2023).

DANY support staff includes its dedicated paralegals. For many DANY paralegals, this is their first job after graduating from college. While lawyers and sworn members of law enforcement who work for the Office must do their work in public, there is no corresponding need for its support staff to be identified to the world and potentially subject to Defendant's attacks. Courts routinely grant protective orders delaying disclosure of witness information where there is a risk of harassment or intimidation, and appellate courts have even held that to deny such a request by the People is an abuse of discretion. See, e.g., People v. Brown, 180 A.D.3d 1107, 1109 (2d Dept. 2020).

Further, the prejudice to the Defense of granting such a request is minimal. The identities of support staff relate to the subject matter of the case only in limited ways. [redacted] Paralegals also identify themselves as notetakers within witness notes, but the identity of the paralegal as notetaker only becomes relevant to the extent that a witness testifies at trial in a manner that is inconsistent with these notes. If the Defense receives this information upon commencement of jury selection, they will have ample time to make use of

this information in preparation for trial. Given the risks posed by the Defendant's behavior and the minimal prejudice to the Defendant, the People request that the Court enter a protective order shielding the identity of DANY support staff in the form proposed by the People.

II. Defendant and the Defense Should Be Limited in the Ways They Use the Covered Materials

The People seek an order that Defendant and the Defense Counsel shall use the Covered Materials solely for the purposes of preparing a defense in this case and shall be prohibited from disclosing the materials to third parties or posting them on social media. At the outset, it is important to note that the People are not at this time seeking a gag order in this case. Defendant has a constitutional right to speak publicly about this case, and the People do not seek to infringe upon that right. That said, neither Defendant nor Defense Counsel have a First Amendment right to speak publicly regarding materials they receive through discovery. See Seattle Times Co. v. Rhinehart, 467 U.S. 20, 33-34 (1984) (upholding a protective order preventing public disclosure of discovery materials in a civil case against a First Amendment challenge); see also United States v. Caparros, 800 F.2d 23, 25 (2d Cir. 1986) (following Seattle Times and holding the same in the context of criminal discovery); In re Ctr. on Priv. & Tech. v. New York City Police Dep't, 181 A.D.3d 503, 504 (1st Dep't 2020), recalled and vacated (Apr. 29, 2021) (following Seattle Times in the context of civil discovery).[4]

[4] This opinion was recalled and vacated upon the petition of the parties after the parties reached a settlement regarding the treatment of the underlying documents. It does not appear that the vacatur was based on the merits of the case. See Exhibit 7.

As the United States Supreme Court emphasized in upholding the protective order at issue in Seattle Times, "As the Rules authorizing discovery were adopted by the state legislature, the processes thereunder are a matter of legislative grace." 467 U.S. at 33. As described above, the People's ability to seek protective orders is integral to the functioning of Article 245. The law now requires the People to disclose a great deal of highly sensitive information shortly after arraignment, including grand jury testimony, material obtained by means of a grand jury subpoena, and victim name and contact information, to name just a few. There are strong public policy reasons why grand jury materials should be kept secret prior to trial, including "prevention of subornation of perjury and tampering with prospective witnesses at the trial" and "assurance to prospective witnesses that their testimony will be kept secret so that they will be willing to testify freely." People v. Di Napoli, 27 N.Y.2d 229, 235 (1970). Unlike the People, neither the Defendant nor Defense Counsel is bound by the requirements of grand jury secrecy, nor can they be prosecuted for Unlawful Grand Jury Disclosure, P.L. § 215.70. For these reasons, courts have routinely entered orders preventing defendants and their counsel from using discovery materials for purposes other than preparing a defense and from disseminating the materials to third parties.

The risk that this Defendant will use the Covered Materials inappropriately is substantial. Defendant has a long history of discussing his legal matters publicly—including by targeting witnesses, jurors, investigators, prosecutors, and judges with harassing, embarrassing, and threatening statements on social media and in other public forums—and he has already done so in this case. Further, Defendant may seek to use the Covered Materials

to advance his recently-filed lawsuit against Cohen. The legislature did not mandate broad disclosures by the People in advance of trial so that the People's discovery materials could be used for these purposes. Rather, the purpose of the discovery reforms was to allow defendants to make informed decisions about whether to plead guilty in criminal cases. See, e.g., Press Release, Governor Andrew Cuomo, In 9th State of the State Address, Governor Advances Agenda to Ensure the Promise of Full, True Justice for All, Exhibit 8 ("Defendants will also be allowed the opportunity to review whatever evidence is in the prosecution's possession *prior to pleading guilty to a crime.*") (emphasis added); Donnino, Practice Commentary, McKinney's Cons. Laws of N.Y., N.Y. Crim. Pro. CPL 245.10 ("Broader pre-trial discovery enables the defendant to make a more informed plea decision, minimizes the tactical and often unfair advantage to one side, and increases to some degree the opportunity for an accurate determination of guilt or innocence.") (quoting People v. Copicotto, 50 N.Y.2d 222, 226 (1980)). The proposed order will in no way prejudice Defendant in his ability to mount a defense to the allegations in court or to determine whether to plead guilty. By the very terms of the order, Defendant and Defense Counsel will be allowed to use the materials freely—with certain safeguards discussed, infra—in order to prepare a defense or consider any plea decision. The People therefore request that the Court enter the proposed order permitting Defendant and Defense Counsel to use the discovery materials solely for the purpose of preparing a defense in this matter and limiting their ability to provide the materials to third parties, including the press, or to post them to social media platforms.

III. Defendant Should be Permitted to Review Certain Discovery Materials Only in the Presence of Defense Counsel

The People seek the ability to mark certain materials as "Limited Dissemination Materials" and that such materials shall be kept solely in the possession of Defense Counsel, that Defendant may view these materials only in the presence of Defense Counsel, and that Defendant will not be allowed to copy, photograph, transcribe, or otherwise independently possess the materials. The People seek to apply this designation to any materials other than (1) materials that the People received from Defendant or any company owned in part or entirely by Defendant or the Donald J. Trump Revocable Trust or (2) third-party records that relate to an account that is in Defendant's name or in the name of a company that is owned in part or entirely by Defendant or the Donald J. Trump Revocable Trust.

These restrictions are reasonable and necessary to protect the discovery materials. Many of the materials the People will provide in discovery are highly sensitive in nature. Defendant is currently under a separate criminal investigation for mishandling classified materials. Investigators are also reportedly looking into whether Defendant improperly shared these materials with individuals who were not entitled to see them. Given these allegations, the restrictions the People propose are reasonable to prevent Defendant from mishandling the discovery materials. Further, these restrictions will have minimal impact on Defendant's ability to prepare a defense. He will have full access to these materials, so long as he is in the presence of Defense Counsel. This access will afford him ample opportunity to prepare a defense. See People v. Olivieri, 2022 WL 402744, at *4 (Sup. Ct., N.Y. Co. February 9, 2022)

(Statsinger, J.) (granting a protective order that allowed only defense counsel to watch certain videos and only in the prosecutor's office and further observing that while the proposed process might be "more inconvenient than simply viewing the videos along with his client, it will certainly be sufficient to allow counsel and the defendant to prepare a defense").

IV. The People Seek Additional Protections for Forensic Images of Witness Cell Phones

The People are prepared to disclose full forensic images of two cell phones belonging to a witness.[5] Only a fraction of materials contained in these images relate to the subject matter of the case, and much of the content is highly personal in nature, including text messages with friends and family, vacation photos, and other materials that would be invasive for others to see. See Riley v. California, 573 U.S. 373, 395 (2014) ("[I]t is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate."). Defendant has an antagonistic relationship with witnesses in this case, referring to Clifford in social media posts as "horseface" and to Cohen as a "liar" and "jailbird." Exhibit 2. Under these circumstances, it would be highly inappropriate to grant Defendant unfettered access to a witness's most personal materials. See People v. Cole, 2020 NYLJ LEXIS 537, at *14 (Sup. Ct., Queens Co. 2020) ("Legislative debate concerning the enactment of the new

[5] [redacted]

discovery rules indicates that the ability to obtain a protective order was considered an important safeguard for the safety and privacy of victims and civilian witnesses.").

Nonetheless, the People acknowledge that these forensic images do contain materials that relate to the subject matter of the case and that the Defendant should be entitled to review such materials. The People therefore propose that only Defense Counsel will be authorized to view the full forensic images. Should Defense Counsel wish to share certain portions of the forensic images with the Defendant, they should first notify the People and may share the materials with the Defendant only if the People do not object. This procedure strikes a fair balance between the People's interest in protecting the private information of a witness with the Defendant's interest in preparing a defense. See People v. Olivieri, 2022 WL 402744, at *4.

V. The People Request that Defendant be Advised on the Record of the Terms of Any Protective Order the Court Enters

Should Defendant violate the terms of any protective order issued by the Court, the People may seek to enforce its terms by initiating a prosecution for Criminal Contempt in the Second Degree, P.L. § 215.50(3). In advancing such a prosecution, the People will be required to show that Defendant had knowledge of the contents of the order. "Notice of the contents of, and therefore of the conduct prohibited by, [a mandate of the court] may be given either orally or in writing or in combination." People v. Clark, 95 N.Y.2d 773, 775 (2000). The People request, therefore, that Defendant be advised on the record of the terms of any protective order the Court enters. Such a proceeding would also permit the Court to

determine on its own whether any future noncompliance with a protective order is sanctionable under Judiciary Law § 750(A).

CONCLUSION

Criminal Procedure Law 245.70 expressly permits broad restrictions and limitations of discovery materials and information upon a showing of good cause. The facts set forth above establish good cause to conclude that a protective order, in the form proposed above, is appropriate. The requested limitations are reasonable, narrowly written, and necessary to protect witnesses' safety and privacy interests and the legitimate needs of law enforcement.

No application for this or similar relief, other than that described herein, has been made in any court.

WHEREFORE, the People respectfully request that a protective order be granted pursuant to CPL 245.70, in the form annexed, and that the Court grant such other and further relief as it may deem just and proper.

Respectfully submitted,

Catherine McCaw
Assistant District Attorney

Dated: New York, New York
April 24, 2023

Exhibits to People's Motion to Quash
and for a Protective Order (Nov. 9, 2023)

Exhibit 3

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK PROTECTIVE ORDER

-against- Ind. No. 71543-23

DONALD J. TRUMP,

Defendant.

The Court, being satisfied based upon the application of Assistant District Attorney Catherine McCaw, dated April 24, 2023, and the opposition motion of Todd Blanche and Susan Necheles, counsel for Donald J. Trump, and the hearing conducted on May 4, 2023 that good cause exists for an order to restrict, defer, and make such other order as is appropriate with respect to disclosure and inspection of discoverable materials and information, pursuant to Section 245.70 of the Criminal Procedure Law, it is hereby:

ORDERED that any materials and information provided by the People to the Defense in accordance with their discovery obligations as well as any other documents, materials, or correspondence provided to or exchanged with defense counsel of record on the above-captioned matter ("Defense Counsel"), in any form or component part, with the exception of any materials provided to the People by Defendant, the Trump Organization, or any company owned in part or entirely by Defendant or the Donald J. Trust Revocable Trust (the "Covered Materials") shall be used solely for the purposes of preparing a defense in this matter; it is further

ORDERED that any person who receives the Covered Materials shall not copy, disseminate, or disclose the Covered Materials, in any form or by any means, to any third party

(except to those employed by counsel to assist in the defense of the above-captioned criminal proceeding) including, but not limited to, by disseminating or posting the Covered Materials to any news or social media platforms, including, but not limited, to Truth Social, Facebook, Instagram, WhatsApp, Twitter, Snapchat, or YouTube, without prior approval from the Court; it is further

ORDERED that disclosure of the names and identifying information of New York County District Attorney's Office personnel, other than sworn members of law enforcement, assistant district attorneys, and expert or fact witnesses (other than summary witnesses), shall be delayed until the commencement of jury selection and permitting the People to redact such names and identifying information from any of the Covered Materials; it is further

ORDERED that those of the Covered Materials that are designated by the People as limited dissemination (the "Limited Dissemination Materials"), whether in electronic or paper form, shall be kept in the sole possession and exclusive control of Defense Counsel and shall not be copied, disseminated, or disclosed in any form, or by any means, by Defense Counsel, except to those employed by Defense Counsel to assist in the defense of the above-captioned criminal proceeding; it is further

ORDERED that Defendant is permitted to review the Limited Dissemination Materials only in the presence of Defense Counsel, but Defendant shall not be permitted to copy, photograph, transcribe, or otherwise independently possess the Limited Dissemination Materials; it is further

ORDERED that Defendant is permitted to review the portions of forensic images of witness cell phones containing (1) material related to any of the events discussed in the indictment or the People's April 4, 2023 Statement of Facts; (2) material evidencing any prior criminal conduct of the owner of the phone or any person identified by the People as a witness in an Addendum to an Automatic Discovery Form (the "People's witness list"); (3) communications or notes referring to any person identified as a witness in the People's witness list; (4) communications or notes with any law enforcement officer or anyone in their office or prosecutor or anyone in their office, including, but not limited to, the New York City Police Department, federal law enforcement, the Southern District of New York, the New York County District Attorney's Office, Special Counsel, or the Department of Justice; and (5) information about Donald Trump; it is further

ORDERED that any other portion of the forensic images of witness cell phones shall be reviewed solely by Defense Counsel and those employed by Defense Counsel to assist in the defense of the above-captioned criminal proceeding, except that, after obtaining permission *ex parte* and *in camera* from the Court, Defense Counsel may show Defendant other Court-approved portions of the forensic images; it is further

ORDERED that, in the event Defendant seeks expedited review of this protective order under CPL 245.70(6)(a), any obligation that would exist on the part of the People to produce the information and materials that are the subject of this order is held in abeyance pending the determination of the intermediate appellate court; and it is further

ORDERED, that the portions highlighted in green in People's Motion in Support of a Protective Order dated April 24, 2023, and any accompanying documents, exhibits, or transcripts, are sealed pursuant to CPL 245.70(1).

DATED: New York, New York
May 8, 2023

MAY 08 2023

So Ordered:

Justice of the Supreme Court

HON. J. MERCHAN

Exhibit 4

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT NO.
: 71543-2023
-against- : CHARGE:
FALSIFYING
DONALD J. TRUMP, : BUSINESS RECORDS
Defendant. 1ST DEGREE

100 Centre Street
New York, N.Y. 10013
May 23, 2023

H O N O R A B L E:

JUAN MERCHAN,

Justice of the Supreme Court.

A P P E A R A N C E S:

FOR THE PEOPLE:

ALVIN BRAGG, JR., DISTRICT ATTOREY
SUSAN HOFFINGER, ESQ.
CHRISTOPHER CONROY, ESQ.
MATTHEW COLANGELO, ESQ.
CATHERINE McCAW, ESQ.
BECKY MANGOLD, ESQ,
KATHERINE ELLIS, ESQ.

FOR THE DEFENDANT:

SUSAN NECHELES, ESQ.
TODD BLANCHE, ESQ.

YVONNE OVIEDO
SENIOR COURT REPORTER

PROCEEDINGS

COURT OFFICER: All rise. Part-59 New York County Supreme Court is now in session. The Honorable Juan Merchan presiding.

THE COURT: Good afternoon, please be seated.

THE CLERK: Calendar 1. Indictment 71543 of 23, Donald J. Trump. Appearances please.

MS. McCAW: For the People, Katherine McCaw. Also I have with me my colleagues, Katherine Ellis, Becky Mangold, Susan Hoffinger, Christopher Conroy, and Matthew Colangello. Good afternoon.

THE COURT: Good afternoon.

MS. NECHELES: Good afternoon, your Honor. For defendant, President Trump, Susan Necheles. He is in Florida on the video, and with him is my co-counsel Todd Blanche.

THE COURT: Good afternoon, Ms. Necheles. Good afternoon, Mr. Trump. Good afternoon, Mr. Blanche. Could you please put your appearance on the record.

MR. BLANCHE: Good afternoon. Todd Blanche for President Trump, who is seated next to me virtually. As we previously indicated to the Court, we waived the President's physical presence at today's hearing, and as such, he is appearing remotely. Good afternoon.

THE COURT: Good afternoon. Before I continue, I do want to remind everyone present, both here in the

courthouse, as well as at the remote location, that recording, copying, forwarding of any kind of today's proceedings is prohibited.

Now, Mr. Trump, there is a couple of reasons why we're having this hearing today. Primarily, we want to go over the protective order. I'm sure you recall that when this case was arraigned on April 4th, there was some discussion on the record about the protective order.

The attorneys represented at that time that they were very close to reaching an agreement, but unfortunately one was not in place that day. So we were unable to put a protective order, or the terms of a protective order on the record.

I was under the impression that we would have one shortly thereafter. I was eventually notified that the parties could not come to an agreement. So we put the case over to May 4th for a hearing on the issue of the protective order, and on May 4th your appearance was waived by Counsel.

At that time, we discussed numerous issues regarding the protective order. I found that actually the two sides were in agreement on many things, on many points, but there were a few that they were not. I did make some rulings only those. I also encouraged the two sides to see if they could work out some of their differences.

Then an May 8th, I was given a copy of the protective order that incorporated my rulings and incorporated the agreements that the parties had come to. That is the protective order that I signed.

Now, Mr. Trump, do you have a copy of that protective order?

THE DEFENDANT: Yes, I do.

THE COURT: And Mr. Blanche, have you had an opportunity to review that protective order with your client?

MR. BLANCHE: Yes, your Honor.

THE COURT: And have you reviewed each of the 9 so ordered paragraphs that are contained in that protective order?

MR. BLANCHE: I have, your Honor, and I've discussed it at length as well, your Honor.

THE COURT: Were there any issues that your client comes in to today's hearing not understanding, or any outstanding issues that he would like to resolve at this time?

MR. BLANCHE: Nothing to resolve, your Honor. Certainly our objection that we noted in our papers and at briefing remain so that because President Trump is running for president of the United States, and is the current leading contender for such, he very much is concerned that

his First Amendment rights are being violated by this protective order.

I have explained to him that that is not Your Honor's intention, and that you have made that clear previously that that is not your intention, and that this is not a gag order, and that he is free to speak about the case and to defend himself subject to the limitations in the protective order. But that being said, that is the only -- the protective order is in place.

THE COURT: Thank you, Mr. Blanche. Yes, that is true, it's certainly not a gag order, and it's certainly not my intention to in any way impede Mr. Trump's ability to campaign for the presidency of the United States. He's certainly free to deny the charges. He's free to defend himself against the charges. He's free to campaign. He's free to do just about anything that does not violate the specific terms of this protective order.

Now, because you've reviewed this with your client, and I'm sure he's asked questions, and I'm sure you've answered his questions, I don't think there is any need for me to go line by line through this protective order. It's just not something I've ever done before with any other defendant who has appeared before me. It's not really something that I see the need to do right now based on your representation that you discussed it and you've advised

your client accordingly. Is that right?

MR. BLANCHE: I agree with you, your Honor, I do not believe it's necessary to go line by line otherwise address the protective order.

THE COURT: Now, did you also explain to your client that this order constitutes a mandate of the Court?

MR. BLANCHE: Yes.

THE COURT: And did you explain to your client what that means?

MR. BLANCHE: Yes, he understands that he has to comply with the order, and if he doesn't do so, he's violating Your Honor's Court Order.

THE COURT: And violation of a Court Order, or a violation of a Court mandate could result in sanctions. There are a wide range of sanctions. They could include up to a finding of contempt, which is punishable. You can explain that to your client.

MR. BLANCHE: Understood, your Honor.

THE COURT: Okay, I don't believe there is anything else we need to go over as far as the protective order. Before we move along, is there anything that you'd like to say, or go on the record with?

MS. McCAW: Nothing from the People, your Honor.

THE COURT: Ms. Necheles, anything from you?

MS. NECHELES: No, your Honor, nothing.

THE COURT: Very briefly I just want to turn our attention to the issue regarding whether Mr. Tacopina is conflicted out of this case or not. I just want to let everyone know that I did receive documents. I did receive them in chambers. I've begun to review them. Other than that, there is really nothing else to put on the record at this time regarding Mr. Tacopina.

I think the last thing I want to go over is the motion schedule and trial schedule. So as you know, I circulated an email on May 11th. At that time I indicated this matter has been set down for trial to begin on March 25th of 2024. At that time, we will address any remaining motions in limine, finalizing the hearings that might be outstanding, and commence jury selection.

As indicated in that email, all parties, including Mr. Trump, are directed to not engage or otherwise enter into any commitments, personal, professional, other otherwise, that would prevent you from starting a trial on March 25, 2024, and completing it without interruption. That is a date certain for the commencement of this trial.

As also indicated in the email, this Court will not entertain the substitution of counsel, unless the attorney seeking to be substituted in is fully available to begin and finish the trial as per the designated schedule.

Any questions about that?

MS. NECHELES: No, your Honor.

MS. McCAW: No, your Honor.

THE COURT: Just to review, I believe that the motion schedule that's in place right now, calls for defense motions to be filed off-calendar on August 8th, the People's response to be filed off-calendar on September 19th, and this matter is being adjourned to December 4th for decision.

I will note, for the record, that the period between December 4th, the date of decision, and March 25th, the commencement of trial, provides a large enough cushion, a significant cushion, so that if there are any unforeseen delays, including the Court's inability to decide all the motions in time -- there should be no delays. I expect that there will be no delays as to the trial, even if there are other delays up front.

Any questions about that?

MS. NECHELES: Your Honor, if I could address that. When we set that date of August 8th for the defense brief to be due, we expected to be getting discovery shortly thereafter. We set that date with time built in so that we could review all the discovery and make our motions. It's now been seven weeks and we have not received any discovery at all to date. I expect that we'll be receiving discovery today.

So we would ask that the Court allow an adjournment til the end of September for the defense motions, which is approximately seven weeks. It's a little bit longer because of how the Jewish holidays fall. So we would ask for that so that we would have time that we originally thought we were going to have to be able to review all the discovery and make the proper motions.

As your Honor said, now that we have a trial date of March 25th, I believe that that would give time to put all the other dates back as well.

THE COURT: People.

MS. McCAW: So before we address the issue of a trial schedule, I would like to just say that we are currently serving defense counsel with a copy of the automatic discovery form, the addendum to the automatic discovery form, a cover letter describing the materials, as well as a hard drive that contains the People's first production of discovery materials.

MS. NECHELES: Thank you.

THE COURT: Thank you.

MS. McCAW: With that said, we would note that the original discovery, the original motion schedule was set with the ultimate discovery deadline in mind of June 8th, and in fact was pegged to be two months after the People's production of the bulk of discovery materials on

June 8th, which is the statutory deadline.

We anticipate that we will still be able to make the production of the vast majority of materials, save for email messages that would be turned over pending an email review, and are on track to meet that deadline. At this point in time, we don't see any need to extend the motion schedule.

THE COURT: Would you like to be heard further?

MS. NECHELES: Your Honor, I had spoken with the People before. I was aware that they were opposing this. I don't really see the harm to the People. I understand what they're saying that they still expect to finalize discovery, but we haven't even started looking at it. We have to upload it, and we haven't had any opportunity to do that. We have lost seven weeks on this.

I will note that after we finalized the protective order, we requested at that point, that the People produce the discovery to the lawyers only so that we could start uploading it, with an assurance from the lawyers that we would hold it, and only us would review it, and we wouldn't discuss it with anybody, and the People declined to do so. So now we're seven weeks out and we haven't had the opportunity. I really don't know that there is any harm.

THE COURT: The only harm is that that would eat significantly into this cushion that we tried to build in.

I can extend it a reasonable amount of time. It can't go in September or late September. I will extend it to August 29th.

MS. NECHELES: Thank you, your Honor.

THE COURT: People, will you be requesting three additional weeks?

MS. McCAW: I think that the People are still fine with a 6-week response time, your Honor.

THE COURT: Okay. So six weeks from August 29th brings us to October 10th?

MS. McCAW: That's correct, your Honor.

THE COURT: I don't have a 2024 calendar. I'm looking for dates in January of 2024 for Court's decision, if anybody can pull one up.

MS. McCAW: So three additional weeks, your Honor?

THE COURT: Yes.

MS. McCAW: I believe it would be January 2nd or 3rd.

THE COURT: What day of the week is January 2nd or 3rd?

MS. McCAW: January 2nd is a Tuesday. January 3rd is a Wednesday.

THE COURT: We'll put it over to January 4th.

MS. McCAW: I think three weeks would be

specifically Christmas.

THE COURT: It would be Christmas. I just don't think it's realistic to expect anybody to come in at that time. So we'll put it on for January 4th, which is a Thursday, at 9:30, for decision.

Are there any other matters we need to take up at this time?

MS. McCAW: Yes, one additional note, your Honor. The People anticipate filing a copy of the ADF within 48 hours in the Court's file, pending any sort of requests for redactions from the defense.

THE COURT: Thank you. Mr. Blanche, do you have any questions, anything else that you'd like to bring up?

MR. BLANCHE: ,No your Honor. Thank you.

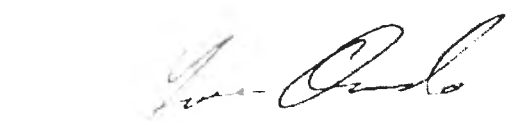
THE COURT: All right, thank you. See you on the adjourn date, October 10th. Thank you.

MS. McCAW: January 4th, you Honor?

THE COURT: January 4th.

*****

This is certified to be a true and accurate transcript of the above proceedings recorded by me.



YVONNE OVIEDO
SENIOR COURT REPORTER

Exhibit 5

← **Truth Details**
2238 replies

Trending

Donald J. Trump
@realDonaldTrump

Mark Milley, who led perhaps the most embarrassing moment in American history with his grossly incompetent implementation of the withdrawal from Afghanistan, costing many lives, leaving behind hundreds of American citizens, and handing over BILLIONS of dollars of the finest military equipment ever made, will be leaving the military next week. This will be a time for all citizens of the USA to celebrate! This guy turned out to be a Woke train wreck who, if the Fake News reporting is correct, was actually dealing with China to give them a heads up on the thinking of the President of the United States. This is an act so egregious that, in times gone by, the punishment would have been DEATH! A war between China and the United States could have been the result of this treasonous act. To be continued!!!

7.02k ReTruths **20.8k** Likes Sep 22, 2023 7:59 PM

Reply ReTruth Like

Exhibits to People's Motion to Quash
and for a Protective Order (Nov. 9, 2023)

Exhibit 6

← **Truth Details**
3188 replies

Trending

Donald J. Trump
@realDonaldTrump

I don't think Mark Meadows would lie about the Rigged and Stolen 2020 Presidential Election merely for getting IMMUNITY against Prosecution (PERSECUTION!) by Deranged Prosecutor, Jack Smith. BUT, when you really think about it, after being hounded like a dog for three years, told you'll be going to jail for the rest of your life, your money and your family will be forever gone, and we're not at all interested in exposing those that did the RIGGING — If you say BAD THINGS about that terrible "MONSTER," DONALD J. TRUMP, we won't put you in prison, you can keep your family and your wealth, and, perhaps, if you can make up some really horrible "STUFF" a out him, we may very well erect a statue of you in the middle of our decaying and now very violent Capital, Washington, D.C. Some people would make that deal, but they are weaklings and cowards, and so bad for the future our Failing Nation. I don't think that Mark Meadows is one of them, but who really knows? MAKE AMERICA GREAT AGAIN!!!

7.72k ReTruths **27k** Likes

Oct 24, 2023, 9:43 PM

Reply ReTruth Like

Exhibits to People's Motion to Quash
and for a Protective Order (Nov. 9, 2023)

Exhibit 7

TRINA A. HIGGINS, United States Attorney (#7349)
CAMERON P. WARNER, Assistant United States Attorney (#14364)
Attorneys for the United States of America
Office of the United States Attorney
111 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2176

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

UNITED STATES OF AMERICA, Plaintiff, vs. CRAIG DELEEUW ROBERTSON, Defendant.	Case No. [redacted] FELONY COMPLAINT SEALED COUNT 1 Violation of 18 U.S.C. § 875(c) (Interstate Threats) COUNT 2 Violation of 18 U.S.C. §115(a)(1)(B) (Influencing, Impeding, and Retaliating Against Federal Law Enforcement Officers by Threat) COUNT 3 Violation of 18 U.S.C. § 871(a) (Threats Against the President) Judge [redacted]

Before the Honorable [redacted] Magistrate Judge for the District of Utah, appeared the undersigned, who on oath deposes and says:

COUNT 1

18 U.S.C. § 875(c)
(Interstate Threats)

On or about March 18, 2023, in the District of Utah,

CRAIG DELEEUW ROBERTSON,

defendant herein, did knowingly transmit in interstate commerce a communication containing a threat to injure the person of another, the New York County District Attorney, Alvin Bragg, to wit:

> ALVIN BRAGG
> Heading to New York to fulfill my dream of iradicating [sic] another of George Soros two-but political hach [sic] DAs.
> I'll be waiting in the courthouse parking garage with my suppressed Smith & Wesson M&P 9mm to smoke a radical fool prosecutor that should never have been elected.
> I want to stand over Bragg and put a nice hole in his forehead with my 9mm and watch him twitch as a drop of blood oozes from the hole as his life ebbs away to hell!!
> BYE, BYE, TO ANOTHER CORRUPT BASTARD!!!"

all in violation of 18 § U.S.C. 875(c).

COUNT 2
18 U.S.C. § 115(a)(1)(B)
(Influencing, Impeding, Retaliating Against
Federal Law Enforcement Officers by Threat)

On or about March 24, 2023, in the District of Utah,

CRAIG DELEEUW ROBERTSON,

defendant herein, did threaten to assault and murder [redacted] and SA-1, both of whom are Federal law enforcement officers with the Federal Bureau of Investigation, with the intent to impede and intimidate [redacted] and SA-1 while they were engaged in the performance of

their official duties, and with the intent to retaliate against [redacted] and SA-1 on account of the performance of their official duties, in violation of 18 U.S.C. §§ 115(a)(1)(B) and 115(b)(4).

COUNT 3
18 U.S.C. § 871(a)
(Threats Against the President)

On or about August 7, 2023, in the District of Utah,

CRAIG DELEEUW ROBERTSON,

defendant herein, did knowingly and willfully make a threat to take the life of and to inflict bodily harm upon the President of the United States, to wit:

> "I HEAR BIDEN IS COMING TO UTAH. DIGGING OUT MY OLD GHILLE SUIT AND CLEANING THE DUST OFF THE M24 SNIPER RIFLE. WELCOM, BUFFOON-IN-CHIEF!"

all in violation of 18 U.S.C. § 871(a).

ELEMENTS OF OFFENSES

The elements for a violation of 18 U.S.C. § 875(c), Interstate Threats, are:

(1) the defendant knowingly transmitted a communication containing a threat to injure the person of another,

(2) the defendant transmitted the communication with the intent to make a threat, or with knowledge that the communication will be viewed as a threat; and

(3) the communication was transmitted in interstate or foreign commerce.

The elements for a violation of 18 U.S.C. § 115(a)(1)(B), Influencing, Impeding, and Retaliating Federal Law Enforcement Officers by Threat, are:

(1) that the defendant threatened to assault, kidnap, or murder a United States

official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. § 1114, and

(2) the defendant did so with intent to impede, intimidate, or interfere with such official, judge, or law enforcement officer while he or she was engaged in the performance of official duties, or with the intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties.

The elements for a violation of 18 U.S.C. § 871(a), Threats Against the President, are:

(1) the defendant knowingly and willfully made a true threat to take the life of, to kidnap, or to inflict bodily harm upon a victim; and

(2) the victim was the President of the United States, the President-elect, the Vice President or other officer next in the order of succession to the office of President of the United States, or the Vice President-elect.

PROBABLE CAUSE

This complaint is made on the basis of investigation consisting of the following:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI), [redacted] I am currently assigned [redacted] and primarily investigate complex criminal organizations, such as criminal gangs and drug trafficking organizations. During my time as a law enforcement officer, I have investigated matters involving violent acts, to include aggravated assault, rape, and homicide, threats of violence, extortion, kidnapping, murder-for-hire, money laundering, weapons violations, drug trafficking, fraud, and more.

2. As a federal agent, I am authorized to investigate violations of laws of the United States and to execute warrants issued under the authority of the United States. Consequently, I am an "investigative or law enforcement officer of the United States," within the meaning of Section 2510(7) of Title 18, United States Code, that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Section 2516 of Title 18, United States Code.

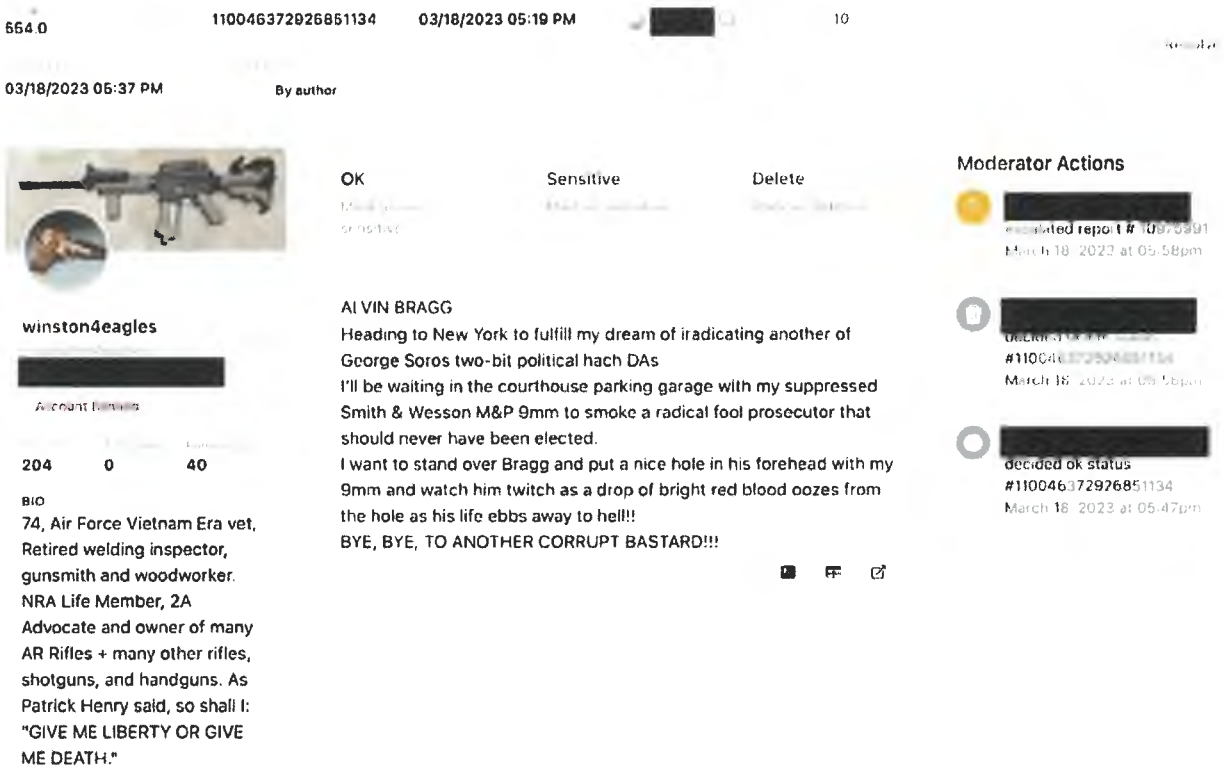
3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested arrest warrant for CRAIG DELEEUW ROBERTSON for violations of 18 U.S.C. § 875(c) (Interstate Threats), 18 U.S.C. § 115(a)(1)(B) (Influencing, Impeding, Retaliating Against Federal Law Enforcement Officers by Threat), and 18 U.S.C. § 871(a) (Threats Against the President), and does not set forth all of my knowledge about this matter. Information developed to date as a result of my investigation and the investigation of others revealed the following:

4. On, or about, March 19, 2023, I received a notification, which had come from the FBI National Threat Operations Center ("NTOC"), regarding a threat to life.[1] NTOC had received a tip from a social media company ("Company-1") regarding username @winston4eagles posting a threat on Company-1's platform to kill New York

1 NTOC fields calls and electronic tips from the public.

County District Attorney ("DA") Alvin Bragg. At the time of the post, DA Bragg was overseeing a criminal investigation into former President Donald J. Trump.

The following is a screenshot of the posted threat:



The screenshot shows that User @winston4eagles posted the following true threat:

"ALVIN BRAGG
Heading to New York to fulfill my dream of iradicating [sic] another of George Soros two-but political hach [sic] DAs.
I'll be waiting in the courthouse parking garage with my suppressed Smith & Wesson M&P 9mm to smoke a radical fool prosecutor that should never have been elected.
I want to stand over Bragg and put a nice hole in his forehead with my 9mm and watch him twitch as a drop of blood oozes from the hole as his life ebbs away to hell!!
BYE, BYE, TO ANOTHER CORRUPT BASTARD!!!"

5. NTOC provided the following information for the person associated with username @winston4eagles: a telephone number, email address, and home addresses all believed to belong to Craig Deleeuw ROBERTSON (hereafter "ROBERTSON"). The email address associated with the @winston4eagles [redacted]

6. On March 19, 2023, I, along with another FBI Special Agent (hereafter "SA-1"), conducted physical surveillance in the vicinity of an address in Provo, Utah where the FBI believed ROBERTSON to reside ("Residence-1"). During surveillance, the following was observed:

a. A blue Honda, parked in the driveway of Residence-1, bearing a Utah State License Plate number which, based on my review of records, matched a vehicle listed as registered to ROBERTSON at Residence-1.

b. A heavy-set white male, approximately 70-75 years old, with gray hair, wearing a bright blue jacket, white shirt, and tie (hereafter "UM-1"), walked from the east area of the above listed residence and got into the passenger's side front seat of the Honda.

c. ROBERTSON, wearing a dark suit (later observed as having an AR-15 style rifle lapel pin attached), a white shirt, a red tie, and a multi-colored (possibly camouflage) hat bearing the word "TRUMP" on the front, walked from the east area of the residence, and got into the driver's seat of the Honda. ROBERTSON drove the Honda out of the driveway and traveled a

short distance northbound into the parking lot of a church. ROBERTSON and UM-1 exited the Honda and walked into the church building.

d. After several hours, UM-1 exited the church building and walked back to Residence-1.

e. Approximately one hour later, ROBERTSON exited the church building and entered the Honda with another unknown male (hereafter "UM-2"). ROBERTSON and UM-2 drove out of the parking lot and out of sight. Several minutes later, ROBERTSON and UM-2 returned to the church parking lot in the Honda. UM-2 exited the Honda, and ROBERTSON drove to Residence-1.

7. After arriving at the residence, SA-1 and I spoke with ROBERTSON outside of the residence. The conversation began when I called out, "Mr. Robertson?" and ROBERTSON responded in the positive.

8. After advising ROBERTSON of SA-1's and my identities as Federal Law Enforcement Officers for the FBI, ROBERTSON admitted his username on Company-1 was winston4eagles. When I advised ROBERTSON that we would like to speak with him regarding a comment he had posted on Company-1's social media platform, ROBERTSON stated, "I said it was a dream!" ROBERTSON then said, "We're done here! Don't return without a warrant!"

9. A court authorized search of a social media company ("Company-2") account registered to "Craig Robertson," with ROBERTSON's same email address and displaying the name "Craig D. Robertson," showed ROBERTSON was living in Provo, Utah.

10. As part of this investigation, I have also reviewed public posts from Company-2's social media platform made by ROBERTSON. Based on my review of those posts by ROBERTSON from that account, I know that ROBERTSON does, in fact, appear to own a sniper rifle and a ghillie suit, has made violent threats to murder public officials, and appears to possess numerous firearms (in addition to what appears to be a long-range sniper rifle). The search also yielded, in part, multiple posts regarding threats, violent acts, firearms, and the possession and use of firearms in furtherance of committing violence against government officials. The posts show ROBERTSON's intent to kill, at a minimum, D.A. Bragg and President Joe Biden. The posts further show ROBERTSON's intent to impede and intimidate SA-1, me, and other FBI special agents while engaged in the performance of our official duties and that ROBERTSON intended to retaliate against the FBI. The following are screenshots of the posts:[2]

2 The posts are not in chronological order. However, the posts display a date or timeframe of when they were published.

a.

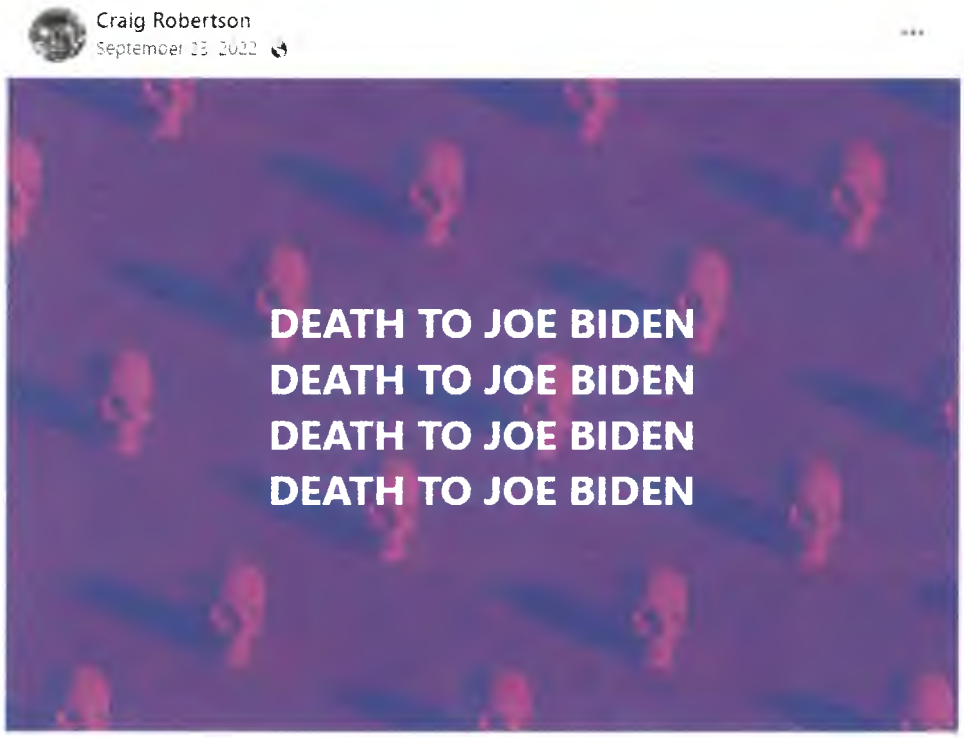
I believe "JOE" refers to United States' President Joseph Biden (POTUS) and "KAMALA" refers to United States' Vice President Kamala Harris (VPOTUS).

b.

I believe "LETITIA JAMES" refers to New York State Attorney General ("AG") Letitia James and "B/TCH" to be a variation on the spelling of the word "BITCH".

c.

I believe "Heinrick Himler" refers to the former leader of the Nazi Party Heinrich Himmler and "Merrick Garland" refers to United States AG Merrick Garland.

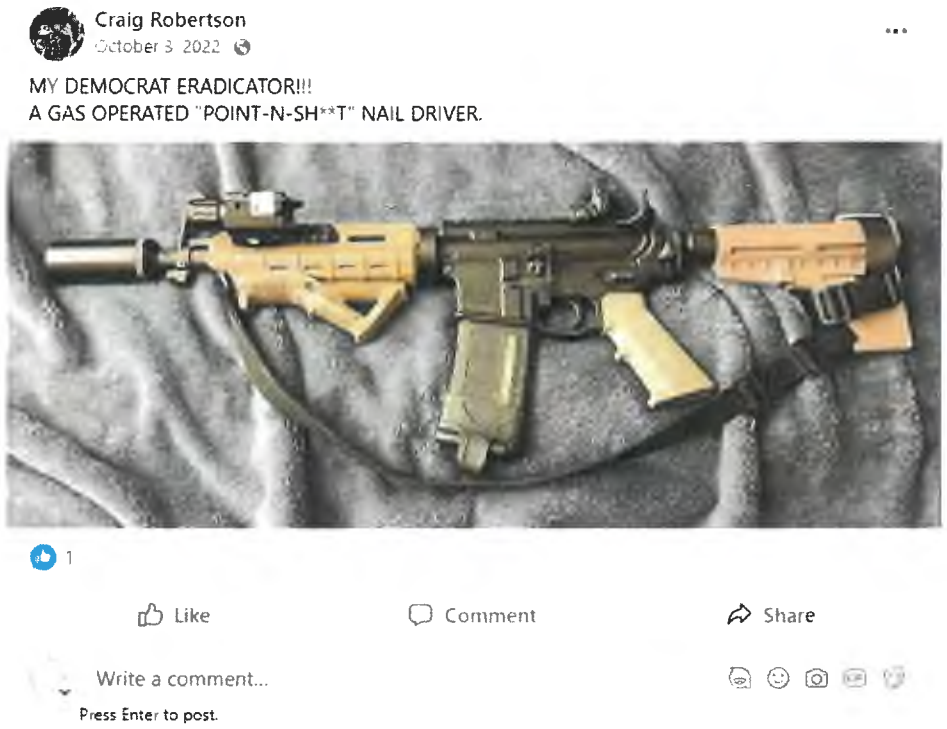
d. 

I believe "JOE BIDEN" refers to POTUS and that ROBERTSON intends to bring about the death to President Biden.

e. 

I believe "Merrick Garland" refers to AG Garland, "MAGA TRUMPER" refers to a supporter of former United States' President Donald Trump, and "cowards" refers to FBI Speical Weapons and Tactics (SWAT) team members.

f.



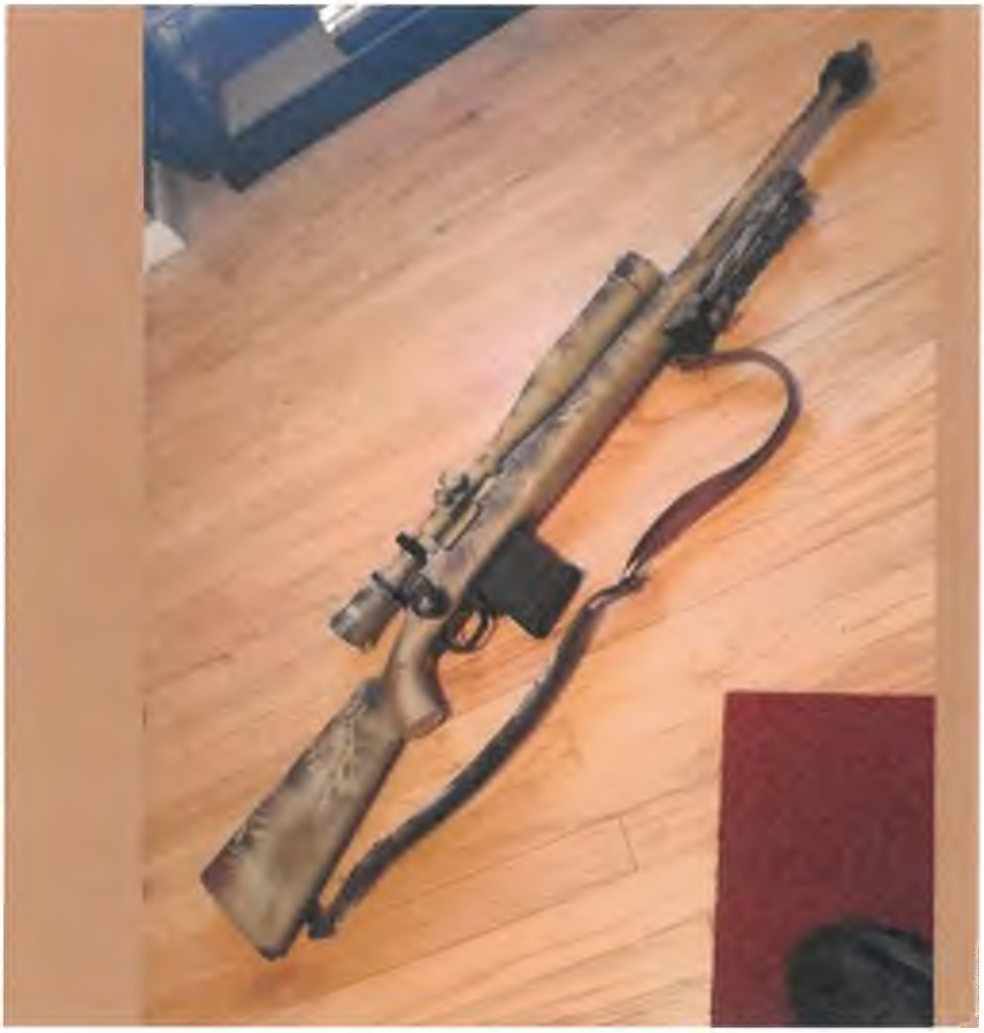
I believe "DEMOCRAT ERADICATOR" refers to the pictured semi-automatic rifle as an instrument used to cause death to persons belonging to the Democratic Party.

g.

I believe "BIDEN" refers to POTUS and that ROBERTSON intends to bring about the death to President Biden..

h. Craig Robertson
October 4 2022

LONG RANGE DEMOCRAT, HIPOCRIT ERADICATOR!!!



I believe "LONG RANGE DEMOCRAT, HIPOCRIT ERADICATOR" refers to the pictured rifle as an instrument used to cause death to persons belonging to the Democratic Party.

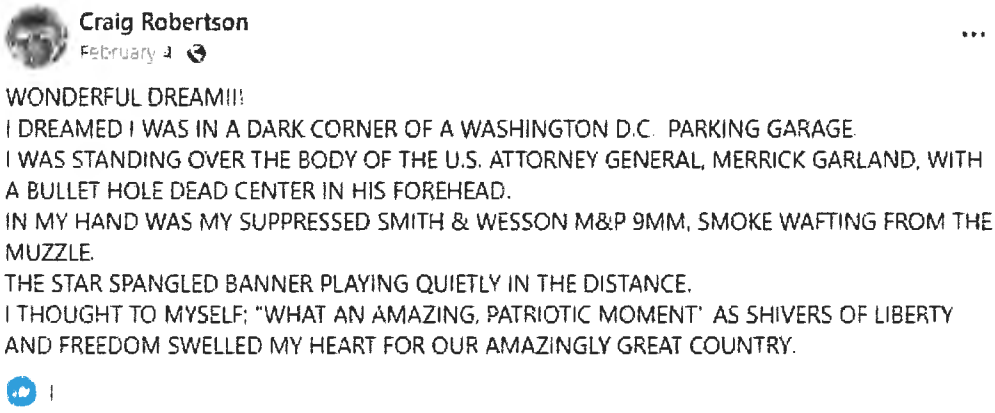
i. 

I believe "Merrick Garland eradication tool" refers to the pictured semi-automatic handgun as an instrument used to cause death to AG Garland.

I believe "Merrick Garland" refers to AG Garland and "they" refers to FBI speical agents. I believe this is a threat to kill FBI Special Agents who are engaged in an investigation of ROBERTSON. This post shows ROBERTSON's intent to impede, intimidate, and retaliate against SA-1, me, and other FBI special agents.

k. 

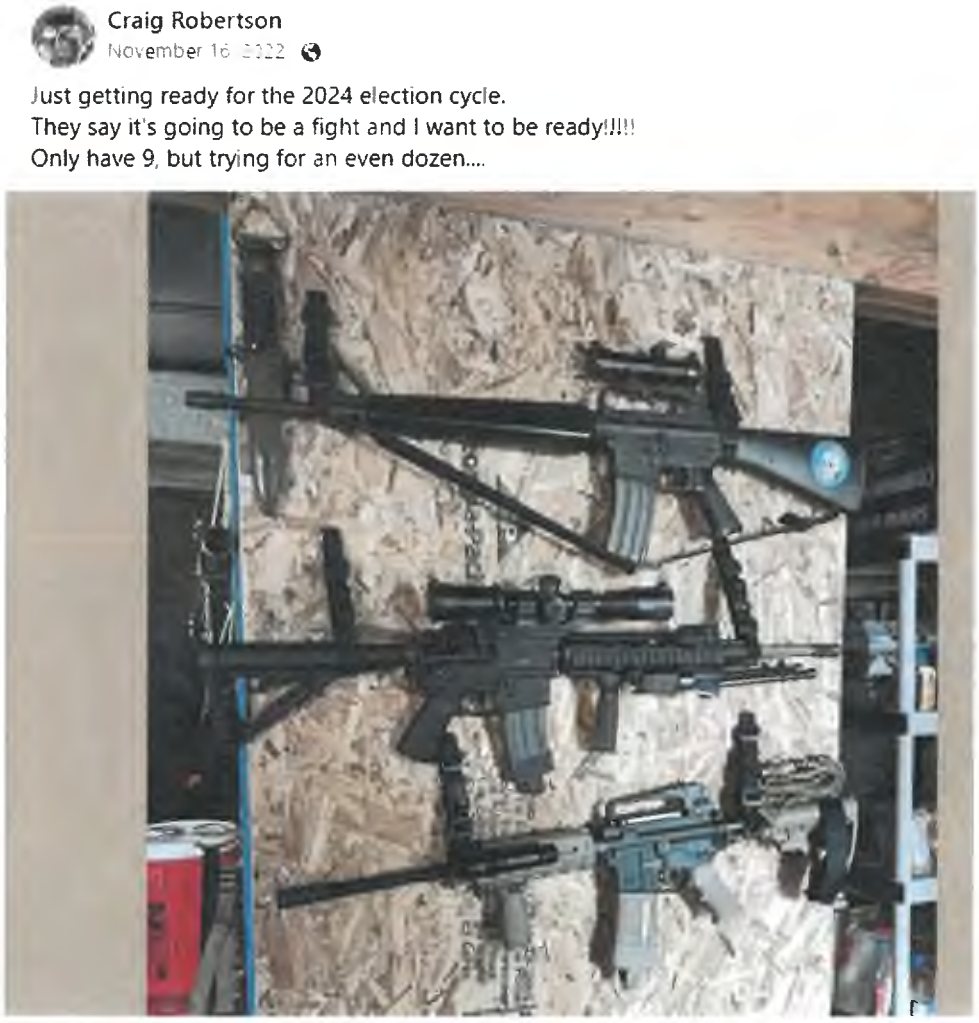
I believe "Gavin Newsom" refers to the Governer of California, Gavin Newsom and "wound above his brow" refers to a bullet hole in Governer Newsom's forehead.

l. 

I believe this may have been the post ROBERTSON refered to when he told SA-1 and me, "I said it was a dream!"

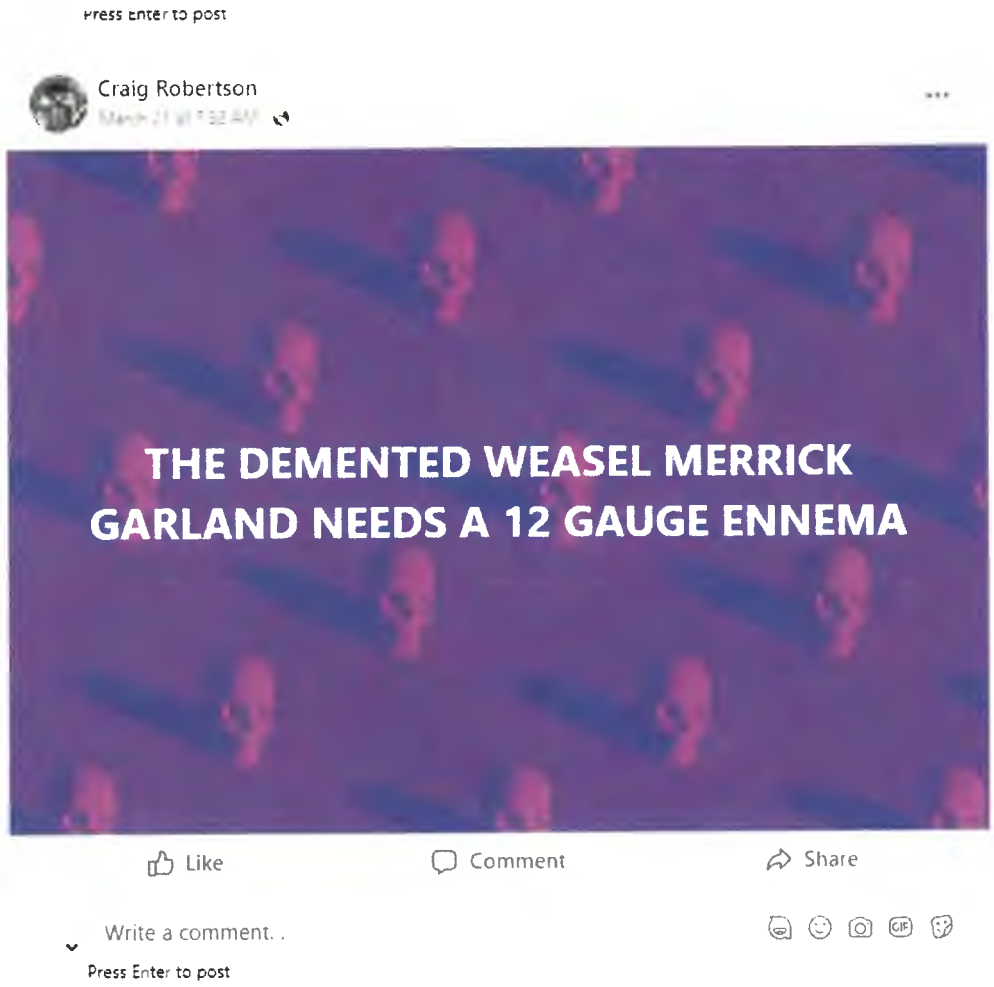
m.

I believe "Jefferson" refers to former United States' President Thomas Jefferson as depicted on the pictured United States' five-cent coin, and "old Joey" refers to President Biden.

n. 

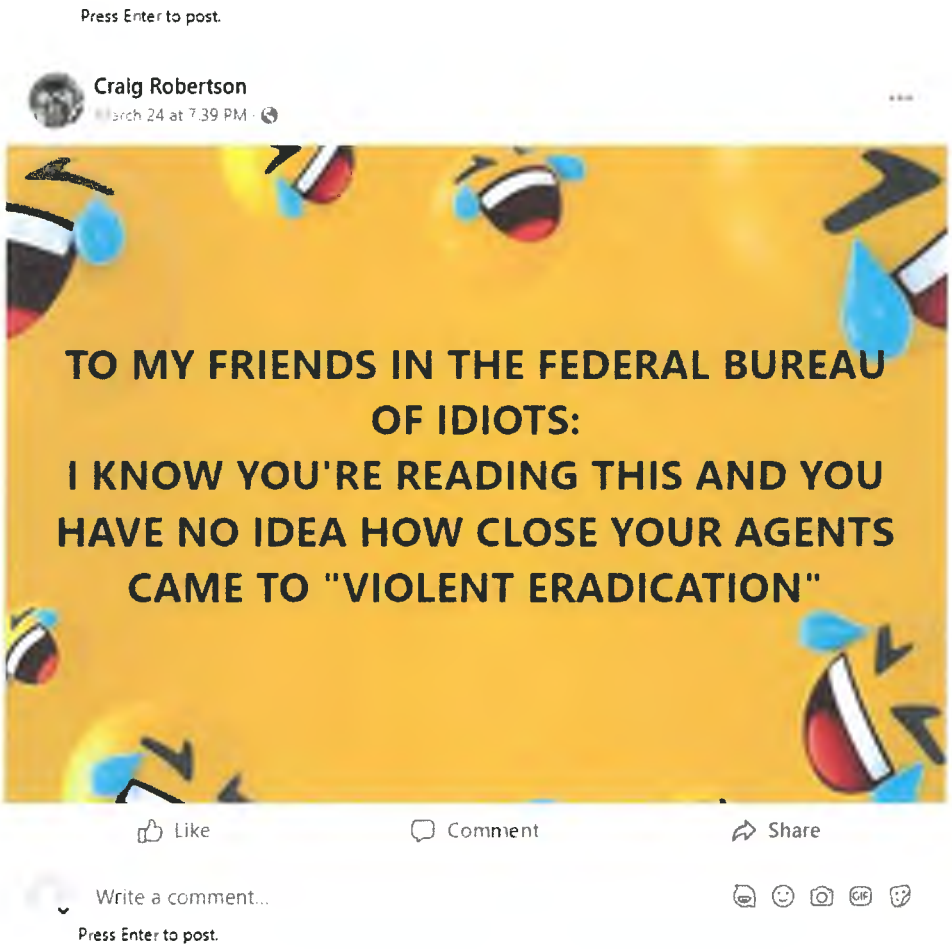
I believe this post refers to ROBERTSON having nine (9) semi-automatic rifles and attempting to obtain three (3) additional semi-automatic rifles in order to be ready for a "fight" during the 2024 election cycle.

o. Because this post was posted on March 21, 2023, subsequent to SA-1 and me speaking with ROBERTSON, I believe "jackboot Nazi FBI" refers to the FBI in general and to SA-1 and me in particular.



p.

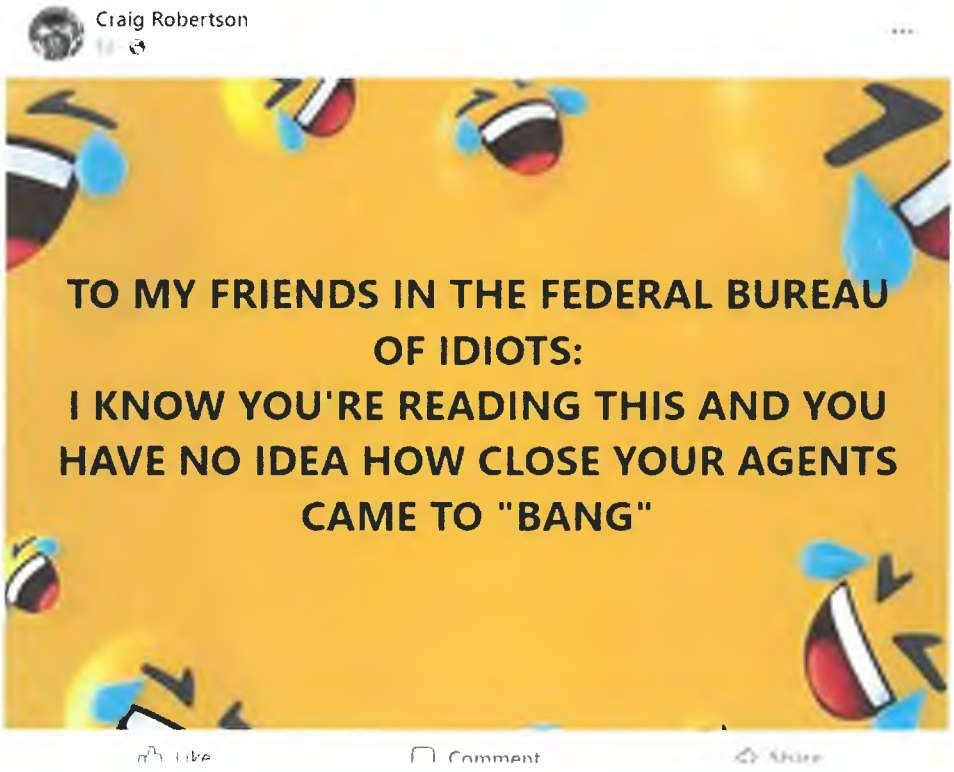
I believe "MERRICK GARLAND" refers to AG Garland.



q.

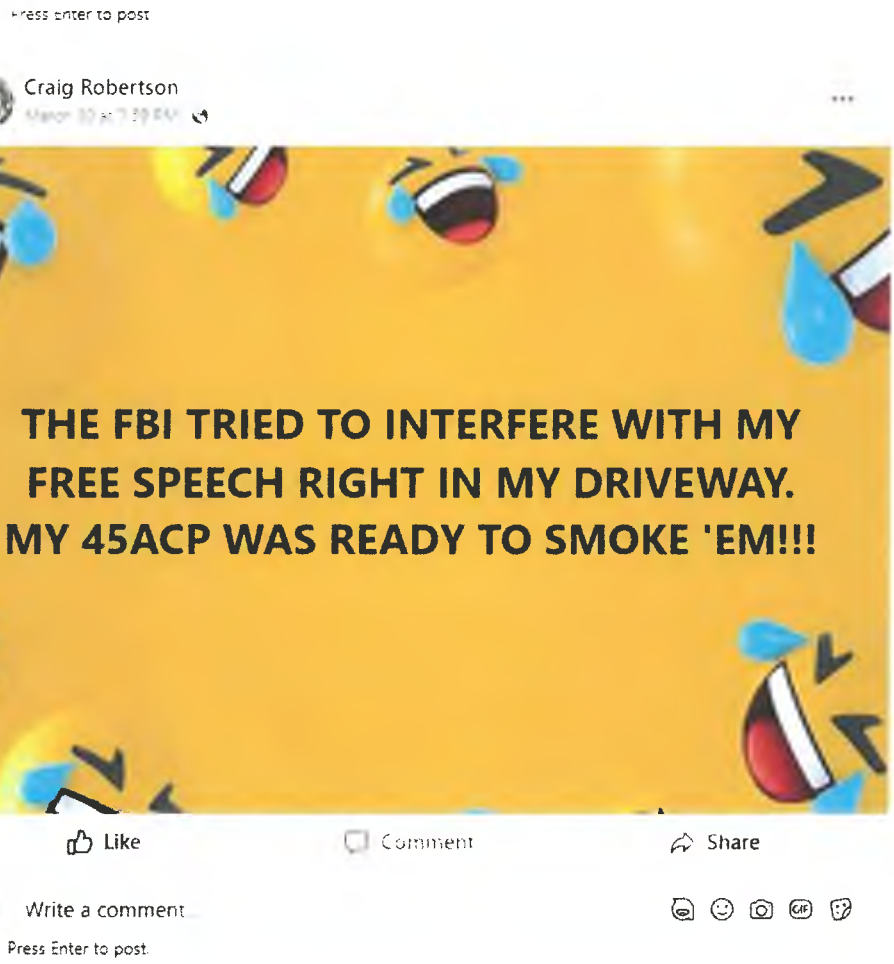
I believe this was posted on or about March 24, 2023. As such, I believe "YOUR AGENTS" refers to SA-1 and me, who spoke with ROBERTSON just five days prior on March 19, 2023, and informed him we were investigating his posting(s) on social media. I believe "VIOLENT ERADICATION" referes to ROBERSTON assaulting and murdering SA-1 and me by shooting us with a firearm. I believe he made this threat with the intent to impede, intimidate, and interfere with FBI special agents engaged in the performance of their official

duties and also had the intent to retaliate against such FBI agents on account of the performance of their official duties.



S.

I believe this was posted on March 25, 2023, as it was discovered on March 30, 2023. Additionally, I believe "YOUR AGENTS" refers to SA-1 and me who spoke with ROBERTSON on March 19, 2023, and "BANG' to be referring to being shot. Like the previous posting, I believe he made this threat with the intent to impede, intimidate, and interfere with FBI special agents engaged in the performance of their official duties and also had the intent to retaliate against such FBI agents on account of the performance of their official duties.



t.

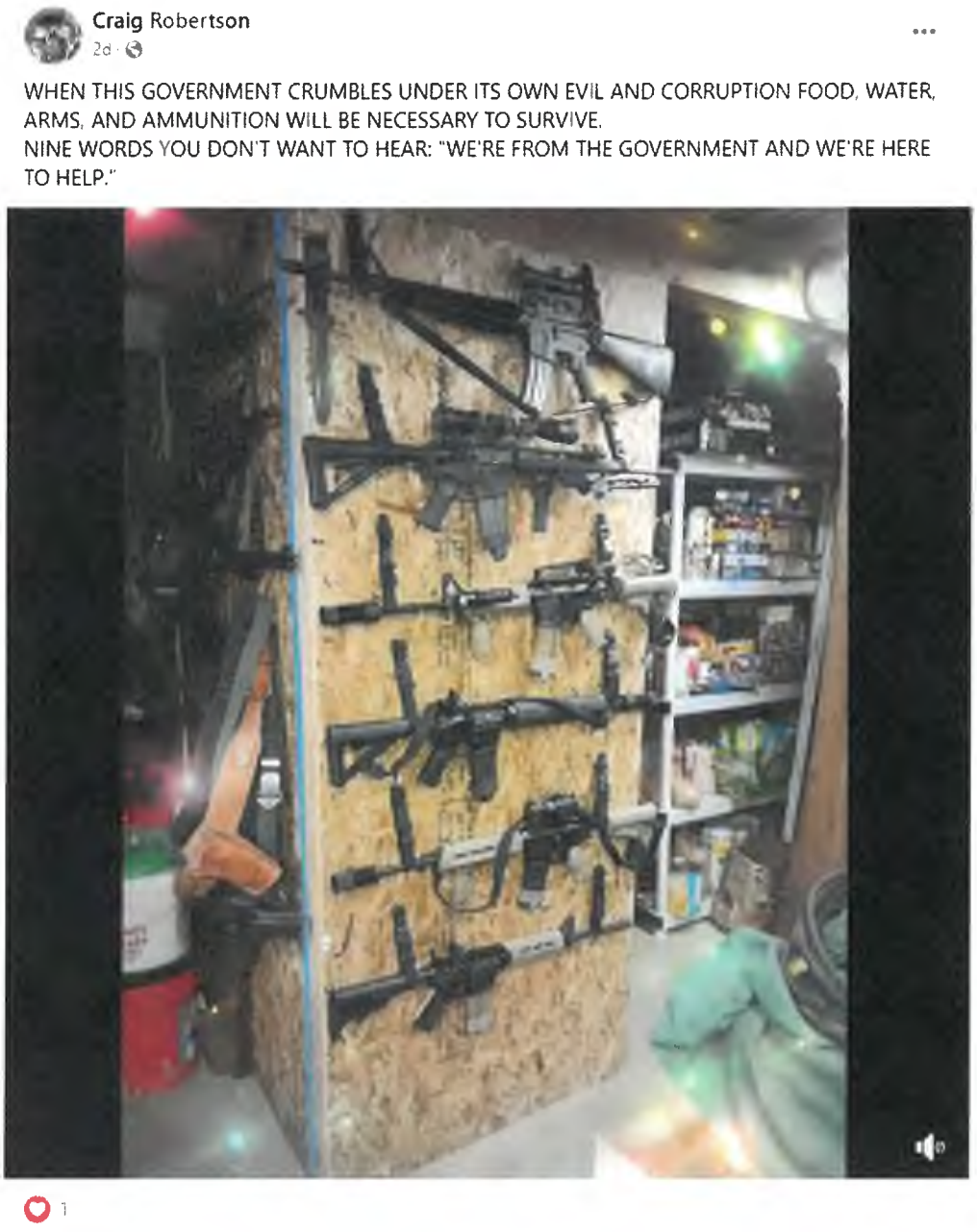
I believe "FBI" refers SA-1 and me, "45ACP" refers to a .45 caliber handgun, and "SMOKE 'EM' refers to shooting SA-1 and me.

u.

I believe this was posted by ROBERTSON on Facebook on or about April 11, 2023. I believe "ALVIN" to be referring to DA Bragg and ROBERTSON intended this to be a true threat to shoot DA Bragg with firearm.

v.

I believe "ALVIN BRAGG" is DA Bragg. I believe ROBERTSON intended this to be a true threat to shoot DA Bragg with firearm.



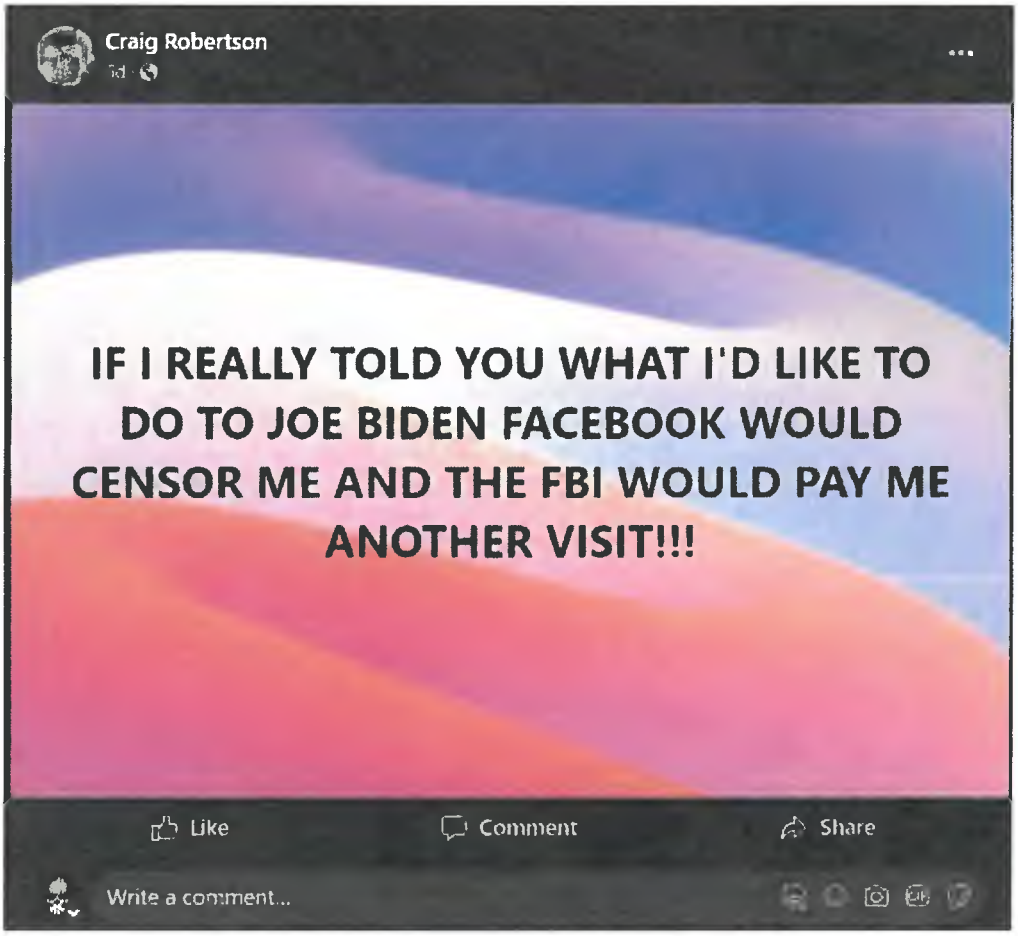
W.

I believe this, along with other postings I have reviewed to ROBERTSON's public social media accounts, demonstrate ROBERTSON is in possession of firearms capable of inflicting death and/or bodily injury and that he intends to use these

firearms and ammunition in furtherance of committing crimes of violence as alleged above in Counts 1-3.

x. 

I believe this to be a threat of death against FBI special agents if any FBI special agents arrive at ROBERTSON's residence.

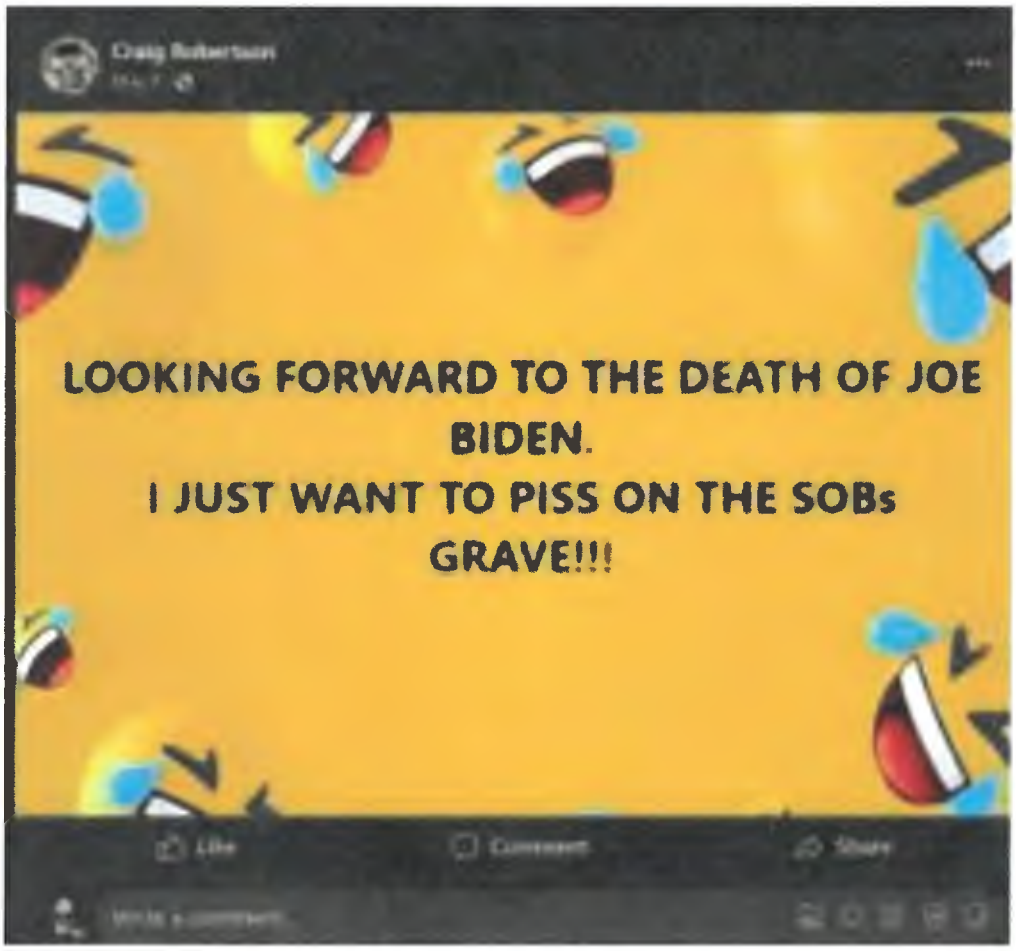
y. 

I believe this to be a threat of violence against President Biden.

z.


BECAUSE OF JOE BIDEN'S POLICIES, WHEN HE IS FINALLY ASSASSINATED NO ONE WILL GIVE A DAMN BECAUSE HE AIN'T BLACK.
NOT A JOKE!!!

aa. 
JOE BIDEN IS DOING ANOTHER
"BASEMENT" CAMPAIGN BECAUSE HE IS
SO HATED THAT ASSASSINATION
ATTEMPTS WILL INCREASE 100 FOLD!!!
NOBODY WANTS HIM.

bb. 

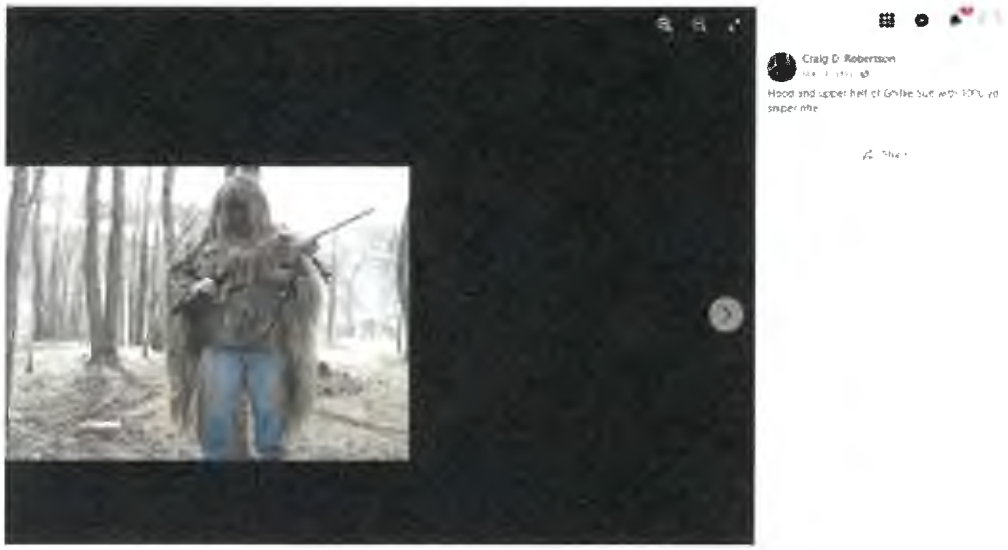
I believe "JOE BIDEN" refers to President Biden, and "PISS" refers to urinating, and "SOBs" refers to "son of a bitch's."

cc. 

The above post was published on, or about August 6, 2023. President Biden is scheduled to arrive in Utah on August 9, 2023. There have been media stories in Utah about President Biden's upcoming visit. I therefore believe this is knowing and willful true threat to kill or cause injury to President Biden using an M24 sniper rifle while being concealed by a ghillie suit during President Biden's visit to Utah.

dd.


Hide in Plain Site - I'm just a pile of grass!
Craig D. Robertson
+10



Consistent with ROBERTSON'S threat to kill President Biden above, these posts show ROBERTSON dressed in a ghillie suite demonstrating his ability to conduct sniper tactics. While these postings are somewhat dated, they nevertheless show ROBERTSON has access to a ghillie suit and a long-range rifle. Indeed, ROBERTSON confirmed in his recent threat to kill President Biden from two days ago, that he will get out his "OLD GHILLIE SUIT" and "DUST OFF" his sniper rifle, thus indicating he has been in possession of these items for some time and is still in possession of these items. I believe that ROBERTSON intends to use them to commit crimes of violence discussed in this affidavit.

11. I respectfully request that this Complaint and Affidavit, as it reveals an ongoing investigation, be sealed until further order of the Court in order to avoid premature disclosure of the investigation, guard against flight, and better ensure the safety of agents and others, except that working copies may be served on Special Agents

and other investigative and law enforcement officers, federally deputized state and local law enforcement officers, and other government and contract personnel acting under the supervision of such investigative or law enforcement officers as necessary to effectuate the Court's Order.

12. Based on the foregoing information, I respectfully request that a warrant of arrest be issued for CRAIG DELEEUW ROBERTSON for violations of 18 U.S.C. § 875(c), 18 U.S.C. §§115(a)(1)(B) and 115(b)(4), and 18 U.S.C. § 871(a).

[redacted]

Special Agent
Federal Bureau of Investigation

SUBSCRIBED AND SWORN to before me via video-teleconference this 8th day of August, 2023.

[redacted]

APPROVED:

TRINA A. HIGGINS
United States Attorney

/s/ Cameron P. Warner
Cameron P. Warner
Assistant United States Attorney

Exhibit 8

Donald J. Trump

@realDonaldTrump · 2h

OUR NATION IS NOW THIRD WORLD & DYING. THE AMERICAN DREAM IS DEAD! THE RADICAL LEFT ANARCHISTS HAVE STOLLEN OUR PRESIDENTIAL ELECTION, AND WITH IT, THE HEART OF OUR OUR COUNTRY. AMERICAN PATRIOTS ARE BEING ARRESTED & HELD IN CAPTIVITY LIKE ANIMALS, WHILE CRIMINALS & LEFTIST THUGS ARE ALLOWED TO ROAM THE STREETS, KILLING & BURNING WITH NO RETRIBUTION. MILLIONS ARE FLOODING THROUGH OUR OPEN BOARDERS, MANY FROM PRISONS & MENTAL INSTITUTIONS. CRIME & INFLATION ARE DESTROYING OUR VERY WAY OF LIFE...

6.82k ReTruths **17.2k** Likes

Donald J. Trump

@realDonaldTrump · 1h

Page 2: NOW ILLEGAL LEAKS FROM A CORRUPT & HIGHLY POLITICAL MANHATTAN DISTRICT ATTORNEY'S OFFICE, WHICH HAS ALLOWED NEW RECORDS TO BE SET IN VIOLENT CRIME & WHOSE LEADER IS FUNDED BY GEORGE SOROS, INDICATE THAT, WITH NO CRIME BEING ABLE TO BE PROVEN, & BASED ON AN OLD & FULLY DEBUNKED (BY NUMEROUS OTHER PROSECUTORS!) FAIRY TALE, THE FAR & AWAY LEADING REPUBLICAN CANDIDATE & FORMER PRESIDENT OF THE UNITED STATES OF AMERICA, WILL BE ARRESTED ON TUESDAY OF NEXT WEEK. PROTEST, TAKE OUR NATION BACK!

8.42k ReTruths 19.5k Likes Mar 18, 2024, 7:04 AM

Reply ReTruth Like ...

Donald J. Trump

@realDonaldTrump · 1h

IT'S TIME!!! WE ARE A NATION IN STEEP DECLINE, BEING LED INTO WORLD WAR III BY A CROOKED POLITICIAN WHO DOESN'T EVEN KNOW HE'S ALIVE, BUT WHO IS SURROUNDED BY EVIL & SINISTER PEOPLE WHO, BASED ON THEIR ACTIONS ON DEFUNDING THE POLICE, DESTROYING OUR MILITARY, OPEN BORDERS, NO VOTER I.D., INFLATION, RAISING TAXES, & MUCH MORE, CAN ONLY HATE OUR NOW FAILING USA. WE JUST CAN'T ALLOW THIS ANYMORE. THEY'RE KILLING OUR NATION AS WE SIT BACK & WATCH. WE MUST SAVE AMERICA!PROTEST, PROTEST, PROTEST!!!

12.6k ReTruths **33.7k** Likes

Mar 18, 2023, 12:21 PM

Reply ReTruth Like

Exhibit 9

AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States of America
v
Abigail Jo SHRY

Case No. **4:23-mj-1602**

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of August 5, 2023 in the county of Brazoria in the Southern District of Texas, the defendant(s) violated:

Code Section	*Offense Description*
18 USC Section 875(c)	Transmission in Interstate or Foreign Commerce of any Communication Containing a Threat to Injure the Person of Another

This criminal complaint is based on these facts:

See attached

☑ Continued on the attached sheet.

Complainant's signature

Special Agent Joshua Henry FPS

Printed name and title

Sworn to before me and signed in my presence.

Date: August 11, 2023

Judge's signature

City and state: Houston, Texas

United States Magistrate Judge Sam Sheldon

Printed name and title

4:23-mj-1602

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Joshua Henry, of the United States Department of Homeland Security, Federal Protective Service, being duly sworn, do hereby swear and affirm the following facts as being true to the best of my knowledge, information, and belief.

I am a Special Agent with the Federal Protective Service (FPS), United States Department of Homeland Security, and have been working with FPS for approximately 14 years. In that capacity, I investigate violations of the United States Federal Criminal Codes, Code of Federal Regulations, and related offenses including threats.

Based on the facts and circumstances outlined below, there is probable cause to believe that Abigail Jo SHRY did knowingly and willfully commit an offense against the United States, to wit: Transmission in Interstate or Foreign Commerce of any Communication Containing a Threat to Injure the Person of Another, to wit: United States District Judge Tanya Chutkan and United States Congresswoman Sheila Jackson Lee, in violation of Title 18, United States Code, Section 875(c).

This affidavit is made for the limited purpose of supporting a criminal complaint. I have not set forth each and every fact learned during the course of the investigation. Rather, I have set forth only those facts that I believe are necessary to establish probable cause for the crime charged. Unless otherwise indicated, where actions, conversations, and statements of others are related herein, they are related in substance and in part only. The information in the following paragraphs furnished in support of this affidavit comes from the personal investigation of Affiant and from other officials and relayed to Affiant in person or through Affiant's review of their investigative reports, and does not contain all information known by me, only facts for consideration of probable cause.

The following incident occurred during a phone call to United States District Judge Tanya Chutkan's chambers in Washington, DC from Alvin, TX using phone number 832-537-2180. SHRY and left a threatening voicemail message intended for Judge Chutkan and mentioned United States Congresswoman Sheila Jackson Lee, the LGBTQ community, and other democratic parties.

On August 5, 2023, at approximately 7:51 P.M., a call was received in the chambers of District of Columbia United States District Judge Tanya Chutkan. According to caller identification on the Judge's phone, the call came from phone number (832) 537-2180. The caller's introduction stated, "Hey you stupid slave nigger," after which the caller threatened to kill anyone who went after former President Trump, including a direct threat to kill Congresswomen Sheila Jackson Lee, all democrats in Washington D.C. and all people in the LGBTQ community. The caller further stated, "You are in our sights, we want to kill you," and "We want to kill Sheila Jackson Lee." "If Trump doesn't get elected in 2024, we are coming to kill you, so tread lightly, bitch." The caller continued with their threats, stating, "You will be targeted personally, publicly, your family, all of it."

Investigation determined that the telephone number (832) 537-2180 was issued to a cell phone owned by Abigail Jo SHRY of Alvin, Texas.

On August 8, 2023, DHS Special Agents conducted a knock and talk at the residence of Abigail Jo SHRY in Alvin, Texas. During consensual questioning, SHRY admitted that the phone number (832) 537-2180 belongs to her and that she did in fact make the call to Judge Chutkan's chambers. SHRY stated that she had no plans to travel to Washington, DC or Houston to carry out anything she stated, adding that if Sheila Jackson Lee comes to Alvin, then we need to worry.

Based on the foregoing, I believe there is probable cause that on or about August 5, 2023, Abigail Jo SHRY did commit the offense of Transmission in Interstate or Foreign Commerce of any Communication Containing a Threat to Injure the Person of Another, to wit: United States District Judge Tanya Chutkan and United States Congresswoman Sheila Jackson Lee, in violation of Title 18, United States Code, Section 875(c).

Joshua Henry
Special Agent
Department of Homeland Security
Federal Protective Service

Sworn to before me telephonically this 11th day of August, 2023 and I find probable cause.

HONORABLE SAM ~~SHELDON~~
United States Magistrate Judge

Exhibits to People's Motion to Quash
and for a Protective Order (Nov. 9, 2023)

Exhibit 10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

ARTHUR RAY HANSON, II

Criminal Indictment

No. 1:23-CR-0343

UNDER SEAL

THE GRAND JURY CHARGES THAT:

Introduction

At all times material to this indictment:

1. The defendant, ARTHUR RAY HANSON, II, lived in or around Huntsville, Alabama.

2. Fani Willis was the elected District Attorney for Fulton County, Georgia, and was investigating a case involving Former President of the United States Donald J. Trump.

3. Patrick Labat was the elected Sheriff for Fulton County, Georgia, and was in charge of the operation of the Fulton County Jail where Fulton County criminal defendants are often received into custody and photographed.

Count One

4. The Grand Jury re-alleges and incorporates by reference the factual allegations contained in paragraphs 1 through 3 of this Indictment as if fully set forth herein.

5. On or about August 6, 2023, in the Northern District of Georgia and elsewhere, the defendant, ARTHUR RAY HANSON, II, consciously disregarding a substantial risk that his communication would be viewed as threatening violence, knowingly transmitted a communication in interstate and foreign commerce, from the State of Alabama to the State of Georgia, that contained a threat to injure Fulton County Sheriff Patrick Labat; specifically, HANSON called the Fulton County Government customer service line and left a voicemail message for Sheriff Labat in which HANSON made statements, which included, but were not limited to, the following: "if you think you gonna take a mugshot of my President Donald Trump and it's gonna be ok, you gonna find out that after you take that mugshot, some bad shit's probably gonna happen to you;" "if you take a mugshot of the President and you're the reason it happened, some bad shit's gonna happen to you;" "I'm warning you right now before you fuck up your life and get hurt real bad;" "whether you got a goddamn badge or not ain't gonna help you none;" and "you gonna get fucked up you keep fucking with my President."

All in violation of Title 18, United States Code, Section 875(c).

Count Two

6. The Grand Jury re-alleges and incorporates by reference the factual allegations contained in paragraphs 1 through 3 of this Indictment as if fully set forth herein.

7. On or about August 6, 2023, in the Northern District of Georgia and elsewhere, the defendant, ARTHUR RAY HANSON, II, consciously disregarding

a substantial risk that his communication would be viewed as threatening violence, knowingly transmitted a communication in interstate and foreign commerce, from the State of Alabama to the State of Georgia, that contained a threat to injure Fulton County District Attorney Fani Willis; specifically, HANSON called the Fulton County Government customer service line and left a voicemail message for District Attorney Willis in which HANSON made statements, which included, but were not limited to, the following: "watch it when you're going to the car at night, when you're going into your house, watch everywhere that you're going;" "I would be very afraid if I were you because you can't be around people all the time that are going to protect you;" "there's gonna be moments when you're gonna be vulnerable;" "when you charge Trump on that fourth indictment, anytime you're alone, be looking over your shoulder;" and "what you put out there, bitch, comes back at you ten times harder, and don't ever forget it."

All in violation of Title 18, United States Code, Section 875(c).

True

A 10-25-23 BILL

FOREPERSON

RYAN K. BUCHANAN
United States Attorney

BRET R. HOBSON
Assistant United States Attorney
Georgia Bar No. 882520

BRENT ALAN GRAY
Assistant United States Attorney
Georgia Bar No. 155089

600 U.S. Courthouse
75 Ted Turner Drive SW
Atlanta, GA 30303
404-581-6000; Fax: 404-581-6181

Exhibit 11

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37
Justice

---X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR. ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants

---X

INDEX NO. 452564/2022

SUPPLEMENTAL LIMITED GAG ORDER

On October 3, 2023, after Defendant Donald J. Trump posted to his social media account an untrue, disparaging, and personally identifying post about my Principal Law Clerk, I imposed on all parties to this action a very limited gag order, "forbidding all parties from posting, emailing, or speaking publicly about any members of my staff," emphasizing, quite clearly, that "personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances." I further made clear that "failure to abide by this directive will result in serious sanctions."

On October 20, 2023, upon learning that Donald J. Trump failed to remove the post from one of his campaign websites, donaldjtrump.com, for a total of 17 days, I imposed a fine of $5,000.00 against Donald J. Trump for violating the gag order. On October 25, 2023, after conducting a brief hearing, I concluded that Donald J. Trump had intentionally violated my gag order by stating to a gaggle of reporters outside the courtroom the following statement in reference to my Principal Law Clerk: "This judge is a very partisan judge with a person who's very partisan sitting alongside him, perhaps even more partisan than he is," and fined him an additional $10,000.00.

I imposed the gag order only upon the parties, operating under the assumption that such a gag order would be unnecessary upon the attorneys, who are officers of the Court.

Over the past week, defendants' principal attorneys, namely, Christopher Kise (admitted *pro hac vice*) (Continental PLLC), Clifford Robert (Robert & Robert PLLC) and Alina Habba (Habba

OTHER ORDER – NON-MOTION

Madaio & Associates LLP), have made, on the record, repeated, inappropriate remarks about my Principal Law Clerk, falsely accusing her of bias against them and of improperly influencing the ongoing bench trial. Defendants' attorneys have made long speeches alleging that it is improper for a judge to consult with a law clerk during ongoing proceedings, and that the passing of notes from a judge to a law clerk, or vice-versa, constitutes an improper "appearance of impropriety" in this case. These arguments have no basis.

Pursuant to 22 NYCRR § 100.3(B)(6)(6)(c): "**A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges**" (emphasis added). This is precisely the role of a Principal Law Clerk in the New York State Courts.

Moreover, ethics advisory opinions have further emphasized that: "The relationship between a judge and his/her law clerk is one of particular trust and confidence. Although a judge and his/her law clerk are of course not 'partners,' the two engage in the kind of professional interchange that might be found between long-time colleagues in a law firm." Advisory Opinion 07-04, available at https://www.nycourts.gov/ipjudicialethicsopinions/07-04.htm.

As I have stated on the record, seemingly to no avail, my law clerks are public servants who are performing their jobs in the manner in which I request. This includes providing legal authority and opinions, as well as responding to questions I pose to them. Plainly, defendants are not entitled to the confidential communications amongst me and my court staff, who are hired specifically to aid me in carrying out my adjudicative responsibilities. Nor are they entitled to continue referencing my staff in the record. Defendants' attorneys have had ample opportunity to make their record, and they have at length. Indeed, I will assist them by repeating here that I will continue to consult with my staff, as is my unfettered right, throughout the remainder of the trial. Accordingly, defendants' record is now fully preserved for the duration of the proceedings. Defendants' attorneys may refer back to this blanket statement in their appeal as they deem appropriate. Defendants may reference my staff as is appropriate to ask about scheduling issues or the management of the trial, which is an integral part of their jobs. What they may *not* do is to make any further statements about internal and confidential communications (be it conversations, note passing, or anything similar) between me and my staff.

Defendants' First Amendment arguments in opposition to the imposition are wholly unpersuasive. This gag order is as narrowly tailored as possible to accomplish its purpose, which is to protect the safety of my staff and promote the orderly progression of this trial. As I have made clear, as the Judge in this case and the trier of fact, the gag order does not apply to me. However, I will not tolerate, under any circumstances, remarks about my court staff. The threat of, and actual, violence resulting from heated political rhetoric is well-documented. Since the commencement of this bench trial, my chambers have been inundated with hundreds of harassing and threating phone calls, voicemails, emails, letters, and packages. The First Amendment right of defendants and their attorneys to comment on my staff is far and away outweighed by the need to protect them from threats and physical harm.

Thus, for the reasons stated herein, I hereby order that all counsel are prohibited from making any public statements, in or out of court, that refer to *any* confidential communications, in any form, between my staff and me.

Failure to abide by this directive shall result in serious sanctions.

NOV 03 2023 HON. ARTHUR F. ENGORON

DATE: 11/3/2023 ARTHUR F. ENGORON, JSC

Check One: ☐ Case Disposed ☒ Non-Final Disposition

Check If Appropriate: ☐ Other (Specify _____)

Exhibit 12

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARTHUR F. ENGORON** **PART** 37
Justice

----------X

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

----------X

INDEX NO. 452564/2022

On October 3, on the record, I imposed on all parties to this action a very limited gag order, "forbidding all parties from posting, emailing, or speaking publicly about any members of my staff," emphasizing, quite clearly, that "personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances" (emphasis added). I further made clear that "failure to abide by this directive will result in serious sanctions."

Despite this unambiguous order, last week I learned that Donald Trump had failed to abide by it by not removing, for a total of 17 days, from the website of donaldjtrump.com an untrue, disparaging and personally identifying post about my Principal Law Clerk. Counsel for defendant stated in open court that the violation of the gag order was inadvertent. Taking counsel at his word, I imposed a $5,000 nominal sanction against Donald Trump for the first-time violation of the gag order.

On October 25, during a break order from the trial, Donald Trump made the following statement to a gaggle of reporters outside the courtroom: "This judge is a very partisan judge with a person who's very partisan sitting alongside him, perhaps even more partisan than he is." Quite clearly, defendant was referring, once again, to my Principal Law Clerk, who sits alongside me on the bench.

Defendant's attorneys offered the explanation that Donald Trump was referring to Michael Cohen, who had been sitting on the witness stand. I then conducted a brief hearing, during

OTHER ORDER – NON-MOTION

which Donald Trump testified, under oath that he was referring to Michael Cohen. However, as the trier of fact, I find this testimony rings hollow and untrue. The Oxford English Dictionary defines "alongside" as "close to the side of; next to." Witnesses do not sit "alongside" the judge, they sit in the witness box, separated from the judge by a low wooden barrier. Further, Donald Trump's past public statements demonstrate him referring to Michael Cohen directly by his name, or by a derogatory name, but in all circumstances, he is unambiguous in making it known he is referring to Michael Cohen.

Moreover, the language Donald Trump used on October 25 mirrors the language he used in public statements to the press on October 2, wherein he inappropriately and unquestionably spoke about my Principal Law Clerk, stating: "this rogue judge is a trump hater, the only one that hates trump more is his associate up there, this person that works with him, and she's screaming into his ear."

Using imprecise language as an excuse to create plausible ambiguity about whether defendant violated this Court's unequivocal gag order is not a defense; the subject of Donald Trump's public statement to the press was unmistakably clear. As the trier of fact, I find that Donald Trump was referring to my Principal Law Clerk, and that, as such, he has intentionally violated the gag order.

This is the second violation of this Court's gag order in the less than one month since this trial commenced. Accordingly, this Court imposed a fine of $10,000 on defendant Donald Trump, to be paid to the New York Lawyers' Fund for Client Protection, within thirty (30) days of October 25, 2023.

Further, Donald Trump is ordered to post proof of payment, of this fine and the one imposed on October 10, 2023, to NYSCEF within two days of making such payments.

DATE: 10/26/2023 **ARTHUR F. ENGORON, JSC**

Check One: ☐ **Case Disposed** ☒ **Non-Final Disposition**

Check if Appropriate: ☐ **Other (Specify** _____ **)**

Exhibit 13

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37
Justice

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

- v -

DONALD J. TRUMP, DONALD TRUMP JR, ERIC TRUMP, ALLEN WEISSELBERG, JEFFREY MCCONNEY, THE DONALD J. TRUMP REVOCABLE TRUST, THE TRUMP ORGANIZATION, INC., TRUMP ORGANIZATION LLC, DJT HOLDINGS LLC, DJT HOLDINGS MANAGING MEMBER, TRUMP ENDEAVOR 12 LLC, 401 NORTH WABASH VENTURE LLC, TRUMP OLD POST OFFICE LLC, 40 WALL STREET LLC, SEVEN SPRINGS LLC,

Defendants.

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INDEX NO. 452564/2022

On October 3, during a break in this trial, defendant Donald Trump posted to his social media account an untrue, disparaging, and personally identifying post about my Principal Law Clerk. I spoke to defendants, both on and off the record. Off the record, I ordered Donald Trump to remove the post immediately. Approximately 10 minutes later, Donald Trump represented to me that he had taken down the offending post, and that he would not engage in similar behavior going forward. I then, on the record, imposed on all parties to this action a very limited gag order, "forbidding all parties from posting, emailing, or speaking publicly about any members of my staff," emphasizing, quite clearly, that "personal attacks on members of my court staff are unacceptable, inappropriate, and I will not tolerate them under any circumstances." I further made clear that "failure to abide by this directive will result in serious sanctions."

Despite this clear order, last night I learned that the subject offending post was never removed from the website "DonaldJTrump.com," and, in fact, had been on that website for the past 17 days. I understand it was removed late last night, but only in response to an email from this Court.

Today, in open Court, counsel for Donald Trump stated that the violation of the gag order was inadvertent and was an "unfortunate part of the process that is built into the campaign structure." Giving defendant the benefit of the doubt, he still violated the gag order. Conners v Pallozzi, 241 AD2d 719, 719 (3d Dept 1997) ("[c]ontrary to defendants' claim on appeal, a finding of civil contempt does not require a showing that such disobedience was willful").

OTHER ORDER – NON-MOTION

Further, whether intentional or the result of mere "campaign structure" negligence, the effect of the post on its subject is unmitigated by how or why it remained on Donald Trump's website for 17 days. Moreover, a defendant may not evade liability for violating a court order by asserting that the violation was a result of the actions of one or more of the defendant's employees or agents.

In the current overheated climate, incendiary untruths can, and in some cases already have, led to serious physical harm, and worse.

Donald Trump has received ample warning from this Court as to the possible repercussions of violating the gag order. He specifically acknowledged that he understood and would abide by it. Accordingly, issuing yet another warning is no longer appropriate; this Court is way beyond the "warning" stage.

Given defendant's position that the violation was inadvertent, and given that it is a first time violation, this Court will impose a nominal fine, $5,000, payable to the New York Lawyers' Fund for Client Protection, within ten (10) days of the date of this order.

Make no mistake: future violations, whether intentional or unintentional, will subject the violator to far more severe sanctions, which may include, but are not limited to, steeper financial penalties, holding Donald Trump in contempt of court, and possibly imprisoning him pursuant to New York Judiciary Law § 753.

ARTHUR F. ENGORON, JSC

DATE: 10/20/2023

Check One: ☐ Case Disposed ☒ Non-Final Disposition

Check if Appropriate: ☐ Other (Specify _____)

Exhibits to People's Motion to Quash
and for a Protective Order (Nov. 9, 2023)

Exhibit 14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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E. JEAN CARROLL,

Plaintiff,

-against-

20-cv-7311 (LAK)

DONALD J. TRUMP, in his personal capacity,

Defendant.

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ORDER

LEWIS A. KAPLAN, *District Judge.*

On October 11, 2023, the Court directed the parties to file any objections to trying this case before an anonymous jury. Neither objected, and the Court received no other opposition. For the reasons stated in the Court's decision ordering the use of an anonymous jury in the trial of a closely related second case, *Carroll v. Trump*, No. 22-cv-10016 (LAK) ("*Carroll II*"), the Court finds that "[i]f jurors' identities [in the trial of this case] were disclosed, there would be a strong likelihood of unwanted media attention to the jurors, influence attempts, and/or harassment or worse by supporters of Mr. Trump [and/or by Mr. Trump himself]."[1] Indeed, in the very recent past, Mr. Trump has been fined twice for violating a gag order issued by a New York judge in response to comments made by Mr. Trump in relation to the judge's clerk.[2] In view of Mr. Trump's repeated public statements with

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1 *Carroll v. Trump*, No. 22-CV-10016 (LAK), 2023 WL 2612260, at *4 (S.D.N.Y. Mar. 23, 2023).

2 *See, e.g.*, Jack Queen and Jasper Ward, *Trump fined $5,000 for violating gag order in New York civil trial*, REUTERS, Oct. 20, 2023, https://www.reuters.com/legal/trump-fined-5000-post-disparaging-court-clerk-new-york-case-filing-2023-10-20/ (reporting that Mr. Trump was fined $5,000 for violating a New York judge's gag order because a "social media post

respect to the plaintiff and court in this case as well as in other cases against him, and the extensive media coverage that this case already has received and that is likely to increase once the trial is imminent or underway, the Court finds that there is strong reason to believe the jury requires the protections prescribed below. No less restrictive alternative has been suggested. The presumption of access to juror names is overcome by the risks identified herein and in the Court's previous decision.

Accordingly, (1) the names, addresses, and places of employment of prospective jurors on the *voir dire* panel, as well as jurors who ultimately are selected for the petit jury, shall not be revealed, (2) petit jurors shall be kept together during recesses and the United States Marshal Service ("USMS") shall take the petit jurors to, or provide them with, lunch as a group throughout the pendency of the trial, and (3) at the beginning and end of each trial day, the petit jurors shall be transported together or in groups from one or more undisclosed location or locations at which the jurors can assemble or from which they may return to their respective residences.

SO ORDERED.

Dated: November 3, 2023

Lewis A. Kaplan
United States District Judge

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attacking the judge's clerk – which was deleted from the former president's Truth Social platform – had remained visible on his 2024 campaign website two weeks after an order was issued to take it down"); Jennifer Peltzand and Jake Offenhartz, *Trump is fined $10,000 over a comment he made outside court in his New York civil fraud trial*, AP NEWS, Oct. 25, 2023, https://apnews.com/article/trump-michael-cohen-fraud-lawsuit-7 f6e5 3 6e97 d77 efl cd44 1 e4 d5ec4 1 ee4 ("Donald Trump was abruptly called to the witness stand and then fined $10,000 on Wednesday after the judge in his civil fraud trial said the former president had violated a gag order. It was the second time in less than a week that Trump was penalized for his out-of-court comments.").

Examples of Mr. Trump's previous "attack[s] [on] courts, judges, various law enforcement officials and other public officials, and even individual jurors in other matters" are detailed in the Court's decision ordering the use of an anonymous jury in the trial of *Carroll II*. *See generally Carroll*, 2023 WL 2612260.

Exhibits to People's Motion to Quash
and for a Protective Order (Nov. 9, 2023)

Exhibit 15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

PRESIDENT DONALD J. TRUMP, Plaintiff, v. MICHAEL D. COHEN, Defendant.	Case No.: **COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff President Donald J. Trump, by and through his counsel, as and for causes of action against the Defendant, Michael D. Cohen, alleges as follows:

NATURE OF THE ACTION

1. This is an action arising from Defendant's multiple breaches of fiduciary duty, unjust enrichment, conversion, and breaches of contract by virtue of Defendant's past service as Plaintiff's employee and attorney.
2. Defendant breached his fiduciary duties owed to Plaintiff by virtue of their attorney-client relationship by both revealing Plaintiff's confidences, and spreading falsehoods about Plaintiff, likely to be embarrassing or detrimental, and partook in other misconduct in violation of New York Rules of Professional Conduct, including Rules 1.5, 1.6, 1.9, and 8.4.[1]
3. Defendant breached the contractual terms of the confidentiality agreement he signed as a condition of employment with Plaintiff by both revealing Plaintiff's confidences, and spreading falsehoods about Plaintiff with malicious intent and to wholly self-serving ends.

[1] The ABA Model Rules of Professional Conduct largely parallel, for purposes of the ethical standards referenced in this Complaint, the New York Rules of Professional Conduct.

4. Defendant unlawfully converted Plaintiff's business property when he fraudulently misrepresented a business expenditure, and stated that he was owed an extra $74,000 over the true amount of the expenditure. Defendant was reimbursed based on the fraudulent misrepresentation, and accordingly converted $74,000 from Plaintiff.

5. Defendant committed these breaches through myriad public statements, including the publication of two books, a podcast series, and innumerable mainstream media appearances, as detailed herein. Defendant has engaged in such wrongful conduct over a period of time and, despite being demanded in writing to cease and desist such unacceptable actions, has instead in recent months increased the frequency and hostility of the illicit acts toward Plaintiff. Defendant appears to have become emboldened and repeatedly continues to make wrongful and false statements about Plaintiff through various platforms. Such continuous and escalating improper conduct by Defendant has reached a proverbial crescendo and has left Plaintiff with no alternative but to seek legal redress through this action.

6. Plaintiff has suffered vast reputational harm as a direct result of Defendant's breaches.

THE PARTIES

7. Plaintiff President Donald J. Trump is a private citizen of the United States, and a resident of the state of Florida.

8. Defendant Michael D. Cohen is a natural person over the age of eighteen, and a resident of the state of New York in the County of New York.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) as the parties are diverse, and the amount in controversy is greater than seventy-five thousand dollars ($75,000).

10. The Court possesses personal jurisdiction over Defendant pursuant to Florida Statute §48.193(2) on the grounds that Defendant, during the operative period alleged in the Complaint, engaged in substantial and not isolated business activities in Florida, and more specifically in this District, in the context of his representation of, and relationship with, Plaintiff. Upon information and belief, Defendant traveled to Miami, Florida to engage in services for the Plaintiff. In addition, this Court possesses personal jurisdiction over Defendant pursuant to Florida Statute § 48.193(1)(a)(6) on the grounds that Defendant engaged in business activities in Florida in the marketing and selling of the Books (as defined below), the marketing and publication of the Podcast (also defined below), and through additional media appearances and public statements, all of which were accessible and were accessed in this state and which caused injury to Plaintiff within this state while Defendant was engaged in solicitation or service activities within this state and/or products, materials, or things processed, serviced, or manufactured by Defendant were used or consumed within this state in the ordinary course of commerce, trade, or use.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and (b)(3) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District and also because Defendant is subject to this Court's personal jurisdiction with respect to this action.

STATEMENT OF FACTS

A. Generally

12. Defendant received his law license in New York in or about 1992 and, therefore, was governed by the ethical Rules promulgated by the state of New York.

13. Beginning in or about the fall of 2006, Defendant served as an attorney to Plaintiff, both for Plaintiff personally, and as counsel to Trump Organization LLC ("the Trump Organization").

14. Among other innumerable positive statements made by Defendant about Plaintiff and his role as Plaintiff's attorney, Defendant described his job as "very surreal," claiming he had "been admiring Donald Trump since [] high school."[2] Defendant viewed Plaintiff as a "wonderful man" who would be "an amazing president,"[3] and someone Defendant thought "the world" of as "a businessman" and "a boss."[4]

15. Defendant stated that Plaintiff was "smart," and "the greatest negotiator on the planet,"[5] and described his own role as the one "who protects the President and the family," and strongly stated that he "would take a bullet" for Plaintiff.[6]

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[2] Michael Falcone, *Donald Trump's Political 'Pit Bull': Meet Michael Cohen*, ABC News (Apr. 15, 2022), *available at* https://abcnews.go.com/Politics/donald-trumps-political-pit-bull-meet-michael-cohen/story?id=13386747.

[3] *Michael Cohen: I Will Remain the Personal Attorney to Trump; Omarosa: Hollywood Has No Impact on the Will of the People*, HANNITY (Mar. 20, 2017), *available at* https://www.foxnews.com/transcript/michael-cohen-i-will-remain-the-personal-attorney-to-trump-omarosa-hollywood-has-no-impact-on-the-will-of-the-people.

[4] Falcone, *supra* note 2.

[5] *Michael Cohen: Trump 'Best Negotiator in the History of This World,'* HANNITY (Aug. 4, 2015), *available at* https://grabien.com/file.php?id=53826.

[6] Emily Jane Fox, *Michael Cohen Would Take a Bullet for Donald Trump*, VANITY FAIR (Sep. 6, 2017), *available at* https://www.vanityfair.com/news/2017/09/michael-cohen-interview-donald-trump.

16. Defendant claimed he would "never walk away" because Plaintiff "deserve[d]" Defendant's "loyalty" because "[o]ne man who wants to do so much good with so many detractors against him needs support."[7]

17. Defendant stated that Plaintiff was "an honorable guy,"[8] and that he "never [saw] a situation where Mr. Trump has said something that's not accurate."[9]

18. Defendant claimed that "[t]here's no money in the world that could get me to disclose anything about" the Trump Organization.[10]

19. Defendant resigned as counsel to the Trump Organization on January 20, 2017, when Plaintiff was inaugurated the 45th President of the United States, but Defendant continued to represent Plaintiff personally until in or about June 2018.

20. Starting in 2017, Defendant maintained his representation of Plaintiff as a solo attorney under Michael D. Cohen & Associates P.C., an entity wholly owned by Defendant.[11]

21. Soon thereafter, Defendant set up his own law firm and consulting business (Michael D. Cohen & Associates P.C., and Essential Consultants LLC, respectively), partnering with a major law firm that paid him $500,000 annually, in an attempt to enrich himself to the tune of millions of dollars in lucrative corporate contracts.[12]

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[7] *Id.*

[8] Transcript, *New Day*, CNN (Nov. 24, 2015), *available at* http://www.cnn.com/TRANSCRIPTS/1511/24/nday.04.html.

[9] Transcript, *The Lead With Jake Tapper*, CNN (Nov. 30, 2015), *available at* http://www.cnn.com/TRANSCRIPTS/1511/30/cg.02.html.

[10] Fox, *supra* note 6.

[11] Government's Opposition to Michael Cohen's Motion for a Temporary Restraining Order (ECF Doc. No. 1) at 11, *Cohen v. United States*, No. 1:18-mj-03161-KMW (S.D.N.Y. April 13, 2018) ("Gov't Opposition").

[12] *See, e.g.,* Dan Mangan, N*ovartis Paid Trump Lawyer Michael Cohen $1.2 Million for Advice on Obamacare – Work He Was Unable to Do*, CNBC (May 9, 2018), https://www.cnbc.com/2018/05/09/novartis-paid-trumps-lawyer-michael-cohen-more-than-1-million-for-work-he-was-unable-to-do-company-says.html; Rosaline S. Helderman et al., *Cohen's*

B. **Defendant's Personal and Professional Downfall**

22. On April 9, 2018, the FBI executed warrants to search Defendant's home, office, safety deposit box, electronic devices, and hotel room as authorized upon a finding of probable cause.[13]

23. The warrants reportedly included references to Defendant's father-in-law's loans to a taxi fleet operator in Chicago, worth tens of millions of dollars.[14] Defendant's father-in-law was previously charged with conspiring to defraud the IRS,[15] and pleaded guilty to money-laundering charges in connection with accounting practices related to his New York taxi business.[16]

24. In connection with the federal investigation, Defendant spoke with attorney Robert Costello, who counseled him over the course of "hours, meeting and speaking by phone."[17]

$600,000 Deal With AT&T Specified He Would Advise on Time Warner Merger, Internal Company Records Show, WASH. POST (May 10, 2018), https://www.washingtonpost.com/politics/cohens-600000-deal-with-atandt-specified-he-would-advise-on-time-warner-merger-internal-company-records-show/2018/05/10/cd541ae0-5468-11e8-a551-5b648abe29ef_story.html.

[13] Government's Opposition to Michael Cohen's Motion for a Temporary Restraining Order (ECF Doc. No. 1) at 1, *Cohen v. United States*, Case No. 1:18-mj-03161-KMW (S.D.N.Y. April 13, 2018) ("Gov't Opposition").

[14] *See, e.g.*, Dan Managan, *Father-in-Law of Trump Lawyer Michael Cohen Reportedly Loaned at Least $20 Million to Chicago Cab Mogul Mentioned in FBI Search Warrants for Cohen*, CNBC (Apr. 19, 2018), *available at* https://www.cnbc.com/2018/04/19/father-in-law-of-trump-lawyer-michael-cohen-loaned-millions-to-cab-mogul.html.

[15] *Id.*

[16] Jake Pearson & Stephen Braun, *Trump Personal Attorney Michael Cohen Loaned Millions to Ukraine-Born Cab Mogul*, Assoc. Press (Apr. 27, 2018), available at https://www.jacksonville.com/story/news/2018/04/27/trump-personal-attorney-michael-cohen-loaned-millions-to-ukraine-born-cab-mogul/12385950007/.

[17] Ben Protess, Sean Piccoli & Kate Christobek, *Trump Grand Jury Hears From Lawyer Who Assails Cohen's Credibility*, N.Y. Times (Mar. 20, 2023), available at https://www.nytimes.com/2023/03/20/nyregion/costello-cohen-trump-grand-jury.html. Defendant later waived his attorney-client privilege with Mr. Costello and refused to pay a bill for Mr. Costello's legal services. *Id.*

25. In particular, at Defendant's request, Mr. Costello met with Defendant in April 2018, shortly after the search warrant on Defendant's home was executed.[18]

26. According to Mr. Costello, at that meeting, Defendant was highly distressed, "was in a manic state," was "pacing like a wild tiger in a cage,"[19] appeared "frazzled"[20] "like he hadn't slept in three, four, five days," and even relayed to counsel "that he had contemplated suicide."[21]

27. Defendant told Mr. Costello that Defendant did not know of any criminal wrongdoing by Plaintiff in any matter,[22] even when pressed by Mr. Costello: "I said, 'Michael, these people in the Southern District are not interested in you—You're a bump in the road. Their interest clearly is Donald Trump. So the way out of this is to cooperate if you have something to cooperate, because if it's Donald Trump you're cooperating against, you can get in on a prosecution agreement, which means you're out of this picture at all.' I said, 'It's a lot better than suicide.' And he thought and said, 'I don't have anything against Donald Trump.' And I must have asked him that same question. We were there for two hours, probably seven different ways, just to make sure that he kept on reiterating. And after the first time, where he simply said, 'I don't have anything on Donald Trump,' after that every time his response

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[18] Brooke Singman, *Trump-Manhattan DA Case: Bob Costello Testifies to Grand Jury, Says Michael Cohen Is A 'Serial Liar,'* Fox News (Mar. 20, 2023), *available at* https://www.foxnews.com/politics/trump-manhattan-da-case-bob-costello-testifies-grand-jury-says-michael-cohen-serial-liar.

[19] *Id.*

[20] Caitlin Yilek, *Attorney Seeks to Discredit Michael Cohen in Trump Grand Jury Investigation*, CBS (Mar. 20, 2023), *available at* https://www.cbsnews.com/news/trump-grand-jury-new-york-robert-costello-michael-cohen/.

[21] Singman, *supra* note 18.

[22] Jack Forrest & Zachary Cohen, *Trump's Team Puts Forward Ally in Hopes of Undercutting Cohen Testimony in NY Hush Money Case*, CNN (Mar. 20, 2023), *available at* https://www.cnn.com/2023/03/20/politics/michael-cohen-robert-costello-manhattan-grand-jury/index.html.

was, 'I swear to God, Bob, I don't have anything on Donald Trump.'" Costello also attests to the fact of how Cohen "would suddenly stop in the middle of whatever he was talking about, and turn and point his finger at us and say, 'I want you guys to understand—I will do whatever the F I have to do. I will never spend a day in jail.' He said that at least 10 to 20 times during that two-hour period. It was, it was a bizarre mantra, but it made it clear to us that Michael Cohen was saying, 'I will lie, cheat, steal, shoot someone, I will never spend a day in jail.'"[23]

28. In particular, Defendant told Mr. Costello during the course of the meeting that he had "decided [on] his own . . . to see if he could take care of" certain "negative information" that Stephanie Clifford "wanted to put in a lawsuit against" Plaintiff.[24] According to Mr. Costello, Defendant was clear that the resulting payment was his "idea."[25]

29. Defendant told Mr. Costello that Defendant and Clifford's lawyer "negotiated a nondisclosure agreement for $130,000," and expressly stated that the $130,000 payment did not come from Plaintiff.[26]

30. Instead, Defendant told Mr. Costello that Defendant had taken a loan out for the $130,000 because he "wanted to keep [the payment a] secret," both from his wife and from Plaintiff's wife.[27]

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[23] Sean Hannity, *Defending Trump — March 31st, Hour 2*, OMNY-FM, (Mar. 31, 2023), *available at* https://omny.fm/shows/the-sean-hannity-show/defending-trump-march-31st-hour-2.
[24] *Id.*; Kelly Garrity & Erica Orden, *Former Legal Adviser to Michael Cohen Tries to Discredit Him in Grand Jury Testimony*, Politico (Mar. 21, 2023), *available at* https://www.politico.com/news/2023/03/20/former-attorney-to-michael-cohen-tries-to-discredit-him-in-grand-jury-testimony-00087982.
[25] Protess et al., *supra* note 17.
[26] Singman, *supra* note 18.
[27] *Id.*

31. Mr. Costello's account is consistent with a letter dated two months before the FBI raid, on February 8, 2018, from another attorney representing Defendant in response to a complaint filed with the Federal Election Commission (FEC). That letter plainly states that Defendant "used his own personal funds to facilitate a payment of $130,000 to Ms. Stephanie Clifford. Neither The Trump Organization nor the Trump campaign was a party to the transaction with Ms. Clifford, and neither reimbursed Mr. Cohen or the payment directly or indirectly."[28]

32. Mr. Costello has further completely discredited Defendant's subsequent accounts implicating Plaintiff's involvement in any violation of law surrounding the payment, and on the basis of his interactions with Defendant, calls Defendant a "serial liar,"[29] and a "totally unreliable"[30] individual who "has great difficulty telling the truth."[31]

33. Subsequent to the investigation by law enforcement, Defendant asked for, and Plaintiff repeatedly rejected, Defendant's requests for a presidential pardon.[32]

34. The criminal investigation culminated on August 21, 2018, when Defendant pleaded guilty in the United States District Court for the Southern District of New York to an eight-count

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[28] Letter from McDermott, Will & Emery attorney Stephen M. Ryan to Fed. Election Comm'n Office of Complaints Exam., Re: MUR 7313 (Feb. 8, 2018).

[29] *See* Brooke Singman, *Trump-Manhattan DA Case: Bob Costello Testifies to Grand Jury, Says Michael Cohen Is A 'Serial Liar,'* Fox News (Mar. 20, 2023), *available at* https://www.foxnews.com/politics/trump-manhattan-da-case-bob-costello-testifies-grand-jury-says-michael-cohen-serial-liar.

[30] Yilek, *supra* note 20.

[31] Singman, *supra* note 18.

[32] *See* Protess et al., *supra* note 17; Rebecca Ballhaus, *Cohen Told Lawyer to Seek Trump Pardon*, WALL ST. J. (Mar. 6, 2019), *available at* wsj.com/articles/attorney-says-cohen-directed-his-lawyer-to-seek-trump-pardon-contradicting-testimony-11551931412; *see also* David Greene & Ryan Lucas, *Cohen, Trump and the Pardon That Wasn't*, Nat'l Public Radio (Mar. 7, 2019), *available at* https://www.npr.org/2019/03/07/701081872/cohen-trump-and-the-pardon-that-wasnt.

criminal information brought by the United States Attorney's Office for the Southern District of New York charging violations of tax evasion, making false statements to a financial institution, causing an unlawful corporate contribution, and making an excessive campaign contribution.

35. News reports also indicated that "prosecutors had evidence that also implicated [Defendant's] wife in potential criminal activity," though "[his] wife was never charged."[33]

36. On November 29, 2018, Defendant pleaded guilty to one count of making a false statement to Congress, a charge brought by Special Counsel Robert Mueller III.

37. "[E]ach" of the counts to which Defendant pleaded guilty "involved deception," and in the words of the sentencing judge, Defendant was guilty of a "veritable smorgasbord of fraudulent conduct."[34]

38. In connection with Defendant's consolidated sentencing proceedings, federal prosecutors submitted two scathing sentencing memoranda, each dated December 7, 2018; one from the Special Counsel's Office ("SCO") run by Robert S. Mueller III and another from the U.S. Attorney's Office for the Southern District of New York ("SDNY").

39. The SCO's memorandum focused on Defendant's "deliberate and premeditated" false statements to Congress.[35]

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[33] Rebecca Ballhaus & Michael Rothfeld, *Trump Again Blasts Michael Cohen, the Former Lawyer Who Broke With Him*, WALL ST. J. (Dec. 3, 2018), *available at* https://www.wsj.com/articles/trump-again-blasts-former-lawyer-who-broke-with-him-1543858254.

[34] *Id.*

[35] Gov't Sentencing Mem., *United States v. Cohen*, No. 18-850 (S.D.N.Y. Dec. 7, 2018), ECF No. 15, at 2 (submitted by the SCO).

40. The SDNY's memorandum, meanwhile, acknowledged that any assistance Defendant may have provided arose at least in part out of a "desire for leniency," and does not "reflect a selfless and unprompted about-face."[36]

41. The SDNY noted that Defendant's crimes were "motivated . . . by personal greed," and were effectuated by "repeatedly us[ing] his power and influence for deceptive ends." Indeed, Defendant exhibited "a pattern of deception that permeated his professional life[.]"

42. Each of Defendant's crimes "involve[d] deception, and each were [sic] motivated by personal greed and ambition."

43. Defendant's "desire for even greater wealth and influence precipitated an extensive course of criminal conduct."

44. But even when faced with overwhelming evidence of willful tax evasion, Defendant refused to take ownership of his wrongdoing, blaming his accountant for his failure to report millions of dollars over a period of years from income completely unrelated to his work with Plaintiff or the Trump Organization, including profitable loans and investments from the lease of taxi medallions.[37]

45. The SDNY also released a public statement which stated, in part, that "Michael Cohen is a lawyer who, rather than setting an example of respect for the law, instead chose to break the law, repeatedly over many years, and in a variety of ways. His day of reckoning serves as a reminder that we are a nation of laws, with one set of rules that applies equally to everyone."[38]

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[36] Gov't Sentencing Mem., *United States v. Cohen*, No. 18-850 (S.D.N.Y Dec. 7, 2018), ECF No. 27, at 15 (submitted by the SDNY) [hereinafter SDNY Sentencing Mem.].
[37] *Id.* at 5-6.
[38] Press Release, Dep't of Justice, *Michael Cohen Pleads Guilty in Manhattan Federal Court to Eight Counts, Including Criminal Tax Evasion and Campaign Finance Violations* (Aug. 21, 2018),

46. To this day, Defendant refuses to take responsibility for his actions; he called the SDNY's public statement "100 percent inaccurate and . . . [the] SDNY prosecutors knew it," insisting that "I did not engage in tax fraud" but "had to plead guilty to it in order to protect my wife and family."[39]

47. Defendant repeatedly suggested that his plea agreement was coerced: "[L]ike a man in a hostage video, [Defendant] agreed to the SDNY deal. . . . They put a metaphorical gun to [Defendant's] wife's head and forced [Defendant] to execute a plea deal," to which he allocuted at his plea proceeding like "a well-rehearsed actor" reading a "letter of lies" "to insure full compliance to [the SDNY's] demands."[40]

48. The SDNY concluded that Defendant's conduct constituted an "abuse of both his standing as an attorney and," referring to Plaintiff, "his relationship to a powerful individual," which is "repugnant from anyone, let alone an attorney of the bar."[41]

49. On December 12, 2018, Defendant was sentenced to three years in prison based upon the convictions secured by the SDNY, a two-month concurrent sentence for the conviction secured by the SCO, concurrent three-year terms of supervised release in both cases, and was ordered to pay two fines of $50,000 each, to forfeit $500,000, and to pay $1,393,858 in restitution to the Internal Revenue Service.

50. On February 26, 2019, pursuant to disciplinary proceedings instituted by the Attorney Grievance Committee for the First Judicial Department, Defendant was disbarred by a panel of judges sitting on the New York Supreme Court. Indeed, in addressing the

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available at https://www.justice.gov/usao-sdny/pr/michael-cohen-pleads-guilty-manhattan-federal-court-eight-counts-including-criminal-tax.

[39] MICHAEL COHEN, REVENGE 54 (Melville House Publ'g 2022), *see infra*, note 59.

[40] *Id.* at 91, 97.

[41] SDNY Sentencing Mem., *supra* note 36, at 32.

seriousness of the unlawful conduct engaged in by Defendant, the panel's written decision noted that Defendant's conviction for making false statements to Congress was analogous to a first degree felony conviction under New York law and, therefore, automatic disbarment was appropriate.

51. In or around May 2019, Defendant began serving his sentence at Federal Correction Institution, Otisville ("FCI Otisville") in Orange County, New York.

52. Time and again, Defendant refused to accept responsibility for his actions. In 2020, Defendant moved his sentencing judge for a reduced sentence. The court denied his request, admonishing that, "[t]en months into his prison term, it's time that Cohen accept the consequences of his criminal convictions for serious crimes that had far reaching institutional harms."[42]

C. Defendant's Continuing Fiduciary Obligations to Plaintiff

53. Defendant, at all relevant times prior to his disbarment in February 2019, was an attorney licensed to practice law in the state of New York.

54. As a member of the state Bar of New York before his disbarment, Defendant was subject to stringent ethical obligations and professional standards applicable to all lawyers in New York.

55. The obligations and standards imposed against attorneys by the state of New York create a fiduciary relationship between the lawyer and his client; among these fiduciary duties, Defendant undertook fiduciary duties on behalf of his client.

56. For example, New York Rule of Professional Conduct ("NYRPC") 1.6 prohibits an attorney from "reveal[ing] confidential information . . . or us[ing] such information to the

[42] Mem. & Order, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Mar. 24, 2020).

disadvantage of the client or for the advantage of the lawyer" unless circumstances exist which are not relevant here; confidential information consists of all "information gained during or relating to the representation of a client, whatever its source, that is (a) protected by the attorney-client privilege, (b) likely to be embarrassing or detrimental to the client if disclosed, or (c) information that the client has requested to be kept confidential."

57. NYRPC Rule 1.5 prohibits an attorney from "charg[ing] or collect[ing] an excessive or illegal fee or expense." Such illegal expenses include fraudulent billings that are "knowingly and intentionally based on false or inaccurate information," including where, for example, "the client has agreed to pay the lawyer's cost of in-house services," and the attorney were to charge the client "more than the actual costs incurred."[43]

58. NYRPC Rule 1.6 prohibits an attorney, as relevant here, from "knowingly reveal[ing] confidential information . . . or us[ing] such information to the disadvantage of a client or for the advantage of the lawyer or a third person" unless the client gives informed consent.

59. NYRPC Rule 1.9 extends an attorney's fiduciary obligations to former clients: as relevant here, "[a] lawyer who has formerly represented a client in a matter" shall not thereafter "(1) use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client[,]" or "(2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules[.]"

60. Defendant's fiduciary duties owed to Plaintiff survive the attorney-client relationship and Defendant's disbarment and are still in effect today.

[43] Rule 1.5 (New York State Bar Association Comment [1A]).

D. Defendant's Duties Under the Confidentiality Agreement

61. As a material condition of his employment with the Trump Organization, Defendant signed a confidentiality agreement entitled "Employee Agreement of Confidentiality" ("the Confidentiality Agreement").

62. The Confidentiality Agreement requires that during Defendant's "term of . . . employment and at all times thereafter," with exceptions not relevant here, Defendant "agree[d] not to directly or indirectly disseminate, or publish, or cause to be disseminated or published any Confidential Information in any form, including but not limited to any diary, memoir, book, letter, story, speech, photography, interview, article, essay, account, description or depiction of any kind whatsoever, whether fictionalized or not."

63. The Confidentiality Agreement defines "Confidential Information" to include "(i) the personal life or business affairs . . . of Trump; (ii) the personal lives and/or business affairs of members of Trump's family; and/or (iii) the business affairs of [the Trump Organization], or an of its affiliates, officers, directors, or employees."

64. Beginning on or about 2018, after Defendant's representation of Plaintiff had ended, Defendant committed the first of an onslaught of fiduciary and contractual breaches against Plaintiff by making numerous inflammatory and false statements about Plaintiff.

E. Defendant Seeks Profit and Notoriety By Disparaging Plaintiff Through Books, Podcast, and Other Public Statements

65. Defendant's most egregious breaches of fiduciary duty and contract arise in connection with the publication of his books and podcast, discussed in further detail herein.

i. *The Books*

66. In mid-to-late 2019, while incarcerated at FCI Otisville, Defendant began working on a manuscript, which would eventually be formulated into his first book, *Disloyal: A Memoir:*

The True Story of the Formal Personal Attorney to President Donald J. Trump ("*Disloyal*").[44]

67. *Disloyal* purports to reveal confidential information about Plaintiff, as defined by the Confidentiality Agreement, and as contemplated by the New York Rules of Professional Conduct.

68. *Disloyal* also provides fictionalized accounts of Defendant's interactions with Plaintiff that are prohibited by the Confidentiality Agreement, and which are intended to be embarrassing or detrimental to Plaintiff, and redound to Plaintiff's disadvantage, in violation of the New York Rules of Professional Conduct.

69. In connection with the publication and promotion of *Disloyal*, Defendant committed a vast number of breaches of fiduciary duty and violations of the Confidentiality Agreement.

70. Defendant was aware that the publication of *Disloyal* would violate the Confidentiality Agreement and his fiduciary duties to Plaintiff, his former client.

71. Defendant never sought or received consent or authorization from Plaintiff regarding the disclosure of confidential information prior to the dissemination and publication of *Disloyal*.

72. In fact, on or about April 20, 2020, Plaintiff submitted a cease-and-desist letter to Defendant's counsel, advising that the release of *Disloyal* would violate Plaintiff's confidentiality rights as required as Plaintiff's former attorney and by the Confidentiality Agreement. Defendant acknowledged receipt of the letter.

73. Defendant's *Disloyal* was published by Skyhorse Publishing, and distributed by Simon and Schuster, beginning on September 8, 2020.

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[44] MICHAEL COHEN, DISLOYAL: A MEMOIR (Skyhorse Publ'g 2020).

74. The timing of *Disloyal*'s release, just prior to the November 3, 2020 Presidential Election, suggests that Defendant intended to improperly disclose Plaintiff's confidences when it would be most lucrative to do so—and while *Disloyal* would be sure to have the most damaging reputational effect on Plaintiff.

75. Plaintiff refutes the truth of any and all disclosures made by Defendant which are contained in *Disloyal*.

76. Despite being advertised as a factual memoir, *Disloyal* is replete with mischaracterizations, falsehoods, and flat-out misrepresentations about Plaintiff.

77. This was by design; indeed, the purpose of Defendant's book was to share a purported non-public insider's account of Plaintiff that would breach both his fiduciary duties and those he assumed under the Confidentiality Agreement: access to "the real real Donald Trump—the man very, very, very few people know."[45]

78. *Disloyal* is fashioned as a "tell-all" recounting of Defendant's decades-long relationship, interactions, and dealings with Plaintiff, wherein Defendant purports to present readers with an "intimate portrait" of Plaintiff.

79. Throughout *Disloyal*, Defendant uses quotation marks to fabricate verbatim conversations, and falsely put words directly in Plaintiff's mouth.

80. These alleged conversations, portrayed by Defendant to have taken place verbatim, date back to 2006, a full 14 years before Defendant began writing *Disloyal* in March 2020.[46]

[45] *Id.* at 7.
[46] *Id.* at 22, 26.

81. *Disloyal*'s forward nods both to the unprecedented breaches of fiduciary duties found therein, and further suggests Defendant's bad faith in publishing the confidential information: "this is a book the President of the United States does not want you to read."[47]

82. By way of example, the following paragraphs contain a non-exhaustive overview of Defendant's countless disclosures of information in violation of his Confidentiality Agreement and his fiduciary duties to Plaintiff.

83. Defendant describes an exchange in which Plaintiff is verbatim described as asking for Defendant's "help" on an "issue" regarding a "rogue board" at Trump World Tower, which Defendant represented solicitation of his "assess[ment] [of] a serious situation" to which he "determine[d] strategy on a critical business matter."[48]

84. Defendant claims that he "research[ed] the issues" on the "rogue board" issue, describes his legal "conclu[sion] that the board had indeed wrongly accused" Plaintiff, "and recorded that conclusion in a three-page memorandum outlining the allegation, the controversial issues and the way to proceed, as I saw it."[49]

85. Defendant describes working on various real-estate and other business matters for Plaintiff in a legal capacity as Plaintiff's "personal attorney," including the Running Horse golf project, Meadowlands development, and Trump Network.[50]

86. Defendant claims to describe verbatim a 2011 conversation he had with Plaintiff regarding the legal and real-estate strategies for acquiring what would become Trump Winery.[51]

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[47] *Id.* at 15.
[48] *Id.* at 30-31.
[49] *Id.* at 32.
[50] *Id.* at 99-101.
[51] *Id.* at 148-49.

87. Defendant describes the legal work he did in connection with Trump University, and the Plaintiff's alleged approving reaction.[52]

88. Defendant represents that he stole from Plaintiff by "l[ying]" to inflate expenditures Plaintiff owed to him in an effort to "sneakily up[] my bonus."[53]

89. Defendant represents that "[o]f course" he "cash[ed] in on [his] relationship with" Plaintiff.[54]

90. Defendant likewise intended to disclose confidential information, claiming time and again that he "was dealing with the personal and extremely confidential matters that could make or break" Plaintiff.[55]

91. At bottom, Defendant's account is indeed incredible; he concedes that he must distinguish between "the time [he] lied" and "the time he told the truth" in prior testimony.[56]

92. Defendant repeatedly wrongfully calls Plaintiff racist.[57]

93. Defendant incorrectly declares that Plaintiff "didn't care about American national security."[58]

94. Defendant repeatedly misrepresents that Plaintiff engaged in illegal or unethical conduct as to matters in which Defendant purportedly represented Plaintiff.

95. Defendant's untruthful claims against Plaintiff are simply of a piece with Defendant's other indicia of unreliability, including Defendant's renunciation of all responsibility for the

[52] *Id.* at 167-68.
[53] *Id.* at 316.
[54] *Id.* at 341.
[55] *Id.* at 287-88.
[56] *Id.* at 168.
[57] *Id.* at 106, 272.
[58] *Id.* at 248.

multiple convictions to which he pleaded guilty by claiming that his plea was coerced by federal prosecutors.

96. Defendant went on to publish a second book, *Revenge: How Donald Trump Weaponized the US Department of Justice Against His Critics*, published in 2022 by Melville House Publishing ("*Revenge*"; collectively, "the Books").[59]

97. In *Revenge*, Defendant repeatedly disclaims responsibility for any wrongdoing that resulted in his pleading guilty to multiple felonies; and details how, in his view, he was railroaded by federal prosecutors at Plaintiff's direction.[60]

98. *Revenge* also purports to reveal confidential information about Plaintiff, as defined by the Confidentiality Agreement, and as contemplated by the New York Rules of Professional Conduct.

99. Plaintiff refutes the truth of any and all disclosures made by Defendant which are contained in *Revenge*.

100. For example, Defendant baldly asserts that Plaintiff "lies" with "frequency and ferocity . . . about damn near everything."[61]

101. Defendant recycles his false attacks on Plaintiff as a racist and bigot,[62] and attacks Plaintiff as corrupt,[63] among other insults.

102. Defendant received significant monetary compensation from his publishers or other third parties in connection with the writing and/or publication of the Books.

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[59] MICHAEL COHEN, REVENGE (Melville House Publ'g 2022).
[60] *See, e.g.*, *id.* at 54 ("While I did not engage in tax fraud, I had to plead guilty to it in order to protect my wife and family."); *id.* at 91 (stating that SDNY "forced me to execute a plea deal"); *id.* at 97 (describing his prepared remarks for the plea allocution as "a letter of lies").
[61] *Id.* at 247.
[62] *See, e.g.*, *id.* at 8, 126.
[63] *Id.* at 60.

103. Defendant's actions were driven by greed and his desire to capitalize on the fame and success of Plaintiff, his former client who became President of the United States, to Plaintiff's embarrassment and detriment, and at Plaintiff's expense.

ii. *The Podcast and Other Public Statements*

104. Beyond publication of the Books, Defendant has also made numerous false public statements about Plaintiff through various forms of traditional media (including television, radio, in print, etc.) as well as via the internet, many of which violate Defendant's fiduciary duties with respect to Plaintiff, and Defendant's contractual obligations regarding Plaintiff.

105. Many such statements were published in Defendant's podcast, entitled *Mea Culpa*, which he launched in September 2020 (the "Podcast").

106. Defendant represents that he "decided . . . to create [the] podcast [] to keep [his] brain active, to be productive, and, maybe most importantly, to get the word out about the nonsense going on. I called it 'Mea Culpa' in an acknowledgement of my wrongdoing"—though the Defendant refuses to accept wrongdoing in connection with the eight federal convictions for which he pleaded guilty.[64]

107. The Podcast is produced by MeidasTouch, an independent political action committee, or "Super PAC," "fueled by anti-Trump donors" which, according to *Rolling Stone*, is focused on "grandiose self-promotion [that] doesn't match reality."[65]

108. Promotional materials advertising Defendant's Podcast clearly state his malicious intent and retributive motive to harm Plaintiff at any cost: Defendant states that he is on "a

[64] *Id.* at 153.
[65] Seth Hettena, *The Trouble with MeidasTouch*, ROLLING STONE (Apr. 8, 2021), *available at* https://www.rollingstone.com/politics/politics-features/meidastouch-2020-campaign-finance-trump-1152482/.

mission to right the wrongs [Defendant] perpetrated," allegedly on behalf of Plaintiff, and "dismantle the Trump legacy" now that Defendant finds himself "imprisoned in his home, [with] his life, reputation and livelihood destroyed."[66]

109. In the more than 250 episodes of the Podcast produced to date, Defendant repeatedly and consistently reveals, or purports to reveal, confidential information gleaned by nature of his prior attorney-client relationship with Plaintiff, as well as information pertaining to Plaintiff's personal and private life.

110. As with the Books, a significant amount of the information revealed on the Podcast is inflammatory, misleading, or outright false.

111. For example, in February 2021, September 2021, January 2022, and April 2022, Defendant hosted Stephanie Clifford on his Podcast, delving into the details of her allegations against Plaintiff and revealing purported client confidences about Defendant's role in that matter, but failing to make plain that Plaintiff relied on Defendant's legal advice, and Plaintiff acted out of a desire to protect his family from the malicious and false claims made by Clifford.[67]

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[66] Home Page, *Mea Culpa*, https://podcasts.apple.com/us/podcast/mea-culpa/id1530639447.

[67] "Stormy Daniels Is Not Afraid," *Mea Culpa* (Feb. 8, 2021), https://podcasts.apple.com/us/podcast/stormy-daniels-is-not-afraid-february-8-2021/id1530639447?i=1000508279909; "Breaking!!! Stormy Daniels Returns to Mea Culpa," *Mea Culpa* (Feb. 17, 2023), https://podcasts.apple.com/us/podcast/breaking-stormy-daniels-returns-to-mea-culpa/id1530639447?i=1000535959714; "World Exclusive Interview!!! Stormy Daniels to Michael Avenatti: F@ck-Off!," *Mea Culpa* (Jan. 26, 2022), https://podcasts.apple.com/us/podcast/world-exclusive-interview-stormy-daniels-to-michael/id1530639447?i=1000581743372; "Blockbuster Stormy Daniels Interview," *Mea Culpa* (Apr. 9, 2022), https://www.youtube.com/watch?v=6rlIEGUenwI.

112. Further, in November 2021, Defendant aired a "Best of *Mea Culpa*: Stormy Daniels" episode.[68]

113. Although he was former counsel to Plaintiff in regards to this matter, Defendant stated, "I should not have gotten involved into it, and then would that have stopped him from maybe being President," adding his own hopes that her pending defamation case (which she lost against the President) would move forward, because "I think it's important."[69]

114. On March 16, 2023, in the days after Defendant's appearances before the Manhattan District Attorney's grand jury regarding its investigation into the payment to Clifford, Defendant released a new episode claiming, "Exclusive!! Stormy Daniels Tells All…" only to re-air his first Interview with her from February 2021, discussing her allegations against Plaintiff,[70] but beginning with his own purported interactions with the grand jury.

115. Defendant has also recently hosted episodes of the Podcast that discuss Defendant's putative legal exposure and falsely implicate confidential information, including with

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[68] "Best of Mea Culpa: Stormy Daniels," *Mea Culpa* (Nov. 29, 2021), https://podcasts.apple.com/us/podcast/best-of-mea-culpa-stormy-daniels/id1530639447?i=1000581743326.

[69] "Stormy Daniels Is Not Afraid," *supra* note 66.

[70] "Exclusive!! Story Daniels Tells All.. [sic] Hush Money & Trump's Mushroom Shaped Pecker," *Mea Culpa* (Mar. 16, 2023), https://audioboom.com/posts/8264819-exclusive-stormy-daniels-tells-all-hush-money-trump-s-mushroom-shaped-pecker?playlist_direction=forward.

guests who have historically been hostile towards Plaintiff, Norm Eisen,[71] Elie Honig,[72] and Glenn Kirschner.[73]

116. Defendant has made countless other media appearances wherein he discusses his prior attorney-client relationship with Plaintiff, and purports to disclose privileged details of their prior interactions and dealings.

117. During one such appearance, for example, Defendant discussed that he testified in front of the Manhattan District Attorney's grand jury, and suggested that Plaintiff was, by virtue of Defendant's knowledge of confidential information, criminally exposed.[74]

118. Plaintiff has not authorized any of the public disclosures made by Defendant.

119. Plaintiff refutes the truth of any and all disclosures made by Defendant which are contained in the Podcast and other media appearances.

120. Defendant's improper, self-serving, and malicious statements about his former client, his family members, and his business constitute repeated and substantial violations of his continuing fiduciary obligations as an attorney.

121. Defendant chose to capitalize on his confidential relationship with Plaintiff to pursue financial gain and repair a reputation shattered by his repeated misrepresentations

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[71] "Breaking!!! Trump Indictment Imminent + A Conversation With Norm Eisen," *Mea Culpa* (Mar. 13, 2023), *available at* https://audioboom.com/posts/8262581-breaking-trump-indictment-imminent-a-conversation-with-norm-eisen.

[72] "HOLY SH!T: J6th Committee Subpoenas Trump + A Conversation With Elie Honig," *Mea Culpa* (Oct. 14, 2022), *available at* https://audioboom.com/posts/8174416-holy-sh-t-j6th-committee-subpoenas-trump-a-conversation-with-elie-honig?playlist_direction=forward.

[73] "Breaking!!! Criminal Charges For Trump Likely + A Conversation With Glenn Kirschner," *Mea Culpa* (Mar. 10, 2023), *avaiable at* https://audioboom.com/posts/8261414-breaking-criminal-charges-for-trump-likely-a-conversation-with-glenn-kirschner.

[74] *See, e.g.*, *Michael Cohen: Stormy Daniels Will Do 'A Fantastic Job' As Possible Witness In Hush Money Probe*, MSNBC (Mar. 16, 2023), *available at* https://www.youtube.com/watch?v=NHJYuzcnE6Q.

and deceptive acts, fueled by his animus toward the Plaintiff and his family members. His actions constitute grave violations of his contractual and fiduciary duties to the Plaintiff, and Defendant must be held accountable.

122. Any further statements or disclosures made by Defendant after the date of this Complaint will likewise constitute a breach of the Confidentiality Agreement and a violation of Defendant's fiduciary duty owed to Plaintiff. As such, Plaintiff expressly incorporates any such statements or disclosure as if pleaded at length herein, and reserves his right to amend the Complaint to supplement Plaintiff's claim for damages to encompass any such additional violations.

123. All conditions precedent to the bringing of this action have occurred, been satisfied, or have otherwise been waived.

124. As a result of the Defendant's wrongful conduct, described herein, and Plaintiff's need to protect and enforce his legal rights, Plaintiff has retained the undersigned attorneys, and is required to pay attorneys' fees in order to prosecute this action.

FIRST CAUSE OF ACTION

(Breaches of fiduciary duties)

125. Plaintiff repeats and realleges the allegations contained within paragraphs 1 through 124 as if set forth at length herein.

126. At all relevant times, Defendant was in a fiduciary relationship with Plaintiff by virtue of his past representation as Plaintiff's former attorney, and owed Plaintiff all fiduciary duties inherent with the attorney-client relationship.

127. In representing Plaintiff, Defendant was obligated to faithfully comply with his fiduciary duties and the duties imposed upon him by common law and statute, including the New York Rules of Professional Conduct, and in particular Rules 1.5, 1.6, 1.9, and 8.4.

128. Disclosing client confidential communications and disclosing information relating to the representation of a client to the client's disadvantage in violation of Rules 1.6, 1.9, and 8.4 of the New York Rules of Professional Conduct, constitute misconduct.

129. Defendant engaged in misconduct when he breached the fiduciary duty of confidentiality he owed to Plaintiff by disclosing, through publication and release of the Books, production and dissemination of the Podcast, and numerous other media appearances, both confidential information, including attorney-client privileged communications; and falsehoods and misstatements that have damaged Plaintiff's reputation.

130. Defendant engaged in misconduct when he breached the duty of confidentiality owed to Plaintiff specifically by disclosing confidential information, misstatements, and misrepresentations likely to be embarrassing or detrimental to Plaintiff without Plaintiff's consent.

131. Defendant did not obtain Plaintiff's consent or authorization before publishing any confidential information.

132. Defendant knowingly, willfully, and intentionally violated his fiduciary duty of confidentiality to Plaintiff.

133. Defendant derived a significant benefit, to Plaintiff's detriment and at Plaintiff's expense, as a direct result of his breach of fiduciary duty, including, without limitation, realization of substantial monetary gain in the form of compensation, advances, royalties, proceeds and/or profits received for his role in the writing, publication, promotion, and/or sale of the Books.

134. Defendant's breaches directly caused Plaintiff's damages.

135. It is against equity and good conscience for Defendant to retain his ill-gotten gains.

136. Accordingly, Plaintiff is entitled to an award for restitutionary damages in an amount equal to or greater than the total and actual monetary gain received by Defendant in connection with the publication, promotion, and/or sale of the Books.

137. In addition, due to the egregious and deliberate nature of Defendant's wrongdoing, the outrageous and wide-spanning nature of his breach of attorney-client privilege, and his conscious and wanton disregard for Plaintiff's rights as a client and/or former client, Plaintiff is entitled to an award of punitive damages.

138. Plaintiff is further entitled to an award for interest, attorneys' fees, and costs of this action.

SECOND CAUSE OF ACTION

(Breaches of Contract)

139. Plaintiff repeats and realleges the allegations contained within paragraphs 1 through 124 as if set forth at length herein.

140. Defendant is a party to, obligated under, and bound by the terms of the Confidentiality Agreement.

141. Defendant, at all relevant times, has been bound by the confidentiality and non-disclosure obligations set forth in the Confidentiality Agreement.

142. Defendant materially breached the Confidentiality Agreement by disclosing confidential information, misstatements, and misrepresentations likely to be embarrassing or detrimental to Plaintiff without Plaintiff's consent.

143. Specifically, Defendant committed multiple material breaches of the Confidentiality Agreement by, among other acts, causing the Books to be published and releasing the Podcast, thereby disclosing actual information and/or disclosing misleading,

fabricated, or fictionalized information about Plaintiff, his personal life, his business affairs, and his attorney-client relationship, without prior authorization or consent from Plaintiff.

144. As a direct and proximate result of Defendant's breach of the Confidentiality Agreement, Plaintiff has sustained, and will continue to sustain, significant damages in an amount to be determined at trial, including, but not limited to, actual, compensatory, and incidental damages, plus interests and the costs of this action.

145. Plaintiff is further entitled to attorneys' fees, disbursements, and related costs incurred by Plaintiff in connection with this action pursuant to Section 8 of the Confidentiality Agreement.

THIRD CAUSE OF ACTION

(Breaches of the Implied Covenant of Good Faith and Fair Dealing)

146. Plaintiff repeats and realleges the allegations contained within paragraphs 1 through 124 as if set forth at length herein.

147. Defendant owed Plaintiff a duty of good faith and fair dealing as implied in the terms of the Confidentiality Agreement.

148. In accordance with this duty, Defendant was obligated to refrain from engaging in any conduct that would destroy or injure Plaintiff's rights to the benefit of the Confidentiality Agreement, including each and every material provision contained therein.

149. Defendant failed to deal with Plaintiff in good faith and instead conducted himself so as to intentionally and maliciously breach his confidentiality and non-disclosure obligations owed to Plaintiff through his unauthorized disclosure of confidential information protected under the Confidentiality Agreement.

150. In doing so, Defendant willfully and/or negligently breached his implied covenant of good faith and fair dealing at the expense of Plaintiff.

151. As a direct and proximate result of Defendant's breaches of the implied covenant of good faith and fair dealing, Plaintiff has sustained significant damages in an amount to be determined at trial in actual and compensatory damages, and is due the disgorgement of any profits, payments, compensation, advances, royalties, and/or other monetary proceeds received by Defendant as a direct or indirect result of the publication of the Books, plus interests and the costs of this action.

FOURTH CAUSE OF ACTION

(Unjust Enrichment)

152. Plaintiff repeats and realleges the allegations contained within paragraphs 1 through 124 as if set forth at length herein.

153. By causing the Books to be published and his other wrongful acts laid out herein, Defendant callously disregarded the fiduciary duties owed to his former client, Plaintiff, and, in addition, intentionally and blatantly breached the clear and unambiguous terms of the Confidentiality Agreement.

154. Defendant's wrongful actions were intentional, calculated, malicious, and motivated by his desire to acquire fame, attention, notoriety, and wealth.

155. Defendant received substantial compensation, proceeds, and/or profits as a direct result of, without limitation, his role in the publication, promotion, and/or sale of the Books, as well as from his production and marketing of the Podcast, all at the expense of Plaintiff.

156. As a result of the foregoing, Defendant was unjustly enriched, at Plaintiff's expense, by virtue of his own wrongful, intentional, and egregious actions.

157. It is against equity and good conscience to permit Defendant to retain such enrichment.

158. Accordingly, Plaintiff is entitled to an award for restitutionary damages in an amount equal to or greater than the total and actual monetary gain received by Defendant in connection with the publication, promotion, and/or sale of the Books.

159. In addition, due to the egregious and deliberate nature of Defendant's wrongdoing, the outrageous and wide-spanning nature of his breach of attorney-client privilege, and his conscious and wanton disregard for Plaintiff's rights as a client and/or former client, Plaintiff is entitled to an award of punitive damages.

FIFTH CAUSE OF ACTION

(Conversion)

160. Plaintiff repeats and realleges the allegations contained within paragraphs 1 through 124 as if set forth at length herein.

161. By his own account, Defendant "lied" about the amount of money he was owed in reimbursement for an expense he made on Plaintiff's behalf, instead "load[ing] up" and "sneakily upping [his] bonus" in order to "counter screw[]" Plaintiff.[75]

162. Defendant admits that the cost of the expenditure was $13,000 but he "lied" and represented that his expenditure was $50,000. Such statement was false, and Defendant made the statement knowingly.

163. In so doing, Defendant intentionally took property (specifically, funds allocated for the particular purpose of reimbursement) belonging to Plaintiff.

[75] DISLOYAL, *supra* note 44, at 315-16.

164. Indeed, Defendant was only authorized to collect the amount of the expenditure, plus such additional money as the Trump Organization officials found sufficient to "gross[] up . . . to make up for taxes" on the original expenditure.

165. Accounting for the "gross[ing] up" process authorized by the Trump Organization to reimburse Defendant, Defendant fraudulently misrepresented the amount owed to him for reimbursement and converted $74,000 in funds to which he was not entitled.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests that this Court enter judgment in its favor grating the following relief:

(a) For actual, compensatory, incidental, and punitive damages in an amount to be determined at trial, but expected to substantially exceed Five Hundred Million Dollars ($500,000,000);

(b) For restitution and disgorgement of any profits, payments, compensation, advances, royalties, and/or other monetary proceeds received by Defendant as a direct or indirect result of the publication of the Books, the Podcast, and other ancillary products;

(c) For the $74,000 that was subject to unlawful conversion and made via fraudulent misrepresentation by Defendant, plus interest and other costs and expenses;

(d) For interest, costs, expenses, and attorneys' fees pursuant to statute; and

(e) For such other relief as this Court may deem fair, equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial as to all issues so triable.

Dated: April 12, 2023

Respectfully submitted,

BRITO, PLLC
2121 Ponce de Leon Boulevard
Suite 650
Coral Gables, FL 33134
Office: 305-614-4071
Fax: 305-440-4385

By: */s/ Alejandro Brito*
ALEJANDRO BRITO
Florida Bar No. 098442
Primary: abrito@britopllc.com
Secondary: apiriou@britopllc.com

Exhibit 16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-21377-GAYLES/TORRES

DONALD J. TRUMP,

Plaintiff,

vs.

MICHAEL D. COHEN,

Defendant.

ORDER ON RE-SCHEDULING OF PLAINTIFF'S DEPOSITION

This matter was before the Court on Plaintiff, Donald J. Trump's ("Plaintiff"), request to modify the Court's prior order that Plaintiff "appear for his deposition on October 3, 2023" [D.E. 65 at 5]. The issue was raised *ore tenus* by Plaintiff during a discovery hearing held September 28, 2023, on other discovery matters pending in the case. The Court directed Defendant to file a proposed order and motion for entry related to the deposition issue [D.E. 73], to which Plaintiff responded in opposition. A hearing was also held on the motion on this date. Based on the record presented, the ore tenus motion to reschedule the Plaintiff's deposition is **GRANTED** in part.

After the parties could not agree on a set date for the taking of Plaintiff's deposition, the matter was raised before the Court at the August discovery calendar held early in the case. The Court granted Defendant's request to schedule the deposition at the earliest available date, and the Court set the deposition by agreement of the parties to take place on September 6, 2023, at a location to be agreed upon by the parties.

During the September 5, 2023, discovery calendar, which took place the day before the scheduled deposition, Plaintiff urgently requested a modification of the scheduled deposition based on the sudden unavailability of counsel representing Plaintiff in other matters (and not counsel of record in this case) because his presence at the deposition was deemed to be essential given the potential Fifth Amendment issues that might arise. The Court heard argument on that second request and granted the *ore tenus* motion to reschedule the deposition for October 3, 2023. That Order was entered on the record at the hearing and also memorialized by written Order entered on the docket on September 19, 2023. [D.E. 65]. The written Order also addressed the scope of the deposition and the parameters for the setting of the deposition location.

At the time that Plaintiff requested the modification of the September 6th date, Plaintiff was well aware that he was scheduled to attend a trial, set back in November 22, 2022, in a New York state court proceeding. *People of the State of New York v. Donald J. Trump, et al.*, No. 452564/2022 (Sup. Ct. N.Y. County). The Judge in that case set the trial in that matter "[to] begin on October 2, 2023." *Id.*, D.E. 228 at 3.

Nevertheless, October 3rd was the proposed date selected by Plaintiff for the taking of his deposition in this case. The scheduled New York trial was apparently not an impediment to scheduling this deposition even though it was certainly possible the trial would proceed as scheduled. When the continuance was granted, other available dates in September could have been made available, but Plaintiff identified October 3rd as a preferred date for the deposition.

As it turned out, at the discovery hearing held September 28, 2023, six days before the scheduled deposition, Plaintiff again requested that the Court reschedule his deposition so that he could attend his previously-scheduled New York trial in person. Plaintiff represented that, now that pretrial rulings have been entered in the case that materially altered the landscape, it was imperative that he attend his New York trial in person—at least for each day of the first week of trial when many strategy judgments had to be made. Plaintiff insisted that he would be prejudiced if he could not do so, and that the scheduling of this deposition did not anticipate what would happen in the pretrial proceedings in the New York case.

Over Defendant's objection, the Court has decided to grant Plaintiff some relief with respect to this issue based on his representations. But the Court denied Plaintiff's request for an extended delay pending the outcome of the New York case. The Court requested proposed dates at the end of that week or the beginning of the following week when Plaintiff would agree to be deposed. Plaintiff advised the Court that two dates were available during that period of time, October 8 or 9, 2023. Defendant was granted time to confer and advise the Court which of those dates he

requested, either of which would take place in New York given that that forum was now more convenient for Plaintiff (since he was intending to be there for the trial) as well as lead counsel for Defendant who practices in New York as well as Defendant himself. To that point, the Court also denied Plaintiff's request to set the deposition by remote means. Defendant is entitled to take the deposition in person.

On this date, Defendant advised the Court through the pending motion that he requests October 9, 2023. Yet, Plaintiff advised the Court today that another conflict, unbeknownst to counsel, existed with the 9th and that only Sunday October 8th was now available. The purported conflict, however, is not a trial related conflict nor one that would irreparably prejudice Plaintiff if it was rescheduled, assuming of course that such conflict presently exists. The Court will, therefore, enforce Plaintiff's earlier agreement on the record that either date was available and Orders that the deposition will take place, without further modification, on October 9, 2023, to commence at 10:00 a.m., at a location in New York City that will be set by a revised notice of deposition that will be served no later than October 2, 2023. Upon service of that notice, and if necessary, Plaintiff will direct his protective detail to contact Defendant's counsel and direct any necessary security protocols no later than October 4, 2023, at 5:00 P.M.

In sum, and in reliance on these representations from Plaintiff and the claimed prejudice that would befall him if the October 3rd deposition proceeded as scheduled in West Palm Beach, the Court grants in part the motion to modify the deposition

date at this late date. The October 3rd date is CONTINUED in favor of the October 9th date. No further continuances will be Granted with respect to this deposition.

Finally, to remedy the prejudice to Defendant from the untimely rescheduling, for the second time, of the noticed deposition, the Court is granting Plaintiff this relief contingent on reimbursement of Defendant's expenses caused by the untimely continuance of the October 3rd deposition in West Palm Beach. Specifically, to the extent Defendant incurs cancellation fees of any kind, or is unable to obtain full refunds for any expenses he has already incurred in arranging to take the deposition on October 3rd, he will submit documentation of those expenses to Plaintiff's counsel within ten (10) days after Plaintiff's deposition. If agreement is not reached as to the amount, Defendant can file a motion with the Court for assessment of costs in accordance with this Order. The Court will not assess attorneys' fees at this time with respect to the scheduling of this deposition but can revisit that issue if circumstances warranted it.

All other Orders previously entered by the Court with respect to the method and scope of the deposition remain in full force and effect and shall be fully complied with.

DONE AND ORDERED in Chambers at Miami, Florida this 29th day of September, 2023.

EDWIN G. TORRES
United States Magistrate Judge

Exhibits to People's Motion to Quash
and for a Protective Order (Nov. 9, 2023)

Exhibit 17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

PRESIDENT DONALD J. TRUMP, Plaintiff, v. MICHAEL D. COHEN, Defendant.	Case No.: 23-cv-21377-DPG

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Plaintiff, President Donald J. Trump, by and through undersigned counsel, hereby gives notice that pursuant to Rule 41(1)(A)(i) he is voluntarily dismissing this action without prejudice.

Date: October 5, 2023

Respectfully submitted,

BRITO, PLLC
Counsel for Plaintiff
2121 Ponce de Leon Boulevard
Suite 650
Coral Gables, FL 33134
Office: 305-614-4071
Fax: 305-440-4385

By: /s/ *Alejandro Brito*
ALEJANDRO BRITO
Florida Bar No. 098442
Primary email: abrito@britopllc.com
Secondary email: apiriou@britopllc.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 5, 2023 the foregoing was served via the Court's CM/ECF System upon:

Benjamin H. Brodsky, Esq.
Max Eichenblatt, Esq.
Brodsky, Fotiu-Wojtowicz, PLLC
200 SE 1st Street, Suite 400
Miami, Florida 33131
bbrodsky@bfwlegal.com
max@bfwlegal.com
docketing@bfwlegal.com

Counsel for Defendant

Danya Perry, Esq. *(Pro Hac Vice)*
E. Danya Perry, PLLC
157 East 86th Street
4th Floor
New York, NY 10028
Dperry@danyaperrylaw.com

Counsel for Defendant

By: /s/ *Alejandro Brito*

Exhibits to People's Motion to Quash
and for a Protective Order (Nov. 9, 2023)

Exhibit 18

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK against DONALD J. TRUMP, Defendant.	DECISION AND ORDER ON DEFENDANT'S MOTION TO QUASH TWO SUBPOENAS Ind. No. 71543/2023

HON. JUAN M. MERCHAN J.S.C.:

On April 4, 2023, Donald J. Trump, the Defendant, was arraigned before this Court on an indictment charging him with 34 counts of Falsifying Business Records in the First Degree, in violation of Penal Law § 175.10.

On May 11, 2023, the New York County District Attorney's Office ("DANY" or the "People") served the Trump Organization with a subpoena *duces tecum* seeking production of various records. Over the next few days, Steven Yurowitz, Counsel for the Trump Organization, and representatives from DANY, engaged in several conversations in an attempt to resolve objections the Trump Organization had raised to the subpoena. Unable to reach a resolution, DANY withdrew the subpoena. Subsequently, on May 15, 2023, the People issued a new subpoena *duces tecum* which narrowed the requests and extended the return date. On that same day, the People issued a separate subpoena *duces tecum* to Kaplan, Hecker & Fink LLP.

On May 31, 2023, Defendant moved to quash both subpoenas.[1] The People opposed the motion on June 14, 2023. The following constitutes this Court's Decision and Order.

CONTENTIONS OF THE PARTIES

The Subpoena to the Trump Organization

Defendant relies on *County of Nassau Police Dept. v. Judge*, 237 A.D.2d 354 (1997), in support of his contention that this subpoena should be quashed because the People have not "establish[ed] the existence of a factual predicate which would make it reasonably likely that the documentary information will bear relevant and material evidence." *Judge at 378*. In response, the People submit that they have

[1] The subpoenas are contained in Exhibits A and B of Defendant's Motion to Quash.

provided a sufficient factual predicate demonstrating that each request seeks evidence which is reasonably likely to be relevant and material to the facts at issue and that the requests are not overbroad.[2] The People argue that a party may properly seek documents if it is able to articulate "any theory of relevancy and materiality." *People v. Gissendanner*, 48 N.Y.2d 543, 549 (1979).

Specifically, defendant argues that the first of the three requests contained in the subpoena is overbroad because it seeks "all [email] communications between approximately 70 people for nearly a year."[3] It is the People's position that the subpoena merely requests email "for a critical time period when the defendant and others signed the checks at issue in this case," and that the requested materials "are reasonably likely to be relevant and material to the process by which the defendant conducted his personal affairs," as well as "the circumstances by which those checks were processed."[4] Further, the People assert that the contents of the emails and the number of communications will demonstrate how the defendant was kept "informed of and involved with the operation of his personal business in New York" while he served as President of the United States.[5]

Regarding the second of the three requests, Defendant argues that the subpoena is overbroad because it seeks any severance agreement, confidentiality agreement, or non-disclosure agreement in effect between the Trump Organization and 17 current or former Trump Organization employees over a six-year period. Defendant notes that only 7 of the 17 individuals named in the request have been identified as potential trial witnesses. Defendant relies on *Constantine v. Leto*, 157 A.D.2d 376, 378 (1990) for the proposition that the subpoena impermissibly seeks: (1) documents that are not directly relevant and material to the facts at issue; (2) to ascertain the existence of evidence; and (3) impeachment material.[6] The People claim that the request seeks information which "will confirm the nature and importance of the relationship of each of the key executives or employees," which "will likely reveal some material differences in those relationships," as they were employed by the Trump Organization when the business records were falsified.[7]

Regarding the third and final request, Defendant argues that this request is also overbroad because it seeks (i) all emails between Rhona Graff and Melania Trump; (ii) all emails between Rhona Graff and Keith Schiller; and (iii) all travel itineraries prepared for Donald J. Trump from January 1, 2015, through January 20, 2017. Defendant cites *People v. Chambers*, 134 Misc. 2d 688, 690 (Sup. Ct.

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[2] People's Memorandum of Law at page 1.
[3] Defendant's Motion at page 4.
[4] People's Memorandum of Law at page 10.
[5] People's Memorandum of Law at page 10.
[6] See Defendant's Motion at page 5.
[7] See People's Memorandum of Law at page 11.

N.Y. Co. 1987) in support of his argument that the request improperly attempts to use a subpoena to "investigate possible leads to material which may be irrelevant."[8] The People argue that based on their investigation, the Defendant's written and electronic calendars do not "capture all of the defendant's meetings and travel during the relevant period" and that the request is likely to yield the Defendant's itineraries, which will confirm "whom the defendant met and where those meetings took place" when the criminal conduct allegedly occurred.[9]

The subpoena to Kaplan, Hecker & Fink LLP

The subpoena served on Kaplan, Hecker & Fink LLP seeks "[t]he full transcript, full video recording, and all exhibits related to the videotaped deposition of Donald J. Trump taken on or about October 19, 2022, in the case captioned *E. Jean Carroll v. Donald J. Trump*, 1:20-cv-0733-LAK. Defendant moves to quash this subpoena because "it is overbroad, it is an attempt to fish for impeachment material, and because the materials are subject to a protective order in the Southern District of New York."[10] Further, Defendant claims that the request fails to seek a specific portion of the deposition, and, instead, requests the full video and transcript and all exhibits. Relying again on *Constantine v. Leto*, 157 A.D.2d at 378, Defendant argues that the subject matter of the deposition is unrelated to the facts in this case and that the request inappropriately seeks "to fish for impeaching material."

The People contend there is no basis to quash this subpoena as either overboard or improper because the documents it requests are relevant and material to these proceedings. The People further argue that certain publicly released excerpts of the deposition demonstrates that Defendant's testimony included reference to a relevant Access Hollywood tape and address "[t]he way in which defendant dealt with allegations of a sexual nature by women in the months leading up to the 2016 presidential election, which feature prominently in their case.[11] Lastly, the People assert that Judge Kaplan's Protective Order in *E. Jean Carroll v. Donald J. Trump*, 1:20-cv-0733-LAK does not preclude Kaplan, Hecker & Fink LLP from providing the requested materials.[12]

CONCLUSION

Criminal Procedure Law § 610.20 provides that any party to a criminal proceeding may issue a subpoena. CPL § 610.20(2) specifically confers upon the People the authority to subpoena testimony

[8] See Defendant's Motion at page 5 – 6.
[9] See People's Memorandum of Law at page 11 – 12.
[10] See Defendant's Motion at page 6.
[11] See People's Memorandum of Law at page 3.
[12] See People's Memorandum of Law at page 8 – 9.

or evidence. To sustain a subpoena, the issuing party must demonstrate "that the testimony or evidence sought is reasonably likely to be relevant and material to the proceedings and that the subpoena is not overboard or unreasonably burdensome." *See*, CPL § 610.20(4); *see also*, *People v. Kozlowski*, 11 NY.3d 223, 242 (2008) (the proper purpose of a subpoena *duces tecum* is to compel the production of specific documents that are relevant and material to facts at issue in a judicial proceeding). When disputes arise concerning the "validity or propriety" of a subpoena, the court must resolve whether the subpoena is enforceable. *See, Application of Davis*, (Crim. Ct. N.Y. Co. 1976); *see also*, *People v. Natal*, 75 N.Y.2d 379, 385 (1990). Because the subpoenaed materials are returnable to the court, it follows that the court retains the ultimate authority on the outer parameters of the People's subpoena powers. *See*, *People v. D.N.*, 62 Misc.3d 544 (Crim. Ct. N.Y. Co. 2018), *internally citing Matter of Terry D.*, 81 N.Y.2d 1042 (1993).

The Court of Appeals has held that a subpoena is properly quashed when the party issuing it fails "to demonstrate any theory of relevancy and materiality, but instead, merely desire[s] the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable [them] to impeach witness[es]." *People v. Gissendanner*, 48 N.Y.2d 543, 549 (1979). The *Gissendanner* Court noted that a subpoena *duces tecum* may not generally be "used for the purpose of discovery or to ascertain the existence of evidence." *Id.* at 551.

Conversely, courts have denied a motion to quash where the subpoena demands production of specific documents which are relevant and material to the proceedings. *See*, *People v. Duran*, 32 Misc.3d 225, 229 (Crim. Ct. Kings Co. 2011) (Laporte, J) ("the defendant established that the solicited data is relevant and material to the determination of guilt or innocence, and not sought solely in the speculative hope of finding possible impeachment of witness' general credibility"); *People v. Campanella*, 27 Misc.3d 737 (Dist. Ct. Suffolk Co. 2009) (Horowitz, J) (in the present case, the defense has fashioned a very specific request and the court does not believe that this is a fishing expedition but rather a narrowly sculpted pursuit of relevant information).[11]

The Subpoena to the Trump Organization

The first request, which calls for "*all* emails between *anyone* who works or worked out of ... Trump Tower ... with a Trump Organization email address (ending@trump.org.com) and *anyone* with an email address ending in @who.eop.gov, for the period from January 20, 2017 to December 31, 2017" is overbroad (*emphasis added*,) because it is not narrowly tailored, lacks specificity and fails to describe

[11] See People's Memorandum of Law at page 7.

the subject matter the People contend is relevant and material to these proceedings. The motion to quash this request as currently drafted is granted.

The second request seeks "from the period from January 1, 2017, to the present, any: (i) severance agreement; (ii) confidentiality agreement; (iii) or non-disclosure agreements in effect between the Trump Organization" and 17 individuals employed or formerly employed by the Trump Organization. Defendant stresses that the People's Automatic Disclosure Form only identifies seven of these individuals as potential witnesses. In fact, the People concede that only "a number of the individuals identified in the request are likely to be witnesses for the People at trial."[14] The People have sufficiently explained the relevance and materiality of this request as it pertains to the seven individuals the People intend to call as witnesses. Therefore, the Trump Organization is directed to comply with this request within 45 days of this Decision and Order. However, the People have thus far failed to adequately explain how the materials related to the 10 other individuals is relevant. As a result, Defendant's motion to quash is granted with respect to those 10 individuals.

The third and final request seeks "(i) *all* emails between Rhona Graff and Melania Trump; (ii) *all* emails between Rhona Graff and Keith Schiller; and (iii) *all* travel itineraries prepared for Donald J. Trump" for a period covering 25 months. *Emphasis added.* The People contend that this request is "specifically tailored to capture communications concerning defendant's meetings and travel." This Court finds that the third request as currently drafted is not narrowly tailored and does not adequately achieve its stated objective of capturing certain communications regarding travel and meetings in order to identify "whom the defendant met and where those meetings took place."[15] As framed, this request would yield significantly more responsive records than necessary to achieve the stated goal. Therefore, the motion to quash the third request as currently drafted is granted.

The subpoena to Kaplan, Hecker & Fink LLP

This subpoena seeks "[t]he full transcript, full video recording, and all exhibits related to the videotaped deposition of Donald J. Trump taken on or about October 19, 2022, in the case captioned *E. Jean Carroll v. Donald J. Trump*, 1:20-cv-0733-LAK." Defendant argues, among other things, that the requested materials cannot be turned over because they are the subject of an existing Protective and Confidentiality Order.[16] The People argue that the Protective and Confidentiality Order does not

[14] See People's Memorandum of Law at page 11.
[15] See People's Memorandum of Law at page 11.
[16] The Protective and Confidentiality Order is contained in Exhibit C of Defendant's Motion to Quash.

preclude production because certain excerpts of the deposition have already been publicly filed by defense counsel and other portions were introduced into evidence at trial despite Judge Kaplan's prior instruction that the Court would not likely "seal or otherwise afford confidential treatment to any Discovery Material introduced at trial."[17]

The Court finds that this subpoena is not overbroad or otherwise inappropriate. The People have demonstrated that the request seeks items that are relevant and material to these proceedings However, this Court is unable to determine from the moving papers whether the Protective and Confidentiality Order is still in effect as to those materials which were *not* introduced into evidence at trial or otherwise publicly filed.

This Court does not wish to create any issue or conflict with Judge Kaplan's Order. Therefore, the appropriate course of action is for either, or both parties, to seek clarification from Judge Kaplan as to whether compliance with the subpoena would in any way violate his Order. If the Order is still in effect, then Kaplan Hecker & Fink LLP must not comply. On the other hand, if the requested materials, in their entirety, are no longer protected by the Order, then Kaplan Hecker & Fink LLP is directed to comply with the subpoena within 16 days from the date the parties receive confirmation from the Southern District

The foregoing constitutes the Decision and Order of this Court.

July 7, 2023
New York, New York

JUL 07 2023

Juan M. Merchan
Justice of the Supreme Court
Judge of the Court of Claims

HON. J. MERCHAN

[17] See People's Memorandum of Law at page 4.

Exhibit 19

CRIMINAL COURT OF THE CITY OF NEW YORK
NEW YORK COUNTY: **PART D**

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

JOSHUA MANTON,
Defendant.

DECISION and ORDER

Docket No. CR-013873-22NY

HON. NESTOR DIAZ, J.

Defendant, Joshua Manton, is charged by information with Unlawful Threat to Disclose an Intimate Image (Administrative Code § 10-180[b][2]), Aggravated Harassment in the Second Degree (Penal Law § 240.30[1][a]), Attempted Coercion in the Third Degree (PL § 110/135/60[3] & [9]), and Harassment in the Second Degree (PL § 240.26[1]). He has served the complainant, Natalie Sannes, a subpoena, signed by defense counsel, seeking the following: (1) all sexually explicit photographs and videos referred to in the accusatory instrument; (2) all sexually explicit photos and videos that Joshua Manton shared with the complainant; (3) all communication, not limited to, emails, text, instant messengers, etc. regarding the complainant's sharing of (2) above; (4) the complete and unedited audio recording of the alleged "door slam incident" on or about June 9, 2021; and (5) the complete and unedited audio recording of the alleged "wine glass incident" on or about June 9, 2021.

The People, on behalf of the complainant, move to quash this subpoena. For the reasons stated below, the motion to quash the subpoena is GRANTED.

Background

The accusatory instrument filed in this case states that in relevant part, on or about May 13, 2022 in the County and State of New York,

"I [Natalie Sannes] was engaged in a relationship with the defendant for 5 years. My relationship ended with the defendant in May 2021.

On May 9, 2022 at approximately 6:44pm, I received a text message from the defendant, in which the defendant stated to me in substance, 'I want you to post a heartfelt apology, making it clear you did it out of spite and rather than going to actual therapy due to childhood traumas, you turned to some childish form of crowd-sourced therapy. If your apology is not as well written and 'popular' as your original post I'm going to start posting pictures and videos from 5 years of Natalie's greatest hits online we'll see what you friends and co-workers and mother think about you then. I look forward to reading more of your creative writing.' When I did not comply, on May 13, 2022, at 3:50pm, the defendant sent a follow-up text to me which stated in substance, 'First post will happen tonight since you seem to need a little motivation.'

"I know the text messages were from the defendant because I recognized the number from which they came to be the defendant's phone number.

"While I was in a relationship with the defendant, I gave him sexually explicit photos and videos of me that were taken while we were in a relationship. Some of these photos depict my breasts and my face. I did not give the defendant permission to share or disclose said videos and photos, and the distribution of such would cause me substantial emotional harm.

"The defendant's above-mentioned conduct caused me to feel annoyed, harassed, alarmed, threatened, and in fear for my physical safety."

The complainant received defendant's subpoena on August 30, 2022. The People filed the instant motion to quash on September 19, 2022.

Discussion

Pursuant to Criminal Procedure Law § 610.20, an attorney for a defendant in a criminal action may issue a subpoena for the attendance in such court whom the defendant is entitled to call in such action. CPL § 610.20(3). A subpoena may also require the witness to bring and produce certain specified physical evidence. CPL § 610.10(3). To sustain a subpoena, the seeking party must show that the "evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome." CPL § 610.20(4). A court will quash a subpoena if it appears to be a "fishing expedition" and a subpoena may not

be predicated upon mere speculation, nor upon potential for unearthing relevant evidence. People v. Jovanovic, 176 Misc2d 729, 733 (Sup Ct NY Co 1997). Moreover, a subpoena may not be used to circumvent discovery procedures (see People v. Chambers, 512 NYS 2d 631 [1987) or to expand discovery available under existing law (see Matter of Terry D., 81 NY2d 1942 [1993]). Finally, where the information sought has no direct bearing on the issue of defendant's guilt or innocence, but rather goes toward the issue of the complainant's credibility or for impeachment material, such information is not properly disclosable. Id.

As an initial matter, this Court finds that the District Attorney, as an adverse party to the action, have standing to oppose defendant's subpoena on behalf of the complainant as this subpoena would have an impact on the criminal case (see Matter of Morgenthau v. Young, 204 AD2d 118 [1st Dept. 1994]).

Turning now to the specific information defendant's subpoena seeks, Item (1) includes "all sexually explicit photographs and videos referred to in the accusatory instrument." The People contend that these materials are not discoverable under Article 245 of the Criminal Procedure Law as they are not in the People's possession or control. They further argue that defendant, by his own admission, is already in possession of these materials and has threatened to expose them. Thus, there is no good faith basis or legal justification to seek the same from the complaining witness. The Court finds that these materials are not in the People's possession and therefore not subject to disclosure and will not allow defendant to use a subpoena to circumvent discovery procedures (see People v. Chambers, supra).

Further, sound public policy favors the quashing of this subpoena as to these materials. Originally enacted in late 2017, Unlawful Threat to Disclose an Intimate Image, was passed by the New York City Council to address insufficient criminal and civil penalties in the law for what is

commonly referred to as "revenge porn" or the nonconsensual dissemination of sexually explicit images or other media (see generally, New York City Council, Committee on Public Safety, Report of the Governmental Affairs Division on Proposed Int. No, 1267-A, Nov. 15, 2017 [Committee Report]; People v. Ahmed, 64 Misc. 3d 601 [Crim Ct Bronx Co 2019]). This Court finds this by passing this law, the City Council never intended to force alleged victims of revenge porn to turn over intimate or sexually explicit images of themselves to the person who is alleged to have disseminated or threatened to disseminate them. Requiring compliance with this subpoena at this stage of the case would have a grave chilling effect on victims coming forward to report these crimes. Additionally, forcing victims to turn over these private messages is counter to the very purpose for which this law is created and could lead to more instances of revenge porn in the future.

Should these materials become relevant and material at a later stage, defendant may make further arguments to the trial judge as to their disclosure and the People are free to apply for a protective order at that time.

Defendant's Item 2 requests all sexually explicit photos and videos that Joshua Manton shared with the complainant. Item 3 involves all communication, not limited to, emails, text, instant messengers, etc. regarding the complainant's sharing of (2) above. This Court agrees with the People that these requests may be overbroad given the five-year length of their romantic relationship. More importantly, the Court finds no relevance pursuant to CPL § 610.20 to videos and photos that were shared from the defendant to the complainant when the defendant himself is the person alleged to have threatened to share these materials. This Court will not allow defendant to use a subpoena to engage in a fishing expedition for information that he is otherwise not entitled to. People v. Jovanovic, 176 Misc2d at 733.

Items 4 and 5 seek the complete and unedited audio recordings of the alleged "door slam incident" and the "wine glass incident" on or about June 9, 2021. The People aver that the complainant sent them two audio recordings that pre-dated the instant offense and although they were not relevant to the instant matter, they shared them with defense counsel pursuant to their discovery obligations. The complainant contend that these recordings are complete and unedited. As such, Items 4 and 5 are cumulative to materials already disclosed to defendant and therefore the subpoena for them is quashed as moot.

Accordingly, the People's motion to quash the subpoena is granted.

This constitutes the decision and order of the court.

Dated: October 24, 2022
New York, New York

ENTER:

HON. NESTOR DIAZ
Judge of the Criminal Court

Exhibits to People's Motion to Quash
and for a Protective Order (Nov. 9, 2023)

Exhibit 20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

PENNY BRADLEY, DEFENDANT

----------x

DECISION AND ORDER
INDICTMENT 2134-19
850-21

MAXWELL WILEY, J.:

In papers filed on May 25, 2023, the People moved to quash subpoenas *duces tecum* issued by the defense to Virgin Entertainment Holdings, LLC (Virgin), Stephen Squinto, and Denise LaPera.[1] The People also seek an order from the Court precluding the defense from issuing similar such subpoenas *dues tecum* to the People's witnesses which the People argue is a form of harassment. Defendant filed a response in opposition on June 5, 2023.

The People argue that the subpoenas are overbroad and unreasonably burdensome, and in addition, seek material that is immaterial and irrelevant. Defendant argues that the documents subpoenaed would counter the People's theory of larceny and provide valuable impeachment evidence.

The Court is guided by the principles set for long ago and more recently reaffirmed, that "defendants must proffer a good faith factual predicate sufficient for a court to draw an inference that specifically identified materials are reasonably likely to contain information that has the potential to be both relevant and exculpatory." People v. Kozlowski, 11 NY3d 223, 241 (2008); *see also*, People v. Gissendanner, 48 NY2d 543, 550 (1979).

The Court notes at the outset that each of the subpoenas in question seek the same five categories of information. The Court has reviewed the submissions and finds that aspects of the subpoenas as written are indeed overbroad. Specifically, defendant's request, listed as item four, for "[a]ll written communications (including emails and text messages)to, from, or among Klinger & Klinger CPA (and its employees); and all documents sent to or received from Klinger & Klinger CPA, including tax returns and accounting records" is not limited by subject matter or by date. Additionally, item three which seeks "[a]ll written communications (including emails and text messages) to, from, or among...Jack Dayan, and/or Jaylight LLC regarding the property and building located at 46 East 82nd Street, New York, New York" is not limited by subject matter or by date.[2] It is information regarding the sale of the property that may yield relevant

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1

In her response, defendant references several other subpoenas *duces tecum* not addressed by the People in their motion to quash. The Court is unaware of any other pending motions to quash subpoenas brought by attorneys representing these other individuals or entities. Accordingly, this decision addresses only the subpoenas reference in the People's motion.

2

With regard to the information sought in item three, defendant indicates that Daniela Sassoun and Lydia Rosengarten have already complied with the subpoena and provided the requested information.

information for defendant, not anything at all relating to the property itself. Similarly, item two which seeks "[a]ll documents and written communications (including emails and text) from January 1, 2018 to present regarding 46 East 82nd Street LLC and/or NSM82 LLC" is overbroad.

The subpoenas also suffer from being immaterial and irrelevant. Specifically, defendant's request, listed as item five, for "[a]ll written communications (including emails and text messages) to, from, or among the Manhattan District Attorney's Office, including any subpoenas issued by the Manhattan District Attorney's Office," are not material to the charges and not discoverable via subpoena. This information, in this Court's opinion, clearly falls under the rubric of a "fishing expedition." This category also suffers from being overbroad. Additionally, this information would include work product and is not discoverable. CPL 245.65.

As to item one which seeks documents relating to the actual sale of 46 East 82nd Street, while defendant has not made a "robust showing under *Gissendanner,*" the Court cannot conclude with respect to these categories that defendant is engaged in a fishing expedition. People v. Kozlowski, *supra* at 242. As such, the Court finds that defendant has made an adequate showing for the documents set forth in item number one.

With respect to the People's claim that many of the documents requested will impinge of certain privileges, namely the attorney-client and martial privileges, the Court finds that that does not serve as a basis to preclude defendant from seeking the materials. The subpoenaed party is free to assert a claim of privilege should such a basis exist.

For all of the above-stated reasons, the People's motion to quash is granted. The People's further application to preclude defendant from issuing similar overbroad and improper subpoenas to any of the People's witnesses going forward is denied. Defendant is now aware of the Court's findings and any further subpoenas should be issued in conformance with this decision and exclude from production documents between the People and the subpoenaed party.

Dated: July 26, 2023
New York, New York

MAXWELL WILEY J.S.C.

Exhibit 21

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

v. 23 Civ. 3773 (AKH)

DONALD J. TRUMP,

Hearing

Defendant.

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New York, N.Y.
June 27, 2023
2:30 p.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE
Attorneys for Plaintiff
BY: MATTHEW COLANGELO
STEVEN WU
REBECCA MANGOLD
SUSAN D. HOFFINGER

BLANCHE LAW
Attorneys for Defendant
BY: TODD BLANCHE

NECHELES LAW LLP
Attorneys for Defendant
BY: SUSAN NECHELES
GEDALIA STERN

YUROWITZ LAW PLLC
Attorneys for Defendant
BY: STEVEN YUROWITZ

President Trump's private books underneath the umbrella of the Trump Organization isn't enough, we can agree with the People to call a witness. We also have a witness today that we could call, your Honor, that could further discuss what we believe is not necessary given the evidence in this case, your Honor, which is that these checks were for a retainer and an attorney agreement between President Trump and Michael Cohen. It lasted while he was president, and it was for good reason, your Honor. So this wasn't a hypothetical problem that the president thought he might encounter.

THE COURT: You have a witness you want to call?

MR. BLANCHE: He was sued --

THE COURT: You have a witness you want to call?

MR. BLANCHE: Your Honor, if we could take a two-minute recess and discuss, yes, I do.

THE COURT: Two minutes.

MR. BLANCHE: Thank you.

(Recess)

THE COURT: Mr. Blanche.

MR. BLANCHE: Your Honor, we call Alan Garten.

MR. COLANGELO: Your Honor, one request from the People. As the Court knows, the parties stipulated last week that no party intended to call a live witness at this proceeding. We don't object to Mr. Garten's direct testimony being taken today. Given that we had no notice until

Mr. Blanche mentioned it from the podium a few minutes ago that there was the possibility of a witness, we would ask that cross-examination be scheduled for tomorrow morning. We think we could do it in less than an hour.

THE COURT: Let's see what he has to say first.

Go ahead, Mr. Garten.

ALAN GARTEN,

called as a witness by the Defendant,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BLANCHE:

Q. Good afternoon, Mr. Garten.

Where do you work?

A. The Trump Organization.

Q. What is your position with the Trump Organization?

A. Chief Legal Officer.

Q. And did you have that position -- well, have you had that position since 2016?

A. I've been a lawyer there since 2007. I have had that position since January 2017.

Q. What was your position prior to January of 2017?

A. General counsel.

Q. You have been here today during the hearing, have you not?

A. Yes, I have.

Q. So are you familiar with an individual named Michael Cohen?

A. Yes.
Q. How are you familiar with him?
A. He was employed at the Trump Organization as an attorney for -- I believe since 2007 until January of 2017, approximately.
Q. And so January of 2017, approximately, Mr. Cohen left the Trump Organization. Do you have an understanding as to why?
A. He left the organization to serve as a personal attorney to President Trump.
Q. And as far as you know, did he in fact assume that role as personal attorney to Donald Trump?
A. Yes.
THE COURT: You can object, Mr. Colangelo, if you want. You can object, you know.
MR. COLANGELO: Yes, your Honor.
Let me make a record that one of my colleagues, Susan Hoffinger, will enter an appearance and will handle the --
MS. HOFFINGER: Good afternoon, your Honor.
THE COURT: You will be conducting the cross-examination?
MS. HOFFINGER: If appropriate, I will, your Honor.
THE COURT: Are there any objections?
MS. HOFFINGER: Not so far, your Honor.
THE COURT: You are going to handle the objections?
MS. HOFFINGER: I will.

THE COURT: Why don't you change places with Mr. Colangelo.

MS. HOFFINGER: Okay.

THE COURT: My policy is that, whether it's a jury or nonjury case, the rules of evidence apply.

MS. HOFFINGER: Thank you.

THE COURT: Go ahead, Mr. Blanche.

MR. BLANCHE: Thank you, your Honor.

BY MR. BLANCHE:

Q. Do you have an understanding as to whether Mr. Cohen actually assumed the duties as personal attorney to President Trump?

MS. HOFFINGER: Objection.

THE COURT: Sustained.

BY MR. BLANCHE:

Q. So when Mr. Cohen left in approximately January 2017, do you know what he did?

A. He took on the role of personal attorney to President Trump.

Q. And how do you know that?

A. I know that from my experience at the organization that this was something that was openly discussed and that Mr. Cohen, I know, was very vocal about his new position and --

THE COURT: Is this hearsay you are telling me? It's all hearsay. You don't know yourself. You know what was said

in the office.

THE WITNESS: No, I do know myself because --

THE COURT: What's your personal knowledge?

THE WITNESS: My personal knowledge is conversations with Mr. Cohen. And also, when matters would come in that previously may have been dealt with by the organization, but that were now related -- were not corporate related, but related to President Trump or the first lady, those matters would be sent to Mr. Cohen.

BY MR. BLANCHE:

Q. And when you are talking about in time, you are saying after Mr. Cohen left in January 2017 through the rest of the year when he was serving as counsel to President Trump?

A. That's my recollection, yes.

Q. And do you know why Mr. Cohen left the Trump Organization to go become private attorney for President Trump?

MS. HOFFINGER: Objection.

THE COURT: Sustained.

MR. BLANCHE: May I ask the reason for sustaining the objection, your Honor.

THE COURT: Hearsay.

MR. BLANCHE: Well, your Honor --

THE COURT: Lay a better foundation.

BY MR. BLANCHE:

Q. Mr. Garten, were you present or did you have discussions

with Mr. Cohen about him leaving the Trump Organization?

MS. HOFFINGER: Objection.

THE COURT: Sustained -- withdrawn.

You may answer that question.

THE WITNESS: My office was right next to Mr. Cohen's for many years, so we had a lot of conversations, and this is going back to late 2016, early 2017, so my memory is certainly not perfect there. But certainly, I do know that once Mr. Cohen took on the role of attorney for the president, there were discussions about the need for him to have to leave --

MS. HOFFINGER: Objection.

THE WITNESS: -- the company.

THE COURT: These were discussions between you and Cohen?

THE WITNESS: Correct.

THE COURT: Overruled.

THE WITNESS: If I could just finish. In order to --

THE COURT: Don't say what it is. You had discussions.

Go ahead, next question.

BY MR. BLANCHE:

Q. Mr. Garten, was it your understanding, did you believe Mr. Cohen needed to leave -- did you believe that Mr. Cohen needed to leave the Trump Organization in order to fulfill his duties to President Trump?

MS. HOFFINGER: Objection.

THE COURT: Sustained.

BY MR. BLANCHE:

Q. Do you have an understanding, Mr. Garten, about whether Mr. Cohen was paid for the work that he did for President Trump after he left the Trump Organization?

A. I know he was paid 400 and -- I don't know the exact amounts -- 35 payments -- I'm sorry, 12 payments of $35,000.

Q. And what's the basis of your knowledge of that?

A. I just -- I can't point to anything specific, other than my role at the company.

Q. Let me ask it another way.

Do you have personal knowledge of that fact?

A. I knew he was being -- those payments were made to Mr. Cohen in 2017, yes.

Q. And do you know why those payments were made to Mr. Cohen?

A. My understanding was to reimburse him for the payment that he had made as part of the Clifford settlement agreement and also to compensate him for the work that -- this role that he was playing as counsel.

Q. Mr. Garten, going back to the time period between when President Trump was elected and the time that he took office in -- so late 2016 to early 2017 -- were you involved in the discussions about separating President Trump from the Trump Organization while he was president?

A. To some degree, yes.

Q. And what was the reason for separating President Trump from the Trump Organization?

MS. HOFFINGER: Objection.

THE COURT: Overruled.

THE WITNESS: We were generally advised, I think, as is reflected in the white paper, that there had to be a separation once he took office, that President Trump had to be separated from the company. And so the company then implemented policies to -- in addition to the white paper, which is drafted by Morgan Lewis, the company implemented its own policies to create that separation so that people at the company were not reaching out to President Trump or communicating, things like that. There are documents that I can certainly provide. There were corporate policies that were issued creating the separation.

BY MR. BLANCHE:

Q. And was it you that made the decision to separate Mr. Cohen from the Trump Organization, given what his role would be with President Trump?

A. Not alone. But when I learned that Mr. Cohen would serve as personal attorney, I did provide advice that he needed to exit the company.

Q. Why?

A. Because if he's going to serve as personal counsel, then it

would be inconsistent with all the policies that we implemented to separate the president from the company.

Q. Was one of the reasons that Mr. Cohen separated from the Trump Organization, was one of the reasons because of President Trump's constitutional duties that he would take on as President of the United States?

MS. HOFFINGER: Objection, leading.

THE COURT: Sustained.

BY MR. BLANCHE:

Q. Mr. Garten, you said that you were part of the discussions to have Mr. Cohen leave the Trump Organization.

What were the reasons that you believed it was appropriate and necessary for him to leave the Trump Organization, given his new role?

A. That's what we were advised after he -- after President Trump was elected, that's what we were -- we were advised that that was legally required.

THE COURT: That was the white paper by Morgan Lewis?

THE WITNESS: Correct.

THE COURT: The Trump Organization engaged Morgan Lewis to provide legal services?

THE WITNESS: I'm not sure if the organization did or President Trump did.

THE COURT: And in response to that, Morgan Lewis delivered a white paper?

THE WITNESS: Correct.

THE COURT: That's in evidence, right, Mr. Blanche?

MR. BLANCHE: It is, your Honor.

Just a few more questions.

BY MR. BLANCHE:

Q. I believe you mentioned earlier that you were also part of the -- you know that Mr. Cohen actually took on the role as private counsel to President Trump; correct?

MS. HOFFINGER: Objection, leading.

THE COURT: Overruled.

THE WITNESS: I know that matters that there -- that there were -- when matters came in that were not company related, but related to the president or the first lady, I do know that those matters would be referred to Mr. Cohen. I don't know how many there were. I know that it took place, yes.

BY MR. BLANCHE:

Q. Understood.

Are you familiar with the emoluments clause of the Constitution?

A. Very generally. I don't know that anybody is really familiar with the emoluments clause, but yes.

Q. Do you have an understanding as to whether -- one of the reasons that Mr. Cohen served in the Trump Organization --

THE COURT: He's not here as an expert, is he? If you

want to bring out instructions that he gave, advice that he gave, go ahead. But we're not hearing him as an expert.

MR. BLANCHE: One moment, your Honor.

(Conferring)

BY MR. BLANCHE:

Q. Mr. Garten, did you have a specific concern that Mr. Cohen needed to leave the Trump Organization because of President Trump's constitutional duties when he assumed the office of president?

MS. HOFFINGER: Objection.

THE COURT: Sustained.

MR. BLANCHE: Sorry, did you sustain the objection?

THE COURT: Sustained, yes.

I think you are finished, Mr. Blanche.

MR. BLANCHE: Yes, I think I am, your Honor.

MS. HOFFINGER: Your Honor, we renew our request --

THE COURT: No, do it now.

CROSS-EXAMINATION

BY MS. HOFFINGER:

Q. Good afternoon, Mr. Garten.

A. Good afternoon.

Q. Mr. Garten, you said you were general counsel of the Trump Organization; is that correct?

A. Correct.

Q. And for many years; is that right?

A. Different legal positions during my tenure; assistant general counsel, general counsel and chief legal officer.

Q. And as your role as general counsel or chief legal officer for the Trump Organization, did you handle payments for attorneys who worked either for the Trump Organization or for Donald Trump?

A. When you say "handled" --

Q. Withdrawn. Let me ask a more specific question.

When attorneys were retained to work either for Mr. Trump personally or for the Trump Organization, what was the process of them being retained and paid at the Trump Organization?

MR. BLANCHE: Objection.

THE COURT: Overruled.

THE WITNESS: The lawyers would be engaged and the documentation would be processed and sent over to accounting to make whatever payments were required.

BY MS. HOFFINGER:

Q. Well, let's talk about some of the documentation.

When you say that the lawyers were retained, was there a retainer agreement for attorneys who were working either for Donald Trump in his personal capacity or for the Trump Organization?

A. I would say, typically, yes. Not necessarily in every case or every matter, but typically, yes.

Q. Typically would be in the vast majority of matters; is that correct?

MR. BLANCHE: Objection, misstates testimony.

THE COURT: Overruled.

THE WITNESS: More often than not.

BY MS. HOFFINGER:

Q. So, for example, when the law firm Vinson Elkins was retained to do work personally for Donald J. Trump in his tax matters, was there a retainer agreement in that?

A. I'm not familiar with that representation. But I'm certainly not arguing that the practice is to have a written retainer --

THE COURT: I think you have gotten that.

MS. HOFFINGER: I'll move on, your Honor.

BY MS. HOFFINGER:

Q. Was it a fact that those retainer agreements were reviewed by your office, as legal counsel, as part of the retention?

A. Generally, yes.

Q. And would those lawyers who were retained by Donald Trump personally or by the Trump Organization, would they submit invoices with details of their work?

A. Generally, yes.

Q. And were those reviewed by your office, the office of legal counsel or general counsel, of the Trump Organization?

A. That's the general practice, yes.

Q. And were those amounts that were paid to those law firms pursuant to retainer agreements also recorded in the general ledgers of Donald J. Trump personally, as well as the Trump Organization?

A. Yeah, they would be recorded in whichever -- yeah, whichever -- the ledger of whichever entity was retaining that lawyer or --

THE COURT: Ms. Hoffinger, this is not a discovery matter.

MS. HOFFINGER: I'll try to get to the points that I can.

BY MS. HOFFINGER:

Q. Now, in the case of Michael Cohen, when he left the Trump Organization and he became a personal attorney to President Trump, was there a retainer agreement that covered that retention?

A. I'm not aware of a written retainer agreement.

Q. Does that mean that there was no retainer agreement, sir?

A. Not that I've ever seen, no.

Q. And were invoices submitted by Mr. Cohen that detailed the work that he performed for Donald Trump in 2017?

A. From what I have seen, they were just summary -- I would call them summary invoices, but no detail.

Q. In other words, with just the monthly amount, no detail?

A. Correct, I think for services rendered or something to

that -- and then just a flat amount.
Q. And that was unusual, was it not, for the Trump Organization, with relation to the Trump Organization records related to lawyers?
A. Not typical, but -- but it does happen.
Q. As you sit here, do you have any idea of the personal work that Michael Cohen did in 2017 for Donald Trump?
A. I certainly know, because I did it, when matters that would come in -- I'm not saying -- I don't know how many matters there are -- but there was occasion when matters that would come in would be brought to my attention that I did not believe were corporate matters, things that involved the corporate business of the organization, that involved the president or the first lady, those I would send to Mr. Cohen.
Q. And you don't know if Mr. Cohen actually did work on those matters, though, do you?
A. No.
Q. And he didn't provide invoices detailing work on those matters; is that right?
A. No, just the summary bill he would send.
Q. And again, that was different from any other lawyer or law firm who did work at the Trump Organization or --
THE COURT: I think you made that point.
MS. HOFFINGER: I'll move on, your Honor.
BY MS. HOFFINGER:

Q. I asked you a question about the general ledger and whether the general ledger generally recorded the work of lawyers, for the Donald Trump general ledger, are you aware of that?
A. The ledger would record payments to -- in the case of lawyers, yeah, it would -- if President Trump engaged a law firm or lawyer, then that would typically be paid out of his personal account and recorded on his personal ledger.
Q. And in fact, those general ledgers, his personal general ledgers would actually also describe the type of work that each of those law firms did; correct?
A. Correct. There would be a code, and the code corresponds to -- like, for example, legal expenses has a code or something else had a different code.
Q. In addition to the legal code, there would be actual description of the matter that was worked on by that law firm or those lawyers; isn't that correct?
A. That, I'm not sure about.
MS. HOFFINGER: If it's okay, your Honor, I'm going to hand up some pages from the Donald Trump personal general ledger. I'd like to show it to defense counsel first.
THE COURT: It seems to me that you are more focused on discovery for your case.
MS. HOFFINGER: I'm sorry, your Honor, I just wanted to show him one page of the general ledger and have him confirm that in every other case there's a description of the type of

matter that that law firm performed.

THE COURT: Go ahead.

MS. HOFFINGER: Thank you.

BY MS. HOFFINGER:

Q. So I'm handing up, sir, just as an example, the Donald J. Trump detailed general ledger -- it's DANY 136744 -- and it's account legal expense, and it's for the months of February of 2017 and March of 2017, April of 2017 as an example.

MS. HOFFINGER: Would it be all right if I handed that to the witness, your Honor.

THE COURT: You may.

BY MS. HOFFINGER:

Q. I ask you, sir, to just take a look at this page and the page following. Take a moment and just see if there's a description for every law firm and every lawyer of the type of work that is engaged, but in fact there's no such description for Michael Cohen.

MR. BLANCHE: Objection, misstates the --

THE COURT: Sustained.

BY MS. HOFFINGER:

Q. Is it a fact that the general ledger entries in the vast majority of cases show the type of work, the type of engagement of those lawyers?

A. In the vast majority -- not all, in fairness -- but the vast majority, yes.

Q. And would you turn to the next page for the one for Michael Cohen, where it's circled, and is there a description there for the work of Michael Cohen?

A. There's no description.

MS. HOFFINGER: Thank you.

Q. Now, sir, just a question, Michael Cohen's title before he left the Trump Organization was special counsel to Donald J. Trump, was it not?

A. Correct.

Q. And when he left, he had a similar title, personal attorney to the president, though, in that case?

A. Yes.

Q. Now, in 2017, you said he was paid a total of about $420,000; is that right?

A. Yes.

Q. And as far as you know, after 2017, he continued to be the personal attorney for Donald J. Trump; is that right?

A. I believe so, yes.

Q. And in fact, however, he was not paid anything by either Donald J. Trump personally or the Trump Organization in 2018; is that correct?

A. Not that I'm aware of, no.

Q. Now, you mentioned, sir, the white paper, which is in evidence here. And you mentioned that Mr. Cohen --

THE COURT: Let me get that straight.

Cohen continued to work for Trump in 2018?

THE WITNESS: I know he -- I believe so. I know he represented -- certainly was representing himself -- what work he was doing, I couldn't really tell you, but it's probably for the whole of 2017 as well, but --

THE COURT: Without payment?

THE WITNESS: I don't know of any payments that were made to him. I know he was certainly on TV representing himself as personal attorney, but I do not know of any payments made to him in 2018.

BY MS. HOFFINGER:

Q. In fact, all payments stopped at the end of 2017 when the $420,000 had been fully paid; is that correct?

A. Yeah, I'm not -- I'm not aware of any payments in 2018, correct.

Q. Now, you mentioned that it was your understanding that it was part of the work of Morgan Lewis & Bockius, perhaps Sheri Dillon that led to the white paper and the separating of the business of the Trump Organization from President Trump?

A. Yes. It was Sheri Dillon, and there was a lawyer who I am blanking on, who I think was a former White House counsel, but I could be wrong. I'm blanking on his name.

Q. You said it was your understanding that the separation of Michael Cohen, the need to separate him from the Trump Organization was part of that work of Morgan Lewis which

resulted in the white paper; is that right?

A. No. I don't believe the need to separate Mr. Cohen emanated from Morgan Lewis.

Q. Who did it emanate from?

A. Myself and Eric Trump.

Q. You said you got advice that it was appropriate for Michael Cohen to leave the company as a result of Donald Trump being president, did you not?

MR. BLANCHE: Objection, misstates his testimony.

THE COURT: Overruled.

The witness can clarify if he wishes to.

THE WITNESS: I don't recall saying that. If I did, I misspoke.

But I don't recall getting advice from Morgan Lewis about the need to separate -- this is going back years, so my memory, admittedly, could be wrong. I don't remember -- I certainly don't remember getting advice from Morgan Lewis on that. If I said that earlier, I apologize, I misspoke.

BY MS. HOFFINGER:

Q. Have you had occasion to read the white paper that's in evidence here?

A. Not in quite a while.

Q. Does Michael Cohen appear anywhere in the white paper as being part of the separation --

THE COURT: Stop right there. We have it.

MS. HOFFINGER: Your Honor, a moment to speak with my colleagues.

(Conferring)

MS. HOFFINGER: Nothing further, your Honor. Thank you for your patience.

THE COURT: Thank you.

Mr. Blanche, redirect.

MR. BLANCHE: Briefly, your Honor.

REDIRECT EXAMINATION

BY MR. BLANCHE:

Q. Mr. Garten, you were asked some questions on cross-examination about the general ledger accounts for various law firms and attorneys, whether there's any detail and expenses associated with that ledger.

Do you remember those questions?

THE COURT: Was there any detail about services.

MR. BLANCHE: About services provided by the law firms, correct.

BY MR. BLANCHE:

Q. Do you remember those questions?

A. Yes.

MR. BLANCHE: May I approach, your Honor, and show him the ledger that was showed to him before. May I approach, your Honor.

THE COURT: Yes.

BY MR. BLANCHE:

Q. Mr. Garten, can you take a look at the handful of pages from the general ledger that you were previously shown and look at the -- focusing on the ones that are highlighted in pen.

A. Yeah, I see it.

Q. So are there in fact several entries for law firms where no description for services is included on the general ledger?

A. Yup, yeah --

THE COURT: To sum up this point, for the large majority of instances where law firms delivered services, they gave details. But in some instances, they didn't give details. Is that correct?

THE WITNESS: That's accurate.

THE COURT: I think I have that very fascinating point.

BY MR. BLANCHE:

Q. For example, do you see the name John Dowd on that ledger?

THE COURT: I have it, I have it. The vast majority, one way; sometimes the other way, Mr. Blanche.

MR. BLANCHE: Yes, your Honor.

THE COURT: That's going to make the whole case.

BY MR. BLANCHE:

Q. Mr. Garten, you can put that to the side.

Is one reason that there would be a lack of description is if an attorney was just paid a flat fee every

month?

A. It could be. I can't say definitively, I'm not the person recording, I'm in the legal department. This is generated by the accounting department.

THE COURT: I don't --

THE WITNESS: I can't say.

THE COURT: Can we go to another interesting point.

MR. BLANCHE: Yes, your Honor.

So just one more question, if I could just have one moment, your Honor.

(Conferring)

BY MR. BLANCHE:

Q. You were asked some questions about whether payments were made to Mr. Cohen in 2018.

Do you recall those questions?

A. Yes.

Q. Do you recall whether Mr. Cohen was -- whether his residence was searched by the FBI in early, mid 2018?

A. I recall that, yes.

Q. Is it your understanding that one of the reasons why President Trump stopped paying Mr. Cohen was because of his legal troubles?

MS. HOFFINGER: Objection.

THE COURT: If you know.

THE WITNESS: I can't say definitively.

MR. BLANCHE: Thank you. No further questions.

MS. HOFFINGER: Just one question, your Honor. I can do it from here.

THE COURT: Yes.

RECROSS EXAMINATION

BY MS. HOFFINGER:

Q. Mr. Blanche asked you about John Dowd, who was an attorney who was retained to work for Mr. Trump; is that right?

A. He did, yes.

Q. Do you know what Mr. Dowd did for Mr. Trump?

MR. BLANCHE: Objection, your Honor. It was sustained.

THE COURT: Sustained.

BY MS. HOFFINGER:

Q. There was in fact a retainer agreement between Mr. Dowd -- was there --

MR. BLANCHE: Objection.

THE COURT: Sustained.

Thank you very much, Mr. Garten.

THE WITNESS: Thank you.

THE COURT: Next, Mr. Blanche, still on the topic of color of office.

MR. BLANCHE: Your Honor, thank you.

So picking up where I left off, your Honor, the question is whether the work that Mr. Cohen was doing in his