

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

PART 59 OCT 11 2023

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

**NOTICE OF PRESIDENT
DONALD J. TRUMP'S MOTION
TO FILE OMNIBUS PAPERS
WITH LIMITED REDACTIONS**

PLEASE TAKE NOTICE that upon the annexed Affirmation of Todd Blanche, dated October 5, 2023, and the exhibits attached thereto, President Donald J. Trump, by his counsel Blanche Law PLLC and NechelesLaw LLP, will move this Court, the Supreme Court of New York, County of New York, 100 Centre Street, New York, N.Y. 10007, on a date and time to be set by the Court, to permit a copy of the Omnibus Papers to be filed with redactions solely limited to the names of District Attorney support personnel and personal identifying information of the parties and witnesses.

Dated: October 5, 2023
New York, N.Y.

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PART 59 OCT 11 2023

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

PART 59 OCT 11 2022

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

**AFFIRMATION OF TODD
BLANCHE IN SUPPORT OF
PRESIDENT DONALD J.
TRUMP'S MOTION TO FILE
OMNIBUS PAPERS WITH
LIMITED REDACTIONS**

Todd Blanche, a partner at the law firm Blanche Law PLLC, duly admitted to practice in the courts of the State of New York, hereby affirms the following to be true under penalties of perjury:

1. I represent President Donald J. Trump in this matter and submit this affirmation in support of a motion to file a public copy of President Trump's Omnibus Motions and supporting papers ("Omnibus Papers") in the above-captioned case with limited redactions.¹

2. This Affirmation is submitted upon my personal knowledge or upon information and belief, the source of which is my communications with the court, with prosecutors and with other counsel, my review of documents in the case file, and an independent investigation into the facts of this case.

3. For the reasons set forth below, the court should grant President Trump's motion and permit a copy of the Omnibus Papers to be filed publicly with redactions solely limited to the names of District Attorney staff and personal identifying information of the parties and witnesses.

¹ The Defense does not object to the redaction of either the names of DANY support personnel and/or email addresses and contact information of the parties.

FACTUAL BACKGROUND

4. During the People's years-long investigation of President Trump, there was substantial public reporting about the two grand jury investigations. The names of grand jury witnesses and people who met with and were interviewed by the prosecutors were all repeatedly reported in the media. The facts of the case are well-known and have been discussed during congressional hearings, federal sentencings, and in other public forums. A former prosecutor in the Manhattan District Attorney's Office ("DANY") even published a memoir providing an "inside account" of the People's investigation. *See Omnibus Motions at 43-45.*

5. On April 4, 2023, the People filed a thirty-four count Indictment, charging President Trump with falsifying business records in the first degree in violation of Penal Law §175.10. Accompanying the indictment was a "Statement of Facts" that delved into various details of the factual findings of the grand jury. The District Attorney also issued a press release and held a press conference to discuss the charges against President Trump and the findings of the grand jury, including by identifying various individuals involved in the case.

6. On April 23, 2023, the People sought a protective order under Article 245 of the Criminal Procedure Law ("C.P.L."), and, after briefing and oral argument, the Court subsequently entered a protective order. *See Protective Order, attached hereto as Exhibit 1.* The Protective Order by its terms does not impose limitations on publicly filed motions by either party. In fact, the Protective Order expressly allows discovery material to be used "for the purposes of preparing a defense in this matter." Moreover, standard practice in New York Courts is to file omnibus motions in unredacted form, including grand jury material, with limited exceptions such as redacting personal identifying information.

7. On September 29, 2023, the Defense filed President Trump's Omnibus Papers, asserting, *inter alia*, that the charges against President Trump are legally deficient, and that the People selectively prosecuted President Trump, violated grand jury secrecy, and impermissibly delayed in bringing this case. Although the Omnibus Papers were filed with both the Court and the People, they were not filed publicly for the purpose of giving the People an opportunity to review them and propose redactions, consistent with the procedures ordered by the Court on May 4, 2023. See Transcript of Protective Order Hearing ("Protective Order Tr.") at 46-49, attached hereto as Exhibit 2.

8. The People submitted voluminous proposed redactions to the Omnibus Papers on October 2, 2023. According to the People, the proposed redactions—*i.e.*, those of (1) the names of grand jury witnesses and potential witnesses at trial (2) the name of a DANY paralegal,² (3) identifying information, and (4) the subject matter of grand jury testimony, grand jury exhibits, interview reports and further evidence in this case—are "necessary and consistent with the May 8, 2023 Protective Order, grand jury secrecy and concerns about witness and personnel safety."

9. In order to be able to publicly file President Trump's Omnibus Motions, the Defense filed the Omnibus Papers on October 3, 2023, with all of the People's proposed redactions. But, because the vast majority of the People's proposed redactions are inconsistent with applicable law, the Defense now moves to be allowed to file the Omnibus Papers publicly with only a few limited redactions.

10. To put the People's proposed redactions in perspective, it is instructive to consider a few examples: First, the People propose 76 redactions of the name of a lawyer who previously

² As discussed above, n. 1, we do not oppose the redactions of the names of any paralegal or other DANY support personnel.

worked for the Trump Organization as Special Counsel to President Trump (“Lawyer A”). See Statement of Facts at ¶ 3 (identifying said person as Lawyer A).³

11. Of course, the identity of Lawyer A is widely known—indeed, Lawyer A himself has appeared on multiple news programs, social media, and other publicly available outlets broadcasting to the world his role in this case. Lawyer A’s role in this case was publicly reported by national and international media well before the initiation of this proceeding. See, e.g., Nadine El-Bawab and Aaron Katersky, *Timeline: Manhattan DA’s [Person B⁴] hush money case against Donald Trump*, ABC NEWS (Aug. 28, 2023), <https://abcnews.go.com/Politics/timeline-manhattan-district-attorney-case-donald-trump/story?id=98389444> (identifying the name of Lawyer A); Nicki Brown, *[Lawyer A] testifies again before grand jury probing hush money scheme*, CNN (Mar. 16, 2023), [https://www.cnn.com/2023/03/15/politics/\[Lawyer A\]-trump-manhattan-grand-jury-testimony/](https://www.cnn.com/2023/03/15/politics/[Lawyer A]-trump-manhattan-grand-jury-testimony/); Maggie Haberman, *[Lawyer A], Trump’s Longtime Lawyer, Says He Paid [Person B] Out of His Own Pocket*, NEW YORK TIMES (Feb. 13, 2018), [https://www.nytimes.com/2018/02/13/us/politics/\[Person B\]-\[Lawyer A\]-trump.html](https://www.nytimes.com/2018/02/13/us/politics/[Person B]-[Lawyer A]-trump.html). And, on the very day he testified in the grand jury, Lawyer A talked to the press on video about his grand jury testimony while standing in front of 80 Centre Street. See Associated Press, *[Lawyer A] testifies before grand jury in Trump hush money probe*, YouTube (Mar. 13, 2023), https://www.youtube.com/watch?v=ZW420bV_S7E.⁵

³ To avoid the People ironically seeking redactions to this motion to file unredacted Omnibus Papers, President Trump will, within this motion, refer to this individual as “Lawyer A,” but he does so only to allow this unredacted motion to be filed expeditiously. In no way does the Defense concede it is necessary or appropriate to refer to this individual in publicly filed documents as “Lawyer A,” as opposed to using his real name.

⁴ Again, solely for the purpose of expediting the public filing of this motion, the Defense will refer to the individual named in the headline as “Person B.”

⁵ Lawyer A has also written a book about this case and discussed its facts on numerous podcasts.

12. Bizarrely, the People have even proposed redacting Lawyer A's name in a press release issued by the U.S. Department of Justice. *See* Omnibus Motions at 5 n.3 ("U.S. Department of Justice, [redacted] Pleads Guilty In Manhattan Federal Court To Eight Counts, Including Criminal Tax Evasion And Campaign Finance Violations (Aug. 21, 2018), [https://www.justice.gov/usao-sdny/pr/\[redacted\]-pleads-guilty-manhattan-federal-court-eight-countsincluding-criminal-tax](https://www.justice.gov/usao-sdny/pr/[redacted]-pleads-guilty-manhattan-federal-court-eight-countsincluding-criminal-tax)").⁶

13. The People have similarly proposed redacting Lawyer A's name in the Defense's description of a news article reporting certain facts underlying this case. *See* Omnibus Motions at 4 ("In January 2018, the *Journal* ran an article about [redacted] paying [redacted].").

14. And the People have proposed redacting numerous references to "[redacted]'s invoices" and the "invoices of [redacted]." *See, e.g.*, Omnibus Motions at 3, 5, 6, 11 and 37.

15. Incredibly, the People have proposed all these redactions notwithstanding the fact that the People used Lawyer A's actual name in the Indictment itself. *See* Indictment at 1, 3-6, 8-12 and 14 (identifying each invoice at issue as "an invoice from Michael Cohen"). Similarly, the District Attorney personally named Lawyer A when holding a press conference announcing the charges of President Trump. *See Manhattan District Attorney News Conference on Indictment of Former President Trump*, C-SPAN (Apr. 4, 2023), <https://www.c-span.org/video/?527172-1/manhattan-district-attorney-news-conference-indictment-president-trump>.

16. In short, there is simply no basis to require the Defense to redact the name of Lawyer A from its Omnibus Papers and doing so creates a different standard for the People and for the Defense. The People are permitted to identify the name of Lawyer A, but the defense must redact this very same information from public filings with the Court.

⁶ The People have publicly acknowledged Lawyer A's guilty plea. *See* Statement of Facts at ¶ 3.

17. Similarly, the People seek to redact the name of an AMI executive. *See, e.g.*, Omnibus Motions at 3 (“According to an AMI executive named [redacted].”). This, notwithstanding the fact that the executive’s involvement in this case is known from Lawyer A’s federal sentencing, a Federal Election Commission (“FEC”) Statement of Reasons, *see* FEC Statement of Reasons in MURs 7324, 7332, 7364 & 7366, and press reports. *See, e.g.*, Erica Orden, *Former National Enquirer publisher testifies before Trump grand jury*, POLITICO (Mar. 27, 2023), <https://www.politico.com/news/2023/03/27/publisher-testifies-trump-grand-jury-00089091>.

18. The next example of the unfounded nature of the People’s proposed redactions is that the People have proposed redactions of the names of all witnesses, whether they testified in the grand jury or simply met with the People for a proffer. *See, e.g.*, Omnibus Motions at 6 (“By the end of [November 2019], DANY had met with or elicited grand jury testimony from, at least, [redacted] (between January and October 2019), [redacted] (October 2019), [redacted] (November 2019), [redacted] (November 2019), [redacted] (November 2019), [redacted] (August 2019), and [redacted] (November 2019).”); Omnibus Motions at 8 (“DANY presented three additional witnesses in 2023—[redacted], [redacted], and [redacted]—but none of them were significant to the charges and DANY could have subpoenaed all of them in 2019 had it wished.”).

19. Yet, like Lawyer A and the AMI executive, the identities of these and other potential witnesses are widely known. At least two of them testified publicly at the recent Trump Corporation tax trial and admitted having testified in the prior grand jury. In addition, it has been widely reported that at least eight of the ten witnesses named in the Omnibus Papers testified before the grand jury in 2023. *See, e.g.*, Ben Protes, William K. Rashbaum, Jonah E. Bromwich

and Maggie Haberman, *[Lawyer A] to Testify at Grand Jury as Likely Trump Indictment Looms*, NEW YORK TIMES (Mar. 10, 2023), [https://www.nytimes.com/2023/03/10/nyregion/trump-bragg-\[Lawyer A\]-indictment.html](https://www.nytimes.com/2023/03/10/nyregion/trump-bragg-[Lawyer A]-indictment.html); Kate Christobek, Ben Protess, Jonah E. Bromwich and William K. Rashbaum, *[Witness] Meets With Manhattan Prosecutors as Trump Inquiry Intensifies*, NEW YORK TIMES (Mar. 6, 2023), [https://www.nytimes.com/2023/03/06/nyregion/\[Witness\]-trump-manhattan-prosecutors.html](https://www.nytimes.com/2023/03/06/nyregion/[Witness]-trump-manhattan-prosecutors.html); William K. Rashbaum, Ben Protess, Jonah E. Bromwich and Hurubie Meko, *Manhattan Prosecutors Begin Presenting Trump Case to Grand Jury*, NEW YORK TIMES (Jan. 30, 2023), [https://www.nytimes.com/2023/01/30/nyregion/trump-\[Person B\]-grand-jury.html](https://www.nytimes.com/2023/01/30/nyregion/trump-[Person B]-grand-jury.html). Notably, at least two of the witnesses released statements to the press, informing the world that they were witnesses in this case and had either met with the prosecutors or testified before the Grand Jury. See Jennifer Peltz and Deepti Hajela, *[Person B] meets with prosecutors investigating Trump*, ASSOCIATED PRESS (Mar. 15, 2023), [https://apnews.com/article/trump-\[Lawyer A\]-\[Person B\]-grand-jury-d48153fc2d3fe7a656e8a24ad1acd082](https://apnews.com/article/trump-[Lawyer A]-[Person B]-grand-jury-d48153fc2d3fe7a656e8a24ad1acd082); Ben Protess, Kate Christobek, William K. Rashbaum and Jonah E. Bromwich, *[Lawyer A] Testifies in Grand Jury as Trump Indictment Appears Near*, NEW YORK TIMES (Mar. 13, 2023), [https://www.nytimes.com/2023/03/13/nyregion/\[Lawyer A\]-trump-grand-jury.html](https://www.nytimes.com/2023/03/13/nyregion/[Lawyer A]-trump-grand-jury.html). And, astonishingly, despite their claims of concern for witness security, the People have not even claimed that any of these witnesses informed the People that they want their names to be redacted. For these reasons, the People's purported concerns about witness safety are unsupported.

20. The People have also proposed free-wheeling redactions of the Defense's citations to grand jury material, discovery material, and expected evidence in this case. They did so despite the fact that the entire factual background of this prosecution has long been in the public domain (in large part because the witnesses whose names the People now seek to redact have publicly

discussed their roles, or their roles have been reported by multiple news outlets). *See, e.g.*, G.J. Testimony of [redacted] at DANYGJ00073819.”); Omnibus Motions at 5 (“In March 2019, [redacted] claimed to members of DANY that [redacted]. (DANYDJT00001051-053). During that same meeting, [redacted]. *See id.*”); Omnibus Motions at 20 (“[Redacted] testified [redacted], *see* G.J. Testimony of [redacted] at DANYGJ00074578, and [redacted], *see, e.g.*, [] G.J. Testimony of [redacted] at DANYGJ00074581.”).

21. The redactions proposed by the People are inappropriate. The People brought this case and should not be permitted to avoid public scrutiny of the numerous infirmities in their case by attempting to litigate it in secret. Nor should the People be allowed to pick and choose what information they believe the public is entitled to know pre-trial. This is inconsistent with President Trump’s First and Sixth Amendment rights, as well as the public’s First Amendment and common law rights to public access to judicial records.

22. For these reasons, and as discussed in further detail below, President Trump respectfully requests that the Court order that the Omnibus Papers be filed publicly with redactions solely limited to the names of DANY support personnel and the personal identifying information (such as email addresses and phone numbers) of the parties and witnesses.

**THE COURT SHOULD GRANT PRESIDENT TRUMP’S
MOTION FOR FILING WITHOUT REDACTION**

23. Filings in criminal cases in this country are presumptively public unless there is a legitimate basis to keep the facts or information from the public. *See* Transcript of Hearing on Protective Order at 66, *United States v. Donald J. Trump*, 23-cr-257 (D.D.C.) (Aug. 11, 2023) (“I intend for this case to proceed in the public record as much as possible, and the [Special Counsel’s] motion did not persuade me that there was a need to file the document *ex parte*. . . . I will carefully weigh the factors to ensure that there’s sufficient reason for keeping any material off the public

record.”). That is particularly true in this case, where the defendant is the leading Republican candidate for the office of the President of the United States. *See, e.g., United States v. Ford*, 830 F.2d 596 (6th Cir. 1987) (“Here the defendant, a Democrat ... is entitled to attack the alleged political motives of the Republican administration which he claims is persecuting him because of his political views. . . . He is entitled to fight the obvious damage to his political reputation in the press and in the court of public opinion, as well as in the courtroom ... [as h]e will soon be up for reelection.”); *see also* Protective Order Tr. at 36-37 (“[O]bviously Mr. Trump is different. Okay, it will be foolish of me to say he’s not. He’s a former president of the United States and he’s running again as president of the United States.”). The fact that this case carries such political significance does not counsel towards extra secrecy. Rather, quite the opposite is true, especially when the People have filed a Statement of Facts, issued a press release, held a press conference, and stood idly by while a former prosecutor published a book on this case.

24. The People’s claim that these redactions are mandated by grand jury secrecy is unavailing. First, grand jury secrecy rules bind only the People, not the defendant. *See* C.P.L. § 190.25(4)(a); *People v. Phillips*, 67 Misc. 3d 196, 202-203 (Sup. Ct. Bronx Cnty. 2020) (requiring the People to show good cause for a protective order that would restrict the defendant’s access to grand jury transcripts) (“[Penal Law § 215.70] does not criminalize the action of a person, including a defendant, who receives such material in discovery, even subject to a nondisclosure order, and then disseminates to anyone else or decides to post the testimony on the Internet.”); *see also* Protective Order Tr. at 17 (ADA McCaw saying that the “People are bound by Grand Jury secrecy, which the defense is not”). Second, the interests favoring grand jury secrecy generally do not apply in post-indictment proceedings. An indictment has already been returned, and there is no risk of flight or of interference in the grand jury proceedings. *See, e.g., People v. Di Napoli*,

27 N.Y.2d 229, 235 (1970) (identifying the most common considerations for maintaining the secrecy or confidentiality of grand jury minutes). For these reasons, it is common practice for defense attorneys in New York to quote grand jury materials in their omnibus and *in limine* motions.

25. Moreover, any interest favoring grand jury secrecy is vitiated when the information becomes part of the public domain. See *In re Grand Jury Subpoena (Miller)*, 438 F.3d 1138, 1140 (2006) (“Judicial materials describing grand jury information must remain secret only ‘to the extent and as long as necessary to prevent the unauthorized disclosure of a matter occurring before a grand jury.’ . . . [S]ecrecy is no longer ‘necessary’ when the contents of grand jury matters have become public. . . . Information widely known is not secret.”); see also *In re North*, 16 F.3d 1234, 1245 (D.C. Cir. 1994) (Rule 6(e) did not prohibit release of independent counsel’s report in the wake of Iran-Contra notwithstanding fact that report was primarily based on grand jury testimony); *In re Sealed Case*, 192 F.3d 995, 1001-05 (D.C. Cir. 1999) (Office of the Independent Counsel could not have violated grand jury rules where President Clinton’s status as a grand jury witness was already a matter of widespread public knowledge).⁷

26. Further, any considerations must be weighed against President Trump’s fundamental right to a public trial and the public’s interest in open access to judicial records. See *People v. Clemons*, 78 N.Y.2d 48, 51 (1991) (“the right to a public trial has long been regarded as a fundamental privilege of the defendant in a criminal prosecution”); *Westchester Rockland Newspapers, Inc. v. Leggett*, 48 N.Y.2d 430, 437 (1979) (open court proceedings “protect the accused from secret inquisitional techniques and unjust persecution by public officials and go[] far

⁷ Notably, much of what the People seek to redact, such as the name of witnesses who proffered with the People, is not even grand jury material.

toward insuring [the accused] the fair trial to which he is entitled”) (cleaned up). There is no better example of a case where openness and transparency can help ensure “that the public may see that [the accused] is fairly dealt with and not unjustly condemned.” *People v. Muhammad*, 40 N.Y.3d 26, 34 (2023) (quoting *Waller v. Georgia*, 467 U.S. 39, 46 (1984)); see also *Gannett Co. v. De Pasquale*, 43 N.Y.2d 370, 376–77 (1977), aff’d sub nom., 443 U.S. 368 (1979) (“it is the defendant who suffers directly when wrongfully deprived of public vigilance against possibly unjust prosecution or potential abuse (or nonuse) of judicial discretion, the right to insist on a public trial is primarily that of the accused”); *Westchester Rockland Newspapers*, 48 N.Y.2d at 437 (“Justice must not only be done; it must be perceived as being done.”).

27. Significantly, President Trump’s guarantee to a public trial is not limited to the criminal trial itself. It extends to pretrial proceedings, see, e.g., *Waller*, 467 U.S. at 46 (error to close suppression hearing); *People v. Guevara*, 135 A.D.2d 566, 567 (2d Dep’t 1987) (error to close suppression hearing, holding that “the right to a public trial applies to pretrial proceedings”), and it pertains in equal force to written submissions on case-dispositive motions. See *Matter of New York Times Co.*, 828 F.2d 110, 114-116 (2d Cir. 1987) (vacating sealing of motions papers and holding that the constitutional right of access to judicial proceedings extends “to written documents submitted in connection with judicial proceedings that themselves implicate the right of access”); see also *Associated Press v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 705 F.2d 1143, 1145 (9th Cir. 1983) (“the two principal justifications for the first amendment right of access to criminal proceedings apply, in general, to pretrial documents”).

28. These considerations—President Trump’s fundamental right to a public trial and pretrial proceedings, the public interest in open access to judicial records, and the publicity of the facts of this case—all weigh in favor of the non-redaction of the Omnibus Papers.

CONCLUSION

29. For the foregoing reasons, President Trump respectfully moves the Court to order that a copy of the Omnibus Papers be filed in the public case file with redactions solely limited to the names of DANY support personnel and personal identifying information of the parties and witnesses.

Dated: October 5, 2023
New York, N.Y.

By: /s/ Todd Blanche
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Attorney for President Donald J. Trump

EXHIBIT 1

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 hearing conducted on May 4, 2023,} and the opposition motion of Todd Blanche and Susan Necheles, counsel for Donald J. Trump, 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

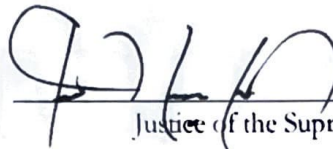
ORDERED that, in the event Defendant seeks expedited review of this protective order under CPL 245.70(6)(a), any obligation that would exist on the part of the People to produce the information and materials that are the subject of this order is held in abeyance pending the determination of the intermediate 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 2

SUPREME COURT STATE OF NEW YORK

COUNTY OF NEW YORK CRIMINAL TERM PART: 59

-----X

THE PEOPLE OF THE STATE OF NEW YORK Indict No.:
71543-2023

-against-

DONALD J. TRUMP,
Defendant

PROTECTIVE ORDER
HEARING

-----X

100 Centre Street
New York, New York
May 4, 2023

B E F O R E:

THE HONORABLE JUAN MERCHAN, Justice

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

ALVIN BRAGG, JR., ESQ.,
District Attorney, New York County
One Hogan Place
BY: CATHERINE MCCAWE, ESQ.
BECKY MANGOLD, ESQ.
MATTHEW COLANGELO, ESQ.
SUSAN HOFFINGER, ESQ.
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CHRISTOPHER CONROY, ESQ.
Assistant District Attorneys

TODD BLANCHE, ESQ.
SUSAN NECHELES, ESQ.
Attorneys for Defendant
Donald J. Trump

Sheila Wesley
Senior Court Reporter

PROCEEDINGS

2

1 COURT SERGEANT: Part 59, New York County Supreme
2 Court now in session. The Honorable Juan Merchan presiding.

3 THE COURT: Good morning. Please be seated.

4 COURT CLERK: Calendar number one on the 59
5 calendar, Donald Trump. Indictment number 71543 of '23.

6 Appearances.

7 THE COURT: Your appearances, please.

8 MS. MCCAWE: For the People, Catherine McCaw.

9 I also have my colleagues with me, Becky Mangold,
10 Matthew Colangelo, Susan Hoffinger, Christopher Conroy, and
11 Katherine Ellis.

12 Good morning, your Honor.

13 THE COURT: Good morning.

14 MS. HOFFINGER: Good morning.

15 MR. BLANCHE: Good morning.

16 Todd Blanche for Donald Trump, 99 Wall Street.

17 THE COURT: Good morning, Mr. Blanche.

18 MS. NECHELES: Good morning, your Honor.

19 Susan Necheles for Donald Trump.

20 THE COURT: Good morning, Ms. Necheles.

21 Before we get into anything substantive, I just
22 wanted to confirm with the defense that you are waiving your
23 client's appearance here today?

24 MR. BLANCHE: Confirmed.

25 THE COURT: And can you also represent to the

Sheila Wesley
Senior Court Reporter

PROCEEDINGS

3

1 Court that you will go back and diligently review with your
2 client everything that took place today including review of
3 the transcript with your client?

4 MR. BLANCHE: That is also confirmed, your Honor.

5 THE COURT: So as you know we're here for a
6 hearing on the People's submission for a protective order as
7 required by law and in connection with that I received
8 several submissions which I would like to put on the record.

9 I received the People's application for protective
10 order dated April 24th. Then I received a submission by the
11 news organizations dated May 1st and, by the way, counsel is
12 here for the news organizations.

13 MR. BALIN: Good morning, your Honor.

14 THE COURT: Good morning.

15 Then after that, I received the defense opposition
16 to the People's application for a protective order also on
17 May 1st. And then I received a letter from the defense in
18 support of the submission by the news organizations.

19 I believe that's all I have in connection with
20 this.

21 So the rules governing protective orders are found
22 in CPL section 245.70 and that's what I'm bound by. So I've
23 reviewed all of the submissions including the exhibits and
24 attachments and I've carefully reviewed the protective order
25 submitted by the People as well as the proposed protective

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1 order submitted by the defense and I've compared them side
2 by side, I've gone back and forth with them and perhaps I'm
3 openly optimistic but it seems to me we're not that far
4 apart really.

5 What I'd like to do is go through a couple of the
6 sections where the defense either had proposed redactions or
7 proposed additions, run it by the People, see what your
8 position is on those and see if we can at least get past
9 some of these.

10 So let's begin and we're going to be working off
11 the defense proposal. Let's, beginning on page one,
12 paragraph one where the defense is adding the names of Todd
13 Blanche and Susan Necheles, is there any objection to that?

14 MS. MCCAWE: No objection from the People, your
15 Honor.

16 THE COURT: So we're in agreement on that.

17 Let's skip the next one and go to page three,
18 paragraph one and there, there are three proposed additions
19 and two proposed redactions.

20 So first proposed addition would be that the
21 defendant is permitted to review the portions of cell phones
22 that are related to Donald J. Trump, the Trump Organization
23 or any company owned in part or entirely run by Donald J.
24 Trump or the Donald J. Trump Revocable Trust or anything
25 involving the subject matter of the case only in the

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1 presence of the defense counsel and any other forensic
2 images should be reviewed solely by defense counsel and
3 those employed by defense counsel to assist in the defense
4 of the above-captioned criminal proceeding except that after
5 obtaining permission ex-parte and in camera from the Court
6 and you crossed off on consent from the People.

7 I'll hear you on that.

8 MS. MCCAWE: Yes, your Honor. We do not believe
9 that the changes that are proposed by defense counsel -- can
10 you hear me if I stand or should I sit in front of the
11 microphone?

12 THE COURT: You can remain seated if you prefer.

13 MS. MCCAWE: Whatever the Court propose.

14 THE COURT: Whatever you prefer.

15 MS. MCCAWE: Your Honor, we do not believe that the
16 proposed changes that the defense counsel has made to the
17 protective order adequately addresses the concerns that have
18 been raised by the People in their moving papers.

19 Our concern regarding the witness' cell phones is,
20 as your Honor knows, the cell phone of any individual
21 contains a large amount of highly personal information
22 including just to name a few, text messages with friends and
23 family, photographs of personal business including perhaps
24 vacation, pictures of the interior of a person's home as
25 well as other matters like internet search history.

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1 The vast majority of the contents that is
2 contained in a witness's cell phone simply does not relate
3 to the subject matter of the case and much of it is of a
4 highly personal nature as the supreme court itself has
5 highly recognized.

6 The procedure that the defense proposes and, in
7 fact, forces essentially no guidelines on what materials the
8 defense may show to the defendant. It essentially says that
9 at the defense's sole discretion, the defense may determine
10 that any material pertaining to the subject matter of the
11 case and then without any application whatsoever, the
12 defense is entitled to show those materials to the
13 defendant.

14 The People understand what the defense concern is
15 regarding the material, the language that the People
16 originally proposed, and so, they would propose as another
17 possibility, to identify that the People -- the defense
18 could show materials to the defendant either after obtaining
19 consent from the People or by filing an ex-parte application
20 with the court.

21 THE COURT: All right, correct me if I'm wrong, I
22 think the party's suggestions are already contained. The
23 part you're suggesting is already contained in here. If I'm
24 reading correctly, what the defense is suggesting is that
25 only be done after obtaining permission from the court

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1 ex-parte in camera. Am I correct about that?

2 MS. MCCAWE: I don't believe so, your Honor. I'm
3 happy to have defense address it but my reading of the
4 language, anything containing the subject matter of the case
5 may be reviewed only in the presence of defense counsel
6 except that after obtaining permission ex-parte from the
7 court, other court approved portions of forensic images may
8 be shown to the defendant.

9 So I believe what the defense is proposing, only
10 those materials that do not relate to the subject matter of
11 the case may be shown to the defendant after a court
12 approved application.

13 MR. BLANCHE: Thank you, your Honor.

14 So the proposed redactions and additions by the
15 defense is designed to address the concerns the People just
16 raised. And so, taking each in turn, first what the defense
17 is saying is that as it comes to the cell phones which we
18 readily agree contain all of the privileged and very
19 sensitive material described by the People. But to the
20 extent that the cell phones contain relevant information,
21 and that's what we describe in our additions, so anything
22 that has to do with the defense of this case or the
23 potential direct evidence against the defendant, should be
24 treated like all of the discovery in this case, limited to
25 summations material included, which means the defense should

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1 be allowed to look at that material, which the People do not
2 object to. But if it relates to the case and if we need to
3 go back and forth on how we expand or contract our
4 description of "related to the case," that's fine with us.

5 But to the extent that it does, we shouldn't have
6 to consult with anybody before showing it to our client
7 putting aside the Sixth Amendment concerns that are raised
8 by that. It almost is obvious, you can think of 25
9 different examples but if there is a text exchange between
10 Michael Cohen and another witness in this case, we have no
11 idea if the People have seen that, I'm sure they have but we
12 have no idea if they have. Under the People's proposed
13 protective order, we have to go to them and say, Hey,
14 listen, there's this text exchange between Michael Cohen and
15 Witness B, gosh, we really like it, can we show it to our
16 client? That's insane. It can't be fair to us or to the
17 defendant.

18 THE COURT: I agree with you that obtaining the
19 consent from the People just seems inappropriate. It just
20 rubs me the wrong way so what I would like to do by the way
21 in that paragraph to address the People's concern short of
22 requiring that you go and seek their consent, it just seems
23 like that is inconsistent with the spirit of the discovery
24 statute.

25 MR. BLANCHE: So what we propose and, again, I

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1 don't think we're not bound to exactly the word but we tried
2 to come up exactly with what the court is describing which
3 is a remedy to their concern is if we review the materials
4 on the cell phone that doesn't fall within the description
5 above. So, for example, the interior of Mr. Cohen's home,
6 hard to see how that's relevant to the case but if for some
7 reason we think it is, that's something that we have to get
8 permission to show our client conceivably but even there we
9 should not have to go to the prosecution, who are trying to
10 convict our client and say, explain why we really want to
11 show pictures of your witness's house and here is why it
12 helps our defense and here is the reason why we think it
13 should be allowed for two reasons:

14 One, it should be obvious, it gives away our
15 defense. But two, it gives them conceivably the veto right
16 so they can say, nah, we don't think you can do that. It
17 can't be.

18 THE COURT: I agree with you. Is there a way we
19 can figure this out?

20 MS. MCCAWE: Yes, your Honor. As we mentioned we
21 would be amenable to a provision whereby they can seek other
22 consent or make an ex-parte application to the court prior
23 to showing the material to the defendant.

24 We do think it addresses their concern potentially
25 tipping off the People regarding what their theory of the

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1 case is, at the same time it does address the People's
2 concern. Large amount of material in the phone are highly
3 personal and don't relate to the subject matter of the case.
4 We would be within our rights properly to go through the
5 phone and merely pick out the portions which we believe
6 pertain to the subject matter of the case and give those
7 merely to the defense.

8 But in an effort to make it so that the defense
9 has full access to the cell phone and we believe and will
10 provide them with the full forensic images, we do want to
11 make sure there are guardrails so it's not solely the
12 defense determining whether the person's cell -- part of the
13 phone come in.

14 THE COURT: How about doing this, the word
15 "consent" from the People does trouble me, so instead of
16 seeking consent from the People, you seek the consent of the
17 Court and I make -- consult with the People if I need to --
18 to better understand what the issue is there?

19 MR. BLANCHE: Just so I understand, your Honor's,
20 proposed solution, is this with respect to anything we want
21 to show our client?

22 THE COURT: No, we're talking about the phones,
23 only the phones.

24 MR. BLANCHE: I'm sorry, even on the phones, we
25 are not okay with that because even under your Honor's

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1 suggested solution the People agree that there is a
2 tremendous amount of information on the phones that are
3 relevant to our defense, so under this solution we are going
4 to have to present the Court, I'm not exactly sure how we
5 would do it or how much time this staff will be able to take
6 to review it.

7 Imagine what we're talking about, we're talking
8 about incredible amounts of information in the form of, I
9 assume, text messages mostly, potentially other social media
10 WhatsApp and whatnot that we have to come to the Court and
11 say here's this, you know, gigabyte of data that we would
12 really like to show our client under our Sixth Amendment
13 right to do so to help prepare for a defense and without the
14 Court's permission we can't do it. And while I don't object
15 to the Court consulting with the People as necessary if it
16 relates to something that has nothing obviously to do with
17 the case, it's extraordinary burdensome and unfair that we
18 can't even show our client, for example, a text message
19 between Michael Cohen and another witness in this case
20 without coming to the Court and getting permission.

21 THE COURT: Well, let me clarify, my suggestion
22 applies only to those items that arguably do not apply to
23 the subject matter of the case. So if you find a text
24 between Michael Cohen and someone else, clearly that does
25 apply to the subject matter of the case and I think under

1 that situation, under those conditions you would be
2 permitted. But I think what I'm talking about are those
3 areas where the People are concerned about people's privacy
4 rights, perhaps they could be embarrassing to anyone,
5 anything of that nature. I don't really have a problem with
6 you seeking the court's consent on that.

7 MR. BLANCHE: We agree that there is potentially
8 some tranche of material that falls outside the four corners
9 of the prosecution of what is part of this case interesting
10 and important to us enough to use as part of our defense
11 and, therefore, we want to share with our client and
12 further, for those things we need to come to the Court for
13 permission. That, I guess I'm struggling with how we define
14 that because while I certainly feel that we are confident
15 and competent to be able to make that decision ourselves, I
16 do think we have to define the protective order and one
17 additional caveat to the extent that the Court have to go to
18 the People if there is an issue that you need addressed
19 based upon our submission, we would request that you not
20 share the proffered materials with the People without
21 seeking our input as well.

22 THE COURT: Of course.

23 MR. BLANCHE: We're talking about hypotheticals
24 here which hopefully won't come into play but that is our
25 concern.

1 THE COURT: That's fine.

2 I'll hear from you.

3 MS. MCCAWE: I think that the People's other
4 concern is, I think in theory what the Court proposes seems
5 reasonable. I do think, however, we would want to make sure
6 that whatever categories are something that the defense
7 shows to the defendant without seeking prior Court approval
8 are well-defined such that there is not much ambiguity so
9 one category of one material, for example, communications
10 between two people who the People have designated as
11 witnesses on the witness list. That is the type of material
12 that would pertain to the subject matter of the case without
13 further review but we want to make sure whatever those areas
14 are, are well-defined so there is no ambiguity as to what
15 the defense may not be shown.

16 MR. BLANCHE: And that's exactly how we tried to
17 describe, we tried to capture what we assumed was on the
18 cell phone but we don't have the cell phone yet which would
19 include everything associated with --

20 THE COURT: Well, the People are seeking to more
21 clearly define what that is. I don't have a problem with
22 that so I'm going to leave it to the two of you to work on
23 that language and provide a revised proposed order to me.

24 Going to the next one, page two, paragraph two,
25 here the defense struck the word "and", and added further

1 application to order that disclosure of the name and
2 identifying information of New York County District
3 Attorney's Office personnel other than sworn members of law
4 enforcement, assistant district attorneys, and expert or
5 fact witnesses shall be delayed until the commencement of
6 jury selection and permitting the People to redact such
7 names and identifying information from any of the cover
8 materials.

9 MS. MCCAWE: The People believe that the original
10 application was based on, demonstrated good cause including
11 based on the defendant's past inflammatory remarks and that
12 the propose language that the People suggested would not
13 seriously prejudice the defense in terms of being able to
14 surmount a defense in court.

15 Our obvious concern here is that members of DANY
16 support staff may find their names splashed across the news
17 or targeted in the defendant's social media as he has an
18 extensive history of doing and we further believe that in
19 most instances where someone along the lines of a paralegal
20 is testifying, that the identity of a paralegal and their
21 past experiences rarely add significantly to the defendant's
22 knowledge as to how the defense cross-examine the paralegal.
23 Usually the paralegal is testifying something along the
24 lines about documents that are already in evidence. Many of
25 them it's their first job out of college so there is simply

1 not a need to know their identity prior to the commencement
2 of jury selection which is the time that the People propose
3 turning that information over to the defense. So we don't
4 see any need for the amendment of the defense proposes.

5 MR. BLANCHE: I don't think we have a lot. I
6 think the way we edit, again, we don't know whether there is
7 any expert or fact witnesses who fall into the excluded
8 category and if there are, we don't think it should apply.
9 The description that was just -- if there is a paralegal who
10 is a summary chart witness, I do not believe that will fall
11 in, we're fine with not having that name of a paralegal
12 staff right before trial, your Honor. What we're trying to
13 avoid here is not having at least defense counsel knowing
14 the names of every witness that's going to testify including
15 fact and experts.

16 A summary chart witness, we do not object to the
17 paragraph that suggest that we don't get that name to close
18 to the trial.

19 THE COURT: Thank you. So I understand your
20 concerns completely. Unless those individuals are fact
21 witnesses, it sounds like the defense is okay with you
22 holding onto those names and not disclosing those until the
23 commencement of jury selection.

24 MR. BLANCHE: Or expert, there may not be.

25 THE COURT: All right.

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1 MS. MCCAWE: I think as long as we're in agreement
2 a witness who is merely summarizing other materials, you
3 know, whether that be financial records or whether that be
4 more like phone records, doesn't fall into that category and
5 is merely a fact witness, the People are --

6 THE COURT: And is not a fact witness.

7 MS. MCCAWE: Sorry, is not -- to put it more
8 clearly, that those people are not fact witnesses is what I
9 meant to say.

10 THE COURT: All right, I think we're in agreement
11 on this, right?

12 MR. BLANCHE: Yes.

13 THE COURT: All right so that leaves one category
14 and that's on page one, paragraph two, and it is a little
15 bit here that I need to go over. I'm not going to read it,
16 you've all read it.

17 People, tell me what your concern is with that?

18 MS. MCCAWE: Which portion are we referring to at
19 this point?

20 THE COURT: You can deal with the whole paragraph
21 there but beginning on page one, paragraph two, the first
22 ordered paragraph.

23 MS. MCCAWE: Okay, so I'm just going to start, I
24 believe that there are two concerns that are raised by this
25 particular paragraph.

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1 I believe that the first notion that seems to be
2 addressed by the paragraph is the idea that the defense
3 believes that the protective order should be binding upon
4 the New York County District Attorney's Office personnel and
5 I'll address that first.

6 The People oppose this proposed change to the
7 protective order. The change seems to precede upon an
8 argument by trying to create a false equivalency between the
9 People and the defense in this matter. There are
10 significant reasons why that equivalency is a false
11 equivalent. The People are not similarly situated by the
12 defense either by nature of the laws that apply to them or
13 by nature of their roles in the respective case.

14 So with respect to the law, the People have a
15 significant number of legal restrictions which affect the
16 way they may speak about a case publicly. The People are
17 bound by Grand Jury secrecy, which the defense is not, and
18 the People are bound by other professional rules of
19 professional conduct including rule 3.6 which the defendant
20 is not, which govern how the People may discuss materials
21 publicly. And so for that reason we believe that the
22 protective order that the defendant proposes is simply
23 unnecessary and redundant of the rules that are already in
24 place and governing the People's conduct.

25 Furthermore, the People do not have the same legal

1 responsibilities in this case as the defense does. We have
2 an obligation as the party that bears the burden of proof in
3 this matter to explain the nature of the charges to the
4 defendant, to the court, and to the public, and many of the
5 instances of public comment that the defense has cited in
6 its paper are merely examples of the People fulfilling these
7 important public functions.

8 So to begin with, the defense has complained about
9 the fact that the People have filed a Statement of Facts in
10 this case. The People recognize that in a case of this
11 complexity that it would be likely that the defense would
12 request a document along the lines of the Bill of
13 Particulars requesting further details regarding the
14 charges. In anticipation of such a request, the People put
15 together a Statement of Facts that details the nature of the
16 documents that the People are alleging were falsified, the
17 reason why those documents were falsified, and the other
18 criminal conduct that the defendant sought to aid or conceal
19 which rendered the conduct felony conduct instead of
20 misdemeanor conduct.

21 Even after the People filed this detailed
22 Statement of Facts, the defense last week still requested a
23 Bill of Particulars asking for additional details regarding
24 the nature of the charges and requesting by nature of the
25 fact that it is a Bill of Particulars that this information

1 be included in the public court file.

2 The defense is simply trying to have it both ways
3 by suggesting that the People should speak publicly and by
4 suggesting that the People should not.

5 Similarly, the defense complained about the
6 factual record that the People made at arraignment. As the
7 court knows, this is a routine part of any arraignment. The
8 People have a responsibility to apprise the court of the
9 nature of the charges. The People made a statement
10 regarding the nature of the charges that went on for
11 approximately three transcript pages so not particularly
12 long and as the court knows, this is a routine part of the
13 People's arraignment and obligations at arraignment.

14 Finally, the defendant has complained regarding
15 the district attorney's press conference. These types of
16 press conferences are not unusual in cases that generate
17 significant public interest and are in essence a part of the
18 district attorney's obligation to explain his actions to the
19 electorate. But the district attorney in having a press
20 conference is bound by the same restrictions that I outlined
21 previously including Rule 3.6 which govern extrajudicial
22 statement. The district attorney in accordance with Rule
23 3.6 merely repeated information that was already in the
24 public record including the Statement of Facts. Ultimately,
25 the defendant seemed to be seeking a protective order of

1 their own by adding this language to the People's proposed
 2 protective order. If they want to propose such a protective
 3 order they should be held to the same proof requirements of
 4 CPL 245 section 70 and show that there is good cause for the
 5 entry of such a protective order.

6 They simply have not done so in this case and so
 7 the People do not believe that that language should be added
 8 to the protective order.

9 THE COURT: Thank you.

10 MR. BLANCHE: Thank you, your Honor.

11 Just to correct maybe a misconception, your Honor,
 12 was nodding at the end. I just want to make sure that it's
 13 clear that our complaints in our briefings about the conduct
 14 of the People and the district attorney on the day of the
 15 arraignment, the statements in court, the Statement of
 16 Facts, the press conference, and the press release and
 17 associated materials on its website was not a suggestion
 18 that they were not permitted to do so. So we are not
 19 seeking a protective order.

20 Our complaint is exactly the opposite. Our
 21 complaint is that the People, after doing so, still want to
 22 restrict President Trump from doing so. That's our
 23 complaint and let me explain exactly what we mean by that.
 24 The People say under various rules and Grand Jury procedures
 25 and obligation of the district attorney to keep the public

1 informed, they draft a protective order and had a press
2 release -- I'm sorry, excuse me -- a Statement of Facts, a
3 press release, and a press conference.

4 Within those three statements and documents
5 included significant Grand Jury material and quoting from
6 the Grand Jury material. Okay, fine, however, the
7 protective order, if the defendant -- if President Trump
8 wants to issue a very similar Statement of Fact quoting from
9 the evidence that would violate the order. So we are not
10 complaining of the fact that the People did what they did on
11 the day of arraignment, our complaint is much different.

12 Our complaint is notwithstanding what the People
13 and what the district attorney did on the day of the
14 arraignment, we are handcuffed and we are prohibited from
15 engaging in similar public commentary as the district
16 attorney under this protective order and so our reasoning
17 behind saying both parties should be bound is because if you
18 understood what the People just said to, your Honor, if they
19 find under their obligations and rules and duties to the
20 public that they need to talk about evidence tomorrow,
21 presumably they'll be allowed to do it. Nothing is to stop
22 the district attorney from having another press conference
23 tomorrow, just like they had a few weeks ago.

24 However, if both parties are bound by the
25 protective order then, your Honor, controls what the

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1 district attorney can do and what the defendant can do and
2 not do. It would obviously be patently unfair if the
3 district attorney could host a press conference tomorrow and
4 talk about the evidence and that would be okay under the
5 various reasons the People just suggested. But if President
6 Trump send out a social media or communicate, again we are
7 not asking to put evidence on social media, we're not asking
8 to have any documents, Grand Jury material, or any piece of
9 evidence.

10 We agree with the People that's not something that
11 should be done in advance of a trial in this case. Our
12 simple disagreement it cannot be that the district attorney
13 is allowed to stand up and talk in detail about evidence
14 including evidence that has nothing to with do with the 34
15 counts.

16 THE COURT: So what you're suggesting that both
17 sides should be treated the same, right, and, therefore, if
18 the Court were to include the People in the order you would
19 be okay with Mr. Trump and the defense being a part of that
20 order?

21 MR. BLANCHE: No.

22 THE COURT: No?

23 MR. BLANCHE: No.

24 THE COURT: Because you just said you want both
25 sides to be treated the same.

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1 MR. BLANCHE: No. The challenge here is that the
2 damage has already been done by the People. I'm sure they
3 will readily agree to not host a press conference between
4 now and the trial but they already did host a press
5 conference.

6 THE COURT: I'm not sure I've communicated well.
7 Why don't you have a seat.

8 So my first question was in essence what you're
9 asking, if I recall from the reading from your papers is
10 you're asking that everybody be treated the same and if the
11 Court were to include the People in the protective order
12 then you would not have an objection to your client being
13 held to that standard in the protective order.

14 (Defense counsels conferring.)

15 MR. BLANCHE: So what we do agree with the first
16 half of your Honor's statement that both parties should be
17 treated equally and be held to the same directives of the
18 Court as it relates to the handling of discovery.

19 What I want to be -- but I do think that -- I do
20 not think it's appropriate that if, your Honor, holds both
21 parties to the same standards under the protective order
22 that we are prevented from discussing or addressing what
23 already been done by the People.

24 THE COURT: Well, the protective goes forward,
25 right. We have to pick up at some point, we can't

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1 retroactively go back and do anything, we can only pick it
2 up now and go forward.

3 MR. BLANCHE: Agreed.

4 THE COURT: And it sound like, and I don't want to
5 put words in your mouth but again for the third time you're
6 asking that both sides be treated fairly and that they be
7 held to the same standard.

8 So your objection is not that the People are
9 asking that Mr. Trump be held to any unfair or
10 unconstitutional or inappropriate standard, okay.

11 You can relax.

12 MR. BLANCHE: Sorry.

13 THE COURT: Having established that and having
14 agreed with that, that your client is not being treated
15 unfairly or unconstitutionally, then it doesn't really
16 matter whether the People are included in that order or not.
17 This is the People's application for a protective order and
18 I agree with the People, the DA, the district attorney of
19 New York county has an obligation, literally an obligation
20 to report on why charges were brought, what charges were
21 brought, and to explain to the public why that's being done.
22 It's part of his job to do that.

23 Especially, I think, just to get back to your
24 specific concern about press conferences and Statement of
25 Facts, especially, whereas here, prior to the arraignment

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1 your client had put out messages regarding date of arrest,
2 alleged charges, and speaking on what he felt was a
3 politically driven prosecution.

4 I think that in light of those statements that
5 were put out there, there is no denying that the district
6 attorney has an absolute obligation then to clarify for the
7 people that he represents what the charges are and why he
8 brought them.

9 With that in mind, if the defense wants a
10 protective order you could certainly apply for one. You can
11 submit one. This is the People's application for a
12 protective order so at least to the extent that we've
13 already discussed, I'm in agreement with the People that
14 there is no reason to add the defense to that part of the
15 protective order.

16 But there are other parts that also concern me or
17 that I want clarified. You crossed off the word disclose
18 and later you crossed off the word disseminate. Help me
19 understand why you did that.

20 MR. BLANCHE: It was just addressing what we were
21 just talking about, your Honor, which is that because of the
22 amount of information that's been shared about this case by
23 not only the People, the district attorney that was just
24 discussed but also by witnesses we should be, our client
25 should be allowed to disclose who as a former president who

1 is currently running for the term of the president, of
2 number of people who are going to vote or not vote for him,
3 his defense of his case and that may include commenting on
4 evidence.

5 What we're not trying to do, we're trying to walk
6 I think an appropriate line here, your Honor, between not
7 posting and agreeing we're not putting out evidence, that
8 will be a clear violation of the protective order that we
9 understand not putting Grand Jury materials, not putting
10 copies of any documents we received from the People out to
11 the public in any form. But that's different in kind than
12 the candidate for president of the United States being able
13 to defend himself publicly to not only, I mean here it
14 looks, this is a new case. It's not just what we talked
15 about with the People, it's also witnesses who have given
16 their version of the facts to the entire voting public, and
17 the entire public.

18 So under the People's proposed protective order,
19 if on the campaign trail President Trump were to defend
20 himself with what he's charged with here and as part of his
21 defense counter something that Mr. Cohen has said publicly
22 or that Mr. Bragg has said publicly, that would potentially
23 violate the protective order if the source of that counter
24 argument is from the evidence that's been produced and
25 that's where there is a fundamental, I don't want to use the

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1 word fairness because I actually think it's a legal right
2 that he has to do, given the fact that he's running for
3 office and given the fact that there's been so much
4 publicity about the underlying facts of this case, but we
5 shouldn't run the risk of him being held in contempt of
6 court by your Honor for violating this protective order if
7 he, as part of his campaigning for president and part of his
8 defense in this case says something from the evidence. And,
9 again, we don't have the evidence yet, so this is a little
10 bit of a hypothetical speculative argument, right.

11 We have to have this argument now because I don't
12 want to be here in a month and having, your Honor, saying
13 why didn't we say something.

14 THE COURT: Sure, of course.

15 MS. MCCAWE: Your Honor, I think from the People's
16 perspective this is one of the important parts of the
17 protective order that they have sought.

18 As we referenced at arraignment, the defendant has
19 an extensive history of making inflammatory remarks
20 regarding witnesses, participants in investigations, and
21 others who are associated with cases that had investigated
22 him previously and based upon on part of that history, it is
23 extremely important that the Judge, the Court ordered a
24 protective order in the form that the People have proposed.

25 To begin with, I would just like to begin by

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1 noting that many of the provisions that are contained in the
2 protective order are fairly routine. That it is routine for
3 courts to enter protective orders stating that a defendant
4 who is receiving discovery materials in part because he is
5 charged with a crime is only entitled to use those materials
6 in a manner that is designed to assist with the defense of
7 the case in court and as part of that, it is routine for
8 courts to tell defendant that they are not allowed to
9 discuss the material publicly and not allowed to discuss
10 those materials on social media.

11 In this particular case, however, the need for
12 such a protective order is far from routine. As we detailed
13 in our moving papers, the defendant has an extensive history
14 of making inflammatory remarks. The defense has tried to
15 downplay those remarks in their own opposition papers by
16 referring to them by simply name calling.

17 The defendant's words has had real world
18 consequences that have gone beyond mere hurt feelings. When
19 you look to the example of Ruby Freeman, a poll worker in
20 Georgia who had to vacate her home for two months after
21 being scapegoated by the defendant to know that, in fact,
22 his words when targeting witnesses can have real
23 consequences towards those witnesses.

24 Similarly, the defendant posted on social media,
25 predicted death and destruction in lower Manhattan if

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1 charges were brought against him, and the NYPD had to mount
2 a significant law enforcement response around the courthouse
3 for weeks leading up to the defendant's arraignment.

4 And, of course, one reason why those posts
5 generated such concern was because they bore such a
6 similarity to the remarks that he made leading up to and on
7 January 6th of 2021 when his supporters stormed the United
8 States Capitol.

9 The defendant's words have consequences. And, in
10 addition to that, the defendant has already begun to target
11 specific individuals associated with this investigation.

12 Again, here the defense has tried to downplay the
13 extent of the defendant's conduct, suggesting that he's only
14 targeted Stephanie Cohen and Michael Cohen, two people who
15 made public statements about him but that's simply is not
16 true. He's made remarks about the Court, he's made remarks
17 about the district attorney, and he's made remarks regarding
18 specific members of the district attorney's office and in
19 some instances their family members.

20 Further, CPL 245.70 does not require that the
21 Court wait until the defendant actually harasses witnesses
22 in this case to impose protective order. CPL 245.70 allows
23 the court to consider the "danger to" among other things,
24 the safety of witnesses, and the risk of intimidation
25 economic reprisal, bribery, harassment or unjustified

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1 annoyance or embarrassment to any person, and the nature,
2 severity, and likelihood of that risk. In other words, the
3 Court can simply consider that risk, the risk of future
4 conduct not merely look back at past conduct in determining
5 whether a protective order is appropriate.

6 Other courts have recognized that. They've
7 recognized the defendant's extensive history of inflammatory
8 remarks, measures, strong measures in response.

9 In fact, Judge Kaplan currently presiding over the
10 E. Jean Carroll trial in the southern district in New York
11 shielded the name of the prospective jurors even from the
12 assigned attorneys assigned to the case and indeed since the
13 filing of the People's position in that case, Judge Kaplan
14 reprimanded the defendant of speaking publicly about
15 evidence, underscoring the fear for strong measures in this
16 case.

17 Perhaps in recognition of the strong record
18 demonstrating good cause in this particular case, the
19 defense has attempted to paint the People's protective order
20 application as something that it is not. This application
21 is not a gag order.

22 Under the proposed protective order the defendant
23 will have many avenues available for him to discuss his
24 views of the case publicly subject, of course, to the
25 Court's important limitations at arraignment. He can

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1 discuss his own personal experiences. He can discuss
2 anything he learned personally about this case from other
3 discussions with witnesses. He can discuss facts that are
4 in the public record which are many. Essentially, anything
5 that he could have said before receiving the People's
6 discovery materials, he will be allowed to say after
7 receiving the People's discovery materials. But what he
8 cannot do is discuss the specific information that is
9 contained within the People's discovery materials which is a
10 relatively narrow limitation.

11 In terms of the defendant's First Amendment
12 concerns, the supreme court has previously held in Seattle
13 Times versus Rhinehart which is quoted in the People's
14 papers that these kind of protective orders do not "requires
15 exacting First Amendment scrutiny." It pointed out that the
16 granting of discovery material to the litigant is a matter
17 of "legislative grace."

18 As the court knows in 2020, Article 245 vastly
19 expanded the number of materials that were available early
20 to defendants in criminal cases. That material included a
21 large amount of highly sensitive material including Grand
22 Jury materials, witness contact information, confidential
23 statements that were made to witnesses but in enacting that
24 statute, the legislature recognized that they needed to
25 impose important guardrails and the protective order grant

1 in 245.70 is that kind of guardrail meant to balance the
2 defendant's right to access the information with the
3 important security concerns regarding the safety of
4 witnesses, the integrity of proceedings, and the integrity
5 of the evidence.

6 Given the fact that the defendant has a large
7 number of avenues available at his disposal to speak about
8 this case, we believe that the proposed protective order is
9 narrowly tailored to address his First Amendment concerns
10 and that the People have shown good cause for the entry of
11 the protective order based on the defendant's past conduct.

12 MR. BLANCHE: Thank you, your Honor.

13 As an initial matter, I believe the People are
14 being a little intellectually dishonest in their argument
15 and here is why I say that, in their paperwork in support of
16 a protective order governing how the defendant can talk
17 publicly about the evidence given against him during the
18 course of discovery, the People attached and have cited
19 today numerous examples of statements that President Trump
20 has made about investigators, prosecutors, Judges, and
21 witnesses in this case.

22 They cite excessively in their brief about public
23 media statements not over social media but also in other
24 places where President Trump has said extraordinary mean
25 things about individuals. They do this in support of a

1 protective order to keep the defendant from talking about
2 the evidence produced in this case publicly.

3 At the end of their entire argument they say oh,
4 we're not asking for a gag order but the evidence supported
5 and given to the Court has anything to do with statements
6 that, if it's accepted by the Court as justification of some
7 relief, amount to a gag order.

8 And, moreover, citing what Judge Kaplan said and
9 what happened last week there is no comparison. Judge
10 Kaplan, and I was in the courtroom, cited a statute, a
11 federal statute that addresses how you can't comment in
12 public if there is an impaneled criminal jury. There is a
13 whole different statute that prevents public dissemination
14 about cases when the jury is impaneled. That's a lot
15 different than where we are here and in our papers we also
16 want to narrow the disagreement here, and I do want to make
17 clear and I think it's fair that in all of the attachments
18 to the People's brief and even in what the People just said
19 today to, your Honor, the protective order doesn't stop
20 anybody.

21 As a matter of fact, your Honor, reminded the
22 parties at arraignment about their conduct and the parties
23 have abided by that since your Honor's admonition at the
24 arraignment.

25 That has nothing to do with why we're here. That

1 doesn't have to do with whether the president, as he's
 2 running for president, is allowed to publicly comment beyond
 3 anything of his personal knowledge against him produced in
 4 the personal discovery.

5 This is a different issue. If there is an issue
 6 with respect to President Trump calling people names or
 7 Judges names or prosecutors names, the remedy for that, in
 8 my view, would be something different than what's described
 9 in this protective order.

10 THE COURT: What would be the remedy for that?

11 MR. BLANCHE: Well, your Honor, has a lot of
 12 options as your Honor said at arraignment, right, there is a
 13 lot of potential options for --

14 THE COURT: But you're making an argument, tell me
 15 what those options are?

16 MR. BLANCHE: Admonition of the defendant,
 17 reminding that the parties should speak civilly. If it
 18 comes to that, potentially a gag order as it relates to
 19 speaking but that being said, but there are First Amendment
 20 rights and free speech rights especially for someone running
 21 for office that allows him to speak of his views of
 22 individuals.

23 THE COURT: If he is running for office, are you
 24 saying he should be held to a different standard than all of
 25 the other defendants who come to this courtroom?

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1 MR. BLANCHE: There is a standard when it comes to
2 certain parts of what he says publicly from other defendants
3 that come in this courtroom.

4 THE COURT: So by the portions of the CPL and
5 particularly with the discovery section, that applies to
6 people who are running for president and don't apply to
7 people who are running for president it appears to everybody
8 else?

9 MR. BLANCHE: That's a fair question, your Honor,
10 and I don't want to say yes or no without being thoughtful
11 about that question because I think it's an important
12 question and I do think that as it relates to an appropriate
13 fashioned protective order, there does need to be a
14 recognition and there does need to be a difference between a
15 routine case in front of your Honor and the case in front of
16 you now.

17 THE COURT: What's routine? If someone is accused
18 of homicide and they're facing 25 to life, is that routine
19 for that person?

20 MR. BLANCHE: Of course not.

21 THE COURT: Okay.

22 MR. BLANCHE: Routine wasn't my word, it was the
23 People's word.

24 THE COURT: You just used it.

25 MR. BLANCHE: I apologize, your Honor. I was just

1 answering your Honor's question about whether this defendant
2 should be treated differently than other defendants. I
3 shouldn't use the word routine. I agree with that.

4 But really the focus of why we're here as it
5 relates to this protective order is minor. If you take the
6 example of someone who is charged with a homicide, there is
7 a protective order that will limit a lot of what that person
8 can do with the evidence in that case, sure. And we're not
9 objecting to virtually anything the People have suggested as
10 it relates to how we can handle covered material and limited
11 dissemination material.

12 Our limited objection is what we're talking about
13 now, is that to the extent that there is evidence produced
14 by the People that directly contradicts or is contrary to
15 public statements made by the People, made by witnesses,
16 made by the district attorney, made by the press release
17 that was issued to say that you cannot publicly speak about
18 that, is in our view inappropriate.

19 THE COURT: Okay, I think what we're seeing here
20 is just how challenging this can be, right. I'm asking
21 questions, sometimes we have a hard time answering the
22 questions. This is challenging.

23 Look, obviously Mr. Trump is different. Okay, it
24 will be foolish of me to say he's not. He's a former
25 president of the United States and he's running again as

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1 president of the United States. He is different. I have to
2 apply the law now.

3 I have to apply the law to him as I see it and in
4 that regard I'm bending over backwards and straining to make
5 sure that he is given every opportunity possible to advance
6 his candidacy and to be able to speak in furtherance of his
7 candidacy. The last thing I want to do is infringe on his
8 or anybody else's First Amendment rights. That's why I
9 think it's important to clarify that, despite the fact that
10 defense has submitted, this is not a gag order the People
11 are seeking, nor are the People seeking to keep evidence
12 from the defendant as has been portrayed a few times.
13 That's not what the People are trying to do.

14 We're simply trying to apply the standards of a
15 protective order as found in subsection (4) and applying
16 those standards to this request. I can't say that the
17 People are off in that some of those elements or particular
18 standards do apply. They do apply here.

19 So in addition to your client being special and I
20 don't mean that in a negative way at all, with that comes
21 responsibility, with that comes responsibility that his
22 words especially when used in the form of rhetoric can have
23 consequences, therefore, I am not going to do anything with
24 respect to this protective order or anywhere else to
25 infringe on your client's First Amendment right, nor am I

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1 going to do anything that will limit his ability to offer
2 his views on the case to speak on his experiences with the
3 case. He is certainly free to do that.

4 He's also free to speak on the vast majority of
5 the evidence because the vast majority came from the defense
6 and the protective order does not apply to evidence that was
7 produced to the People by the defense and then turned over
8 to the defense by the People. So protective order applies
9 to only that evidence which the People themselves have
10 obtained, generated, garnered, and is being shown for the
11 first time. I think that that's pretty narrow and I'm
12 trying to do everything I can to be as narrow and focused
13 here as I can possibly be to tailor this and narrow this as
14 possibly as I can do it.

15 I think if I were to sign a protective order at
16 least that paragraph as written, there is nothing there that
17 would prevent your client from being able to not only speak
18 about the case and speak out in his defense but to speak
19 powerfully and persuasively without the need to start
20 attacking individuals, disclosing names, addresses, cell
21 phones numbers, identity, dates of birth, or anything along
22 those lines. That's just not necessary to advance his
23 candidacy.

24 MR. BLANCHE: We agree with that.

25 THE COURT: Okay.

1 MR. BLANCHE: Can I do one clarification, I don't
2 know if the People disagree with them, I don't expect they
3 will.

4 With respect to some of the conduct alleged in the
5 Statement of Facts especially, and it's public, I'm not
6 talking about, you know, leaks or whatever, I'm talking it's
7 public from other proceedings, so Southern District of New
8 York proceedings and other investigations that have taken
9 place in Washington DC and part of this is just to
10 understand how to instruct our client of what he can and
11 cannot do to the extent that there is information that is
12 produced to us for the first time by the People but is
13 otherwise public from other proceedings, I'm assuming that
14 we've already discussed that?

15 THE COURT: I think so, yes.

16 So before continuing, there is one distinction
17 that the People alluded to and it goes back to when we were
18 discussing the fairness, the issue of fairness, treating
19 both sides the same.

20 One final difference is that Mr. Trump is a party
21 to this action. You represent him, he hired you to counsel
22 him, to give him legal advise. The people that you refer to
23 Michael Cohen, Mike Pomerantz, anybody else, they are not
24 parties to this action. They're not within the control of
25 the People. I directed the People to speak to them or

1 actually I advised the People to speak to them and I was
2 assured that they have and they will. But at the end of the
3 day, they're not a party and I don't see how I could in any
4 way enforce any kind of protective order or suggest that
5 there's been a violation against the People or those
6 individuals because they choose to speak out.

7 Having said all that, I think that we're resolving
8 this. I think that what I've gathered from you is that at
9 the end of the day you may not agree entirely with me with
10 regard to that paragraph, but you agree with what I said at
11 the end.

12 MR. BLANCHE: I feel like that's a trap.

13 Your Honor, I understand what you're saying.
14 While to the extent we disagree, I certainly agree with what
15 you said. I don't want to belabor this point but, your
16 Honor, just stated about witnesses who we agree are under
17 the People not under the People's control necessarily that
18 again in our papers and not touched upon extensively but
19 that's another real concern that we have as it relates to
20 his candidacy for president.

21 So Michael Cohen who I think is the witness we're
22 talking about for the most part although there is another,
23 says something about what he believes to be true from the
24 evidence and from his testimony in the Grand Jury and we're
25 not allowed to respond. That's not really just a fair,

1 necessary issue, although it is a fair necessary issue, it's
 2 also an issue that is more significant because of what he is
 3 doing right now.

4 Again, I don't know if that's going to happen and
 5 I hope that the People's words to Mr. Cohen worked but that
 6 certainly is our concern, your Honor.

7 THE COURT: Let's go back over your proposed
 8 protective order:

9 With regard to the first paragraph, the People did
 10 not object to adding the names.

11 With regard to the second paragraph, although you
 12 may not agree entirely, you may not entirely agree, I'm
 13 going to leave that paragraph as it was for the reasons that
 14 I already stated on the record and there is no need to go
 15 back over it.

16 The next paragraph on page two, the first
 17 paragraph beginning with the word ordered, I think that we
 18 agree that we're going to leave that as well with the
 19 understanding that -- am I mistaken.

20 MR. BLANCHE: May I just have one moment?

21 THE COURT: Of course.

22 (Defense counsels conferring.)

23 MR. BLANCHE: Sorry, your Honor, we agree with the
 24 summary witness but to the extent that there are experts or
 25 fact witnesses that otherwise fall in the definition of New

1 York County District Attorney's personnel and they're not
2 sworn members of law enforcement or ADAs we would expect
3 those.

4 THE COURT: You agree, right?

5 MS. MCCAWE: Yes, your Honor.

6 THE COURT: That's correct.

7 Turning to page three, the first paragraph, well
8 we already discussed this and what I've asked that both of
9 you put your heads together and see if you can draft another
10 paragraph incorporating what we've discussed here today and
11 if you can get that to me as quickly as possible, I'd
12 appreciate it so we can get moving on this. And I think
13 that addresses all of the proposed additions or redactions
14 on the protective order.

15 There are other things I would like to go over
16 perhaps you as well but I think on the protective order
17 that's it.

18 MR. BLANCHE: Yes.

19 MS. MCCAWE: Just one last request from the People,
20 your Honor, we mentioned this in our moving papers but
21 whenever the Court does reach a final decision regarding the
22 protective order, we would like to have the defendant
23 advised as to the content of the protective order on the
24 record.

25 THE COURT: All right so I'm open to suggestions

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1 on how to do that. Again, here we get into the issue should
2 he be treated the same as everybody else but the fact is
3 he's not everybody else.

4 MR. BLANCHE: Can we have one moment to discuss
5 that?

6 THE COURT: Yes.

7 (Defense counsels and assistant district
8 attorneys conferring.)

9 MS. MCCAW: Your Honor, the People are proposing
10 that rather than an in-person appearance recognizing the
11 vast issues with bringing the defendant here in person, if
12 the Court instead conduct a virtual appearance on the
13 record.

14 THE COURT: We can do that and we'll do it here in
15 the courtroom as well. We'll setup the camera for Mr. Trump
16 to appear wherever he is at that time and we'll do it here
17 in the courtroom virtually.

18 MR. BLANCHE: Thank you, your Honor.

19 THE COURT: Sure.

20 Now addressing counsel for the news organizations,
21 is there anything else that you would like to add besides
22 what you already included in your papers?

23 You can use the podium.

24 State your name for the record.

25 MR. BALIN: Robert Balin, Davis Wright Tremaine,

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1 LLP from the news organizations.

2 The very first good cause factor in the statute
3 are constitutional rights and limitations and this is really
4 about hopefully avoiding a First Amendment problem at least
5 it's written, the paragraph that we've spent a long time we
6 talked about.

7 THE COURT: Which is not going to look the way it
8 looks at the end.

9 MR. BALIN: That I know and it orders that any
10 person and I don't think the DA really intended to include
11 the world about information that the press gets and all
12 we're asking --

13 THE COURT: Let me ask if the People have any
14 objection to changing that to the parties including counsel
15 and news counsel, any objections to that?

16 MS. MCCAWE: I don't think we object and I don't
17 know if it's necessary, I don't know if the Court as has
18 pointed out can enter a protective order that will affect
19 someone who is not a party to the litigation but we don't
20 have an objection.

21 THE COURT: Okay, so we can do that.

22 MR. BALIN: And then the second point, your Honor,
23 and again I hope it is not an issue is, the protective order
24 appropriately doesn't address court filings so once the
25 court filing, the rules of the road are different. The

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1 First Amendment applies, attaches any time there is a court
2 filing. Your Honor, when you adjudicate something that is a
3 government act, whoever wants to seal a filing has a burden,
4 they have to show a compelling interest. They might, it's
5 very possible in some particular application, but what can't
6 happen is advanced sealing without knowing what a motion or
7 paper or pleading is about, knowing what's attached to it.

8 All we're saying, your Honor, is that this and the
9 First Department has directed this, that it need to be
10 document by document. A motion comes, any kind of court
11 filing asking your Honor to take action, the press and the
12 public gets notice of that. Whoever wants to argue that
13 there is compelling interest to seal it will make that
14 argument and I will probably be here opposing that argument
15 but, nonetheless, that's our second request, your Honor.

16 THE COURT: I'll hear from the People.

17 MS. MCCAWE: I don't think the People are
18 fundamentally in disagreement with the position of the
19 press, we understand that any application of sealing must be
20 made on a case by case basis and must comply with the
21 requirements of the First Amendment.

22 What we are requesting, however, is that the Court
23 adhere to the procedure that it outlined in its April 13th
24 e-mail to the parties and that both sides be given the
25 opportunity to request redactions from the public filings

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1 before they are filed with the public docket.

2 THE COURT: And that's the way I've done it in the
3 past and that's the way I'm inclined to do it going forward.
4 I find that it works well when one side wishes to file a
5 document, you provide it to the other side, they're given
6 about 48 hours to make changes if they want and the other
7 side is given the opportunity to either state that something
8 should be redacted or shouldn't be redacted, something
9 should be sealed or shouldn't be sealed.

10 If the two sides are in agreement, I don't have to
11 get involved, that's what happens and the CPL provides for
12 that. If they cannot come to an agreement, they involve me
13 and I try to help resolve it. Again, the CPL provides for
14 that as well.

15 What's your position on that?

16 MR. BLANCHE: We object, your Honor. I understand
17 I'm new to this courtroom, your Honor, but I understand that
18 is your Honor's practice in the past and in recent matters
19 and for recent reasoning Ms. Necheles stated previously and
20 I will state again, we don't believe that should be that
21 process, notice to the other party prior to filing with the
22 other side, requesting redacted process of documents. We
23 think if something is filed publicly, should be filed
24 publicly.

25 THE COURT: If it's filed publicly it will be

1 public and at that point if something should be redacted
2 it's too late and that's the reason why this has been my
3 practice.

4 You know, I've used it in other cases and I
5 believe the last case, I believe, Ms. Necheles was involved
6 and I believe it worked well. You may recall there were
7 some names that two sides agreed to redact because it would
8 have been inappropriate for those names to have been made
9 public and that was at the defense request not the People's
10 request. So that was done and every document that involved
11 those names, those names were redacted but who's to say that
12 you might miss one, who's to say that you might not miss a
13 social security number or an address, at that point the cat
14 is out of the bag, it's too late. I don't see a prejudice
15 in doing this. I think it's just a layer of protection for
16 everyone and I don't see any harm. Unless I see prejudice
17 or harm, I don't see the risk not to put something out there
18 that will violate a person's privacy rights or other rights.

19 MS. NECHELES: May I address this?

20 If, your Honor, is aware we objected in the last
21 case and prior to First Amendment you ruled on that and we
22 continued to object to that process. We understand the
23 Court rules that we cannot put certain things in and it must
24 always redact social security numbers, children's name,
25 which is what we asked for being redacted last time, and all

1 sort of things that are in court rules and we will comply
2 with those, of course.

3 The question here is whether everything in
4 discovery should be presumed to be kept out or it's sort of
5 a standard list, the People get to object to whatever they
6 want from us being able to file and then we have to litigate
7 that on every single basis. We don't think that is
8 appropriate. We think there are court rules which have to
9 be followed and there shouldn't be a presumption that other
10 things be sealed in court filings.

11 THE COURT: Okay, I appreciate that. I don't
12 think that this practice is burdensome. I don't think it
13 apply to every document that is filed, every letter that is
14 filed, it just doesn't. There may be some information that
15 one side believe should be redacted and the other doesn't or
16 vice versa and I think this is just an extra layer of
17 protection and I don't have a problem with it and that's
18 what we're going to do going forward.

19 MR. BALIN: If I can make one last quick point and
20 we would ask consistent with First Amendment practice that
21 when a party wants to file something under seal or a portion
22 of it, I'm not talking about redacting a child's name, I'm
23 talking about a pleading where someone is asking, your
24 Honor, to take action that the press gets notice of that
25 beforehand so that we can decide whether or not we think

1 it's appropriate to take a position on that filing.

2 MS. MCCAWE: Your Honor, I don't know that notice,
3 separate notice to the press is necessary. The People are
4 of the view that once the material is filed in the court
5 file with or without redactions, the press will have the
6 opportunity at that point to file an appropriate motion.

7 THE COURT: I agree. There is nothing in the law
8 that provides for what you are requesting. Again, you're
9 not a party to this action. What will happen is if
10 something is filed that doesn't contain a redaction or is
11 sealed, you are certainly free at that point, if you believe
12 you have the right, to bring it to my attention and have an
13 opportunity to be heard. But I don't think to do it in
14 advance, first of all, that will be very difficult to do as
15 a matter of logistics, logistics issue. I also don't
16 believe the law provides for that.

17 MR. BALIN: We will have to agree to disagree on
18 that point, your Honor. But I thank you for the time.

19 THE COURT: Thank you.

20 Just a couple of other things I wanted to go over,
21 actually really one more thing. The People asked that the
22 Court set the matter down for a January trial date and at
23 that time the defense counsel to use your words you thought
24 that was a little bit aggressive and I agree.

25 The defense requested a spring trial date. I

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1 think at this point now that we all know more about the case
2 and we've all had an opportunity to familiarize ourself with
3 it, I am going to ask both parties to come together and see
4 if you can agree on a trial date in February or March of
5 2024 and if you can agree to that date, that will be
6 terrific. If you can't, let me know and I'll set a trial
7 date.

8 But what's important is with regard to that, once
9 a trial date is selected, I'm directing now that all of the
10 parties are to refrain from engaging in anything that will
11 preclude you, prevent you in any way from commencing the
12 trial, continuing the trial and finishing the trial and that
13 will include taking on new cases, agreeing to start a trial,
14 booking vacations, anything that would interfere because as
15 you know, right now there's six DAs in the well, normally
16 there is at least three defense attorneys and there is a
17 defendant. Once we pick a date, it becomes very, very
18 difficult to reschedule the date.

19 Now with regard to your client, this applies to
20 him as well. Once we pick a trial date, he is bound by that
21 as well and so he cannot agree to any appearances,
22 commitments, speaking engagements, anything of any kind that
23 would interfere with an agreed upon trial date.

24 Any questions about that?

25 MS. MCCAWE: Just to clarify, when you say

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1 vacations, you mean during the trial, for example, Christmas
2 is still --

3 THE COURT: Yes, Christmas comes before.

4 MS. MCCAWE: Fine, your Honor.

5 THE COURT: Anything else?

6 Anything else either side would like to address
7 before we finish up?

8 MR. BLANCHE: Very briefly on something not
9 related to anything that we talked about here today.

10 The defendant anticipates later today seeking
11 removal of this case to federal court. Our understanding of
12 the rules nothing affects anything that we've done today or
13 the discussion of discovery after the protective order is
14 filed. We'll of course provide copies to, your Honor, and
15 also to the People later today.

16 THE COURT: Thank you for making me aware of that.
17 All right and I imagine you'll respond.

18 All right, let's go back over the critical dates:
19 The defense motions are due August 8th off calendar.
20 People's response September 19th off calendar and we're
21 meeting back here December 4th for a decision.

22 And just to clarify something that I said at
23 arraignment, I was reading the transcript and I don't think
24 I was entirely clear, you are certainly free to file your
25 motions before that date and you're free to file piecemeal

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1 portions of your motions prior to that date. The August 8th
2 date was just the end date.

3 MR. BLANCHE: Understood. Thank you.

4 THE COURT: Thank you all.

5 (Proceedings concluded.)

6 * * *

7 C E R T I F I C A T E

8

9 I, Sheila Wesley, Senior Court Reporter, of the State of
10 New York, do hereby certify that the foregoing is a true and
accurate transcript of my stenographic notes.

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12 *sheila wesley*

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Sheila Wesley
Senior Court Reporter

AFFIRMATION OF SERVICE

I, Gedalia Stern, an attorney admitted to practice in the State of New York and counsel for defendant Donald J. Trump, hereby affirm, under the penalties of perjury, that on October 6, 2023, that the defendant's motion to file omnibus papers with limited redactions, as well as the Affirmation of Todd Blanche in Support of that Motion, both dated October 5, 2023, was served by email to ADA Susan Hoffinger at: [REDACTED] v



Gedalia Stern

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AFFIRMATION OF SERVICE

I, Gedalia Stern, an attorney admitted to practice in the State of New York and counsel for defendant Donald J. Trump, hereby affirm, under the penalties of perjury, that on October 6, 2023, that the defendant's motion to file omnibus papers with limited redactions, as well as the Affirmation of Todd Blanche in Support of that Motion, both dated October 5, 2023, was served by email to ADA Susan Hoffinger at hoffingers@dany.nyc.gov



Gedalia Stern

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