



TODD BLANCHE  
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(212) 716-1250

March 14, 2024

Via Email

Hon. Juan M. Merchan  
Judge - Court of Claims  
Acting Justice - Supreme Court, Criminal Term, Part  
100 Centre Street  
New York, NY 10013

**Re: People v. Trump, Ind. No. 71543/23**

Dear Judge Merchan:

We respectfully write in response to the People’s March 14, 2024, Notice regarding the untimely production of a large quantity of records relating to Michael Cohen obtained from the U.S. Attorney’s Office for the Southern District of New York (“USAO-SDNY”), and the People’s consent to an adjournment of the trial date.

An immediate adjournment is appropriate, but the Court should reject the People’s effort to ward off President Trump’s pending motion to dismiss the Indictment, which is based on the People’s significant and ongoing discovery violations, until (1) the People collect and produce all of the discovery to which President Trump is entitled, and (2) the Court resolves factual disputes relating to the nature and scope of the discovery violations at issue in connection with the pending motion. At the conclusion of that process, again, dismissal will be appropriate. For now, however, an adjournment is necessary, and thirty days is not sufficient given the volume of recently produced materials and the nature of the ongoing disputes.<sup>1</sup> Therefore, we respectfully request that the Court schedule a hearing on the pending discovery motion and the scheduling of a trial date, should one be necessary, at a time that is convenient to Your Honor during the week of March 25. *See* Notice at 3 (“We are available for a conference with the Court if the Court requests.”).

As the Court considers this request, we note there are critical facts bearing on these issues that were omitted from the People’s Notice. First, on March 12, 2024, the People disclosed for the first time that [REDACTED]

[REDACTED]. Ex. 1.

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<sup>1</sup> We note that a 30-day adjournment would move the start of the trial from March 25 to April 24, which would conflict with Passover, which this year is from April 22 to April 30. The Court cannot schedule the trial in a timeframe that would prevent or inhibit the ability of observant Jews to participate as jurors. We also note that President Trump’s trial in the Southern District of Florida is still scheduled to begin on May 20, 2024, even though President Trump has requested that the date be adjourned, and the Court has indicated an adjournment is appropriate.

The People’s disclosure was required, but untimely, consistent with other violations discussed in our pending discovery motion, and was only provided because we demanded it. Ex. 2. Second, the People also produced last night, among other things, [REDACTED], which relate to [REDACTED]. We immediately expressed our concerns about the significance of that untimely production, as a forensic review and collection of discoverable data from [REDACTED] should have been conducted many months ago. Ex. 3. The People have not provided a substantive response to that letter. Rather, the People’s Notice and consent to an adjournment followed.

The People’s Notice itself proceeds on the basis of mischaracterizations of the record that we can only assume will continue when the People submit their opposition to our discovery motion on March 18, 2024, assuming the Court agrees to the requested extension.<sup>2</sup> To be clear, the subpoena we served on the USAO-SDNY on January 18, 2024, was rejected. Rather, the USAO-SDNY required a *Touhy* request seeking discretionary disclosures pursuant to federal regulations. See 28 C.F.R. §§ 16.21 – 16.29; *United States ex. rel Touhy v. Ragen*, 340 U.S. 462 (1951). President Trump made that request after the People quashed efforts to obtain similar discoverable information from Cohen himself, and from his publishers, beginning in November 2023. The People opposed the *Touhy* request, as well, including by relying on federal law and privileges that they had no business invoking, which can only be regarded as further efforts to obstruct President Trump’s access to discoverable information that we should be permitted to use to challenge the credibility of their star witness, Michael Cohen.

Beginning on March 4, 2024, the USAO-SDNY has made rolling productions of at least 104,000 pages of records, and that office has indicated that further productions will be made next week. Of the records produced to date, the USAO-SDNY produced more than 74,000 pages to DANY only, so that the People could make decisions regarding whether the materials were discoverable in this case. Those materials have now been provided to President Trump. To our knowledge, DANY has produced all of the materials obtained from the USAO-SDNY *because they are subject to CPL § 245.20*. The People should not be heard to claim otherwise when seeking to restrict President Trump’s rights to appropriate time to review these new and voluminous records.

As noted, there are disputed issues of fact regarding the People’s obligation to obtain and produce these materials much earlier. The People claim in the Notice that they “diligently sought the full grand jury record related to Cohen’s campaign finance convictions from the USAO last year,” but USAO-SDNY “declined to provide” them.” Notice at 1-2. Other than this “bare, conclusory assertio[n],” the People “do not detail the steps they took” to try to obtain this material from SDNY. *People v. McKinney*, 2021 WL 2006850, at \*7 (Crim. Ct. Kings Cnty. May 19, 2021); see also *id.* at \*4 (“This bare-bones assertion does not provide the Court with the necessary factual basis to make a finding that the People have, in fact, acted diligently[.]”); *People v. Higgins*, 2022 WL 3131965, at \*3 (Yonkers City Ct. Aug. 4, 2022) (“A bare-bones assertion does not provide the Court with the necessary factual basis to make a finding of good faith or due diligence”; rather “[g]ood faith may be demonstrated by the People’s recitation of the steps taken to obtain the

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<sup>2</sup> We do not object to the People’s request for three additional days to respond. See Notice at 3.

materials and the outcome of these efforts.” (cleaned up). This unsupported assertion of diligence is insufficient, and the USAO-SDNY should be permitted to address the extraordinarily serious claim by the People that the USAO-SDNY wrongfully withheld responsive materials on a previous occasion in response to the People’s request. Further, it is surprising and disappointing that the People waited until they got caught being derelict in their discovery obligations (after fighting the *Touhy* process at every opportunity) that they put forward their position that USAO-SDNY “declined” to provide information the People somehow knew President Trump was entitled to under the CPL. It is similarly wrong, but not surprising, that the People assign blame on President Trump for the untimely disclosures when the People had many years to work with USAO-SDNY to confirm they had collected all information they were obligated to produce to comply with the CPL.

In sum, the People’s consent to an adjournment of the trial is a necessary step towards a just resolution of these proceedings, but the Court must not permit that request to obscure the need to dismiss the Indictment as a whole, or at the very least, for inquiry and fact-finding into the circumstances that put Your Honor and President Trump in this position based on ongoing discovery violations. Accordingly, we respectfully request a hearing on the pending motion for discovery sanctions and the scheduling of a trial date, should one be necessary, at a time that is convenient to Your Honor during the week of March 25, 2024.

Respectfully Submitted,

/s/ Susan R. Necheles  
Susan R. Necheles  
Gedalia M. Stern  
Necheles Law LLP

/s/ Todd Blanche  
Todd Blanche  
Emil Bove  
Stephen Weiss  
Blanche Law PLLC  
*Attorneys for President Donald J. Trump*

Cc: Susan Hoffinger  
Joshua Steinglass  
Matthew Colangelo  
(Via Email)

# **EXHIBIT 1**



ALVIN L. BRAGG, JR.  
DISTRICT ATTORNEY

**DISTRICT ATTORNEY**  
**COUNTY OF NEW YORK**  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000

March 12, 2024

VIA EMAIL

Todd Blanche  
Emil Bove  
Blanche Law  
99 Wall Street, Suite 4460  
New York, NY 10005

**Re: The People v. Donald J. Trump, Ind. No. 71543-23**

Dear Todd and Emil,

We write in response to your March 11, 2024 letter seeking further documents and information relating to [REDACTED] which we produced to you on March 4, 2024 after having received it from NBCUniversal pursuant to subpoena. In addition to producing [REDACTED] on March 6, 2024 we also produced to you [REDACTED] which we were not required to disclose under CPL § 245.20(1), but which we disclosed in an exercise of the People’s discretion pursuant to the presumption of openness specified in CPL § 245.20(7).

We have produced all discoverable materials in our possession, custody or control relating to [REDACTED] However, we were informed today by [REDACTED]

We are also informed that you have emailed trial subpoenas to both counsel for [REDACTED] and counsel for NBCUniversal for a broad range of documents relating to [REDACTED] We believe that in accordance with the Court’s Order of March 1, 2024, you are required to advise the Court of these trial subpoenas and any others you have issued since December 18, 2023.

We remain, as always, committed to complying with our continuing discovery obligations in every respect, including by producing materials required to be disclosed pursuant to CPL § 245.20(1)(k) and CPL § 245.60. To the extent any such additional materials become available, we will provide them to you.

Sincerely,

  
Susan Hoffinger  
Assistant District Attorney

cc: Susan Necheles, Esq.

# **EXHIBIT 2**



TODD BLANCHE  
ToddBlanche@blanchelaw.com  
(212) 716-1250

March 11, 2024

Via Email  
Susan Hoffinger  
Matthew Colangelo  
Joshua Steinglass  
Assistant District Attorneys  
County of New York  
One Hogan Place  
New York, New York 10013

**Re: People v. Trump, Indictment Number 71543-23: Discovery Request**

Dear Prosecution Team:

We write to seek further information concerning your recent disclosures relating to [REDACTED]. Although you failed to timely disclose these details, we understand from media reports that [REDACTED] was screened at the South by Southwest conference on March 8, 2024, and that it is scheduled to be released on the Peacock streaming service on March 18, 2024—a week before the scheduled start of jury selection.

Please provide all documents and information in your possession, custody, or control relating to (1) the timing of [REDACTED] release; (2) compensation to [REDACTED] relating to [REDACTED]; (3) your knowledge of the production, contents, compensation, and release of [REDACTED]; and (4) admonishments or communications by the People to [REDACTED] or [REDACTED] counsel regarding public statements and efforts to draw media and public attention to her testimony. Such documents and information are subject to your discovery obligations under *Brady*, *Giglio*, caselaw establishing analogous state law constitutional obligations, and CPL § 245.20(k).

First, information relating to the timing of [REDACTED] release is discoverable because it appears that the release was scheduled by [REDACTED]—one of your witnesses—to prejudice President Trump at the upcoming trial and to maximize media attention and financial compensation related to her participation in the trial. These details reflect motive and bias that we are permitted to develop through cross-examination at trial. Second, information relating to [REDACTED] compensation for [REDACTED] is also relevant to motive and bias. Third, your knowledge of [REDACTED] and its release is discoverable because you conveyed a benefit and favorable treatment to [REDACTED] by failing to timely disclose [REDACTED] plans to prejudice President Trump, and your actions in this regard are also relevant to the application of the sanctions remedies we are seeking in our March 8, 2024 proposed motion relating to discovery violations. Finally, information regarding admonishments or communications to [REDACTED] or anyone associated with her, including her counsel, which she has referenced in public statements, is discoverable because

either she violated your requests or you failed to instruct your witness in the manner that Judge Merchan ordered you to do at the May 2023 hearing.

We respectfully request the courtesy of a response to this letter by March 12, 2024.

Respectfully Submitted,

/s/ Todd Blanche

Todd Blanche

Emil Bove

Blanche Law PLLC

*Attorneys for President Donald J. Trump*



# **EXHIBIT 3**



TODD BLANCHE  
ToddBlanche@blanchelaw.com  
(212) 716-1250

March 13, 2024

Via Email

Assistant District Attorney Rebecca Mangold  
New York County District Attorney's Office  
1 Hogan Place  
New York, New York 10013

**Re: Untimely Discovery Production**

Dear Ms. Mangold:

We write in response to the late-produced discovery, provided to President Trump's counsel tonight at 8:04 p.m. Similar to the more than 100,000 pages of materials from the USAO-SDNY that you have produced over the last two weeks, it is extremely difficult for us to understand how this information could be produced via FOIA, and yet not be produced by DANY in a timely fashion at the outset of this case. Moreover, sending us discoverable [REDACTED] strongly suggests that DANY still has not collected in a systematic fashion all of [REDACTED]. Nor has DANY produced similar communications relating to [REDACTED] and the People's other witnesses. We are in no position to be able to tell whether the issue is one or more of (1) DANY not carefully searching [REDACTED] relating to the investigation; (2) [REDACTED] to conduct DANY business; and/or (3) [REDACTED] that have been recovered more recently from other sources. Any and all of these options are troubling following last month's untimely production of [REDACTED], and given where we are in this case. Information regarding any and all of these options is also discoverable as impeachment for Cohen and under *Kyles* as to the integrity of the investigation. We require complete disclosures, promptly, regarding all of these issues and what you have done to address them.

Furthermore, these [REDACTED] serve as further evidence that [REDACTED] to DANY's investigation. Either [REDACTED] on DANY systems, in which case you have [REDACTED] and must produce them, or [REDACTED] on an outside system, in which case you must disclose that breach and seek to collect the documents directly from [REDACTED]. No privilege can be claimed over [REDACTED] as it is obvious from the produced [REDACTED] that [REDACTED] was [REDACTED]. It is equally clear that there were communications within DANY regarding whether and to what extent to [REDACTED]. You have not produced all of those internal communications, either. As we explained in our discovery motion, you have relied, at least in part, on unacceptable and indefensible invocations of the work product privilege to withhold constitutionally mandated discovery. As

March 13, 2024

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with the [REDACTED], your failure to do so up to this point is troubling. We require complete disclosure, promptly, regarding drafts of the letter and communications regarding its content.

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/s/ Todd Blanche

Todd Blanche

Emil Bove

Stephen Weiss

Blanche Law PLLC

Susan R. Necheles

Gedalia M. Stern

Necheles Law LLP

*Attorneys for President Donald J. Trump*

Cc: Susan Hoffinger  
Joshua Steinglass  
Matthew Colangelo  
(Via Email)