

PART 59 APR 12 2024



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

April 12, 2024

Via Email

Honorable Juan M. Merchan  
Acting Justice - Supreme Court, Criminal Term

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

Dear Justice Merchan:

We respectfully submit this pre-motion letter on behalf of President Donald J. Trump concerning two issues relating to the Court's April 8, 2024 letter regarding jury selection. We request that this letter be treated as our full submission on these issues unless further briefing would assist the Court.

First, the Court's proposal regarding the dismissal of potential jurors who self-identify as being unable to serve is inadequate because the plan would not create a sufficient record for purposes of any necessary appellate review, or a venue-change motion pursuant CPL § 230.20. Specifically, President Trump respectfully renews his request that the Court employ a hybrid method, 2/15/24 Tr. 25-26, which differentiates between (1) potential jurors who conclude they "cannot be fair and impartial," 4/8/24 Ltr. at 3; and (2) potential jurors who conclude they "are otherwise unable to serve," *id.*, due to, for example, religious observances, job obligations, prepaid travel, or family arrangements.<sup>1</sup> The Court should bifurcate the process so that the record is clear about the quantity and identity (by juror number) of jurors who excuse themselves on the first basis. That clarity is necessary so that President Trump can present arguments to the First Department, if and when necessary, regarding the number of potential jurors who believed they harbored a disqualifying bias before questioning, as well as the number of additional potential jurors who reveal a disqualifying bias during questioning. These figures are extremely significant to assessing the constitutional and statutory adequacy of the jury selection process, including the impact of the extraordinarily prejudicial pretrial publicity associated with this case, which we identified in the pending adjournment motion that we submitted to Your Honor, as well as in an April 9, 2024 venue-change motion filed in the First Department pursuant to CPL § 230.20.

Second, while we agree that whether a potential juror "likes or does not like" President Trump is not the central focus of jury selection, 4/8/24 Ltr. at 5-6, it is well established that a potential juror's "negative opinion" is a form of "actual bias" under CPL § 270.20(1)(b). *People v. Torpey*, 63 N.Y.2d 361, 366 (1984). In *Torpey*, the "negative opinion" at issue included an actual bias arising from the defendant's alleged association with a group. Affiliations that could give rise to disqualifying bias are similarly important to jury selection in this case. Question 29.A of the Court's questionnaire asks about connections to "any other political entity affiliated with Mr. Trump," which is a fairly direct inquiry regarding Republican Party affiliation. On the other hand, however, Questions 29.E-H ask only about "anti-Trump" groups. People can have political or policy views that lead to disqualifying bias without being "anti-Trump." Thus, the questionnaire benefits DANY by identifying people who affiliate with President Trump's political party. The questionnaire lacks a similarly broad inquiry to identify potential jurors who align with rival political parties that are not necessarily "anti-Trump," but could still support a disqualifying bias that is worthy of follow-up inquiry by the defense. To the extent the Court fails to remedy this asymmetry in the questionnaire, defense counsel must be permitted leeway to probe such affiliations during the jury selection process.

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<sup>1</sup> President Trump maintains his objection to the broader approach of the contemplated jury-selection process that would permit potential jurors who self-identify as unable to serve to excuse themselves without further inquiry. We respectfully submit that, under the unique circumstances of this case, the Court's experience that the "vast majority" of jurors in other cases who reach that conclusion "are in fact excused" is not an adequate basis to refrain from conducting an individualized inquiry to determine whether the statutory for-cause standard is met in this case. 4/8/24 Ltr. at 2.

April 11, 2024  
Page 2

Respectfully Submitted,

/s/ Todd Blanche  
Todd Blanche  
Emil Bove  
Blanche Law PLLC

*Attorneys for President Donald J. Trump*

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