



PART 59 APR 18 2024

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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 in response to the Court's request for a limiting instruction relating to (1) anticipated testimony from Michael Cohen regarding his 2018 guilty plea to a FECA violation, and (2) any testimony from David Pecker concerning AMI's September 2018 non-prosecution agreement, 2021 conciliation agreement with the FEC, and/or the FEC's 2021 "Factual and Legal Analysis" regarding AMI. *See* Tr. 69; *see also* 3/18/24 Op. 5-6. We request that this letter be treated as our full submission on these issues unless further briefing would assist the Court.

President Trump requests that the Court provide the following limiting instruction immediately after Cohen's testimony regarding his FECA guilty plea, and again during the Court's final instructions to the jury:

"You just heard evidence that Michael Cohen pleaded guilty to violating the Federal Election Campaign Act. That evidence is being offered only to help you assess Mr. Cohen's credibility as a witness. Mr. Cohen's guilty plea is not evidence of the defendant's guilt, and you may not consider it in determining whether the People have proven any of the elements of the charges."

This requested instruction is consistent with the Court's *in limine* ruling, as well as DANY's representation that they "have no objection to a limiting instruction advising the jury that they cannot consider Michael Cohen's guilty plea as evidence of defendant's guilt." Tr. 61; *see also* *People v. Wright*, 41 N.Y.2d 172, 176 (1976) ("Although a codefendant's plea of guilt *might be admissible on the question of credibility* if the codefendant takes the stand in defendant's trial, that plea has no probative value as to defendant's guilt." (emphasis added)).

In response to President Trump's proposal, DANY proposed the following alternative:

"There has been testimony elicited at this trial concerning Michael Cohen's guilty plea to federal campaign finance violations. This evidence was admitted to provide context for his decision to break from Mr. Trump and to assist you in assessing Mr. Cohen's credibility. You may not consider the guilty plea itself to be evidence of the defendant's guilt."

During the parties' conferral via email on this issue, DANY described their proposal as one that would instruct the jurors regarding the "proper use of such testimony in a more fulsome way." However, DANY's proposal actually asks the Court to endorse their theory that the salient feature of the guilty plea is an indication of an alleged "break from" President Trump. President Trump respectfully submits that it would be unnecessary and unjust for the Court to take a position on DANY's theory of what the evidence shows. The defense has a very different view of Cohen's decision. We must be permitted to argue that the plea reflects adversely on his credibility, and the jury must evaluate these competing arguments without judicial intervention. *See* Tr. 117 (preliminary instruction that the jury "alone determine[s] the truthfulness and accuracy of the testimony of each witness").

Finally, the Court's *in limine* ruling authorized "testimony" from Pecker regarding AMI's FECA-related "agreements" and solicited a proposed limiting instruction regarding that evidence. 3/18/24 Op. at 6. President Trump respectfully requests a limiting instruction on that issue similar to the once described above, and reserves the right to object to any efforts by DANY to exceed the scope of the Court's ruling regarding "testimony" by offering the agreements themselves.

Respectfully Submitted,

/s/ Todd Blanche

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Cc: DANY attorneys of record