

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

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

**PRESIDENT DONALD J. TRUMP'S RESPONSE TO THE
PEOPLE'S MOTION FOR AN ORDER PURSUANT TO CPL § 270.15(1-a)**

I. INTRODUCTION

President Trump does believe that a protective order pursuant to CPL § 270.15(1-a) is appropriate. The basis for such an order, however, is the extremely prejudicial pretrial media attention associated with this case, and not the People's meritless, counterfactual, and unconstitutional efforts to take away President Trump's protected speech regarding matters of public concern.

So that the protective order does not infringe on President Trump's constitutional rights, including his Sixth Amendment right to prepare and present a defense, the Court should modify the order to permit disclosure of jurors' information to staff and consultants retained by defense counsel (and the People) in connection with this case. The Court must also take steps to protect President Trump's right to a fair trial and mitigate the risk of prejudice from the protective order. These steps should include efforts to prevent potential and selected jurors from learning about the protective order and, to the extent jurors pose questions regarding protective measures, providing a neutral explanation that does not implicate President Trump and emphasizes the presumption of innocence.

II. DISCUSSION

A. President Trump Has A Right To Speak On Matters Of Public Concern

The People devote a third of their brief to mischaracterizing statements by President Trump. People's PO Motion at 2-8. All of these comments were protected First Amendment speech. Like any American citizen, and particularly as the presumptive Republican nominee for the 2024 election and leading candidate for the Presidency, President Trump has a right to speak on matters of public concern.

The People do not cite to a single public statement by President Trump since May 2023 that addressed, positively or negatively, the potential venire in *this* case. The People also wrongly claim that President Trump “directed extrajudicial statements to the members of the grand jury through social media” and “suggest[ed] to grand jurors [in this case] what their views should be.” People’s PO Motion at 4. In the comments cited by the People, President Trump did not “direct” or “suggest” anything to the grand jurors. *See id.* For example, one of the People’s three purported examples involved a situation where President Trump criticized Michael Cohen for making public statements regarding his grand jury testimony. *See id.* at 4-5; Ex. 7 to People’s PO Motion.

The People do not identify a single example where President Trump mentioned—let alone attacked or harassed—any juror by name. The only two examples the People cite where President Trump referenced a juror—not by name—were instances where those jurors discussed their work as jurors with the media. The People devote substantial attention to President’s Trump’s comments regarding the bias of the forewoman at Roger Stone’s trial. *See* People’s PO Motion at 2-3. Yet the People fail to mention that the forewoman publicly identified herself and commented about the case and its prosecutors.¹ Similarly, the People falsely claim that President Trump “singled out” the foreperson of the special grand jury in Georgia. People’s PO Motion at 3. Once again, the People fail to acknowledge that this foreperson singled herself out by inappropriately discussing the special grand jury during a series of interviews on such outlets as MSNBC and CNN.² *See* Ex.

¹ *See* Simon Prokupecz & Ashley Fantz, *Stone juror says she ‘stands with’ the prosecutors*, CNN (Feb. 12, 2020, 7:03 pm), <https://www.cnn.com/2020/02/12/politics/stone-juror-doj-prosecutors/index.html> (“I want to stand up for . . . the prosecutors on the Roger Stone trial.” “It pains me to see the DOJ now interfere with the hard work of the prosecutors. They acted with the utmost intelligence, integrity, and respect for our system of justice.”).

² *E.g.*, MSNBC, *Special grand jury foreperson shares details, drops heavy hints in Georgia Trump case*, YOUTUBE (Feb. 22, 2023), <https://www.youtube.com/watch?v=vJ0b9WxIfkEx>; CNN, *Foreperson reacts to Trump’s claims that he gets total exoneration in GA probe*, YOUTUBE (Feb. 21, 2023), https://www.youtube.com/watch?v=_qyEG7Wr7tY.

7 to People’s PO Motion. Nor can President Trump’s comments about that foreperson be described as harassing. Various legal scholars and observers leveled similar criticisms against this grand juror as a result of her public statements.³ Where jurors choose to forgo anonymity and thrust themselves into the public sphere by discussing their activities as jurors, their comments and opinions are subject to reasonable criticism and debate.

The People fail to even allege a connection between President Trump and the release of identifying information of grand jurors in Georgia, or any subsequent treatment of those grand jurors. People’s PO Motion at 8. The People also make much of the fact that the trial judge in Georgia entered “an order restricting jurors’ identities.” People’s PO Motion at 13. President Trump was not referenced in that Order, let alone the basis for it.

Finally, the People cite to statements President Trump made about non-jurors, as well as language from books. *See* People’s PO Motion at 5-7. Innocuous comments from nearly two decades ago—and not about court cases or jurors at all—are not a persuasive authority to limit President Trump’s statutory and constitutional rights in this case.

B. The Court Should Allow Juror Information To Be Disclosed To All Members Of The Litigation Teams

The People propose that jurors’ names and addresses only be disclosed to counsel of record and President Trump. President Trump respectfully submits that the requested juror protective order should be expanded to permit disclosure to individuals employed by counsel of record, such as paralegals and any jury consultants. This request would align the contemplated protective order with the discovery protective order that the Court signed at the beginning of this case, which

³ *See, e.g.,* Jula Shapero, *Christie: Trump grand jury foreperson ‘did a lot of damage’ to case*, THE HILL (Mar. 1, 2023, 11:36 am), <https://thehill.com/policy/national-security/3879196-christie-trump-grand-jury-foreperson-did-a-lot-of-damage-to-case/>; <https://shorturl.at/fwzM5>.

requires certain evidence to be maintained “in the sole possession and exclusive control of Defense Counsel” and “those employed by Defense Counsel.” Protective Order at 2. Allowing those employed or hired by counsel of record to have access to juror information will not pose any additional risk of harassment of the jurors, and it will allow counsel of record to rely on assistance from engaged staff and consultants who will also be subject to the discovery protective order.

C. The Court Should Minimize Any Potential Prejudice By Providing A Neutral Instruction To The Venire

The Court should take precautions to minimize potential prejudice to President Trump resulting from the protective order. *See, e.g., People v. Flores*, 153 A.D.3d 182, 191 (2d Dept. 2018) (reasoning that “[e]mpaneling an anonymous jury creates a potential for prejudice to a defendant”).⁴ The People appear to agree, at least conceptually. *See* People’s PO Motion at 9.

The jurors should not be notified regarding the protective measures unless they express specific concerns about public attention to their role in the case. To the extent they inquire about that issue, “reasonable precautions . . . include providing some type of neutral explanation for the [anonymity] procedure, and appropriate instructions,” such as “advising the jury that the use of numbers instead of names should in no way be interpreted as a reflection of the defendant’s guilt or innocence.” *Flores*, 153 A.D.3d at 192; *see also id.* (“An appropriate instruction may include advising the jury that the use of numbers instead of names should in no way be interpreted as a reflection of the defendant’s guilt or innocence.” (cleaned up)); *United States v. Tutino*, 883 F.2d 1125, 1133 (2d Cir. 1989) (reasoning that trial judge “issued instructions regarding the presumption of innocence in the questionnaire distributed to prospective jurors, and during trial”);

⁴ *See also, e.g., United States v. Pica*, 692 F.3d 79, 88 (2d Cir. 2012) (emphasis added); *United States v. Brown*, 2022 WL 4586302, at *3 (E.D.N.Y. Sept. 29, 2022) (“Empaneling an anonymous jury presents the possibility of unfair prejudice to the defendant and the danger of encroaching on the presumption of innocence.” (cleaned up)).

United States v. Ashburn, 2014 WL 5800280, at *18 (E.D.N.Y. Nov. 7, 2014) (noting that, in order to protect the defendant’s presumption of innocence, “the court will instruct prospective jurors that the reason for their anonymity is to maintain their personal privacy and their ability to render a fair verdict in light of the media and public attention that this trial is likely to receive.”).

D. There Is No Basis To Threaten The Forfeiture Of President Trump’s Rights

The Court should reject the People’s request that it “provide notice” to President Trump that any “conduct that undermines the integrity of these proceedings or that threatens the safety and integrity of the jury may result in the forfeiture of any statutory right [he] has to access the names of prospective or sworn jurors.” People’s PO Motion at 9. The People’s request is without factual or legal basis.

The People do not appear to contest that the law is clear that “[t]he names of prospective jurors shall . . . be disclosed to the parties, since defendant and all counsel have a statutory right to learn such names.” *Flores*, 153 A.D.3d at 189 (cleaned up). In fact, the People do not point to a single case where the defendant was deprived of his statutory right to know the names of prospective jurors, a single appellate case which held that such forfeiture is even possible, or a single case where the concept of “notice” being given to the defendant of the possible forfeiture of that right is simply discussed, much less implemented. *See* People’s PO Motion at 17-20.

However, even if there were a situation where a defendant could forfeit his statutory right to know jurors’ names, the People’s submission has fallen woefully short of establishing that President Trump presents “a *clear threat* to either the safety or integrity of the jury.” *Flores*, 153 A.D.3d at 190 (citing *People v. Watts*, 173 Misc.2d 373, 377 (Sup. Ct. Richmond Cnty. 1997)) (emphasis added). Courts have rejected finding any “clear threat” in cases with substantially more evidence of witness intimidation than here, where there is none. *See Flores*, 153 A.D.3d at 190

(finding no “clear threat” to the jury where “a defendant stood in front of her car and stared at [a juror] as she was ‘going into the car’ in the court parking lot, causing her to feel ‘[u]ncomfortable, a little intimidated”); *Watts*, 173 Misc.2d at 378 (defendant “claimed the ability to tamper with another jury” but did not forfeit his right to learn jurors’ names and addresses because “there is no allegation that an attempt was made to do so by the defendant in that case or in any other case.”). Accordingly, the Court should decline the People’s invitation, without any basis in law or fact, to infringe on President Trump’s statutory and constitutional right to a fair trial and to fully participate in all aspects of the trial proceedings, including President Trump’s meaningful participation in jury selection.

III. CONCLUSION

Subject to the necessary modifications discussed above, President Trump consents to the entry of a protective order pursuant to CPL § 270.15(1-a).

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