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

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 DISMISS AND FOR AN ADJOURNMENT BASED ON DISCOVERY VIOLATIONS**

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 President Trump's Motion To Dismiss And For An Adjournment Based On Discovery Violations.

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

3. Attached as Exhibits 1, 3, 18, 19, 20, 21, 24, and 25 are true and accurate copies of correspondence with the People concerning discovery and related disclosures in this case.

4. Attached as Exhibits 2, 4, 5, 6, 7, 8, 9, 16, and 17 are true and accurate copies of documents produced by the People in discovery in this case.

5. Attached as Exhibits 10, 11, 12, 13, 14, 15 are true and accurate copies of correspondence by and with the U.S. Attorney's Office for the Southern District of New York ("USAO-SDNY") and the People concerning the defense's January 18, 2024 request for the production of materials pursuant to 28 C.F.R. § 16.24(d)(1)(i).

6. Attached as Exhibit 22 is the Certificate of Compliance filed by the People on July 24, 2023.

7. Attached as Exhibit 23 is a true and accurate copy of an article entitled, *Stormy Daniels alleged in new documentary that Donald Trump cornered her the night they met*, published by the *Los Angeles Times* on March 7, 2024.

8. Attached as Exhibits 26, 27, and 28 are true and accurate copies of documents produced by the USAO-SDNY in response to the defense's January 18, 2024 request pursuant to 28 C.F.R. § 16.24(d)(1)(i).

WHEREFORE, for the reasons set forth in the accompanying memorandum of law, President Trump respectfully submits that the Court should grant the requested motions *in limine*.

Dated: March 8, 2024
New York, New York

By: /s/ Todd Blanche
Todd Blanche
Blanche Law PLLC
99 Wall Street, Suite 4460
New York, NY 10005
212-716-1250
toddblanche@blanchelaw.com

Attorney for President Donald J. Trump

EXHIBIT 1

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

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

June 8, 2023

VIA HAND DELIVERY
Todd Blanche
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
1120 Sixth Ave., 4th Floor
New York, NY 10036

Joseph Tacopina
275 Madison Ave., 39th Floor
New York, NY 10016

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

Dear Mr. Blanche, Ms. Necheles, and Mr. Tacopina:

Today, on June 8, 2023, we have provided you with a hard drive containing a second set of discovery materials for the above-referenced case. Please find attached to this letter an index that catalogs the materials provided.

With respect to the June 8, 2023 production, please note the following:

- *First*, all of the materials provided to you are subject to the protective order issued on May 8, 2023;
- *Second*, the People have designated certain of these materials "Limited Dissemination Materials" under the May 8 protective order, as indicated on the attached index;
- *Third*, the People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1) but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65;
- *Fourth*, some materials or information may have been withheld in connection with protective orders issued or anticipated pursuant to CPL § 245.70;

- *Fifth,* we are producing a Supplemental Addendum to our Automatic Discovery Form, dated June 8, 2023. The Supplemental Addendum includes a change to the contact information for one of the individuals listed in Addendum B [redacted], additional information in Section D – "Promises, Rewards, or Inducements" (relating to [redacted], and a new disclosure in Section F – "Brady/Giglio/Gleasen Information" (relating to [redacted]. Documents related to the additional information and disclosures in Sections D and F are included in the discovery materials;

- *Finally*, where applicable, the materials provided have been Bates stamped to aid in the organization and digestion of the materials, and the Bates ranges have been noted on the attached index. Please note, however, that the numbering of the Bates stamps is not sequential.

Separately, we have also provided you today with an additional hard drive that [redacted] and a corresponding index. While these materials are not required to be disclosed under CPL § 245.20(1) in the instant case, we are making them available to you in an exercise of discretion. We are designating all of the materials on this second hard drive "Limited Dissemination Materials" under the May 8, 2023 protective order.

Pursuant to CPL §§ 245.10(1)(a), 245.60 and 245.70, we will continue to make productions to you on a rolling basis and will produce additional discoverable materials and information we learn of or come into the possession of, or as protective orders that impact the disclosure of such items are resolved.

Sincerely,

Katherine Ellis
Assistant District Attorney

EXHIBIT 2

EXHIBIT 3

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

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

July 24, 2023

VIA HAND DELIVERY

Todd Blanche
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
1120 Sixth Ave., 4th Floor
New York, NY 10036

Joseph Tacopina
275 Madison Ave., 39th Floor
New York, NY 10016

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

Dear Mr. Blanche, Ms. Necheles, and Mr. Tacopina:

We are producing today an external hard drive containing additional materials for the above-referenced case.

As detailed in the attached index, this production includes documents designated as "Covered Materials" under the May 8 protective order, including additional open source research materials and public court filings, as well as documents designated as "Limited Dissemination Materials." The "Limited Dissemination Materials" include materials identified through our review of internal email messages, including materials identified by the Bates prefixes "DANYEMAIL" and "DANYNEWS." Note that, in some circumstances, we may have withheld parent emails or attachments where those documents were not subject to disclosure (on work product or other grounds) or where those documents were separately produced. Thus, not all emails were produced as a family. Note further that many of the materials provided, including those with the Bates prefix "DANYNEWS," are not required to be disclosed under CPL § 245.20(1), but we are nevertheless making them available to you in an exercise of discretion.

In addition, we are serving today a Certificate of Compliance and a Supplemental Addendum to the Automatic Discovery Form. The Supplemental Addendum includes additional

information in Section D—"Promises, Rewards or Inducements (CPL § 245.20(1)(l))"; Section F—"*Brady/Giglio/Geaslen* Information (CPL § 245.20(1)(k))"; and Addendum A (listing books in the possession of the People which may include witness statements).

With respect to today's production, please also note the following:

- *First*, all of the materials provided to you are subject to the protective order issued on May 8, 2023;
- *Second*, the People have designated certain of these materials "Limited Dissemination Materials" under the May 8 protective order;
- *Third*, the People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1), but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65;
- *Fourth*, some materials or information may have been withheld in connection with protective orders issued pursuant to CPL § 245.70;
- *Finally*, where applicable, the materials provided have been Bates stamped to aid in the organization and digestion of the materials, and the Bates ranges have been noted on the attached index. Please note, however, that the numbering of the Bates stamps is not sequential.

Pursuant to CPL §§ 245.10(1)(a) and 245.60, we will produce additional discoverable materials and information we learn of or come into the possession of.

Sincerely,

*/s/ Becky Mangold*_____
Becky Mangold
Assistant District Attorney

Received on July 24, 2023 by:

Name: _____

Signature: _____

EXHIBIT 4

EXHIBIT 5

EXHIBIT 6

EXHIBIT 7

EXHIBIT 8

EXHIBIT 9

EXHIBIT 10

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

THE PEOPLE OF THE STATE OF NEW YORK,	:	
- against -	:	Index No. 71543-23
DONALD J. TRUMP,	:	**SUBPOENA DUCES TECUM**
Defendant.	:	

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK

To: United States Attorney's Office
Southern District of New York
c/o AUSA Nicholas Roos
1 St. Andrew's Plaza
New York, NY 10007

YOU ARE HERBEY COMMANDED, all business and excuses being laid aside, to produce, at the Supreme Court of the State of New York, of the County of New York, Part 59, 100 Centre Street, New York N.Y., 10013, on or before February 2, 2024, at 10:00 a.m., the Documents responsive to the Requests set forth below.

DEFINITIONS

1. "Accountant-1" is the accountant described in the Information (defined below).

2. "Cohen" means Michael Cohen, the defendant in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y) and *United States v. Cohen*, No. 18 Cr. 850 (JMF) (S.D.N.Y.).

3. "Counts One through Five" means the tax evasion offenses charged in Counts One through Five of the Information (defined below).

4. "Documents" means communications, electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained directly, or, if necessary, after translation by the responding party into a reasonably usable form. Documents also includes any draft or non-identical copy of any of the foregoing materials.

5. "Guilty Plea" means Cohen's August 21, 2018 guilty plea in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y).

6. "Information" means the August 21, 2018 Felony Information in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y), ECF No. 2.

7. "Search Warrant" means the search warrant bearing docket number 18 Mag. 2969, which is publicly available at ECF No. 43-1 in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y)

8. "SCO Sentencing Submission" means the government's December 7, 2018 sentencing submission in *United States v. Cohen*, No. 18 Cr. 850 (JMF) (S.D.N.Y.), ECF No. 15.

9. "SDNY Sentencing Submission" means the government's December 7, 2018 sentencing submission in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y), ECF No. 27.

INSTRUCTIONS

1. This subpoena covers all Documents in or subject to your possession, custody or control, including all Documents that are not in your immediate possession but that you have the effective ability to obtain, that are responsive, in whole or in part, to any of the individual requests set forth below.

2. To the extent there are no responsive Documents to a particular Request, please indicate that in your response. If a Document once existed and has been lost, destroyed, or is otherwise missing, please provide sufficient information to identify the Document and the details concerning its non-existence.

3. To the extent that a Document otherwise responsive to any of the Requests is withheld on the ground(s) that it is subject to a privilege, please provide a log

that identifies each such document and the specific reason for which it is being withheld in sufficient detail to allow assessment of the validity of the withholding.

4. If you redact any portion of a Document, please provide the reason for the redaction in sufficient detail to allow assessment of the validity of the claimed need for redaction.

REQUESTS

1. With respect to Counts One through Five, please provide the documents (a) described in the Information, (b) summarized to the court at the Guilty Plea as evidence of Cohen's "tax evasion charged in Counts One through Five," or (c) described in the SDNY Sentencing Submission, including:

    a. The federal and state tax filings, and associated work papers, that are relevant to Counts One through Five, including the amended Form 1040s filed by Accountant-1 in 2011 and 2012 and the "individual returns for COHEN and returns for COHEN's medallion and real estate entities" described in paragraph 5 of the Information;

    b. Documents and communications from banks that are relevant to Counts One through Five;

    c. The IRS Revenue Agent Report concerning Cohen's settlement with the IRS over unpaid taxes relating to Counts One through Five;

    d. Documents obtained from or relating to, and communications involving, Accountant-1;

    e. Communications involving the following individuals and entities that paid Cohen unreported income: "Taxi Operator-1," "Taxi Operator-2," "an assisted living company," participants in "the sale of a piece of property in a private aviation community in Florida," and participants in the sale of a "rare and highly valuable French handbag," which are all referenced in the SDNY Sentencing Submission at pages 4-5 and in paragraphs 7 through 12 of the Information;

    f. Documents relating to Cohen's "steps to conceal the interest income he was receiving from Taxi Operator-1," which are referenced at page 7 of the SDNY Sentencing Submission;

    g. The "memorandum that Cohen's accountant prepared in 2013 when Cohen became a client," and the "personal financial statement prepared by Cohen's prior accountant," which are both referenced at page 7 of the SDNY Sentencing Submission; and

    h. Documents relating to Cohen's "updated personal financial statement," including the draft in which "Cohen crossed out the 'loans receivable'

line item altogether," which are all referenced at page 7 of the SDNY Sentencing Submission.

2. For the tax years from 2012 to the present, please provide all state and federal income tax filings, and associated work papers, relating to Cohen and/or entities associated with Cohen.

3. Please provide the documents discussed or relied upon in any way to establish probable cause in the Search Warrant, including bank records and emails from the following financial institutions:

    a. Sterling National Bank;

    b. Melrose Credit Union;

    c. First Republic Bank;

    d. Capital One Bank;

    e. City National Bank;

    f. Morgan Stanley;

    g. Signature Bank;.

    h. Bethpage Credit Union; and

    i. TD Bank.

4. Please provide all documents seized from the Apple iPhone described in the Search Warrant as "Subject Device-1."

5. Please provide all toll records relating to the Apple iPhone described in the Search Warrant as "Subject Device-1."

6. Please provide all documents seized from the Apple iPhone described in the Search Warrant as "Subject Device-2."

7. Please provide all toll records relating to the Apple iPhone described in the Search Warrant as "Subject Device-2."

8. Please provide all documents seized from the email account described in the Search Warrant as the "Cohen Gmail Account."

9. Please provide all documents seized from the email account described in the Search Warrant as the "Cohen iCloud Account."

10. Please provide all documents seized from the email account described in the Search Warrant as the "Cohen MDCPC Account."

11. Please provide all agreements with Cohen or his counsel, including proffer agreements and privilege waivers.

12. Please provide all documents memorializing statements by Cohen, including statements during:

    a. Meetings with the New York Attorney General and New York State Department of Taxation and Financial Services, as described in the SDNY Sentencing Submission at page 16, footnote 5;

    b. Meetings involving personnel from the U.S. Attorney's Office for the Southern District of New York; and

    c. The "seven occasions" that Cohen met with the Special Counsel's Office, as described in the SCO Sentencing Submission at page 2.

13. Documents relating to the following books and manuscripts:

    a. *Trump Revolution: From the Tower to the White House, Understanding Donald J. Trump*;

    b. *Revenge: How Donald Trump Weaponized the US Department of Justice Against His Critics*; and

    c. *Disloyal: A Memoir: The True Story of the Former Personal Attorney to President Donald J. Trump*.

14. Agreements relating to Cohen involving any of the following entities:

    a. Hachette Book Group;

    b. Center Street (an imprint of Hachette Book Group);

    c. Melville House Publishing;

    d. Skyhorse Publishing;

    e. Audio Up, Inc.;

    f. Podcast One Sales, LLC;

    g. Courtside, LLC;

    h. LSJ Media Group, LLC;

    i. LiveXLive, Inc.;

    j. LiveOne, Inc.;

    k. MeidasTouch Network; and

    l. The Arena Group Holdings, Inc.

15. Please provide all documents reflecting or memorializing communications with the Manhattan District Attorney's Office, the Office of the New York State Attorney General, or the Office of Special Counsel Robert S. Mueller III, regarding:

    a. Crimes, misconduct, and/or bad acts by Cohen;

    b. The book titled *People v. Donald Trump: An Inside Account*; or

    c. Cohen's credibility.

16. Please provide all non-privileged documents and communications relating to the December 12, 2023 order to show cause docketed at ECF No. 96 in *United States v. Cohen*.

Failure to comply with this subpoena is punishable as a contempt of court.

Dated: January 18, 2024

By: /s/ Todd Blanche

Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC
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New York, NY 10005
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Attorneys for President Donald J. Trump

EXHIBIT 11

U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

January 19, 2024

BY EMAIL
Todd Blanche, Esq.
Emil Bove, Esq.
Blanche Law

Re: Subpoena Duces Tecum issued to the U.S. Attorney's Office for the Southern District of New York in *People of the State of New York v. Trump*, Index No. 71543-23

Dear Todd and Emil:

We write in response to the subpoena duces tecum dated January 18, 2024 ("Subpoena"), directed to this Office in the above-referenced New York State Supreme Court matter, to which the United States is not a party.

As an initial matter, we write to confirm that this Office has received the Subpoena and that the undersigned Assistant United States Attorney will be handling your request. Moving forward, please direct all communications to the undersigned.

Federal regulations govern the response of the United States government to subpoenas and other third-party discovery demands such as yours. *See generally* 5 U.S.C. § 301. The Department of Justice ("Department" or "DOJ") has broad discretion to determine whether its employees will be permitted to produce documents in matters where the government is not a party. *See United States ex. rel Touhy v. Ragen*, 340 U.S. 462 (1951) (authorizing such regulations). The procedural and substantive factors governing the Department's determination are set forth in the agency's "*Touhy*" regulations. *See* 28 C.F.R. §§ 16.21 to 16.29 (the "DOJ *Touhy* regulations").

The DOJ *Touhy* regulations channel review of demands to the responsible United States Attorney and provide a set of procedures for the United States Attorney to follow when considering those demands. *See* 28 C.F.R. §§ 16.22(b), 16.24. The regulations "provide guidance for the internal operations of the Department of Justice," and do not create substantive rights. *Id*. § 16.21(d).

Ordinarily, a party seeking to obtain records from the Department must first submit a written demand, *see* 28 C.F.R. § 16.22(a), summarize the records sought, and explain the relevance of the records to his proceeding, *see id*. § 16.22(d). Once a party complies with these requirements, the United States Attorney will make the determination regarding the party's demand, in light of the considerations codified at 28 C.F.R. §§ 16.24–26. Applying these considerations, the Department will make appropriate disclosures when warranted. *See id.* § 16.26(c).

This letter is not intended to respond to the substance of Subpoena, but rather to acknowledge that this Office has received a written demand for records and summary of the records sought, which are subject to the DOJ's *Touhy* regulations. In accordance with 28 C.F.R. § 16.22(d), we request that you also provide an explanation of the relevance of the various categories of records sought in the Subpoena. Upon receipt of that information, this Office will proceed to review your *Touhy* request and determine whether the requested records, to the extent they are in our possession, may be produced pursuant to the DOJ *Touhy* regulations.

We note that although the Subpoena originates from a state court, the DOJ *Touhy* regulations have the force of federal law and must be followed even in state court proceedings. We further note that sovereign immunity bars direct enforcement by a state court of a subpoena against the Department or its employees. *See, e.g.*, *Edwards v. DOJ*, 43 F.3d 312, 316 (7th Cir. 1994) ("the review action must be in federal court pursuant to 5 U.S.C. § 702, rather than in a state court that lacks jurisdiction"); *In re Elko County Grand Jury*, 109 F.3d 554 (9th Cir. 1997); *Smith v. Cromer*, 159 F.3d 875, 879 (4th Cir. 1998). Nothing herein should be construed as a waiver of any objection or defense to the validity or enforceability of the Subpoena or as a waiver of any applicable privilege or protection from disclosure.

Please contact the undersigned if you have any questions.

Very truly yours,

DAMIAN WILLIAMS
United States Attorney

By: */s/ Sarah S. Normand*
SARAH S. NORMAND
Assistant United States Attorney

EXHIBIT 12

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

January 22, 2024

Via Email
Sarah Normand
U.S. Attorney's Office
Southern District of New York

Re: January 18, 2024 Subpoena Duces Tecum And *Touhy* Request

Dear Sarah:

We respectfully submit this letter in response to your January 19, 2024 letter, and in furtherance of our *Touhy* request that the Office ("USAO") produce materials that are responsive to our January 18, 2024 subpoena pursuant to 28 C.F.R. § 16.24(d)(1)(i). For the reasons set forth below, the requested disclosures would be appropriate under § 16.26(a), none of the factors specified in § 16.24(b) presents a significant impediment, and the disclosures would be consistent with due process and administration-of-justice principles under federal and state law in connection with the prosecution of President Donald J. Trump by the Manhattan District Attorney's Office ("DANY").

I. Background

As you know, the USAO prosecuted Michael D. Cohen in *United States v. Cohen*, No. 18 Cr. 602 (S.D.N.Y.), and the Special Counsel's Office ("SCO") led by Robert Mueller prosected Mr. Cohen in *United States v. Cohen*, No. 18 Cr. 850 (S.D.N.Y.). Below are relevant details from those cases and DANY's case against President Trump.

A. The Search Warrants Relating To Mr. Cohen

In 2017, the SCO obtained warrants targeting two email accounts and an iCloud account used by Mr. Cohen. *See* Ex. A at 6-7 (search warrant application). In early 2018, the SCO "referred certain aspects of its investigation into Cohen" to the USAO, and provided to the USAO "all non-privileged emails and other content" obtained pursuant to the warrants. *Id.* at 7. In February 2018, the USAO obtained additional warrants targeting email accounts used by Mr. Cohen. *See id.* at 8 & n.6. In April 2018, the USAO obtained a warrant to execute searches of three premises, two phones, and a safe deposit box used by Mr. Cohen. *See id.* at 2-5.

According to the April 2018 warrant application, the USAO was investigating "schemes" by Mr. Cohen "to defraud multiple banks from in or about 2016 up to and including the present," and an October 2016 campaign contribution to President Trump. Ex. A at 8-9. The warrants sought evidence relating to false bank entries, false statements to financial institutions, wire fraud, bank fraud, and illegal campaign contributions. *E.g.*, *id.* at 253. The warrants placed time

restrictions on certain types of evidence to be seized, but the restrictions specified that evidence could be seized relating to events that occurred up to "the present." *Id.* at 253-54.

B. Cohen's Perjury, Misrepresentations, And Violations Of Supervised Release

In a November 3, 2023 letter, which is enclosed as Exhibit B (without enclosures), we discussed Mr. Cohen's guilty pleas in the cases brought by the USAO and the SCO, as well as his subsequent violations of supervised release and perjury in *NYS Attorney General v. Donald Trump, et al.*, Index No. 452564/2022. We summarize those events below.

On August 21, 2018, Mr. Cohen pleaded guilty in the USAO's case to, *inter alia*, five counts of tax evasion in violation of 26 U.S.C. § 7201 (Counts 1 - 5), and one count of making false statements to a financial institution in violation of 18 U.S.C. § 1014 (Count 6). *See* Ex. B at 2. On November 28, 2018, Mr. Cohen pleaded guilty in the SCO's case to making false statements to Congress, in violation of 18 U.S.C. § 1001(a)(2).

The SCO's case was consolidated with the USAO's case for purposes of sentencing. On December 12, 2018, Judge Pauley sentenced Mr. Cohen principally to 36 months' imprisonment and a three-year term of supervised release. *See* Ex. B at 4. Mr. Cohen is still subject to the terms of supervised release, which include the requirement that he not commit another crime. *Id.*

In December 2019, Mr. Cohen sought a sentence reduction pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure. The USAO opposed the motion and informed Judge Pauley that: (1) Mr. Cohen had engaged in a "veritable smorgasbord of fraudulent conduct"; and (2) the prosecutors had "substantial concerns about Cohen's credibility as a witness," based in part on lies during proffers that included "material false statements"—*i.e.*, further violations of 18 U.S.C. § 1001—in January and February 2019. Ex. B at 4. Judge Pauley denied the motion and found that Mr. Cohen "made material and false statements in his post-sentencing proffer sessions." *United States v. Cohen*, 2020 WL 1428778, at *1 (S.D.N.Y. 2020).

Mr. Cohen has filed several unsuccessful motions to terminate his supervised release. In a November 2021 opposition filing, the USAO noted that it "previously delineated many of Cohen's lies that undermined his attempts at cooperation, and pointed to Cohen's repeated attempts to downplay his own conduct after his guilty plea." Ex. B at 4-5. The USAO added that, "[m]ore recently, just before making his last motion, Cohen falsely wrote in a book he authored that he 'did not engage in tax fraud,' that the tax charges were 'all 100 percent inaccurate,' and that he was 'threatened' by prosecutors to plead guilty. *See* Michael Cohen, REVENGE 54 (2022)." *Id.* at 5.

Furthermore, Mr. Cohen committed perjury during October 2023 trial testimony in *NYS Attorney General v. Donald Trump, et al.*, Index No. 452564/2022. *See* Ex. B at 5. The perjury included (1) testifying falsely that he "refused" a motion pursuant to U.S.S.G. § 5K1.1 from the USAO; and (2) testifying falsely that he did not commit the crimes charged in Counts One through Six. *See id*.

C. The Order To Show Cause Regarding Fabricated Case Citations

On November 29, 2023, Mr. Cohen filed another motion for early termination of his supervised release. *See* ECF No. 88, *United States v. Cohen*, No. 18 Cr. 602 (JMF). On December 12, 2023, Judge Furman entered an Order to Show Cause why sanctions should not be imposed relating to three cases cited by Mr. Cohen in his motion: "As far as the Court can tell, none of these cases exist." *Id.*, ECF No. 96. In response, the attorney who filed the motion on behalf of Mr. Cohen retained counsel, asserted that Mr. Cohen had sent him the citations, and informed Judge Furman that he "believed" the citations originated from another attorney representing Mr. Cohen. *Id.*, ECF No. 103 at 6. In a separate filing, Mr. Cohen claimed that he (1) "provided [his attorney] with citations (and case summaries) he had found online and believed to be real"; and (2) obtained the "invalid citations at issue" from a generative artificial intelligence service. *Id.*, ECF No. 104 at 1, 3.

D. DANY's Prosecution Of President Trump

On March 30, 2023, a New York County grand jury returned an indictment charging President Trump with 34 counts of felony falsifying business records, in violation of New York Penal Law § 175.10.[1] Jury selection is scheduled to begin on March 25, 2024.

DANY alleges that President Trump and Mr. Cohen worked with executives from American Media, Inc. to identify and suppress potential negative news stories during the runup to the 2016 presidential election.[2] The first potential story involved Dino Sajudin, a former doorman at Trump Tower, who tried to sell the false claim that President Trump had fathered a child out of wedlock with a staff member. *See* DANY Statement of Facts ¶¶ 10-11.[3] The second potential story involved Karen McDougal, who falsely alleged that she had a sexual relationship with President Trump. *See id.* ¶¶ 12-15. The third potential story involved Stephanie Clifford, also known as Stormy Daniels, who also falsely alleged that she had a sexual encounter with President Trump. *See id.* ¶¶ 16-21. DANY further alleges that, on October 26, 2016, Mr. Cohen wired $130,000 from his personal account to purchase the life rights to Ms. Clifford's story.

DANY's case focuses on payments to Mr. Cohen in approximately 2017. The 34 charges are organized into 11 separate groups based on three types of records: Mr. Cohen's invoices, ledger entries, and the resulting check and stub. DANY alleges that these records were "false" because they indicated that the payments were part of a "retainer" for "legal" services by Mr. Cohen—

[1] The Indictment is available at: https://manhattanda.org/wp-content/uploads/2023/04/Donald-J.-Trump-Indictment.pdf.

[2] In September 2018, the USAO entered into a non-prosecution agreement with American Media, Inc., which is available at: https://www.justice.gov/usao-sdny/press-release/file/1119501/download.

[3] DANY's Statement of Facts is available at: https://manhattanda.org/wp-content/uploads/2023/04/2023-04-04-SOF.pdf.

which they were. DANY escalated the charges to felonies by alleging that President Trump intended "to commit another crime or to aid or conceal the commission thereof" under Penal Law § 175.10. In response to a request for particulars, DANY proffered that its felony theory is based on violations of one or more of the following: the Federal Election Campaign Act, 52 U.S.C. § 30101 *et seq*.; New York Election Law § 17-152; New York Tax Law §§ 1801(a)(3) and 1802; and New York Penal Law §§ 175.05 and 175.10.[4]

Former Special Assistant District Attorney Mark Pomerantz and his colleagues dubbed DANY's legal theory the "zombie case" because of how many times they abandoned the theory, only to revive it when other inquiries were even less fruitful. *See* M. POMERANTZ, PEOPLE VS. DONALD TRUMP: AN INSIDE ACCOUNT at 200 (2023) ("*Pomerantz Inside Account*"). In Mr. Pomerantz's view, the conduct "did not amount to much in legal terms" because "[p]aying hush money is not a crime under New York State law, even if the payment was made to help an electoral candidate," and "creating false business records is only a misdemeanor under New York law." *Id.* at 40-41.

II. Discussion

The Requests in the Subpoena seek information and evidence—to the extent in the USAO's possession or control—that we will use to defend President Trump in the DANY prosecution. *See* 28 C.F.R. § 16.22(d) (requiring "summary of the information sought and its relevance to the proceeding"). DANY has produced only a [redacted] DANY has not produced [redacted], and we have not been able to obtain the other evidence sought in the Requests from other sources. For example, Mr. Cohen has declared publicly, for reasons that are manifest, that he "wouldn't turn this stuff over for all the money in the world."[5]

First, we are seeking evidence that we will use to challenge DANY's reliance on campaign finance and tax offenses as predicates for felony violations of Penal Law § 175.10. *See, e.g.*, *People v. Ulett*, 33 N.Y.3d 512, 515 (N.Y. 2019) ("The prosecution is required to disclose information that is both favorable to the defense and material to either defendant's guilt or punishment." (citing *Brady v. Maryland*, 373 U.S. 83, 87 (1963))).

Second, we are seeking evidence that we will use at trial to impeach the integrity of DANY's investigation. *See, e.g.*, *People v. Hayes*, 17 N.Y.3d 46, 52 (N.Y. 2011) ("In *Kyles*, the Supreme Court . . . acknowledged that it is a common and accepted tactic for defendants to challenge the adequacy of a police investigation."); *see also Kyles v. Whitley*, 514 U.S. 419, 442

[4] DANY's response to President Trump's request for a Bill of Particulars is available at: https://www.justsecurity.org/wp-content/uploads/2023/05/manhattan-district-attorney-bill-of-particulars-response-may-16-2023.pdf.

[5] MeidasTouch (Nov. 16, 2023). Livestream of *Political Beatdown with Michael Cohen and Ben Meiselas* (at 6:50-6:56), *available at* https://www.youtube.com/watch?v=m8u-8xUcDDg&t=3427s.

n.13, 446 (1995) (reasoning that *Brady* obligations include evidence that can be used to "attack[] the reliability of the investigation" and argue that it was "shoddy"). This category of evidence includes communications with DANY regarding Mr. Cohen's bad acts and lack of credibility, as well as materials relating to *Pomerantz Inside Account*, which raised serious questions about the viability of DANY's legal theory and Mr. Cohen.

Third, because of Mr. Cohen's singular importance to DANY as a witness—and DANY's decision to rely on Mr. Cohen's information despite his proven record of lying to prosecutors, law enforcement, and the courts—we are seeking documents relating to Mr. Cohen's credibility and his prior bad acts (including materials relating to the sanctions issue pending before Judge Furman). This includes reports of interviews in which, according to the USAO and the SCO, Mr. Cohen lied to federal authorities. To the extent we are seeking materials described in search warrant applications, we are only seeking evidence that the USAO or FBI seized upon determining that it constituted evidence of a crime.

Fourth, we are seeking evidence of bias and motive that we will also use to impeach Mr. Cohen at trial. For example, we are seeking drafts of *Trump Revolution* and related communications (Request 13(a)), as Mr. Cohen authored that manuscript before he faced penal and financial incentives to demonize President Trump. We are seeking documents relating to Mr. Cohen's agreements with various publishers and media companies (Request 14), as those materials demonstrate the financial motivation that is part of the driving force behind Mr. Cohen's claims. We are also seeking documents relating to Mr. Cohen's subsequently published books (Requests 13(b)-(c))—one of which the USAO has asserted contains lies regarding Mr. Cohen's culpability on tax charges—because communications relating to the editing process bear on counterfactual changes that Mr. Cohen made in order to sell more books.

The Requests in the Subpoena are "appropriate under the rules of procedure governing the case or matter in which the demand arose." 28 C.F.R. § 16.26(a)(1). Specifically, the Requests seek documents that are discoverable in DANY's case under New York law. *See* C.P.L. § 245.20(1).[6] We issued the Subpoena pursuant to C.P.L. § 610.20(3), and it seeks information and records that are "reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome." C.P.L. § 610.20(4); *see also People v. Kozlowski*, 11 N.Y.3d 223, 241 (2008) ("[D]efendants must proffer a good faith factual predicate sufficient for a court to draw an inference that specifically identified materials are reasonably likely to contain information that has the potential to be both relevant and exculpatory."). Moreover, irrespective of the Subpoena, DANY has an obligation to "make a diligent, good faith effort to ascertain the existence of material or information discoverable" under C.P.L. § 245.20, and "to

[6] C.P.L. § 245.20 imposes near open-file discovery obligations that in some respects exceed federal discovery rules. For example, C.P.L. § 245.20 requires prompt production of "[a]ll statements . . . made by persons who have evidence or information relevant to any offense charged or to any potential defense," *id.* § 245.20(1)(e); "[a]ll . . . documents . . . relating to the criminal action," *id.* § 245.20(1)(j); and "all electronically created or stored information seized or obtained by or on behalf of law enforcement from . . . a source other than the defendant which relates to the subject matter of the case," *id.* § 245.20(1)(u)(i).

cause such material or information to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control." *Id.* § 245.20(2). While DANY appears to have taken some steps in furtherance of that obligation, the prosecutors did not go far enough. Accordingly, for all of these reasons, disclosing responsive materials to President Trump would be consistent with 28 C.F.R. § 16.26(a)(1).

Any privilege issues that could arise from the requested disclosures have been, or can be, addressed. *See* 28 C.F.R. § 16.26(a)(2). Providing materials relating to Mr. Cohen's representation of President Trump, or that implicate the executive privilege, would not present concerns because those privileges are controlled by our client. Nor are we seeking materials that are subject to Mr. Cohen's attorney-client privilege or the related work product doctrine. Instruction 3 in the Subpoena contemplates that materials may be withheld on that basis, subject to the provision of an appropriate privilege log. We welcome further discussion on this issue, but it does not appear that these types of privilege issues would present unreasonable burdens in light of the filter-team procedures described in public filings relating to search warrants, *see, e.g.*, Ex. A at 7, 85, and the participation of a Special Master as described in *Cohen v. United States*, 18 Mag. 3161 (S.D.N.Y.). Finally, we recognize that certain of the requests, such as Request 15, could implicate privileges controlled by the USAO. We believe producing some or all of those types of responsive materials can be accomplished in a manner consistent with § 16.26(a)(2). Several of the potentially applicable privileges are qualified, *see, e.g.*, *New York v. Wolf*, 2020 WL 3073294, at *1-2 (S.D.N.Y. 2020), and President Trump has a strong interest in the materials—based on the state and federal constitutions—for defense use in connection with proceedings that could result in his incarceration and impact the 2024 presidential election.

None of the considerations identified in 28 C.F.R. § 16.26(b) warrant rejecting the Requests. The responsive materials may include grand jury information. *See id.* § 16.26(b)(1). However, the USAO already disclosed to DANY [redacted], and we would comply with any procedural requirements you deem necessary in connection with disclosures of similar materials.

Certain of the Requests seek tax return information, but such disclosures would be consistent with 26 U.S.C. § 6103(h)(4)(B)-(C). Any responsive tax information obtained by the USAO pursuant to a court order can be disclosed in connection with DANY's case against President Trump, which is a "State judicial . . . proceeding pertaining to tax administration" because DANY has specified that the object felonies for the Penal Law § 175.10 counts include tax offenses. *Id.* § 6103(h)(4). Mr. Cohen's tax information "directly relates to a transactional relationship between a person who is a party to the proceeding," *i.e.*, President Trump, which "directly affects the resolution of an issue in the proceeding." 26 U.S.C. § 6103(h)(4)(C). Similarly, "the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding." *Id.* § 6103(h)(4)(B). Specifically, Mr. Cohen's treatment of payments that he received relating to Ms. Clifford's is directly relevant to DANY's theory of the case.

The Requests may seek "investigatory records compiled for law enforcement purposes," but disclosure would not "interfere with enforcement proceedings" or disclose sensitive techniques. 28 C.F.R. § 16.26(b)(5). The federal prosecutions of Mr. Cohen have concluded, and we are not aware of any current ongoing federal investigation relating to the same allegations and

offenses. Consistent with our understanding of that finality, FBI reports relating to the SCO's investigation have been released pursuant to FOIA, including a report relating to an interview of Mr. Cohen in September 2018.[7] Therefore, the disclosures we are seeking would also be consistent with the § 16.26(b) considerations.

* * *

We appreciate your consideration of the Subpoena and the Requests therein. Please let us know if you would like to discuss the issues raised in this submission.

Respectfully Submitted,

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

Attorneys for Donald J. Trump

Enclosures

[7] *See* https://www.documentcloud.org/documents/6596807-3rd-Mueller-Document-FOIA-Release#document/p105/a542415.

EXHIBIT 13

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

January 31, 2024

Via Email
Sarah Normand
U.S. Attorney's Office
Southern District of New York

Re: January 18, 2024 Subpoena Duces Tecum And *Touhy* Request

Dear Sarah:

We write in response to your January 30, 2024 letter. We have no objection to you taking additional time to prepare a complete response to our January 22, 2024 *Touhy* Requests, and we appreciate you taking the steps to do so that you described in your letter. Our motions *in limine* in *People v. Trump*, Index No. 71543-23, are due on February 22, 2024. In order to allow us to incorporate any materials the Office provides into those motions and take any necessary steps in response to the Office's decision, we would appreciate a response by February 16, 2024.

We respectfully disagree with the points you made regarding Judge Merchan's ruling on the motions to quash our subpoena to Michael Cohen. We recognize that the Office may consider a variety of factors under the applicable regulations, but Judge Merchan's ruling is not a persuasive basis to guide the Office's discretion for several reasons.

First, we do not agree that the "law of the case" doctrine has application under these circumstances. The doctrine is applied by judges, not prosecutors. At your request, we have submitted our Requests pursuant to the *Touhy* regulations, and those Requests are independent of the pending criminal case. As such, the *Touhy* regulations and related APA caselaw call for the Office to make an independent determination regarding our Requests.

Second, as reflected in our motion for reconsideration in the criminal case, Judge Merchan's ruling constituted a flawed and erroneous application of the legal framework that was relevant to his decision—C.P.L. § 610.20(3)-(4)—which should not be persuasive to the Office. For example, Judge Merchan's use of the term "general discovery," which you noted in your letter, failed to acknowledge that in most instances the subpoena to Mr. Cohen sought evidence that was probative of bias and motive. This includes evidence we are seeking relating to Mr. Cohen's arrangements with podcast and book publishers, which provide Mr. Cohen with financial incentives to make false and sensational public claims about President Trump in order to sell more books and get more views. Evidence of this type of bias and motivation is not "general discovery." *See, e.g.*, Fed. R. Evid. 608(b); N.Y. Rule of Evidence 6.11(c) (same); *United States v. Chichakli*, 2014 WL 5369424, at *17 (S.D.N.Y. Oct. 16, 2014) ("[P]otential bias can be proven by extrinsic evidence." (citing *United States v. Harvey*, 547 F.2d 720, 722 (2d Cir. 1976))).

As another example, we are seeking tax-related documents collected by the Office during its investigation of Mr. Cohen on the basis that the Office believed at the time that those materials were probative of criminal conduct by Mr. Cohen. The tax materials cannot reasonably be deemed "general discovery" outside the reach of C.P.L. § 610.20. In fact, DANY plans to argue at trial that the misdemeanor violations they have charged against President Trump should be escalated to felonies based on a tax-related scheme. As such, Mr. Cohen's tax treatment of the payments at issue is central to President Trump's defense. Judge Merchan's rulings to-date on this issue are unlawful. And DANY's failure to obtain and produce materials for the tax years in question is unconscionable, particularly in light of the fact that DANY has produced tax materials for earlier years. The Office should not be guided by their positions in evaluating the Requests.

We are also seeking from the Office drafts of the manuscript entitled *Trump Revolution: From the Tower to the White House, Understanding Donald J. Trump*, and related communications—including responsive documents seized from Mr. Cohen's accounts and devices, as well as responsive documents that the Office collected through other methods. Mr. Cohen wrote the manuscript prior to learning that he was being investigated by state and federal authorities, he signed a lucrative agreement to publish it, and he reportedly pulled out of that deal after determining that his current false narrative better suited his interests. This is further evidence of bias to which President Trump is entitled, and which should be admissible in any criminal proceeding guided by the rule of law.

So too are the communications sought in Request 15. We limited this Request to three specific topics that Judge Merchan did not address in a manner that should be persuasive to the Office. Specifically, we are seeking communications regarding crimes and misconduct by Mr. Cohen, Mr. Cohen's credibility, and Mr. Pomerantz's book touching on these topics as well as issues that we are entitled to raise at trial relating to the integrity of DANY's investigation. These communications may be independently admissible, but we are also entitled to use them to prepare President Trump's defense and trial strategy.

Third, our Requests are different from the subpoena to Mr. Cohen in important ways. Our use of the word "seized" in Requests 4 through 10 is important in this regard. We are not asking for "general discovery" or an "unrestrained foray." In those Requests, we are seeking evidence that the Office seized pursuant to the search warrants—a process that is separate from the initial collection of data from electronic service providers—*because* the evidence was probative of fraudulent schemes by Mr. Cohen, including wire fraud and bank fraud schemes. The warrant that we attached as Exhibit A to our *Touhy* letter indicates that the Office represented to a Magistrate Judge that there was probable cause to believe those fraud schemes had continued "to the present," and that there was probable cause to believe that Mr. Cohen was involved in "illegal campaign contributions"—another category of federal crime that DANY has invoked in an effort to escalate its baseless misdemeanor charges against President Trump that is contrary to the law and without evidentiary support. By seeking evidence that the Office seized pursuant to the Fourth Amendment and Rule 41, we pursued a narrower approach in the *Touhy* Requests that Judge Merchan has not addressed and could not reasonably reject.

Fourth, we do not believe that the New York rule regarding trial subpoenas, C.P.L. § 610.20(3)-(4), sets forth the applicable "rules of procedure" for purposes of our *Touhy* Requests. 28 C.F.R. § 16.26(a)(1). Rather, the Office should evaluate the Requests based on the applicable discovery provisions of N.Y. Criminal Procedure Law § 245.20.

Section 245.20(1) essentially requires open-file discovery that in some instances exceeds Rule 16 of the Federal Rules of Criminal Procedure. *See, e.g.*, N.Y. Crim. Pro. Law § 245.20(k)(iv) (requiring pretrial disclosure of "[a]ll evidence and information . . . that tends to . . . impeach the credibility of a testifying prosecution witness"); *id.* § 245.20(u)(i)(B) (requiring pretrial disclosure of "all electronically created or stored information seized . . . from . . . a source other than the defendant which relates to the subject matter of the case"). The *Touhy* Requests seek information that is discoverable under these provisions. Here, for example, the communications sought in Request 15 are discoverable under § 245.20(e), which requires pretrial disclosure of "[a]ll statements, written or recorded or summarized in any writing or recording, made by persons who have evidence or information relevant to any offense charged or to any potential defense thereto."

Moreover, § 245.20(2) establishes an affirmative duty on the part of DANY to:

> [M]ake a diligent, good faith effort to ascertain the existence of material or information discoverable under subdivision one of this section and to cause such material or information to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control . . . .

DANY is in violation of this provision. The *Touhy* Requests identify discoverable materials in the possession of the Office. DANY has illegally declined to obtain the materials we are seeking, despite collecting and producing other materials from the Office. We hope that the Office will not join in those suppression efforts.

Fifth, regardless of any weight the Office chooses to place on Judge Merchan's ruling, the constitutional considerations under *Brady* and *Giglio*, the Justice Manual, and the Office's discovery policies should have a role to play in the Office's analysis. "Government disclosure of material exculpatory and impeachment evidence is *part of the constitutional guarantee to a fair trial*." Justice Manual § 9-5.001(B) (emphasis added). "Under this policy, the government's disclosure will exceed its constitutional obligations." *Id.* § 9-5.001(F). "[T]his policy encourages prosecutors to err on the side of disclosure in close questions of materiality and identifies *standards that favor greater disclosure* in advance of trial . . . ." *Id*. § 9-5.001(B). Based on these authorities and our experience, if Mr. Cohen was testifying in a federal criminal trial in another District, we would expect the materials sought in our *Touhy* Requests to be disclosed to the prosecutors responsible for that trial so that they could be disclosed to the defense. Because the Office has already disclosed certain materials to DANY, and based on basic fairness and the affirmative duty

that DANY has ignored under N.Y. Criminal Procedure Law § 245.20(2), we respectfully submit that the Office should provide the responsive materials as soon as impracticable so that President Trump's trial can proceed in a just fashion.

Respectfully Submitted,

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

Attorneys for President Donald J. Trump

EXHIBIT 14

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

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

February 7, 2024

BY ELECTRONIC MAIL

Sarah S. Normand
Deputy Chief, Civil Division
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
New York, NY 10007

RE: *Touhy* request by the defendant in *People of the State of New York v. Donald J. Trump*, Indictment No. 71543-23 (Sup. Ct. N.Y. Cnty.).

Dear Deputy Chief Normand,

The District Attorney's Office submits this letter in connection with a request for disclosure of materials in the files of the Department of Justice by counsel for Donald J. Trump, the defendant in *People of the State of New York v. Donald J. Trump*, Ind. No. 71543-23 (Sup. Ct. N.Y. Cnty.).

Counsel for the defendant served a state-court subpoena *duces tecum* dated January 18, 2024, on the Department seeking records related to the federal government's investigation and prosecution of Michael Cohen in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y.), and *United States v. Cohen*, No. 18 Cr. 850 (JMF) (S.D.N.Y.), as well as records related to the investigation by Special Counsel Robert S. Mueller, III into Russian interference in the 2016 presidential election.

Because a state court may not validly subpoena the federal government, *see, e.g.*, *In re Elko Cnty. Grand Jury*, 109 F.3d 554, 556 (9th Cir. 1997), we understand that the Department has advised defendant's counsel that the government will treat his subpoena as if it were a properly-submitted *Touhy* request under the Department's regulations at 28 C.F.R. part 16 subpart B. *See* 28 C.F.R. § 16.21(a)(2); *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). Consistent with the Department's practices for handling *Touhy* requests of this type, the Department notified the District Attorney's Office of defendant's request, and has invited the District Attorney's Office to provide our views regarding whether defendant's request for records satisfies the applicable standards for disclosure. *See* 28 C.F.R. § 16.24(c); Justice Manual § 1-6.220.

For the reasons described below, the materials sought in defendant's *Touhy* request are substantially restricted from disclosure under the Privacy Act, the federal grand jury secrecy rule, the tax secrecy provisions of the Internal Revenue Code, and the substantive law concerning the

federal government's privileges (including the law enforcement, deliberative process, attorney-client, and work product privileges). In addition, and as also described below, most of the materials sought by defendant's *Touhy* request are irrelevant to the *People v. Trump* prosecution—as already determined by the presiding state-court judge—and disclosure is not warranted for that reason.[1]

As to certain of the materials sought in defendant's *Touhy* request that are protected by grand jury secrecy and governmental privileges, we note in the discussion below where we believe a subset of the requested records may, in the discretion of the responsible Department official (and if not prohibited from disclosure on another basis), satisfy the relevant standards for disclosure. Specifically, the following records or categories of records identified in defendant's *Touhy* request may warrant examination by the U.S. Attorney to determine whether the relevant standards for disclosure are satisfied:

- documents responsive to Request 3 if related to Michael Cohen's campaign finance offenses and if not already obtained by the People and produced to defendant in discovery;
- documents responsive to Request 11 if not already obtained by the People and produced to defendant in discovery;
- documents responsive to Request 12(b) if related to Cohen's campaign finance offenses and if not already obtained by the People and produced to defendant in discovery;
- documents responsive to Request 12(c) if relevant to Cohen's credibility and not already disclosed in the Department's court filings;
- documents responsive to Request 15, if any, as related to the District Attorney's Office.

1. Background regarding United States v. Cohen and People v. Trump. On August 21, 2018, Michael Cohen pleaded guilty to eight offenses in the United States District Court for the Southern District of New York. *See* Information, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018); Hearing Tr., *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018). Counts One to Five related to federal income tax evasion; Count Six was for false statements to a bank; and Counts Seven and Eight were for causing and making unlawful campaign contributions in violation of the Federal Election Campaign Act ("FECA"). As to the campaign finance counts, Cohen admitted in his plea allocution that he did so "in coordination with, and at the direction of, a candidate for federal office" later identified as Donald J. Trump "for the principal purpose of influencing the election." Hearing Tr. 23-24, 27-28, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

The federal government's Information further alleged that Cohen committed one of the campaign finance violations by making a payment to an adult film actress (later identified as

[1] *See* Decision and Order on Motion to Quash Def.'s Subpoena and for a Protective Order, *People v. Trump*, Ind. No. 71543/2023 (Sup. Ct. N.Y. Cnty. Dec. 18, 2023) (Merchan, J.) (the "*Trump* Order on Motion to Quash"). We are appending copies of this order and the accompanying motion papers for your awareness, and describe in the body of this submission where we believe this order should inform the U.S. Attorney's analysis. We also note that defendant filed a motion to reargue his opposition to the motions to quash on January 17, 2024, which the People opposed on January 29. We will provide a copy of any order on defendant's motion to reargue if the Court issues its ruling before the U.S. Attorney's determination on defendant's *Touhy* request.

Stormy Daniels) through a shell corporation funded with his personal funds; that Cohen sent invoices for reimbursement to Trump through executives at the headquarters of the Trump Organization, which is located in New York County; and that Trump reimbursed Cohen a total of $420,000 through a series of monthly payments that were falsely accounted for in various business records created and maintained in the Trump Organization's New York offices. *See* Information ¶¶ 32-35, 37-40, 43-44, *United States v. Cohen*, No. 18-cr-602 (S.D.N.Y. Aug. 21, 2018).

In response to the New York-based conduct described in the Information, the facts admitted at Cohen's plea allocution, and public reporting on the plea, the District Attorney's Office opened an investigation into the circumstances surrounding the facts to which Cohen pleaded guilty, including whether Trump's reimbursement payments to Cohen implicated the New York State criminal prohibition on falsifying business records. In March 2023, and as a result of that investigation, a New York County grand jury returned indictment number 71543/2023 charging Trump with thirty-four counts of Falsifying Business Records in the First Degree in violation of New York Penal Law § 175.10. The March 2023 *People v. Trump* indictment was unsealed at the defendant's arraignment in New York State Supreme Court on April 4, 2023. Trial in *People v. Trump* is scheduled to begin on March 25, 2024.

Under New York law, a person is guilty of first-degree falsifying business records when, "with intent to defraud," he "makes or causes a false entry in the business records of an enterprise," PL § 175.05(1), and when his intent to defraud "includes an intent to commit another crime or to aid or conceal the commission thereof," PL § 175.10. As relevant here, the People have alleged that defendant's intent to defraud included an intent to conceal the two FECA violations identified at Counts Seven and Eight of the government's Information and to which Cohen pleaded guilty. The People have also alleged that defendant's intent to defraud included an intent to commit or conceal tax crimes by reimbursing Cohen twice the amount he was owed for the Daniels payoff so Cohen could characterize the payments as income on his tax returns and still be left whole after paying approximately 50% in income taxes. The tax-related conduct at issue in *People v. Trump* is entirely unrelated to the tax evasion offenses to which Cohen pleaded guilty in federal court (Counts One to Five of the government's Information); those counts charged Cohen with underpayment of taxes for tax years 2012 to 2016, and the intended tax crimes at issue in *People v. Trump* relate to how defendant intended for Cohen to treat the reimbursements he received in 2017. The People have not alleged that any aspect of defendant's intent to defraud on the falsifying business records counts has to do with committing, aiding, or concealing Cohen's tax evasion offenses in Cohen's federal prosecution.

More generally, under state law, "falsifying business records in the second degree is elevated to a first-degree offense on the basis of an enhanced intent requirement . . . not any additional actus reus element." *People v. Taveras*, 12 N.Y.3d 21, 27 (2009). As the federal district court explained last year in rejecting defendant's effort to remove the prosecution to federal court:

> [V]iolations of [another statute] are not elements of the crime charged. The only elements are the falsification of business records, an intent to defraud, and an intent to commit or conceal another crime. The People need not establish that Trump or any other person actually violated [another law]. Trump can be convicted of a felony even if he did not commit any crime beyond the falsification, so long as he intended to do so or to conceal such a crime.

New York v. Trump, No. 23 Civ. 3773 (AKH), 2023 WL 4614689, at *10 (S.D.N.Y. July 19, 2023) (collecting cases).

2. Standards for Disclosure. The United States is not a party in *People v. Trump*. The disclosure of material in state proceedings in which the United States is not a party is generally prohibited absent approval by the responsible Department official (here, the U.S. Attorney) following application of the procedures at 28 C.F.R. § 16.22 and 16.24. *See* 28 C.F.R. §§ 16.22(a), (b).

Under those procedures, the U.S. Attorney shall first "request a summary of the information sought and its relevance to the proceeding." *Id.* § 16.22(d); *see also* Justice Manual 1-6.220. With defendant's consent, the Department has provided the District Attorney's Office with two letters from defense counsel (dated January 22, 2024 and January 31, 2024) that set out defendant's views on the relevance of the requested records.

Section 16.24(b) then provides, in relevant part, that the U.S. Attorney "may authorize . . . the production of material from Department files" if:

> (1) There is no objection after inquiry of the originating component;
> (2) The demanded disclosure, in the judgment of the responsible official, is appropriate under the factors specified in § 16.26(a) of this part; and
> (3) None of the factors specified in § 16.26(b) of this part exists with respect to the demanded disclosure.

28 C.F.R. § 16.24(b). Section 16.26 in turn provides that:

> (a) In deciding whether to make disclosures pursuant to a demand, Department officials and attorneys should consider:
> (1) Whether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose, and
> (2) Whether disclosure is appropriate under the relevant substantive law concerning privilege.
> (b) Among the demands in response to which disclosure will not be made by any Department official are those demands with respect to which any of the following factors exist:
> (1) Disclosure would violate a statute, such as the income tax laws, 26 U.S.C. 6103 and 7213, or a rule of procedure, such as the grand jury secrecy rule, F.R.Cr.P., Rule 6(e), . . . [or]
> (5) Disclosure would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigative techniques and procedures the effectiveness of which would thereby be impaired.

28 C.F.R. §§ 16.26(a), (b).

In identifying the applicable "rules of procedure governing the case or matter in which the demand arose," *id.* § 16.26(a)(1), the U.S. Attorney should look to the authority a criminal defendant has under New York state law to compel third parties to produce records in connection with a criminal proceeding. In particular, the New York Criminal Procedure Law authorizes a criminal defendant to issue a subpoena *duces tecum* directing the production of records from a third party. The CPL permits an attorney for a criminal defendant to issue a subpoena of the court, including a subpoena *duces tecum*, to any witness that the defendant would be entitled to require to attend court. CPL §§ 610.10(3); 610.20(3). Such subpoenas "are process of the courts, not the parties." *People v. Natal*, 75 N.Y.2d 379, 384-85 (1990); *see also* CPL § 610.10(2). To sustain such a subpoena, a defendant must show "that the testimony or evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome." CPL § 610.20(4). Subpoenas may not be used to determine if evidence exists or as "an attempt to conduct a 'fishing expedition,'" *People v. Gissendanner*, 48 N.Y.2d 543, 547 (1979); or to circumvent the procedure for discovery, *see Constantine v. Leto*, 157 A.D.2d 376, 378 (3d Dep't 1990), *aff'd*, 77 N.Y.2d 975 (1991).

The CPL also authorizes a defendant to seek an order of the court authorizing discovery from a third party on a similar standard. Specifically, a court order authorizing discovery may be granted when the defendant meets his burden to show, among other requirements, that the information "relates to the subject matter of the case and is reasonably likely to be material," and "the defendant is unable without undue hardship to obtain the substantial equivalent by other means." CPL § 245.30(3). As with a defendant's authority to issue a subpoena *duces tecum*, a request to a court for a discovery order requires meeting the statutory burden to show that the evidence sought is reasonably likely to be material to the proceedings.

Because these are the only provisions of the state Criminal Procedure Law that authorize a criminal defendant to compel the production of records from third parties, it is appropriate for the U.S. Attorney to treat the standard under CPL § 610.20(4), as applied by state court decisions interpreting that statute, as the applicable "rules of procedure" within the meaning of 28 C.F.R. § 16.26(a)(1).

Defendant's letters explaining the basis for his *Touhy* request urge the U.S. Attorney to apply the broader rules of procedure that govern the People's discovery obligations to a criminal defendant under CPL § 245.20(1). *See* Def.'s Jan. 31 Letter at 3; Def.'s Jan. 22 Letter at 5. That statute generally provides that "the prosecution shall disclose to the defendant . . . all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control." CPL § 245.20(1). It would make little sense to apply this broad discovery obligation to the federal government, for several reasons. Most obviously, defendant's argument asks the U.S. Attorney to treat records in the possession of the federal government as if they were in the possession of a county District Attorney, when they are not. Nor are such materials "in the possession, custody or control of . . . persons under the prosecution's direction or control," CPL § 245.20(1), because the U.S. Attorney is not under the "direction or control" of any District Attorney. Moreover, the discovery statute itself makes clear which law enforcement agencies are considered to possess records that are within the constructive possession of a District Attorney's Office, and the Justice Department is not one of them. *See* CPL § 245.20(2) ("For purposes of [245.20(1)], all items and information related to the prosecution of a charge in the possession of any New York state or local police or law

enforcement agency shall be deemed to be in the possession of the prosecution."). Applying the standard defendant requests would be to impose an "open file" disclosure obligation on every U.S. Attorney's Office or other criminal investigative or enforcement component of the Justice Department in any New York state prosecution where a witness is or was a federal criminal defendant or the subject or target of a federal criminal investigation.

Defendant also argues that the U.S. Attorney should disregard the appropriate rules of procedure because the People somehow fell short of our discovery obligations by not obtaining in the course of our investigation *more* records from the federal government related to the Cohen prosecution than we did. *See* Def.'s Jan. 31 Letter at 3; Def.'s Jan. 22 Letter at 6. Defendant selectively quotes the CPL provision that requires state prosecutors to make a "diligent, good faith effort" to obtain discoverable material, but conspicuously omits the rest of the quoted sentence, which reads in full:

> The prosecutor shall make a diligent, good faith effort to ascertain the existence of material or information discoverable under subdivision one of this section and to cause such material or information to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control; *provided that the prosecutor shall not be required to obtain by subpoena duces tecum material or information which the defendant may thereby obtain*.

CPL § 245.20(2) (emphasis added). Here, obviously, defendant "may thereby obtain" any materials from the federal government that are appropriate for disclosure, precisely as he is seeking to do through his *Touhy* request. And the People's obligation under § 245.20(2) is to uncover otherwise "discoverable" material, which records in the possession of the federal government clearly are not. Controlling appellate law in New York forecloses defendant's argument that the People were required to produce materials in the possession of the federal government that the People themselves never possessed. *See People v. Rodriguez*, 155 A.D.2d 257, 259 (1st Dep't 1989) ("[T]he prosecutor could not be held responsible for not producing a file which he had never possessed or seen, and which neither he nor the state courts could gain access to without the consent of the appropriate federal agency."). In any event, to the extent CPL § 245.20(2) required the District Attorney's Office to request any material from the U.S. Attorney's Office—which it did not—defendant concedes that the People did request (and then produced to him in discovery) grand jury minutes, Form 302s, and witness notes for the key witnesses related to the election interference conspiracy that forms the central fact pattern for the *People v. Trump* prosecution.

3. Defendant's Touhy requests. Applying the Department's regulations and the appropriate state-law rules of procedure, the District Attorney's Office believes disclosure of records responsive to defendant's *Touhy* request is significantly restricted based on (a) the Privacy Act; (b) the federal grand jury secrecy rule; (c) the tax secrecy provisions of the Internal Revenue Code; and (d) the substantive law concerning government privileges (including the law enforcement, deliberative process, attorney-client, and work product protections); with possible exceptions identified below.

a. The Privacy Act. The Department's *Touhy* regulations prohibit disclosure where compliance with a demand would violate a statutory restriction. *See* 28 C.F.R. § 16.26(b)(1). The

U.S. Attorney's disclosure of records in response to defendant's *Touhy* request would violate the Privacy Act absent either Cohen's consent to disclosure of the requested records or a court order.

The Privacy Act "protect[s] the privacy of individuals identified in information systems maintained by federal agencies" by regulating "the collection, maintenance, use, and dissemination of information by such agencies." *Maydak v. United States*, 363 F.3d 512, 515 (D.C. Cir. 2004) (quoting Privacy Act, § 2(a)(5), 88 Stat. 1896). The Act does so by prohibiting disclosure of any "record" contained in a "system of records" without "prior written consent of . . . the individual to whom the record pertains," 5 U.S.C. § 552a(b), unless one of twelve authorized grounds for disclosure applies. *See id.* §§ 552a(b)(1)-(12). A "record" is "any item, collection, or grouping of information about an individual that is maintained by an agency," *id.* § 552a(a)(4); a "system of records" is "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number," *id.* § 552a(a)(5); and the Department has identified the U.S. Attorney's Criminal Case Files as among its systems of records. *See* 82 Fed. Reg. 24,147, 24,151 (May 25, 2017).

Each demand in defendant's *Touhy* request seeks materials that relate to Cohen and are contained in the criminal case files involving *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y.); *United States v. Cohen*, No. 18 Cr. 850 (JMF) (S.D.N.Y.); or the Special Counsel's investigation into Russian interference in the 2016 presidential election. Thus, absent Cohen's consent to the disclosure of the materials from these criminal case files that relates to him, the Privacy Act bars disclosure unless one of the statutory bases for disclosure applies. *See* 5 U.S.C. §§ 552a(b)(1)-(12). None does.

The Privacy Act does contain an exception for compliance with "the order of a court of competent jurisdiction." 5 U.S.C. § 552a(b)(11). This exception does not apply here because, although the CPL permits a defendant in a criminal case to issue a subpoena on behalf of the criminal court, CPL § 610.20(3), a state court subpoena is incompetent to compel the production of records from the federal government. *See In re Elko Cnty. Grand Jury*, 109 F.3d at 556; *Edwards v. U.S. Dep't of Justice*, 43 F.3d 312, 316-17 (7th Cir. 1994). Defendant's subpoena therefore is not an "order of a court of competent jurisdiction." 5 U.S.C. § 552a(b)(11).

To the extent the U.S. Attorney determines after review of the *Touhy* request that disclosure of any records is warranted on other grounds and intends to seek a Privacy Act Protective Order from a federal court to authorize that disclosure, we note that there is an existing protective order in *People v. Trump* that was entered on May 8, 2023 to regulate defendant's use and disclosure of materials obtained through discovery, which the state court later extended to apply to defendant's use of materials he obtained through a trial subpoena. *See* Decision and Order on Motion to Quash Def.'s Subpoena and for a Protective Order 12, *People v. Trump*, Ind. No. 71543/2023 (Sup. Ct. N.Y. Cnty. Dec. 18, 2023) (Merchan, J.) (the "*Trump* Order on Motion to Quash") ("[T]his Court hereby directs that any materials Defendant obtains through the subpoena *duces tecum* to Michael Cohen, shall be subject to the restrictions on use and disclosure already imposed by this Court's Protective Order of May 8, 2023."). It would therefore be appropriate for any Privacy Act Protective Order the U.S. Attorney seeks to mirror the language of the May 8, 2023 Protective Order in *People v. Trump*; and the People would likely ask that the state court expressly extend that Protective Order to cover any materials defendant obtains through this *Touhy* request.

b. The grand jury secrecy rule. The Department's *Touhy* regulations separately prohibit disclosure where doing so would violate the governing rules of procedure, including the federal grand jury secrecy rule. *See* 28 C.F.R. §§ 16.26(a)(1), (b)(1). With limited possible exceptions described below, the records sought by Requests 1 to 15 in defendant's *Touhy* request are all barred from disclosure by grand jury secrecy.

The grand jury secrecy rule provides that an attorney for the government "must not disclose a matter occurring before the grand jury" unless an exception to grand jury secrecy applies. Fed. R. Crim. p. 6(e)(2)(B), (e)(3); *see United States v. Procter & Gamble Co.*, 356 U.S. 677, 681 (1958) ("[A] long-established policy . . . maintains the secrecy of grand jury proceedings in the federal courts."). The records sought by Requests 1 to 15 in defendant's *Touhy* request all appear to be covered by the grand jury secrecy provisions of Rule 6(e) because they relate to or affect grand jury proceedings—namely, the government's investigation and prosecution of Cohen in *United States v. Cohen*, No. 18 Cr. 602 (JMF) (S.D.N.Y.), and *United States v. Cohen*, No. 18 Cr. 850 (JMF) (S.D.N.Y.); and the Special Counsel's investigation of Russian interference in the 2016 presidential election. *See In re Grand Jury Subpoena*, 103 F.3d 234, 236-39 (2d Cir. 1996). Thus, under 28 C.F.R. §§ 16.26(a)(1) and (b)(1), the U.S. Attorney should evaluate whether disclosure to defendant is appropriate under an exception to grand jury secrecy.

The only exception to grand jury secrecy that may apply to defendant's *Touhy* request is for disclosure of grand jury material, when authorized by a court, if sought "preliminarily to or in connection with a judicial proceeding." Fed. R. Crim. P. 6(e)(3)(E)(i). *People v. Trump* is a judicial proceeding, and defendant seeks grand jury material in connection with that proceeding. Where grand jury materials are sought in connection with a judicial proceeding, a court may authorize disclosure on a showing of "particularized need." *United States v. Sells Eng'g*, 463 U.S. 418, 420, 443-46 (1983). This showing requires requesting parties to demonstrate "that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that their request is structured to cover only material so needed." *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 222 (1979). Defendant cannot meet this standard in connection with his *Touhy* request, with limited possible exceptions noted below.[2]

Request 1 seeks eight sub-categories of materials that all relate to Counts One through Five of the 18 Cr. 602 Information. Defendant cannot meet this burden to show a "particularized need" for the materials in Request 1 because Counts One to Five are tax evasion counts based on Cohen's nonpayment of taxes on income from 2012 to 2016 that have nothing to do with the conduct charged in the *People v. Trump* indictment; and because a generalized interest in impeaching a potential witness's credibility does not meet the necessary standard under state law for a defendant to show that subpoenaed materials are "reasonably likely to be relevant and material to the proceedings." CPL § 610.20(4).

As noted, *People v. Trump* concerns whether defendant lied in his business records by falsely describing the $420,000 payments to Cohen in 2017 as payments for legal services pursuant to a retainer, rather than truthfully describing them as reimbursements for the Stormy Daniels

[2] Defendant's January 22 and January 31 letters do not identify or address the authority for or standard governing the federal government's disclosure of grand jury materials.

payoff. The People must establish beyond a reasonable doubt at trial that defendant acted with intent to defraud that included an intent to commit or conceal the commission of other crimes, *see* Penal Law § 175.10; and as noted above, the People may allege at trial that defendant's intent to commit or conceal other crimes included Cohen's federal campaign finance offenses (Counts Seven and Eight of the Information), or defendant's intent to mischaracterize for tax purposes the true nature of the reimbursement. But at no point have the People alleged that any aspect of defendant's intent to commit or conceal other crimes involved Cohen's entirely unrelated convictions for tax evasion (Counts One to Five of the Information). Because federal grand jury materials supporting Cohen's tax evasion convictions for conduct from 2012 to 2016 have nothing to do with the *People v. Trump* prosecution, defendant would not be able to show a "particularized need" for these materials "to avoid a possible injustice." *Douglas Oil*, 441 U.S. at 222.

Applying that standard, the state court already quashed defendant's subpoena to Cohen in *People v. Trump* where defendant sought records that were "not limited to the subject matter of this case." *Trump* Order on Motion to Quash 7. As noted above, defendant sought many of the same records listed in his *Touhy* request directly from Cohen through a subpoena *duces tecum* served on October 27, 2023. The District Attorney's Office moved to quash that subpoena, and the Court in *People v. Trump* largely granted the motion to quash in a December 18, 2023 order on the ground that the subpoena was overbroad and violated state law by seeking records that were not material and relevant to the *People v. Trump* proceedings. That reasoning applies squarely to the records sought in Request 1 of the *Touhy* request.

And to the extent defendant believes that the evidence and investigative file the U.S. Attorney compiled in support of its decision to charge Counts One to Five would be useful as general impeachment in terms of Cohen's credibility as a witness, that is not a valid basis to enforce a trial subpoena under New York law. *See Gissendanner*, 48 N.Y.2d at 548 ("[T]hough access must be afforded to otherwise confidential data relevant and material to the determination of guilt or innocence, . . . there is no such compulsion when requests to examine records are motivated by nothing more than impeachment of witnesses' general credibility."). The state court in fact quashed other requests in defendant's subpoena to Cohen in *People v. Trump* where "Defendant here seeks nothing more than 'the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable [them] to impeach witness[es].'" *Trump* Order on Motion to Quash 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549) (alterations in original).

In justifying his *Touhy* request, defendant asks the U.S. Attorney to disregard the state court's discovery opinion and conclude instead that the state court was wrong and his discovery rulings are "unlawful." Def.'s Jan. 31 Letter at 1 ("Judge Merchan's ruling constituted a flawed and erroneous application of the legal framework that was relevant to his decision—C.P.L. § 610.20(3)-(4)—which should not be persuasive to the Office."); *id.* at 2 ("Judge Merchan's rulings to-date on this issue are unlawful."). Asking the Department to base its *Touhy* determination on the conclusion that the presiding state court judge in a pending state prosecution misinterpreted state criminal procedure law, or issued an "unlawful" opinion, is an invitation to ignore the "general requirements of reasoned agency decisionmaking" required by the Administrative Procedure Act. *Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2569 (2019).

Because the state court has already quashed subpoena requests to Cohen—whose materials are not protected by the grand jury secrecy rule—that were not limited to the subject matter of this case, defendant cannot meet his burden show to a "particularized need" for grand-jury secret materials related to Counts One to Five of the Information that are likewise unrelated to the subject matter of the state prosecution.

Request 2 seeks, "[f]or the tax years from 2012 to the present, . . . all state and federal income tax filings, and associated work papers, relating to Cohen and/or entities associated with Cohen." Defendant sought a narrower set of these tax records directly from Cohen in his October 18, 2023 subpoena, seeking:

> For tax years 2016, 2017 and 2018, all documents and communications relating to any tax liabilities—state or federal—owed by you or by any entity in which you hold or held, directly or indirectly, an ownership interest, including all federal and state tax returns you filed (including amended tax returns), all draft tax returns, all documents related to income calculations or deductions from income, all communications with accountants, and all accountant work papers.

Trump Order on Motion to Quash 10-11. The state court quashed that request in its entirety as an "overbroad . . . request for general discovery" that—even if narrowed to seek only records about Cohen's tax treatment of the $420,000 reimbursement payments he received from defendant in 2017—would still be "immaterial to the question of Defendant's intent to defraud." *Id.* at 10. The state court further held that "[t]he justifications for the demand provided by Defendant are not persuasive," and "[i]t would appear that Defendant here seeks nothing more than 'the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable [them] to impeach witness[es].'" *Id.* at 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549) (alterations in original). Defendant's request for an even broader set of Cohen's tax records in the possession of the U.S. Attorney cannot meet the higher standard to overcome the federal grand jury secrecy rule.[3]

Defendant argues that the state court's rulings as to his request for those tax records are "unlawful." Def.'s Jan. 31 Letter at 2. He is already pursuing recourse for those adverse decisions through a pending motion to reargue. But asking the U.S. Attorney to disclose a witness's confidential tax records to a criminal defendant in the face of a contrary state court order prohibiting the defendant from obtaining those very records is inconsistent with the Department's obligation to follow the appropriate state rules of procedure, however defined. 28 C.F.R. § 16.26(a)(1).

Defendant's *ad hominem* that "DANY's failure to obtain and produce materials for the tax years in question is unconscionable," Def.'s Jan. 31 Letter at 2, likewise ignores that the state court

[3] As noted later in this submission, Requests 1 and 2 both implicate the tax secrecy provisions of the Internal Revenue Code as well.

already held that those tax records are "immaterial" to the pending prosecution.[4] *Trump* Order on Motion to Quash at 10.

Request 3 seeks "the documents discussed or relied upon in any way to establish probable cause" for the federal government's April 2018 search warrant for Cohen's residence, office, and electronic devices, including bank records and emails from eight identified financial institutions. The government's search warrant application, docketed at ECF No. 48-1 on the docket of No. 18 Cr. 602, was intended to support a probable cause showing for potential violations not only of the campaign finance violations to which Cohen later pleaded guilty, but also for potential violations of various bank fraud offenses, including under 18 U.S.C. §§ 1005, 1014, 1343, and 1344. *See* No. 18 Cr. 602, ECF No. 48-1, at p.6 (¶ 5) & pp.8-74 (¶¶ 12-56). But materials supporting the government's probable cause in 2018 to believe Cohen may have committed various bank fraud offenses again have nothing to do with the *People v. Trump* prosecution. Given that the state court previously quashed defendant's subpoena seeking materials from a third party that are "not limited to the subject matter of this case," *Trump* Order on Motion to Quash 7, defendant cannot meet his "particularized need" burden to overcome grand jury secrecy protections for materials related to the government's probable cause showing on potential bank fraud offenses.

The government's search warrant application also sets out its probable cause showing on Cohen's campaign finance offenses. *See* No. 18 Cr. 602, ECF No. 48-1, at pp.38-57 (¶¶ 29-44). Unlike the bank fraud offenses, the campaign finance offenses do relate to the subject matter of the pending state prosecution, both because the business records that defendant allegedly falsified were made to reimburse Cohen for the Stormy Daniels payoff, and because the People allege that among the crimes defendant intended to conceal when he falsified those records were Cohen's FECA violations. However, in reviewing the relevant paragraphs in the search warrant application, it appears that much of the evidence cited at ¶¶ 29-44 of the search warrant application has already been produced to defendant through the People's discovery in the state prosecution, because the People obtained much of that evidence through our own investigative steps [redacted] among other evidence. Defendant cannot show that there is a "particularized need" for disclosure from the federal government of materials he already received from the People in discovery.

The Department's procedures for responding to *Touhy* requests provide that negotiation to limit the requesting party's demand for records is ordinarily appropriate. *See* 28 C.F.R. § 16.24(c); Justice Manual § 1-6.220. Because much of the evidence sought by Request 3 as it relates to the

[4] Defendant's assertion that "DANY has produced [redacted]," Def.'s Jan. 31 Letter at 2, is misleading. In response to a grand jury subpoena to [redacted] And in response to a grand jury subpoena [redacted] There is nothing selective or nefarious about the People's possession of [redacted].

government's probable cause showing on the campaign finance offenses was likely included in the People's discovery to defendant already, the U.S. Attorney should consider asking defendant to identify any particular records referenced in the search warrant application related to the campaign finance offenses that he believes he does not already possess. The U.S. Attorney can then consider whether defendant's request for those specific records meets his burden to show a "particularized need" for those materials, instead of considering a broad demand for materials defendant likely already has. To the extent defendant identifies specific records that were not already included in the People's discovery, the U.S. Attorney has the discretion to examine defendant's stated justification and decide whether the Rule 6(e)(3)(E)(i) exception to grand jury secrecy is satisfied.

Requests 4, 5, 6, and 7 seek all documents seized from, and all toll records relating to, two iPhones described in the search warrant as "Subject Device-1" and "Subject Device-2." The District Attorney's Office [redacted] in the course of our investigation; and on June 15, 2023, we produced to defendant in discovery both the [redacted] as well as the [redacted] accessible to the People's case team (which were filtered for privilege). As before, defendant cannot show a particularized need for materials he already possesses.

Requests 8, 9, and 10 seek "all documents seized from" three of Cohen's email and online storage accounts. Defendant cannot show a particularized need for this extraordinarily broad request because it is "not limited to the subject matter of this case," and instead "seeks nothing more than 'the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable [them] to impeach witness[es].'" *Trump* Order on Motion to Quash 7, 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549).

Request 11 seeks "all agreements with Cohen or his counsel, including proffer agreements and privilege waivers." In the course of the People's investigation, we [redacted], which the People produced to defendant in discovery. As above, defendant cannot show a particularized need to compel production from the federal government of materials he already received from the People. To the extent the government possesses any additional agreements or privilege waivers involving Cohen, the U.S. Attorney has the discretion to examine defendant's stated justification and decide whether the Rule 6(e)(3)(E)(i) exception to grand jury secrecy is satisfied.

Request 12 seeks "all documents memorializing statements by Cohen," including statements during meetings with (a) the New York Attorney General and New York State Department of Taxation and Financial Services; (b) personnel from the U.S. Attorney's Office for the Southern District of New York; and (c) "[t]he 'seven occasions' that Cohen met with the Special Counsel's Office."

Request 12(a) likely does not meet the particularized need standard because, to our knowledge, neither the New York Attorney General nor the New York State Department of Taxation and Financial Services ever investigated the false business records (or the underlying offenses that the People allege defendant intended to commit or conceal) at issue in the *People v. Trump* prosecution; and the state court already held that records unrelated to the subject matter of

the state prosecution are not material and relevant to the proceedings. *See Trump* Order on Motion to Quash 6-7; *see also* CPL § 610.20(4).

As to Request 12(b), the People [redacted] We produced those records to defense counsel in discovery on June 8, 2023.[5] As before, defendant cannot show a particularized need to compel production from the federal government of materials he already received from the People. To the extent the U.S. Attorney's Office possesses notes of meetings with Cohen on other dates that relate to the campaign finance violations to which he pleaded guilty, the U.S. Attorney has the discretion to examine defendant's stated justification and decide whether the Rule 6(e)(3)(E)(i) exception to grand jury secrecy is satisfied.

Request 12(c)—which seeks documents memorializing the Special Counsel's meetings with Cohen during the investigation of Russian interference in the 2016 presidential election—is, as with Request 12(a), not generally related to the subject matter of the state prosecution. *See Trump* Order on Motion to Quash 7. And to the extent defendant's justification for those records is his interest in impeaching Cohen's credibility based on alleged false statements to federal authorities in those meetings, *see* Def.'s Jan. 22 Letter at 2, 5, the People already produced in discovery [redacted] We recognize, however, that unlike most of defendant's other requests, Request 12(c) identifies a defined set of records memorializing seven witness meetings and is not on its face burdensome for the federal government to review. To the extent the U.S. Attorney concludes that any Form 302s or other records directly memorializing Cohen's statements to the Special Counsel contain material that is relevant to Cohen's credibility that is not already discussed in the federal government's public filings identified above, the U.S. Attorney has the discretion to examine defendant's stated justification and decide whether the Rule 6(e)(3)(E)(i) exception to grand jury secrecy is satisfied.

Requests 13 and 14 seek documents relating to books Cohen published or intended to publish, as well as agreements with publishers and media companies. Defendant's justification to the U.S. Attorney explains his request for this records but does not note that the state court quashed defendant's subpoena request to Cohen for his "contract with the publisher for the books Disloyal and Revenge, as well as documents sufficient to show the compensation [Cohen] received from the books Disloyal and Revenge, and from the podcast Mea Culpa," holding that "in the context of this criminal proceeding, the Request seeks nothing more than general discovery." *Trump* Order on Motion to Quash 11. Defendant's *Touhy* request seeks a far broader set of such records from the federal government; given the state court's holding that these records are impermissible general discovery and are not material and relevant to the criminal case, defendant cannot meet his burden

[5] Defendant's January 22 letter states that "DANY has produced only a [redacted] DANY has not produced the complete set of interview reports." Def.'s Jan. 22 Letter at 4. The People have produced in discovery [redacted]

to show a "particularized need" sufficient to overcome the grand jury secrecy prohibition on disclosure.[6]

Request 15 seeks "all documents reflecting or memorializing communications with the Manhattan District Attorney's Office, the Office of the New York State Attorney General, or the Office of Special Counsel Robert S. Mueller III, regarding (a) Crimes, misconduct, and/or bad acts by Cohen; (b) The book titled *People v. Donald Trump: An Inside Account*; or (c) Cohen's credibility." Any communications with the New York Attorney General's Office on these topics are irrelevant to the *People v. Trump* prosecution and do not meet the particularized need standard; this request is, as the state court previously prohibited, an effort at "an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable them to impeach witness[es]." *Trump* Order on Motion to Quash 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549). The same is true of communications between the U.S. Attorney's Office and the Special Counsel's Office regarding Cohen.

As for the request for communications between the District Attorney's Office and the U.S. Attorney's Office on the specified topics, the People have already produced to defendant—after exercising due diligence and reviewing all items and information in the People's possession, custody or control—all "evidence and information" that tends to "impeach the credibility of a testifying prosecution witness," including Cohen, as required by CPL § 245.20(1)(k)(iv). For the same reason, the state court has already quashed defendant's request to seek the same records from a third party. *See Trump* Order on Motion to Quash 7-8. To the extent the U.S. Attorney is nonetheless aware of responsive records on the specified topics, the U.S. Attorney should review those communications and make a determination regarding disclosure based on the applicable standard.

c. The tax secrecy provisions of the Internal Revenue Code. To the extent the requested materials are not exempt from disclosure under the Privacy Act and grand jury secrecy, the Internal Revenue Code applies to prohibit disclosure of the records sought in Request 1 and Request 2 of defendant's *Touhy* request.

The Department's regulations prohibit disclosure where doing so would violate a statutory restriction, such as the tax secrecy provisions of the Internal Revenue Code. *See* 28 C.F.R. § 16.26(b)(1) (citing 26 U.S.C. § 6103). The tax secrecy statute provides generally that "[r]eturns and return information shall be confidential, and except as authorized by this title," "no officer or employee of the United States . . . shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section." 26 U.S.C. § 6103(a), (a)(1); *see also id.* § 6103(b)(1) (defining "return"); *id.* § 6103(b)(2) (defining "return information"). The statutory exceptions to tax secrecy are listed at 26 U.S.C. §§ 6103(c) to (o).

[6] On January 25, 2024, defendant served subpoenas under CPL § 610.20 on the publishers of Cohen's two books—*Disloyal* and *Revenge*—that also sought the same records (and more) that the state court prohibited defendant from obtaining directly from Cohen. The People moved to quash those subpoenas on February 2; one of the publishers filed its own motion to quash on February 6; and defendant's opposition to the People's motion to quash is due on February 16.

Much or all of the material sought by Request 1 is likely protected from disclosure by tax secrecy. Request 1(a) expressly seeks tax returns and work papers that are prohibited from disclosure by 26 U.S.C. § 2601(a); and Requests 1(b) to 1(h)—which seek records related to the tax evasion counts to which Cohen pleaded guilty—largely appear to call for records that would fall within the definition of "return information" that is prohibited from disclosure by 26 U.S.C. §§ 2601(a) & (b)(2). Request 2, which seeks "[f]or the tax years from 2012 to the present, . . . all state and federal income tax filings, and associated work papers, relating to Cohen and/or entities associated with Cohen," even more clearly falls within the prohibition of disclosure of tax returns and return information. None of the statutory exceptions to tax secrecy applies here. *See* 26 U.S.C. §§ 6103(c) to (o).

Defendant's letter to the U.S. Attorney contends that the exceptions to tax secrecy at 26 U.S.C. §§ 6103(h)(4)(B) and (C) apply to permit disclosure. *See* Def.'s Jan. 22 Letter at 6. There are many flaws with this argument. First, the *People v. Trump* prosecution is not a "proceeding pertaining to tax administration" as required by 26 U.S.C. § 6103(h)(4). It is a prosecution for falsifying business records, in which—as noted—"violations of [another statute] are not elements of the crime charged," and "Trump can be convicted of a felony even if he did not commit any crime beyond the falsification, so long as he intended to do so or to conceal such a crime." *Trump*, 2023 WL 4614689, at *10. A prosecution for falsifying business records, whatever the alleged guilty intent, is not a "proceeding pertaining to tax administration," as the statutory definition of "tax administration" makes clear. *See* 26 U.S.C. § 6103(b)(4).

Second, accepting defendant's view that 26 U.S.C. §§ 6103(h)(4)(B) or (C) apply here would again require the Department to conclude that the state court's express application of state law, and the state court's holdings regarding the scope of the pending prosecution, are both wrong. Section 6103(h)(4)(B) only applies if "the treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding," and section 6103(h)(4)(C) only applies if the return "direct relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding." But the state court already expressly held that "[h]ow Mr. Cohen treated the alleged $420,000 payment for tax purposes is immaterial to the question of Defendant's intent to defraud – that is because Defendant's intent is separate and apart from whether his intended result actually came to fruition." *Trump* Order on Motion to Quash 10. An issue that is "immaterial" to any element of the charged offenses, *id.*, cannot "directly relate to" or "directly affect[]" the resolution of any issue. 26 U.S.C. §§ 6103(h)(4)(B), (C).

Third, even if the exceptions for proceedings "pertaining to tax administration" applied here, which they do not, defendant's requests don't even seek records that pertain. Request 1 seeks records related to Counts One to Five of the *Cohen* Information. Those are tax evasion counts for the years 2012 to 2016 that do not overlap with Cohen's possible tax treatment in 2018 of an allegedly illegal reimbursement he received in 2017. And Request 2 seeks all filings and work papers for Cohen and any related entity for the tax years "from 2012 to the present." The overbreadth of that request for sensitive records confirms the state court's holding that defendant's request for Cohen's tax information "seeks nothing more than 'the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information [will] enable [them] to impeach witness[es].'" *Id.* at 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549) (alteration in original).

Disclosure of any records in response to Request 1 or Request 2 in defendant's *Touhy* request is therefore prohibited under 28 C.F.R. § 16.26(b)(1) and the Internal Revenue Code, 26 U.S.C. § 6103.

d. Governmental privileges. Finally, and to the extent not prohibited from disclosure for the reasons described above, government privileges likely apply to restrict disclosure of a subset of the materials sought by defendant's *Touhy* request.

The Department's regulations restrict disclosure of privileged information in response to a *Touhy* request. *See* 28 C.F.R. §§ 16.26(a)(2), (b)(5). Certain of defendant's *Touhy* requests appear to seek records protected by the government's law enforcement, deliberative process, attorney-client, and work product privileges. We also note that the request defines "documents" to include "any draft or non-identical copy" of any document; drafts of any of the materials otherwise disclosable in response to defendant's *Touhy* request are of course extremely likely to be protected under the deliberative process privilege. Because the District Attorney's Office does not know what responsive materials are in the U.S. Attorney's case file that may be protected by these or other privileges, we do not state a position on how the government's privileges may apply here, and whether any qualified privileges are overcome by a sufficient showing of need.

Sincerely,

ALVIN L. BRAGG, JR.
District Attorney, New York County

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EXHIBIT 15

U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

February 23, 2024

BY EMAIL
Todd Blanche, Esq.
Emil Bove, Esq.
Blanche Law

Re: Determination regarding *Touhy* Request to the U.S. Attorney's Office for the Southern District of New York in connection with *People of the State of New York v. Trump*, Index No. 71543-23

Dear Counsel:

This letter provides a determination regarding the defendant's request, by subpoena *duces tecum* dated January 18, 2024 ("*Touhy* Request" or "Subpoena"), seeking production of documents from this Office in connection with the above-referenced criminal proceeding, pursuant to the Department of Justice's ("Department's" or "DOJ's") *Touhy* regulations, 28 C.F.R. §§ 16.21-16.29.

***Touhy* Request**

The Subpoena contains sixteen requests for documents relating to Michael Cohen that fall into seven categories:

(i) *Tax-Related Documents*: Requests 1-2 seek documents relating to the tax evasion counts (Counts One through Five) charged in the August 21, 2018 Information in *United States v. Cohen*, 18 Cr. 602(JMF) ("*United States v. Cohen*"), ECF No. 2 ("SDNY Information"), and all federal and state income tax filings and associated work papers for the tax years 2012 to the present, relating to Mr. Cohen and/or entities associated with him;

(ii) *Documents Discussed in Search Warrant Application*: Request 3 seeks documents "discussed or relied upon in any way to establish probable cause" in the search warrant application bearing docket number 18 Mag. 2969, in *United States v. Cohen*, ECF No. 43-1 ("Search Warrant Application"), including bank records and emails from nine identified financial institutions;

(iii) *Documents Seized from iPhones and Email Accounts*: Requests 4-10 seek "all documents seized from" and "all toll records relating to" two Apple iPhones described in the Search Warrant Application, and "all documents seized from" three email accounts described in the Search Warrant Application;

(iv) *Cohen Agreements and Statements*: Requests 11-12 seek agreements with Mr. Cohen or his counsel, including proffer agreements and privilege waivers, and documents memorializing statements by Cohen, including statements during meetings with the New York Attorney General ("NYAG") and New York State Department of Taxation and Financial Services ("NYDTFS"), meetings with this Office, and certain meetings with the Office of Special Counsel Robert S. Mueller III ("SCO");

(v) *Documents Relating to Cohen Books, Manuscripts and Publishing/Media Agreements*: Requests 13-14 seek documents relating to three books or manuscripts by Mr. Cohen and agreements relating to Mr. Cohen involving twelve publishing or media companies;

(vi) *Communications with DANY, NYAG, or SCO*: Request 15 seeks documents reflecting or memorializing communications with the Manhattan District Attorney's Office ("DANY"), NYAG, or SCO regarding Mr. Cohen's "[c]rimes, misconduct and/or bad acts" or "credibility," or the book titled *People v. Donald Trump: An Inside Account*; and

(vii) *Documents Regarding Order to Show Cause*: Request No. 16 seeks non-privileged documents and communications relating to the December 12, 2023 order to show cause docketed at ECF No. 96 in *United States v. Cohen*.

You have confirmed that these requests do not seek material that is publicly available.

***Touhy* Determination**

The Department's *Touhy* regulations identify several considerations that Department officials should evaluate in deciding whether to authorize disclosure in response to a subpoena or other demand. *See* 28 C.F.R. § 16.26.

First, Department officials should consider "[w]hether such disclosure is appropriate under the rules of procedure governing the case or matter in which the demand arose." 28 C.F.R. § 16.26(a)(1). According to your January 22, 2024 letter, you issued the Subpoena pursuant to § 610.20(3) of the New York Criminal Procedure Law ("CPL") to obtain evidence in connection with the criminal proceeding in *People of the State of New York v. Trump*, Index No. 71543-23 ("*People v. Trump*"). The applicable rule of procedure governing a third-party subpoena *duces tecum* issued in a New York State criminal proceeding is set forth in CPL § 610.20(4) and case law applying that provision. Under CPL § 610.20(4), "the showing required to sustain any subpoena issued under this section is that the . . . evidence sought is reasonably likely to be relevant and material to the proceedings, and the subpoena is not overbroad or unreasonably burdensome."[1]

[1] You have suggested that CPL § 245.20(1), rather than CPL § 610.20(4), provides the applicable rule of procedure. *See* Jan. 31, 2024 Letter at 3. By its plain terms, however, CPL § 245.20(1) governs materials that "the prosecution shall disclose to the defendant." This provision is not applicable to this Office, which is not "the prosecution" but rather a third party to the criminal proceeding. Instead, the Subpoena was "issued… pursuant to C.P.L. § 610.20(3)," which authorizes attorneys for a criminal defendant to issue subpoenas to third parties, provided they can make the showing required by CPL § 610.20(4). Jan. 22, 2024 Letter at 5.

In evaluating whether the Subpoena meets this standard, Judge Merchan's December 18, 2023 Decision and Order in *People v. Trump* ("December 18 Order") is instructive. In that Order, Judge Merchan applied CPL § 610.20(4) in evaluating motions to quash a third-party subpoena issued to Mr. Cohen that sought some of the same records sought in the Subpoena to this Office.

Judge Merchan identified the principles that guide an analysis of whether the standard in CPL § 610.20(4) has been met. According to the New York Court of Appeals, "a subpoena is properly quashed when the party issuing the subpoena fails 'to demonstrate any theory of relevancy or materiality, but instead, merely desires the opportunity for an unrestrained foray into confidential records in the hope that the unearthing of some unspecified information will enable them to impeach witnesses.'" *Id.* at 6 (quoting *People v. Gissendanner*, 48 N.Y.2d 543, 549 (1979) (alterations omitted)). "A subpoena *duces tecum* may not generally be 'used for the purpose of discovery or to ascertain the existence of evidence.'" *Id.* (quoting *Gissendanner*, 48 N.Y.2d at 551). "When deciding a motion to quash a subpoena, access must be afforded to data relevant and material to the determination of guilt or innocence, as, for example, when a request for access is directed toward revealing specific biases, prejudices or ulterior motives of the witness as they may relate to the issues or personalities at hand," or "information which if known to the trier of fact[] could very well affect the outcome of the trial." *Id.* (quoting *Gissendanner*, 48 N.Y.2d at 548 (quotation marks omitted)). But "'there is no such compulsion when requests to examine records are motivated by nothing more than impeachment of witnesses' general credibility.'" *Id.* (quoting *Gissendanner*, 48 N.Y.2d at 548). Based on these principles, Judge Merchan articulated the relevant inquiry under CPL 610.20(4) as "whether the subpoena seeks information to be used for impeachment of general credibility or is instead directed towards revealing specific biases, prejudices or ulterior motives related directly to personalities or issues in the instant matter; whether the solicited information is material to the question of guilt or innocence, or nothing more than a 'fishing expedition.'" *Id.* at 6-7.

We understand you believe "Judge Merchan's ruling constituted a flawed and erroneous application of the legal framework that was relevant to his decision—C.P.L. § 610.20(3)-(4)—which should not be persuasive to th[is] Office." Jan. 31, 2024 Letter at 1. We also understand that the defendant has moved for reargument of some aspects of the December 18 Order in the criminal case. Unless and until Judge Merchan grants the motion for reargument, however, the December 18 Order remains the law of the case. While sovereign immunity bars direct enforcement by a state court of a subpoena against the Department or its employees,[2] and the Department must make an independent judgment as to the propriety of disclosure under the *Touhy* regulations, Judge Merchan's Order is persuasive authority as to the proper application of CPL § 610.20(4) to a third-party subpoena in the context of *People v. Trump*.

Second, "[i]n deciding whether to make disclosures pursuant to a demand" under the *Touhy* regulations, Department officials should consider "[w]hether [such] disclosure is appropriate under the relevant substantive law concerning privilege." 28 C.F.R. § 16.26(a)(2). Some of the

[2] *See, e.g.*, *Edwards v. DOJ*, 43 F.3d 312, 316 (7th Cir. 1994) ("the review action must be in federal court pursuant to 5 U.S.C. § 702, rather than in a state court that lacks jurisdiction"); *In re Elko County Grand Jury*, 109 F.3d 554 (9th Cir. 1997); *Smith v. Cromer*, 159 F.3d 875, 879 (4th Cir. 1998).

requests in the Subpoena implicate privileged information, including but not limited to information protected by the work product doctrine, the deliberative process privilege, and the law enforcement privilege. While some of the applicable privileges may be qualified, *see* Jan. 22, 2024 Letter at 6, the defendant would need to make a particularized showing to overcome such privileges. And with regard to attorney work product, even if the defendant could make a showing of substantial need for specific documents, and inability to obtain their substantial equivalent by other means, documents reflecting prosecutors' mental impressions, conclusions, opinions, and legal theories would remain protected. *See Hickman v. Taylor*, 329 U.S. 495, 512-13 (1947); *cf.* Fed. R. Civ. P. 26(b)(3)(B).

Third, the *Touhy* regulations provide that "disclosure will not be made by any Department official" if it would reveal certain categories of protected information set forth in 28 C.F.R. § 16.26(b). Among other things, disclosure is prohibited if it "would violate a statute, such as the income tax laws, 26 U.S.C. §§ 6103 and 7213," or the Privacy Act, 5 U.S.C. § 552a, "or a rule of procedure, such as the grand jury secrecy rule, [Fed. R. Cr. P.] Rule 6(e)." 28 C.F.R. § 16.26(b)(1). Disclosure is also barred if it "would reveal investigatory records compiled for law enforcement purposes, and would interfere with enforcement proceedings or disclose investigatory techniques and procedures the effectiveness of which would thereby be impaired." *Id.* § 16.26(b)(5).

I have carefully considered the *Touhy* Request, your letters of January 22, January 31, and February 19, 2024,[3] and DANY's letters of February 7 and February 9, 2024. Applying the factors set forth in the Department's *Touhy* regulations, I make the following determinations with respect to each of your requests.

(i) Requests 1-2: Tax-Related Documents

Requests 1 and 2 seek documents relating to the tax evasion counts charged in the SDNY Information, and all federal and state income tax filings and associated work papers for the tax years 2012 to the present relating to Mr. Cohen and/or entities associated with him. I decline to authorize disclosure of the records requested in this category, for the following reasons.

First and foremost, disclosure is not "appropriate under the rules of procedure governing the case or matter in which the demand arose," 28 C.F.R. § 16.26(a)(1), as interpreted and applied by Judge Merchan in his December 18 Order. The requests for tax-related documents in this category directly overlap with requests in the subpoena to Mr. Cohen that were quashed by Judge Merchan.

Specifically, Request 6 of the subpoena to Mr. Cohen sought, "[f]or tax years 2016, 2017 and 2018, all documents and communications relating to any tax liabilities—state or federal—owed by [Mr. Cohen] or by any entity in which [he] hold[s] or held, directly or indirectly, an ownership interest, including all federal and state tax returns [he] filed . . . , all draft tax returns, all documents related to income tax calculations or deductions from income, all communications with accountants, and all accountant work papers." Dec. 18 Order at 10. Judge Merchan found this request "overbroad," noting that it "appears to be at its core, a request for general discovery."

[3] At your request, this Office has not shared your February 19, 2024 letter with DANY.

Id. at 10. In Judge Merchan's view, "[i]t would appear that Defendant here seeks nothing more than 'the opportunity for an unrestrained foray into confidential records in the hope that the unearthing some unspecified information will enable them to impeach witnesses.'" *Id.* at 10-11 (quoting *Gissendanner*, 48 N.Y.2d at 549) (alterations omitted). Accordingly, Judge Merchan ruled that "[t]he degree of this invasion of the alleged stated purpose can[]not be justified," and quashed the request in its entirety. *Id.* at 11.[4]

Requests 1 and 2 of the Subpoena to this Office appear to be less relevant or material than the subpoena requests quashed by Judge Merchan. Request 1 seeks documents related to the tax evasion counts of the SDNY Information. Those counts involved conduct by Mr. Cohen from 2012 to 2016 that is unrelated to the conduct at issue in *People v. Trump*, which as you note "focuses on payments to Mr. Cohen in approximately 2017." Jan. 22, 2024 Letter at 3 (noting DANY's allegations that certain records "were 'false' because they indicated that the payments were part of a 'retainer' for 'legal' services by Mr. Cohen"); *see also* Feb. 7, 2024 DANY Letter at 8-9 (characterizing prosecution as concerning "whether defendant lied in his business records by falsely describing the $420,000 payments to Cohen in 2017 as payments for legal services pursuant to a retainer, rather than truthfully describing them as reimbursements for the Stormy Daniels payoff"). The defendant has not "show[n]" how records relating to Mr. Cohen's tax evasion in 2012-2016 are "reasonably likely to be relevant and material to the proceedings" in *People v. Trump*, and the Subpoena is overbroad. CPL § 610.20(4); Dec. 18 Order at 10-11 (quashing request for some of the same records sought from Mr. Cohen, including tax filings and documents related to tax liabilities in 2016, as an "overbroad . . . request for general discovery"); *see also id.* at 7 (quashing separate subpoena request seeking materials that were "not limited to the subject matter of th[e] case").

Similarly, according to Judge Merchan's December 18 Order, Mr. Cohen's state and federal income tax filings and associated work papers sought in Request 2 of the Subpoena are not "reasonably likely to be relevant and material to the proceedings" in *People v. Trump*. CPL § 610.20(4); *see* Dec. 18 Order at 10-11. For the years other than 2017, you have not identified any theory of relevance for tax filings and associated work papers. *See* Dec. 18 Order at 6 ("a subpoena is properly quashed when the party issuing the subpoena fails to demonstrate any theory of relevancy and materiality" (citation and quotation marks omitted)). With respect to Mr. Cohen's tax filings and associated work papers for 2017, the year of the payments at issue in *People v. Trump*, Judge Merchan has ruled that such a narrowed request "would still seek information and documents which are neither relevant nor material to the issue of guilt or innocence." *Id.* at 10. Judge Merchan found that "[h]ow Mr. Cohen treated the alleged $420,000 payment for tax purposes is immaterial to the question of Defendant's intent to defraud . . . because Defendant's intent is separate and apart from whether his intended result actually came to fruition." *Id.*

We note that in his motion for reargument, the defendant has narrowed his request for tax-related documents to "[d]ocuments sufficient to show how the entire $420,000 payment was

[4] The subpoena to Mr. Cohen also sought documents sufficient to show "which accountants prepared and filed [Mr. Cohen's] tax returns for the tax years 2016, 2017 and 2018." Dec. 18 Order at 11. Judge Merchan quashed this request as well, finding that it "seeks general discovery and appears to be an 'end around' the possibility that Request 6 would be quashed." *Id.*

treated—whether as taxable income or as non-taxable reimbursement—by [Mr. Cohen] on [his] personal tax returns," Jan. 17, 2024 Motion at 10, and does not challenge Judge Merchan's rulings with regard to other tax-related documents. To the extent Judge Merchan grants the defendant's motion and enforces the Cohen subpoena with regard to this narrowed request, the defendant should be able to obtain the requested records from Mr. Cohen. With regard to the broader requests that were quashed by Judge Merchan, the December 18 Order indicates that disclosure in response to Requests 1 and 2 of the Subpoena to this Office is not appropriate under CPL § 610.20(4). *See* 28 C.F.R. § 16.26(a).

To the extent Request 1 seeks privileged information, including but not limited to attorney work product, disclosure is also not "appropriate under the relevant substantive law concerning privilege." 28 C.F.R. § 16.26(a)(2).

Finally, to the extent Requests 1 and 2 seek disclosure of records protected by 26 U.S.C. § 6103 or Federal Rule of Criminal Procedure 6(e), the Department's *Touhy* regulations prohibit disclosure in the absence of an applicable exception. *See* 28 U.S.C. § 16.26(b)(1). Because disclosure is not appropriate under CPL § 610.20(4), *see* 28 C.F.R. § 16.26(a), it is not necessary to analyze the applicability of these authorities to the specific documents sought. For the reasons set forth above, however, it does not appear that any exception would apply to the records sought in Requests 1 and 2.

(ii) Request 3: Documents Discussed in Search Warrant Application

With regard to Request 3, I decline to authorize disclosure to the extent it seeks all documents "discussed or relied upon in any way to establish probable cause" in the Search Warrant Application filed in *United States v. Cohen*, ECF No. 43-1. The referenced document is 269 pages long and includes an 80-page affidavit. *See id.* (affidavit at pages 2-81, duplicated at pages 104-183). In discussing the evidence giving rise to probable cause, the affidavit often refers to general categories of records reviewed by the affiant, such as "property records," "bank records," "records," "data" or "information" maintained by various financial institutions or telecommunications providers, "emails obtained pursuant to search warrants," "reports of interviews" of employees of various entities, and "public records," without identifying specific records. *See, e.g.*, *id.* at 3-5, 7, 10-11, 13-20, 23, 27, 29-31, 33-35, 37-38, 60-62, 64-65, 67, 69. It would be a painstaking and extremely time-intensive task to attempt to identify the specific records referred to in the affidavit. In many cases, it may not be possible to identify the records referred to only in general terms, let alone documents "relied upon in any way" to establish probable cause. Accordingly, to the extent it seeks documents discussed or relied upon in the Search Warrant Application, the request is unreasonably burdensome, and disclosure is not appropriate under CPL § 610.20(4). *See* 28 C.F.R. § 16.26(a)(1). To the extent Request 3 seeks information "relied upon in any way" but not discussed in the Search Warrant application, disclosure is not appropriate for the additional reason that it would reveal prosecutors' mental impressions and conclusions that are protected by the attorney work product doctrine. *See* 28 C.F.R. § 16.26(a)(2); *Hickman*, 329 U.S. at 512-13; *cf.* Fed. R. Civ. P. 26(b)(3)(B).

By contrast, to the extent Request seeks bank records and emails obtained from nine identified financial institutions, it would not require a retroactive analysis of whether those records

were referred to in the Search Warrant Application. This request is overbroad insofar as this Office obtained records from these institutions relating to accounts maintained by individuals other that Mr. Cohen, and I decline to authorize disclosure of any such records. With regard to records pertaining to accounts maintained by Mr. Cohen, however, it appears that this Request may seek information that is relevant and material to the proceeding. DANY appears to agree that "documents responsive to Request 3[,] if related to Michael Cohen's campaign finance offenses and if not already obtained by the People and produced to defendant in discovery," "may, in the discretion of the responsible Department official (and if not prohibited from disclosure on another basis), satisfy the relevant standards for disclosure." Feb. 7, 2024 DANY Letter at 2; *see also id.* at 11-12. This Office is not in a position to determine which materials have been obtained by the People and produced to the defendant in discovery, and it would be unreasonably burdensome for this Office, as a non-party, to review the materials to identify documents that are related to Mr. Cohen's campaign finance offences. In addition, some or all of the requested materials are protected by Fed. R. Crim. P. 6(e), and this Office currently has authorization to share grand jury information only with law enforcement authorities. Accordingly, I authorize production of the requested financial institution records relating to Mr. Cohen to DANY, with the understanding that any relevant, material and/or discoverable materials will be shared with the defense.

(iii) Requests 4-10: Documents Seized from iPhones and Email Accounts

Requests 4-10 seek "all documents seized from" two Apple iPhones and three email accounts belonging to Mr. Cohen and described in the Search Warrant Application, as well as "all toll records relating to" the two iPhones.[5]

You assert that documents seized from Mr. Cohen's phones and email accounts are relevant and material because, in your view, they are probative of potential bias and motive. Jan. 31, 2024 Letter at 2; *see* Dec. 18 Order at 7 (subpoena may be appropriate if it is "directed towards revealing specific biases, prejudices or ulterior motives related directly to personalities or issues in the instant matter"). You maintain that the seized data sought in Requests 4-10 is different from the requests quashed by Judge Merchan insofar as you "are seeking evidence that th[is] Office seized pursuant to the search warrants—a process that is separate from the initial collection of data from electronic service providers—*because* the evidence was probative of fraudulent schemes by Mr. Cohen." Jan. 31, 2024 Letter at 2. You assert that by seeking evidence that the Office seized, you have "pursued a narrower approach in the *Touhy* Request[] that Judge Merchan has not addressed." *Id.*

DANY does not appear to dispute that the seized records sought in Requests 4-10 may include documents that are relevant and material. However, DANY asserts that at least some of these requests are overbroad insofar as they are "not limited to the subject matter of this case." Feb. 7, 2024 DANY Letter at 12. It would be unreasonably burdensome for this Office to review the seized materials to identify potentially relevant material. Although the overbreadth and burden

[5] DANY asserts that it [redacted] during its own investigation and [redacted] as well as the [redacted] accessible to the People's case team (which were filtered for privilege)." Feb. 7, 2024 DANY Letter at 12. However, you have advised this Office that you are not confident that the data obtained and produced by DANY is coextensive with the data seized by this Office.

objections would be sufficient bases to deny this request, under the extraordinary circumstances of this case, I authorize disclosure of the seized materials, subject to entry of an appropriate Privacy Act and Protective Order that incorporates the provisions of the Protective Order entered by Judge Merchan in *People v. Trump* on May 8, 2023. *See* Feb. 7, 2024 DANY Letter at 7.[6]

By contrast, the requested toll records relating to the iPhones described in the Search Warrant Application are not among the seized materials, and you have not identified why such records would be relevant or material to *People v. Trump*. Accordingly, disclosure is not appropriate under the rules of procedure applicable to that proceeding. *See* Dec. 18 Order at 6 ("a subpoena is properly quashed when the party issuing the subpoena fails to demonstrate any theory of relevancy and materiality" (citation and quotation marks omitted)). To the extent you are seeking records obtained via grand jury subpoena, disclosure is also barred by Fed. R. Crim. P. 6(e) absent a showing of particularized need.

(iv) Requests 11-12: Cohen Agreements and Statements

Request 11 seeks agreements with Mr. Cohen or his counsel, including proffer agreements and privilege waivers, and Request 12 seeks documents memorializing statements by Cohen, including statements during meetings with NYAG, NYDTFS, this Office, and certain meetings with the SCO. Without conceding that Request 16 satisfies the standards of CPL § 610.20(4), I provide the following response.

This Office located [redacted] responsive to Request 11, including [redacted]

With regard to Request 12, this Office located the following responsive records:

- [redacted]
- [redacted]
- [redacted]
- [redacted]

[6] This Office will prepare an application for a Privacy Act and Protective Order for submission to the U.S. District Court for the Southern District of New York.

With the exception of [redacted], I authorize the above-referenced documents responsive to Requests 11 and 12, with redactions of FBI file numbers and the names of law enforcement personnel, subject to entry of an appropriate Privacy Act and Protective Order that incorporates the provisions of the Protective Order entered by Judge Merchan in *People v. Trump* on May 8, 2023.

The [redacted] are privileged under both the work product and deliberative process privileges, and therefore not appropriate for disclosure. *See* 28 C.F.R. § 16.26(a)(2). However, this Office has consulted with the FBI and other relevant Department components, and the FBI has provided [redacted]. I authorize disclosure of [redacted], with redactions of FBI file numbers and identifying information of law enforcement personnel, subject to entry of an appropriate Privacy Act and Protective Order that incorporates the provisions of the Protective Order entered by Judge Merchan in *People v. Trump* on May 8, 2023.

This Office did not identify any responsive documents memorializing statements by Cohen during meetings with the SCO on dates other than those identified above, or during any meetings with NYDTFS.

(v) Requests 13-14: Documents Relating to Cohen Books, Manuscripts and Agreements

Request 13 seeks documents related to three books or manuscripts by Mr. Cohen: (i) *Trump Revolution: From the Tower to the White House, Understanding Donald J. Trump* ("*Trump Revolution*"), (ii) *Revenge: How Donald Trump Weaponized the U.S. Department of Justice Against His Critics* ("*Revenge*"), and (iii) *Disloyal: A Memoir: The True Story of the Former Personal Attorney to President Donald J. Trump* ("*Disloyal*"). Request 14 seeks agreements relating to Cohen and twelve listed publishing or media entities.

Judge Merchan quashed a similar request for draft manuscripts for the books *Disloyal* and *Revenge*, finding "no reasonable likelihood that the information sought is relevant or material" to the proceedings in *People v. Trump.* Dec. 18 Order at 11. Judge Merchan also quashed a request for Mr. Cohen's contract with the publisher of the books *Disloyal* and *Revenge*, as well as documents sufficient to show the compensation received by Mr. Cohen for *Disloyal*, *Revenge*, and a podcast called *Mea Culpa*. I decline to authorize disclosure in response to this request to the extent it seeks the same documents from this Office. In any event, this Office has not located any responsive documents relating to the books *Disloyal* or *Revenge*, which were published in 2020 and 2022, respectively, after this Office's investigation of Mr. Cohen had concluded.

This Office has not located any responsive documents relating to *Trump Revolution*, other than documents that may exist within the set seized materials authorized for disclosure in response to Requests 4-10.

(vi) Request 15: Communications with DANY, NYAG, or SCO

This request seeks documents reflecting or memorializing communications with DANY, NYAG, or the SCO regarding Mr. Cohen's "[c]rimes, misconduct and/or bad acts" or "credibility," or the book titled *People v. Donald Trump: An Inside Account*. We understand this request to seek communications focusing on Mr. Cohen's credibility, rather than communications referring to his federal convictions.

With respect to any documents reflecting or memorializing communications with the SCO, to the extent they exist, any responsive communications would be core attorney work product that would reveal the mental impressions and opinions of SDNY and SCO prosecutors, which remain protected despite the qualified nature of the work product privilege. *See Hickman*, 329 U.S. at 512-13; *cf.* Fed. R. Civ. P. 26(b)(3)(B). In addition, a search for responsive materials, to the extent they exist, would require review of archived emails of former employees of the Office that would have to be requested from the Executive Office of U.S. Attorneys. Such a search would be overbroad and unreasonably burdensome under CPL § 610.20(4), given that any responsive records are likely to be privileged. *Cf.* Dec. 18, 2024 Order at 9 (quashing subpoena request that called for production of material that "may very well be protected by the attorney-client privilege"). This request is therefore denied under 28 C.F.R. § 16.26(a)(1) and (2).

Subject to and without waiving any privileges or other protections from disclosure, and without conceding that Request 16 satisfies the standards of CPL § 610.20(4), this Office did not identify any responsive documents reflecting or memorializing communications with DANY or NYAG.

(vii) Request 16: Documents Concerning Order to Show Cause

Without conceding that Request 16 satisfies the standards of CPL § 610.20(4), this Office has not identified any non-privileged documents or communications relating to the December 12, 2023 order to show cause docketed at ECF No. 96 in *United States v. Cohen*.

Conclusion

Please contact this Office if you have any questions concerning this determination. We will proceed to prepare an application for a Privacy Act and Protective Order with regard to the materials for which disclosure has been authorized.

Nothing in this letter waives any applicable privileges or other protections from disclosure or any objection to the Subpoena. All applicable privileges or other protections from disclosure, and all objections to the Subpoena, are expressly reserved.

Very truly yours,

By: _____
DAMIAN WILLIAMS
United States Attorney

cc: Matthew Colangelo, Esq.
New York County District Attorney's Office

EXHIBIT 16

EXHIBIT 17

EXHIBIT 18

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

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

February 26, 2024

VIA EMAIL

Todd Blanche
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
1120 Sixth Ave., 4th Floor
New York, NY 10036

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

Dear Mr. Blanche and Ms. Necheles:

We are producing today an additional set of discovery materials for the above-referenced case pursuant to section 245.60 of the New York Criminal Procedure Law ("CPL") ("Supplemental Discovery"). Please find attached to this letter an index that catalogs the materials provided.

This production consists [redacted] materials received on February 21, 2024 and [redacted]

Today's production may be accessed from a file transfer site via the following URL:

[redacted]

We will provide the username and password to enter the site in a separate email. Should you encounter any issues accessing the materials, please do not hesitate to reach out for assistance.

With respect to today's supplemental production, please note the following:

- *First*, all of the materials provided to you are subject to the protective order issued on May 8, 2023;

- *Second*, the People have designated certain of these materials "Limited Dissemination Materials" under the May 8 protective order;

- *Third*, the People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1), but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65;

- *Fourth*, some materials or information may have been withheld in connection with protective orders issued pursuant to CPL § 245.70; and

- *Finally*, where applicable, the materials provided have been Bates stamped to aid in the organization and digestion of the materials, and the Bates ranges have been noted on the attached index. Please note, however, that the numbering of the Bates stamps may not be sequential.

Pursuant to CPL §§ 245.10(1)(a) and 245.60, we will continue to make productions to you on a rolling basis and will produce additional discoverable materials and information we learn of or come into the possession of.

Sincerely,

/s/ Becky Mangold
Becky Mangold
Assistant District Attorney

EXHIBIT 19

EXHIBIT 20

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

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

March 1, 2024

BY ELECTRONIC MAIL

Todd Blanche
Blanche Law PLLC
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
NechelesLaw LLP
1120 Sixth Ave., 4th Floor
New York, NY 10036

RE: People's responsive disclosure of potential expert witness in *People v. Donald J. Trump*, Ind. No. 71543-23.

Dear Counsel,

Pursuant to CPL § 245.20(1)(f), the People provide the following disclosure in response to defendant's identification of Bradley A. Smith as a potential witness at trial.

The People believe Mr. Smith's proposed testimony should be precluded for the reasons described in the People's February 22, 2024 motions *in limine*. To the extent the Court permits any testimony from Mr. Smith, the People may call Adav Noti as a response witness. Mr. Noti is Executive Director of the Campaign Legal Center. Mr. Noti's current curriculum vitae, which also contains his business address and a list of publications, is attached.

If called as a witness, Mr. Noti's testimony will address the topics identified in Mr. Smith's disclosure. In particular, Mr. Noti may testify:

- That under federal campaign finance law, a third party's payment of a candidate's expenses is a contribution unless the payment would have been made "irrespective of the candidacy";

- That a third party's payment of a candidate's expenses can be deemed a contribution even when the same expense, if paid by the candidate's campaign, would be a prohibited use of campaign funds for personal purposes;

- That the enforcement environment at the time Michael Cohen made the $130,000 payment to Stormy Daniels supported a conclusion that such conduct violated federal campaign finance laws;

- That the district court denied the defendant's motions to dismiss for legal insufficiency in the *United States v. Edwards* prosecution, and that the case was resolved on a factual question for the jury regarding whether the third party's payments of the candidate's expenses would have been made "irrespective of the candidacy," or instead whether one of the third party's purposes was to influence an election;

- That in August 2018, Michael Cohen pleaded guilty to and was convicted of two criminal violations of the Federal Election Campaign Act in connection with the Karen McDougal and Stormy Daniels payments;

- That in September 2018, AMI admitted in connection with a non-prosecution agreement with the United States Attorney for the Southern District of New York that, among other things, AMI knew at all relevant times in connection with the McDougal payment that corporations such as AMI are subject to federal campaign finance laws, and that expenditures by corporations, made for purposes of influencing an election and in coordination with or at the request of a candidate or campaign, are unlawful; and

- That in March 2021, the Federal Election Commission found reason to believe that AMI and David Pecker knowingly and willfully violated the Federal Election Campaign Act by making a prohibited corporate in-kind contribution in connection with the McDougal payment.

Separately, please note that as indicated on Mr. Noti's curriculum vitae, in addition to serving as Executive Director of the Campaign Legal Center, Mr. Noti is also a Complaint Examiner for the District of Columbia Office of Police Complaints. The Office of Police Complaints processes citizen complaints alleging abuse or misuse of police powers against members of the D.C. Metropolitan Police Department. In his capacity as a Complaint Examiner, Mr. Noti has issued Findings of Fact and Merits Determinations on complaints that are assigned for his review. Although the People do not believe that these determinations are "publications" for purposes of the disclosure obligation in CPL § 245.20(1)(f), we advise you that determinations issued by Mr. Noti in his capacity as a Complaint Examiner are available online at https://policecomplaints.dc.gov/page/complaint-examiner-decisions.

Sincerely,

/s/ Matthew Colangelo
Matthew Colangelo
Assistant District Attorney

EXHIBIT 21

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

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

March 4, 2024

VIA EMAIL

Todd Blanche
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
1120 Sixth Ave., 4th Floor
New York, NY 10036

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

Dear Mr. Blanche and Ms. Necheles:

We are producing today an additional set of discovery materials for the above-referenced case pursuant to section 245.60 of the New York Criminal Procedure Law ("CPL") ("Supplemental Discovery"). Please find attached to this letter an index that catalogs the materials provided.

This production consists of intake received on March 4, 2024 from [redacted] selected excerpts from [redacted], and additional publicly-available materials, including [redacted].

Today's production may be accessed from a file transfer site via the following URL:

[redacted]

We will provide the username and password to enter the site in a separate email. Should you encounter any issues accessing the materials, please do not hesitate to reach out for assistance.

In addition to the documents described above, we are producing, as DANYDJT00214611, a link to [redacted] received on March 1, 2024 from NBCUniversal. [redacted] that has not yet been released to the public and was produced to DANY with the understanding that it would be kept confidential by all parties under any and all applicable court orders and confidentiality obligations, and treated as "Limited Dissemination Materials" pursuant to the May 8, 2023 protective order. NBCUniversal did not provide a [redacted], but did provide unique links and passwords for DANY and defense counsel to access [redacted]. The link for defense counsel is below:

We will send the password for the defense counsel link in a separate email.

With respect to today's supplemental production, please note the following:

- *First*, all of the materials provided to you are subject to the protective order issued on May 8, 2023;

- *Second*, the People have designated certain of these materials "Limited Dissemination Materials" under the May 8 protective order;

- *Third*, the People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1), but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65;

- *Fourth*, some materials or information may have been withheld in connection with protective orders issued pursuant to CPL § 245.70; and

- *Finally*, where applicable, the materials provided have been Bates stamped to aid in the organization and digestion of the materials, and the Bates ranges have been noted on the attached index. Please note, however, that the numbering of the Bates stamps may not be sequential.

Pursuant to CPL §§ 245.10(1)(a) and 245.60, we will continue to make productions to you on a rolling basis and will produce additional discoverable materials and information we learn of or come into the possession of.

Sincerely,

/s/ Becky Mangold
Becky Mangold
Assistant District Attorney

EXHIBIT 22

Los Angeles Times

TELEVISION

Stormy Daniels alleges in new documentary that Donald Trump cornered her the night they met

In the forthcoming Peacock documentary "Stormy," adult filmmaker Stormy Daniels offers new details about her 2006 encounter with former President Trump. (Peacock)

BY MAIRA GARCIA | TELEVISION EDITOR

MARCH 7, 2024 9:03 AM PT

Stormy Daniels goes into new detail in a documentary about her alleged 2006 sexual encounter with former President Trump, saying she was cornered by him in his hotel room the night they met and that she blames herself for not stopping him.

The adult filmmaker makes the revelation in "Stormy," a nearly two-hour documentary premiering March 18 on Peacock. It was directed by Sarah Gibson and produced by Erin

Lee Carr and features interviews with Seth Rogen, Jimmy Kimmel, Daniels' family and friends, and several journalists, including New York's Olivia Nuzzi and Denver Nicks, who began a relationship with Daniels while shooting some of the scenes in the film.

"Stormy" details the moments before Daniels met Trump and all that has transpired since, including a $130,000 hush money payment, first reported by the Wall Street Journal, that prosecutors say Trump made to Daniels just before the presidential election in 2016. That payment eventually led to his indictment in New York last year for falsifying business records, with prosecutors saying it was part of a "catch-and-kill" scheme. Trump has denied the relationship and says he didn't know about the payment, but his former lawyer, Michael Cohen, has testified that Trump ordered it.

Daniels previously told her story about the alleged sexual encounter with Trump on CBS' "60 Minutes" in 2018, saying it was consensual. But in "Stormy," her story differs: She says after meeting him in his hotel room and having a conversation, she went to the bathroom, came out and was cornered by him.

"I don't remember how I got on the bed, and then the next thing I know, he was humping away and telling me how great I was," she says. "It was awful. But I didn't say no."

TELEVISION

How Stormy Daniels' candor and humor in her '60 Minutes' interview showed 'a woman to be reckoned with'

March 26, 2018

In the latter half of the documentary, she says, "I've maintained that it wasn't rape in any fashion. But I didn't say no because I was 9 years old again." In the film, she discusses how she was sexually abused by a neighbor as a child, something she revealed in her memoir, "Full Disclosure," in 2018.

She also expresses remorse for not trying to stop him.

“To this day, I blame myself and I have not forgiven myself because I didn’t shut his a— down in that moment, so maybe make him pause before he tried it with someone else,” she says. “The hardest part about all of this is that I feel that I am partially responsible for every woman that could have come after me.”

Stormy Daniels describes what happened between her Donald Trump in the documentary: “It was awful. But I didn’t say no.” (Peacock/Peacock)

The Trump campaign did not immediately respond to a request for comment. Peacock, asked if the filmmakers gave Trump a chance to respond to the claims made in the documentary, did not immediately respond to The Times' question. The press screener viewed by The Times does not address the matter. The release of the documentary comes after Super Tuesday, when Trump all but clinched the Republican nomination for president.

In 2006, Trump was at the peak of his "Apprentice" fame, and he attended a charity golf tournament in Lake Tahoe, Nev., where Wicked Pictures, the studio Daniels worked for, sponsored a hole. Daniels, who worked the Wicked booth at the tournament, posed for a photo with Trump — a now-famous image — and was invited to dinner with him. She says in the documentary that she rejected the invitation initially, but then accepted after speaking to her publicist.

She explains that she arrived early at his hotel, and Trump told her to come up to his room and that they could later go back downstairs. Once in his room, she recounts having a conversation with him about her career, that they had a strong rapport and that nothing raised a red flag.

“He wasn’t interested in the sexual performances. It was all about business,” she says.

After he suggested to Daniels that he could try to get her on “Celebrity Apprentice,” Daniels says in the film, Trump told her that she reminded him of his daughter, Ivanka. “I felt that as this father figure who has watched his daughter be treated a certain way, he could identify with me. I thought we had this mutual respect,” she recounts.

Then the dynamic changed.

“And the last thing I remember was like, ‘I could totally take him if I want to scream or fight, but I’m not supposed to act like that,’” explaining that as a Southerner, she “was taught to show respect and be a good girl” toward elders and men.

Daniels also talks about the harassment and threats she has received since coming out with her story, intimidation that has become increasingly vitriolic, causing her to fear for her life and her daughter’s. She also describes what happened with her former lawyer, Michael Avenatti, who was convicted in 2022 of stealing her book proceeds. He appealed the conviction, but it was upheld on Wednesday unanimously by a federal appeals court.

Nonetheless, Daniels says she wants to remain vocal about what happened between her and Trump, , including the way she feels the justice system has failed her.

“I am here today to tell my story and even if I just change a few people’s minds, that’s fine. If not, then at least my daughter can look back on this and know the truth.”

MORE TO READ

In fiery testimony, Fani Willis hits back at misconduct claims that threaten Trump case

Feb. 15, 2024

Trump testifies in his defense in E. Jean Carroll defamation suit, for less than 3 minutes

Jan. 25, 2024

'Access Hollywood' tape of Trump won't be shown to jury at defamation trial, lawyer says

Jan. 21, 2024

Maira Garcia

Maira Garcia is the television editor for the Los Angeles Times. Previously, she was an editor on the culture desk at the New York Times, where she focused on awards shows and breaking news coverage, and led the department's audience strategy. A native of Texas, she graduated from Texas State University with bachelor's and master's degrees in mass communication.

EXHIBIT 23

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- Donald J. Trump, Defendant.	CERTIFICATE OF COMPLIANCE CPL § 245.50(1) Indictment No. IND-71543-23

Matthew Colangelo, an Assistant District Attorney in the County of New York, states that, after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery under CPL § 245.20(1), the People have disclosed and made available to the defendant all known material and information that is subject to discovery, except for any items and information subject to an order pursuant to CPL § 245.70 or former CPL § 240.50.

The discovery provided to defense counsel is enumerated in the Automatic Discovery Forms served on defense counsel on May 25, 2023, June 8, 2023, and July 24, 2023, which are incorporated herein by reference, as well as in the attached lists[1].

Dated: New York, New York
July 24, 2023

Respectfully submitted,

Alvin L. Bragg, Jr.
District Attorney
New York County

BY: */s/ Matthew Colangelo*
Matthew Colangelo
Assistant District Attorney
Of Counsel
(212) 335-9000

[1] The People's disclosures may include documents, information, and materials that are not required to be disclosed under CPL § 245.20(1), but which have been disclosed in an exercise of the People's discretion pursuant to the presumption of openness specified in CPL § 245.20(7). The production of any such material does not constitute a waiver of any of the People's rights, including the People's right to withhold work product under CPL § 245.65.

EXHIBIT 24

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

March 6, 2024

Via Email
Susan Hoffinger
Executive Assistant District Attorney
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013

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

Dear Ms. Hoffinger:

We write pursuant to CPL §§ 245.50(4)(b) and 245.60 to provide notice of five apparent deficiencies relating to DANY's July 24, 2023 certificate of compliance and supplemental certificates of compliance. We require a response by the end of the day on March 7, after which we will pursue judicial intervention and appropriate sanctions.

First, in addition to DANY's failure to timely collect obvious impeachment material relating to Michael Cohen from the U.S. Attorney's Office for the Southern District of New York ("USAO-SDNY"), as of the evening of March 5, 2024, DANY is in possession of approximately 10,778 pages of records produced to DANY by the USAO-SDNY (bearing production numbers SDNY_USAO_00000183-SDNY_USAO_00010961). All of these materials are discoverable pursuant to CPL § 245.20, and they should be produced forthwith.

Second, evidence of efforts by Cohen to delete data from [redacted] also has obvious impeachment value. Particularly in light of Cohen's history of lies to government authorities, any failure by DANY to investigate the integrity of the data that [redacted] is discoverable pursuant to *Kyles v. Whitley*, 514 U.S. 419 (1995) and other authorities cited in our February 29, 2024 opposition to your motions *in limine*. For the reasons set forth in that submission, such a failure by DANY is admissible to impeach the lack of integrity in DANY's investigation. We therefore require a response to my March 4, 2024 email inquiring whether DANY conducted any forensic analysis to determine whether Cohen altered or deleted data from [redacted] to you.

Third, you have yet to adequately address the unauthorized redactions to the approximately 520 documents labeled in discovery "DANYEMAIL001." These materials appear to reflect DANY communications relating to the subject matter of this case, including discussions with likely trial witnesses and their counsel. We previously provided 19 examples of improper redactions, and you responded with a conclusory—and wholly indefensible—claim that *all* of the substantive redactions obscure "work production communications." To our knowledge, you have not obtained a protective order relating to the redactions. Nor have you provided us with a privilege log to facilitate review of your improper withholding decisions. Moreover, based upon

DANY's prior disclosures relating to [redacted], and your recent production of previously undisclosed [redacted] it appears that DANY has failed to implement reasonable and adequate measures to assure its ongoing compliance with the obligation to produce all discoverable materials in your possession, custody or control.

Fourth, your untimely production of [redacted] appears to violate CPL §§ 245.20(1)(k)(iv) and 245.20(1)(l). Please explain your failure to timely produce [redacted].

Finally, we require more information regarding the [redacted] and described as [redacted] The production is not timely. Moreover, because you apparently believe that NBCUniversal "[has] evidence or information relevant to any offense charged" in this case, CPL § 245.20(1)(e), you are obligated to produce communications by NBC Universal relating to [redacted] and the dissemination restrictions you purported to impose in the March 4, 2024 letter. It also appears that such communications are subject to CPL § 245.20(1)(k) and—because NBC Universal "may be called as [a] witness[]" to authenticate [redacted]—CPL § 245.20(1)(l). Please explain the failure to timely obtain and produce [redacted] and produce the communications that led to this untimely production forthwith.

Respectfully Submitted,

/s/ Susan R. Necheles
Susan R. Necheles
Gedalia Stern
NechelesLaw LLP

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

Attorneys for President Donald J. Trump

Cc: Joshua Steinglass
Matthew Colangelo
(Via Email)

EXHIBIT 25

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

ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

March 7, 2024

BY ELECTRONIC MAIL

Todd Blanche
Emil Bove
Stephen Weiss
Blanche Law PLLC
99 Wall St., Ste. 4460
New York, NY 10005

Susan R. Necheles
Gedalia Stern
NechelesLaw LLP
1120 Sixth Ave., 4th Floor
New York, NY 10036

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

Dear Counsel,

This letter responds to your March 6, 2024 letter. The People have fully complied with our obligations under Article 245.

1. Regarding your demand at 8:55 a.m. yesterday that the People produce "forthwith" the records that the United States Attorney's Office produced after 7:30 p.m. the previous evening in response to defendant's trial subpoena, those records were included in our March 6 supplemental discovery production. Our production of those records to you less than twenty-four hours after we received them complies with CPL § 245.60.

2. Regarding your question about [redacted] we explained to you in our June 15 correspondence (and since) that the production included not only [redacted] but also [redacted] You have had this production for nearly nine months and can perform any analysis you consider appropriate.

3. Our January 28, February 2, and February 9, 2024 correspondence fully addressed the questions you raised for the first time on Saturday, January 27, 2024, about redactions to a subset of records in our July 24, 2023 discovery production. The redacted passages consist entirely of work product and protected names of DANY personnel. Article 245 "does not authorize

discovery" of work product. CPL § 245.65. The May 8, 2023 Protective Order prohibits you from viewing the names of certain DANY staff in order to protect those staff members from the risk of harassment and intimidation.

4. Regarding the federal government's [redacted] that was included in our February 26, 2024 production, we explained to you in our February 26 correspondence that we first obtained that document on February 21, 2024. We produced it three business days later, on February 26, which is timely under CPL § 245.60.

5. Regarding [redacted] that we produced on March 4, 2024, we explained to you in our March 4 correspondence that we first obtained [redacted] on March 1, 2024. We produced it one business day later, which is timely under CPL § 245.60. Your letter separately requests communications by NBCUniversal because you believe they may be called as a witness to authenticate [redacted] We have not identified NBCUniversal as a custodial witness, [redacted] is not on our exhibit list, and the communications from NBCUniversal are not discoverable on any other ground. Nonetheless, in an exercise of our discretion, we included [redacted] in our March 6, 2024 supplemental discovery production.

Sincerely,

/s/ Matthew Colangelo
Matthew Colangelo
Assistant District Attorney

EXHIBIT 26

EXHIBIT 27

EXHIBIT 28