



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

March 10, 2024

Via Email

Honorable Juan M. Merchan  
Judge - Court of Claims | Acting Justice - Supreme Court, Criminal Term

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

Dear Justice Merchan:

We respectfully submit this premotion letter, pursuant to the Court's March 8, 2024 Order, seeking leave to file the enclosed motion for (1) unsealing and public access to all pleadings, orders, and written communications that have involved the Court and the parties, including communications sent by letter and substantive email, and (2) simultaneous public access of all future pleadings, orders, and written communications except to the extent redactions are required by the protective order or law. *See Ex. A.*

The unsealing and public access sought in the proposed motion is required by the state and federal constitutions, necessary to create a record that will permit any subsequent appellate review, and critically important in light of the Court's important rulings relating to, among others, the impending trial date and the prosecutorial misconduct issues that President Trump has raised based on recent developments. Throughout this case, the Court has communicated with the parties via emails and letters that contain substantive rulings but do not appear to be docketed or otherwise available to the public, or to the parties as necessary for an appellate record. The Court has also permitted delayed public filing of motion papers well past the time they are submitted to the Court via email. The relief requested in Exhibit A will remedy these issues. *See, e.g., Hearst Corp. v. Clyne*, 50 N.Y.2d 707, (1980) ("It has, of course, long been the law in this State that all judicial proceedings, both civil and criminal, are presumptively open to the public."); *Westchester Rockland Newspapers, Inc. v. Leggett*, 48 N.Y.2d 430, 440 (1979) ("At the present time, in fact in most criminal cases, there are only pretrial proceedings. Thus, if the public is routinely excluded from all proceedings prior to trial, most of the work of the criminal courts will be done behind closed doors."); *People v. Arthur*, 178 Misc. 2d 419, 421 (Sup. Ct. N.Y. Cnty. 1998) (holding that public right of access applies to "*all nonconfidential material in the court's file*").

We respectfully request that the Court allow President Trump to file the enclosed motion.

Respectfully Submitted,

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

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

*Attorneys for President Donald J. Trump*

# **EXHIBIT A**

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

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

**NOTICE OF PRESIDENT  
DONALD J. TRUMP'S MOTION  
FOR PUBLIC PROCEEDINGS**

PLEASE TAKE NOTICE that upon the annexed affirmation of Todd Blanche, dated March 10, 2024, and the accompanying memorandum of law, President Donald J. Trump, by his counsel Blanche Law PLLC and NechelesLaw LLP, will move this Court, the Supreme Court of New York, County of New York, 100 Centre Street, New York, N.Y. 10013, on a date and time to be set by the Court, (1) to unseal and docket all pleadings, orders, and substantive written communications that have involved the Court and the parties, including communications sent by letter and email, and (2) to require simultaneous public access of all future pleadings, orders, and written communications except to the extent redactions are required by the protective order and law.

Dated: March 10, 2024  
New York, N.Y.

Susan R. Necheles  
Gedalia Stern  
NechelesLaw LLP  
1120 Sixth Avenue, 4th Floor  
New York, NY 10036  
212-997-7400  
srn@necheleslaw.com

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

*Attorneys for President Donald J. Trump*

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

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

**AFFIRMATION OF TODD  
BLANCHE IN SUPPORT OF  
PRESIDENT DONALD J.  
TRUMP'S MOTION FOR  
PUBLIC PROCEEDINGS**

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 and the accompanying memorandum of law and exhibit in support of President Trump's Motion For Public Proceedings.

2. This affirmation and the accompanying memorandum of law are 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 Exhibit 1 is a true and accurate copy of the Court's email sent at approximately 9:17 p.m. on March 8, 2024.

WHEREFORE, for the reasons set forth in the accompanying memorandum of law, President Trump respectfully submits that the Court should (1) unseal and docket all pleadings, orders, and substantive written communications that have involved the Court and the parties,

including communications sent by letter and email, and (2) require simultaneous public access of all future pleadings, orders, and written communications except to the extent redactions are required by the protective order and law.

Dated:           March 10, 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*

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

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

DONALD J. TRUMP,

Defendant.

Index No. 71543-23

**PRESIDENT DONALD J. TRUMP'S MOTION FOR PUBLIC PROCEEDINGS**

## **I. Introduction**

President Donald J. Trump respectfully submits this motion for (1) unsealing and public access to all pleadings, orders, and written communications that have involved the Court and the parties, including communications sent by letter and substantive email, and (2) simultaneous public access of all future pleadings, orders, and written communications except to the extent redactions are required by the protective order or law. Such access is required by the state and federal constitutions, necessary to create a record that will permit any subsequent appellate review, and critically important in light of the Court's important rulings relating to, among others, the impending trial date and the prosecutorial misconduct issues that President Trump has raised based on recent developments.

## **II. Background**

Throughout this case, the Court has communicated with the parties via emails and letters that contain substantive rulings but do not appear to be docketed or otherwise available to the public, or to the parties as necessary for an appellate record. The Court has also permitted delayed public filing of motion papers well past the time they are submitted to the Court via email.

In the latest example, in an email sent at approximately 9:17 pm on March 8, 2024, Your Honor (1) ruled that President Trump's March 8, 2024 motion for discovery sanctions was "not accepted at this time"; (2) ordered defense counsel "not [to] file a motion unless and until this Court expressly authorizes you to do so"; and (3) directed that "nothing should be filed with the Court, redacted or otherwise." Ex. 1.

### **III. Applicable Law**

#### **A. The First Amendment Right of Access**

“The First Amendment to the United States Constitution guarantees the press and the public a right of access to trial proceedings. Without the right to attend trials, ‘which people have exercised for centuries, important aspects of freedom of speech and of the press could be eviscerated.’ *Courtroom Television Network LLC v. State of New York*, 5 N.Y.3d 222, 229 (2005) (quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980)). “In New York, the press, like the public, has a right of access to criminal proceedings,” and “[a]ny exception to a public trial should be narrowly construed.” *Id.* at 231.

The “First Amendment right of access” applies in a criminal case to “several pretrial motions, including motions to dismiss the indictment, to transfer the case, and to compel discovery.” *In re Time Inc.*, 182 F.3d 270, 271 (4th Cir. 1999).

There is no reason to distinguish between pretrial proceedings and the documents filed in regard to them. Indeed, the two principal justifications for the first amendment right of access to criminal proceedings apply, in general, to pretrial documents. Those two justifications are: first, the criminal trial historically has been open to the press and general public, and second, the right of access to criminal trials plays a particularly significant role in the functioning of the judicial process and the government as a whole.

*Associated Press v. U.S. Dist. Ct. for Cent. Dist. Of California*, 705 F.2d 1143, 1145 (9th Cir. 1983) (cleaned up); *see also United States v. DeJournett*, 817 F.3d 479, 481, 484 (6th Cir. 2016) (holding that the “public has the constitutional right to access records in criminal proceedings,” and that “this court has applied *Richmond Newspaper* and the *Press-Enterprise* cases to judicial records”). “When sealing proceedings or documents, a court must articulate the overriding interest along with findings specific enough that a reviewing court can determine whether the closure order was properly entered. The court must also provide members of the public and press who are



present with notice and an opportunity to be heard on a proposed closure.” *United States v. Ochoa-Vasquez*, 428 F.3d 1015, 1030 (11th Cir. 2005) (cleaned up).

These rights of public access to criminal proceedings serve critical interests in advancing the fair administration of justice, promoting public confidence in the judiciary, permitting public scrutiny of matters of great public interest, and defending the fundamental rights of the accused.

The Supreme Court has emphasized this point in a long series of cases:

A responsible press has always been regarded as the handmaiden of effective judicial administration, especially in the criminal field. Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials but guards against the miscarriage of justice by subjecting the police, prosecutors, and judicial processes to extensive public scrutiny and criticism.

*Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559–60 (1976) (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 350 (1966)). “This Court has, therefore, been unwilling to place any direct limitations on the freedom traditionally exercised by the news media for ‘what transpires in the court room is public property.’” *Sheppard*, 384 U.S. at 350 (quoting *Craig v. Harney*, 331 U.S. 367, 374 (1947) (cleaned up)). “The ‘unqualified prohibitions laid down by the framers were intended to give to liberty of the press ... the broadest scope that could be countenanced in an orderly society.’” *Id.* (quoting *Bridges v. State of California*, 314 U.S. 252, 265 (1941)). Thus, “where there was ‘no threat or menace to the integrity of the trial,’” *id.* (quoting *Craig*, 331 U.S. at 337), the Supreme Court has “consistently required that the press have a free hand” in covering criminal proceedings. *Id.*

## **B. The Sixth Amendment Public-Trial Right**

The Sixth Amendment’s “public-trial guarantee” was “created for the benefit of the defendant.” *Gannett Co. v. DePasquale*, 443 U.S. 368, 380 (1979). This and other Sixth Amendment rights, “applicable to the States through the Fourteenth [Amendment], surrounds a

criminal trial with guarantees . . . that have as their overriding purpose the protection of the accused from prosecutorial and judicial abuses.” *Id.* at 379. “[T]here can be little doubt that the explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and public. The central aim of a criminal proceeding must be to try the accused fairly.” *Waller v. Georgia*, 467 U.S. 39, 46 (1984); *Mosallem v. Berenson*, 76 A.D.3d 345, 348-49 (1st Dep’t 2010) (“We have recognized the broad constitutional presumption, arising from the First and Sixth Amendments, as applied to the States by the Fourteenth Amendment, that both the public and the press are generally entitled to have access to court proceedings.”). The reason for this right is that, “[t]o the Framers, secret trials obviously symbolized a menace to liberty, and the public-trial right provided a necessary safeguard against any attempt to employ our courts as instruments of persecution.” *Smith v. Titus*, 141 S. Ct. 982, 984 (2021) (Sotomayor, J., dissenting from denial of cert.). And, while, “[o]f course, the vast majority of judges and jurors would strive to uphold constitutional principles even if criminal proceedings were closed to the public,” the “public-trial guarantee embodies a view of human nature, true as a general rule, that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings.” *Id.* (cleaned up).

### **C. Common Law And Statutory Access Rights**

“The operations of the courts and the judicial conduct of judges are matters of utmost public concern.” *Landmark Comm. v. Virginia*, 435 U.S. 829, 839 (1978). “The common-law right of access to judicial proceedings, an essential component of our system of justice, is instrumental in securing the integrity of the process.” *Chicago Trib. Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311 (11th Cir. 2001).

“It has, of course, long been the law in this State that all judicial proceedings, both civil and criminal, are presumptively open to the public.” *Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 715 (1980) (citing N.Y. Judiciary Law § 4). “At the present time, in fact in most criminal cases, there are only pretrial proceedings. Thus if the public is routinely excluded from all proceedings prior to trial, most of the work of the criminal courts will be done behind closed doors.” *Westchester Rockland Newspapers, Inc. v. Leggett*, 48 N.Y.2d 430, 440 (1979).

“New York has also recognized a common law right of access to court records, deriving from federal decisional law . . . under which the public has a presumptive right, subject to the court’s exercise of sound discretion, *to view all nonconfidential material in the court’s file.*” *People v. Arthur*, 178 Misc. 2d 419, 421 (Sup. Ct. N.Y. Cnty. 1998) (emphasis added); *see also People v. Allen*, 57 Misc. 3d 936, 939 (Livingston Cnty. Ct. 2017) (“[A]ny closure or sealing must be ‘narrowly tailored to serve the asserted interests.’” (quoting *v. Arthur*, 178 Misc. 2d at 422)); *People v. Burton*, 189 A.D. 2d 532, 535 (3d Dep’t 1993) (“There is a common-law presumption in favor of public access to court records.”); *People v. Sullivan*, 168 Misc. 2d 803, 808 (Saratoga Cnty. Ct. 1996) (“The state of New York law seems to be that if the documents were filed in Court, they would be subject to access by the media in the first instance.”).

“[E]very part of every brief filed to influence a judicial decision qualifies as a ‘judicial record.’” *League of Women Voters v. Newby*, 963 F.3d 130, 136 (D.C. Cir. 2020) (cleaned up); *see also, e.g., United States v. Gerena*, 869 F.2d 82, 85 (2d Cir. 1989) (extending right of access to “briefs and memoranda” filed in connection with pre-trial and post-trial motions); *In re New York Times Co.*, 834 F.2d 1152, 1153-54 (2d Cir. 1987) (applying right of access to motion papers); *Application of NBC*, 635 F.2d 945, 949 (2d Cir. 1980) (“The existence of the common law right to inspect and copy judicial records is beyond dispute.”).

#### IV. Discussion

“Court papers are public records.”<sup>1</sup> As a result, formal, publicly filed communications between the parties and the Court are a requirement steeped in President Trump’s right to a public trial, the First Amendment right of access that belongs to the press and the public, and the related common law framework.

At the April 4, 2023 press conference relating to the Indictment, District Attorney Bragg promised the public that this case would be litigated “in a public courtroom in downtown Manhattan.”<sup>2</sup> At President Trump’s arraignment on the same day, the Court acknowledged that “First Amendment rights are critically important, obviously.” Tr. 12. At the May 4, 2023 conference, Your Honor called attention to a perceived obligation on the part of District Attorney Bragg to “explain to the public” what he was doing. Tr. 24.

Since that time, however, the public has been shielded from important communications and rulings bearing on the conduct of this case. “Transparency is pivotal to public perception of the judiciary’s legitimacy and independence.” *United States v. Aref*, 533 F.3d 72, 83 (2d Cir. 2008).

[C]ourts must impede scrutiny of the exercise of that judgment only in the rarest of circumstances. This is especially so when a judicial decision accedes to the requests of a coordinate branch [*i.e.*, prosecutors], lest ignorance of the basis for the decision cause the public to doubt that complete independence of the courts of justice which is peculiarly essential in a limited Constitution.

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<sup>1</sup> N.Y. State Unified Court System, Redaction Rules for Confidential Personal Information, <https://iappscontent.courts.state.ny.us/NYSCEF/live/unrepresented/RedactedDocuments.html> (last visited Mar. 10, 2024).

<sup>2</sup> Jeremy Herb, Kara Scannell, and Lauren del Valle, *Donald Trump pleads not guilty to 34 felony counts of falsifying business records*, CNN (Apr. 4, 2023, 9:54 pm), <https://www.cnn.com/2023/04/04/politics/donald-trump-arraignment-new-york/index.html>.

*Id.* at 83 (cleaned up). “The mere fact that the suit has been the subject of intense media coverage is not . . . sufficient to justify closure.” *ABC, Inc. v. Stewart*, 360 F.3d 90, 102 (2d Cir. 2004). It is unclear if the Court contemplates public filing of its email rulings and otherwise-private correspondence with the parties at some later date, but, even if it does, that is of no moment. *See United States v. Alcantara*, 396 F.3d 189, 201 (2d Cir. 2005) (reasoning that “the fact that transcripts . . . were later available to the public and press does not satisfy the First Amendment right of access”).

The Court’s March 8, 2024 email is an example of an important communication that must be public because it implicated President Trump’s rights under the state and federal Constitutions—including his right to a fair trial and his right to defend himself—as well as under the CPL. Similarly, President Trump’s pre-motion letter in response to the Court’s March 8, 2024 letter is a judicial document subject to the access principles discussed herein. *See Brown v. Maxwell*, 929 F.3d 41, 49-50 (2d Cir. 2019) (reasoning that judicial records include documents that are “relevant to the performance of the judicial function” or “would reasonably have the tendency to influence a district court’s ruling on a motion or in the exercise of its supervisory powers, without regard to which way the court ultimately rules or whether the document ultimately in fact influences the court’s decision” (cleaned up)). The prosecutorial misconduct and discovery violations described in President Trump’s pre-motion letter and the enclosed motion, which have come to light only recently, should not be shielded from public view or summarily, and wrongfully, rejected by the Court without consideration. *In re Special Proc.*, 842 F. Supp. 2d 232, 244 (D.D.C. 2012) (reasoning that “access to the Report will play a significant role in the public’s understanding of criminal trials and safeguard against future prosecutorial misconduct, considerations the courts have consistently found weigh heavily in favor of the right of access”); *see also Richmond*

*Newspapers*, 448 U.S. at 569 (reasoning that open criminal trials “discouraged . . . the misconduct of participants”); *Press–Enterprise Co. v. Super.Ct. of Cal.*, 478 U.S. 1, 8 (1986) (reasoning that public access to criminal proceedings provides a “safeguard against the corrupt or overzealous prosecutor”). President Trump’s Sixth Amendment right, and the constitutional and common law rights of access held by the public and the press, require that such pre-motion letters, emails, and orders be made public promptly.

## V. CONCLUSION

For the foregoing reasons, President Trump respectfully submits that the Court should (1) unseal and docket all pleadings, orders, and substantive written communications that have involved the Court and the parties, including communications sent by letter and email, and (2) require simultaneous public access of all future pleadings, orders, and written communications except to the extent redactions are required by the protective order and law.

Dated:            March 10, 2024  
                      New York, New York

Susan R. Necheles  
Gedalia Stern  
NechelesLaw LLP  
1120 Sixth Avenue, 4th Floor  
New York, NY 10036  
212-997-7400  
srn@necheleslaw.com

By: /s/ Todd Blanche  
Todd Blanche  
Emil Bove  
Blanche Law PLLC  
99 Wall Street, Suite 4460  
New York, NY 10005  
212-716-1260  
toddblanchelaw.com

*Attorneys for President Donald J. Trump*

# **EXHIBIT 1**

**From:** [Hon. Juan M. Merchan](#)  
**To:** [Todd Blanche](#); [REDACTED]; [PART59](#); [REDACTED]  
**Cc:** [Steinglass, Joshua](#); [Hoffinger, Susan](#); [Conroy, Christopher](#); [Mangold, Rebecca](#); [REDACTED] [Susan Necheles](#)  
[REDACTED]; [Gedalia Stern](#); [Emil Bove](#); [Stephen Weiss](#); [Colangelo, Matthew](#)  
**Subject:** Re: People v. Trump, Ind. No. 71543/23, Discovery sanctions motion  
**Date:** Friday, March 8, 2024 9:17:05 PM

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Mr. Blanche, it appears you misunderstood this Court's earlier Order. You've attach what you refer to as a premotion letter, but you also attach an affirmation, a notice of motion and a 48 page motion. Further, you indicate that you will communicate with the People regarding redactions prior to filing.

Your premotion letter is accepted. If the People wish to respond, they will be given until Monday to do so. I will then decide whether to permit you to file a motion. To be crystal clear, so there is no confusion, your motion is not accepted at this time and you may not file a motion unless and until this Court expressly authorizes you to do so. Therefore, nothing should be filed with the Court, redacted or otherwise. - JMM

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**From:** Todd Blanche [REDACTED] >  
**Sent:** Friday, March 8, 2024 7:56:50 PM  
**To:** Hon. Juan M. Merchan <[REDACTED]>; [REDACTED]  
<[REDACTED]>; PART59 <[REDACTED]>; Stacy Villanueva  
<[REDACTED]>  
**Cc:** Steinglass, Joshua <[REDACTED]>; Hoffinger, Susan <[REDACTED]>;  
Conroy, Christopher <[REDACTED]>; Mangold, Rebecca <[REDACTED]>;  
[REDACTED] Susan Necheles [REDACTED])  
[REDACTED]; Gedalia Stern [REDACTED]; Emil Bove  
[REDACTED]; Stephen Weiss [REDACTED]; Colangelo,  
Matthew <[REDACTED]>  
**Subject:** People v. Trump, Ind. No. 71543/23, Discovery sanctions motion

Judge Merchan,

Please see attached. We will communicate with the People regarding redactions prior to filing.

Respectfully submitted,  
Todd

Todd Blanche

**Blanche Law**  
99 Wall Street



Suite 4460

New York NY, 10005

212-716-1250

<https://www.BlancheLaw.com>

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