**TODD BLANCHE**
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(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 to vacate the March 8, 2024 Order and related rulings in Your Honor's email sent at 9:17 p.m. that night. *See* Ex. A. In addition to being inconsistent with CPL §§ 210.45 and 710.60, the Order violates CPL § 255.20(3), which states, in relevant part, "the court must entertain and decide on its merits, at any-time before the end of the trial, an[y] appropriate pre-trial motion [a] based upon grounds of which the defendant could not, with due diligence, have been previously aware, or [b] which, for other good cause, could not reasonably have been raised" under prescribed deadlines.

The Court "may not, *sua sponte*, alter th[e] statutory time period[s]" in CPL § 255.20. *Veloz v. Rothwax*, 65 N.Y.2d 902, 903 (1985). "To the extent that the courts may have some discretion to adjust their procedures in areas involving the inherent nature of the judicial function, the courts may not exercise that discretion in a manner that conflicts with existing legislative command." *People v. Mezon*, 80 N.Y.2d 155, 159 (1992) (cleaned up). Moreover, "trial courts' inherent power to control their own calendars does not include the power to 'depart from the clear wording of CPL § 170.30,'" which is similar to CPL § 255.20 in some respects but provides for a summary-denial procedure that CPL § 255.20 expressly lacks. *Id.* (quoting *People v. Douglass*, 60 N.Y.2d 194, 205 (1983)). The Order, and the further direction in Friday's night's e-mail correspondence, violates these mandates.

The Sixth Amendment similarly forbids the outcome anticipated by the Order. President Trump has a right to defend himself at all stages of this case, including by filing motions clearly allowed under the law. *See Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) ("The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations."). The March 8, 2024 presidential immunity motion meets these standards because it is based on recent filings by the People and even more recent actions by the U.S. Supreme Court. The proposed motion for discovery sanctions, which we described in our pre-motion March 8, 2024 letter in response to the Order, is also entirely permissible because the submission relates to ongoing violations and untimely productions of evidence.

It cannot be that a criminal defendant can be denied the right to file a motion, and it cannot be that a criminal defendant is required to fully articulate the bases, both factually and legally, for such motion in a single-page submission to the Court. We respectfully request that the Court allow President Trump to file the enclosed motion seeking to vacate the Order.

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,<br><br>- against -<br><br>DONALD J. TRUMP,<br><br>Defendant. | Index No. 71543-23<br><br>**NOTICE OF PRESIDENT DONALD J. TRUMP'S MOTION TO VACATE THE COURT'S ORDER ON THE FILING OF MOTIONS** |

PLEASE TAKE NOTICE that upon the annexed affirmation of Todd Blanche, dated March 10, 2024, and the accompanying memorandum of law and exhibits, 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, to vacate the March 8, 2024 Court Order On The Filing Of Future Motions and the rulings conveyed via email later that night.

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

By: /s/ Todd Blanche

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*Attorneys for President Donald J. Trump*

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

| | |
|---|---|
| THE PEOPLE OF THE STATE OF NEW YORK,<br><br>- against -<br><br>DONALD J. TRUMP,<br><br>Defendant. | Index No. 71543-23<br><br>**AFFIRMATION OF TODD BLANCHE IN SUPPORT OF PRESIDENT DONALD J. TRUMP'S MOTION TO VACATE THE COURT'S ORDER ON THE FILING OF MOTIONS** |

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 exhibits in support of President Trump's Motion To Vacate The Court's Order On The Filing Of Motions.

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 March 8, 2024 Court Order On The Filing Of Future Motions.

4. Attached as Exhibit 2 is a true and accurate copy of the pre-motion letter submitted by defense counsel to the Court on March 8, 2024, without the accompanying enclosures.

5. Attached as Exhibit 3 is a true and accurate copy of the Court's email response 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 vacate the March 8, 2024 Order and the rulings conveyed via email later that night.

Dated: March 10, 2024
New York, New York

By: /s/ Todd Blanche
Todd Blanche
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*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 TO VACATE THE COURT'S ORDER ON THE FILING OF MOTIONS**

## I. INTRODUCTION

President Donald J. Trump respectfully submits this motion to vacate the Court's March 8, 2024 order and Your Honor's related email sent at sent at approximately 9:17 p.m. that night.

Nowhere in the CPL has the New York legislature authorized a trial court to prevent a criminal defendant from filing a motion, or to confine relevant points and authorities in support of a criminal defendant's motion to a single page. The aspects of the Order and email that suggest otherwise are inconsistent with CPL § 255.20 and President Trump's rights under the state and federal constitutions, including the Sixth Amendment and due process principles. Accordingly, the Court should vacate the March 8, 2024 order and the rulings set forth in Your Honor's email later that night, and allow President Trump's counsel to file pretrial motions consistent with the CPL and applicable case law.

## II. BACKGROUND

On February 22, 2024, DANY submitted to the Court via email a motion for a gag order. Substantially all of the case-specific evidence appended to the motion related to events in 2023. The People also strategically timed the motion so that the defense's time to respond would run during the same period that the defense was required to respond to the People's motions *in limine* and a motion for protective measures relating to jury selection. The Court expressed no concern about the suspect timing of the filing, and denied in part Prpesident Trump's request for additional time to respond to the motion. President Trump submitted his opposition to the motion, as directed, on March 4, 2024.

On March 7, 2024, the defense submitted to the Court via email, in accordance with the Court's guidance for filing, an affirmation, accompanying memorandum of law, and exhibits in support of President Trump's motion to preclude evidence and for an adjournment based on the

presidential immunity doctrine. In the presidential immunity motion, the defense explained that the timing of the filing was based on recent actions by the U.S. Supreme Court and ambiguities in the People's *in limine* filings.

On Friday, March 8, 2024, at 4:10 p.m., Your Honor issued a "Court Order On The Filing Of Future Motions." Ex. 1. In the Order, the Court directed the parties "to obtain leave of the Court before filing any additional motions prior to March 25, 2024." *Id.* The Court further ordered that: "A party seeking such leave must file a letter ('pre-motion letter') with the Court, no more than one page in length. The pre-motion letter must set forth the basis for the motion and the relief that is being sought." *Id.* The Order directed that: "The opposing party will be given one day to respond, should it choose to. The Court will then grant or deny the request." *Id.* The Order further directed that, "*[i]f leave is granted*," the Court "will notify the parties of the briefing schedule." *Id.* (emphasis added). The Court also reserved the ability, "[i]n appropriate cases," to "exercise its discretion to construe the pre-motion letter, along with the opposition letter, if any, as the motion itself." *Id.*

When the Court issued the Order, defense counsel was in the process of finalizing President Trump's motion for sanctions based on the People's ongoing discovery violations and prosecutorial misconduct. At approximately 7:56 p.m. on March 8, 2024, defense counsel submitted to the Court via email a pre-motion letter relating to the discovery motion. *See* Ex. 2 (pre-motion letter without enclosure). The pre-motion letter enclosed the motion itself, as we had already written it prior to receiving the Court's unexpected and improper order late in the afternoon on March 8.

At approximately 9:17 p.m. on March 8, 2024, Your Honor responded to defense counsel's transmittal email. Ex. 3. 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." *Id*.

## I. Applicable Law

### A. CPL §§ 210.45 And 255.20(3)

A motion to dismiss the Indictment "must be made in writing." CPL § 210.45(1). Section 210.45(1) specifically authorizes a criminal defendant to "submit documentary evidence supporting or tending to support the allegations of the moving papers." *Id.* The Court "must" evaluate "all" of the moving papers "for the purpose of determining whether the motion is determinable without a hearing to resolve questions of fact." CPL § 210.45(3). Under CPL 210.45(5), the Court is only authorized to "deny the motion without conducting a hearing" under certain specific circumstances. Motions to suppress evidence are governed by substantially similar procedural restrictions set forth in CPL Article 710.

The Court "*must entertain and decide on its merits*, at any-time before the end of the trial, an[y] appropriate pre-trial motion [a] based upon grounds of which the defendant could not, with due diligence, have been previously aware, or [b] which, for other good cause, could not reasonably have been raised within the period specified" in CPL § 255.20(1). CPL § 255.20(3) (emphasis added). Thus, "[w]here no motion was made because the defendant was unaware of the grounds upon which it might have been made, consideration of the motion is *mandatory* if due diligence has been shown." *People v. Perry*, 128 Misc. 2d 430, 436 (Sup. Ct. N.Y. Cnty. 1985) (emphasis added); *see also People v. Loizides*, 123 Misc. 2d 334, 336 (Suffolk Cnty. Ct. 1984) ("A court is empowered to, and indeed must entertain and decide on its merits, at any time before the end of trial, any appropriate pretrial motion, even if not made within the requisite [45]-day period,

based upon grounds of which the defendant could not, with due diligence, have been previously aware, or which, for other good cause, could not reasonably have been raised within such time period.").

The Court "may not, *sua sponte*, alter th[e] statutory time period[s]" in CPL § 255.20. *Veloz v. Rothwax*, 65 N.Y.2d 902, 903 (1985).

**B. Limits On Judicial Discretion To Invent Procedural Requirements**

"[T]he language of the Constitution leaves little room for doubt that the authority to regulate practice and procedure in the courts lies principally with the Legislature." *Cohn v. Borchard Affiliations*, 25 N.Y.2d 237, 247 (1969); *see also* New York Constitution, article VI, § 30; *Matter of A.G. Ship Maintenance Corp. v. Lezak*, 69 N.Y.2d 1, 5 (1986) ("Under the State Constitution the authority to regulate practice and procedure in the courts is delegated primarily to the Legislature."). "To the extent that the courts may have some discretion to adjust their procedures in areas involving the inherent nature of the judicial function, the courts may not exercise that discretion in a manner that conflicts with existing legislative command." *People v. Mezon*, 80 N.Y.2d 155, 159 (1992) (cleaned up).

In accordance with this principle, "[n]either the court nor the parties may restructure the [CPL] to adopt a procedure that is more convenient for them at the moment by waiving its clear provisions." *People v. Lawrence*, 64 N.Y.2d 200, 207 (1984); *see also People v. Selikoff*, 35 N.Y.2d 227, 238 (1974) ("A judge may not ignore those provisions of law designed to assure that an appropriate sentence is imposed."); *see also People v. Lopez*, 28 N.Y.2d 148, 152 (1971) ("Surely a Judge, a prosecutor and a defendant cannot by agreement restructure substantive law to fit their notion of what is more appropriate in a particular case. If, in cases such as this, the legal scheme of punishment is not sufficiently flexible, the remedy lies with the Legislature."). For

example, the "trial courts' inherent power to control their own calendars does not include the power to 'depart from the clear wording of CPL § 170.30.'" *Mezon*, 80 N.Y.2d at 159 (quoting *People v. Douglass*, 60 N.Y.2d 194, 205 (1983)).

### C. Sixth Amendment Right To A Fair Trial

The Sixth Amendment of the federal Constitution affords every defendant the right to a fair trial. *See Hurrell-Harring v. State*, 15 N.Y.3d 8, 15, 21-22 (2010) ("Also 'critical' for Sixth Amendment purposes is the period between arraignment and trial when a case must be factually developed and . . . pretrial motions filed"). "[T]he vindication of the Sixth Amendment's provision for a fair trial implicates several interests other than truthfinding," "including . . . preservation of the appearance of fairness." *Diaz v. Scully*, 821 F.2d 153, 157 (2d Cir. 1987). "It is also axiomatic that due process requires that the accused be permitted to fully and equally participate in the truth-finding process of a fair trial. This includes, of course, the fundamental right to present evidence favorable to his case." *People v. Bottom*, 76 Misc. 2d 525, 527 (Sup. Ct. N.Y. Cnty. 1974).

## II. DISCUSSION

The March 8 Order and Your Honor's email later that night violate the admonition from the Court of Appeals in *Veloz* prohibiting arbitrary modifications to CPL § 255.20, *see* 65 N.Y.2d at 903; and the reasoning by the Court of Appeals in *Mezon* and *Douglass* that the Court may not "adopt, *ipse dixit*" procedural rules that are inconsistent with the CPL and the state and federal constitutions, *see* 60 N.Y.2d at 205; *see also Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) ("The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations."). Therefore, because the Order and Your Honor's email rulings are inconsistent with CPL §§ 210.45, 255.20, and Article 710, the Court

should vacate the Order and address defense motions if and when they are filed based on the procedural compliance and substantive merit of each filing.

The Court cannot prohibit a criminal defendant from filing a motion. And there are no "appropriate cases" where the Court could "convert" a pre-motion letter into a motion, as indicated in the Order, and deny the motion without giving the defense an opportunity to set forth all of the points and authorities in support of our position. Under CPL § 210.45, President Trump is entitled to submit written motion papers, including "documentary evidence," in support of a motion to dismiss the Indictment, which applies to the proposed discovery motion. Unlike CPL § 170.30(3), CPL § 255.20 does not permit a motion to be "summarily denied." *See Jama v. ICE*, 543 U.S. 335, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest."). Rather, for any motion, the Court "must entertain and decide on its merits, at any-time before the end of the trial," the defense submission. CPL § 255.20(3). In *People v. Wisdom*, for example, the Court of Appeals found a defendant's motion to dismiss to have been timely because the defendant was not aware of the operative facts until after the deadline for omnibus motions. 23 N.Y.3d 970, 972 (2014). The motion in *Wisdom* was filed *after the jury issued a verdict*. *See id.*; *see also People v. Weaver*, 112 A.D.2d 782 (4th Dep't 1985) ("The Trial Judge . . . was authorized . . . to entertain and determine at any time before sentence a motion to dismiss the indictment in furtherance of justice pursuant to CPL 210.40 (*see*, CPL 255.20[3]). We find no abuse of discretion here by the grant of the postverdict motion to dismiss the indictment for criminal mischief in the third degree.").

The Order is particularly problematic insofar as it seeks to deprive President Trump of sufficient space to articulate his position regarding the timing of the motion. The defense must be permitted adequate page-length accommodations to explain why a motion is "based upon grounds of which the defendant could not, with due diligence, have been previously aware" and/or for where "good cause" is shown. CPL § 255.20(3); *see also People v. Huang*, 248 A.D.2d 73, 76 (1st Dep't 1998) ("[U]nder CPL 255.20(3), even after the trial has begun, *the trial court must* entertain a belated motion if it is 'based upon grounds of which the defendant could not, with due diligence, have been previously aware, or which, for other good cause, could not reasonably have been raised' within the specified time limits of CPL 255.20(1) and (2)." (emphasis added)). Courts routinely exercise their discretion to consider defense motions that implicate important issues in the case—especially where, as with the pending presidential immunity motion and proposed discovery motion, the submission relates "to the accuracy of the truth-finding process." *People v. Coleman*, 114 Misc. 2d 685, 690 (Sup. Ct. Kings Cnty. 1982); *see also, e.g.*, *People v. Milman*, 164 A.D.3d 609, 610 (2d Dep't 2018) (holding that defendant's motion to dismiss was timely because "it was based upon facts of which she had previously been unaware and which could not have been included in a timely omnibus pretrial motion."); *People v. Perry*, 128 Misc. 2d 430, 436 (Sup. Ct. N.Y. Cnty. 1985) ("Where no motion was made because the defendant was unaware of the grounds upon which it might have been made, consideration of the motion is mandatory if due diligence has been shown."); *People v. Rodriguez-Alas*, 65 Misc. 3d 914 (Crim. Ct. Bronx Cnty. 2019) (finding good cause where 18-day period between discovery and communication of defendant's position to the People was reasonable); *People v. Brathwaite*, 176 Misc. 2d 79, 80 (Sup. Ct. Queens Cnty. 1998) ("Although the instant application was made on the eve of trial, Criminal Procedure Law Section 255.20(3) clearly states that the Court must entertain and decide

on the merits, at any time prior to the end of the trial, any appropriate pretrial motion based upon grounds which the defendant could not, with due diligence, have been previously aware."); *People v. Huelin*, 85 Misc.2d 139, 140 (Dist. Ct. Suffolk Ctny. 1975) ("[S]ince the motion is based upon information not previously known by counsel, the motion may be entertained pursuant to [CPL § 255.20] subdivision 3.").

In this case, the volume of discovery, the People's malfeasance during the discovery process, and the accelerated trial schedule adopted by the Court, which conflicts with President Trump's rights and obligations in other cases, are factors bearing on Your Honor's discretion to address motions whenever they are filed. *See, e.g.*, *People v. Melillo*, 112 Misc. 2d 1004, 1005 (Sup. Ct. N.Y. Cnty. 1982) ("[T]he court finds some justification for the delay in the voluminous discovery material provided by the People and the long period of time taken to dispose of preliminary motions. The court, therefore, in its discretion and in the interests of justice will consider the merits of the motion."); *People v. Wyssling*, 82 Misc. 2d 708,709 (Crim. Ct. Suffolk Cnty. 1975) (finding motion timely "[i]n the light of the number and nature of the charges and their serious import in this lengthy indictment," "the fact that the requested discovery is particularly significant to the perjury allegations," and "the serious prejudice to defendant if the motion were summarily denied"). Indeed, the Court exercised its discretion to accept the People's gag order motion based on stale evidence, and to require President Trump to oppose the motion in just six business days, over a defense objection and despite the need to draft opposition papers during the same timeframe relating to the People's motions *in limine* and motion for a protective order regarding the jury.

In addition, as we noted in the March 8, 2024 premotion letter, the Court's suggestion that President Trump made no effort to explain the timing of the presidential immunity record is

incorrect. Defense counsel explained in the submission that the timing of the motion was based on remaining ambiguities concerning the evidence the People will seek to offer in their case in chief arising from their *in limine* briefing on February 22 and 29, 2024, the Supreme Court's grant of certiorari in *Trump v. United States* on February 28, 2024, and the Supreme Court's emphasis on relevant federalism principles and precedent in the March 4, 2024 decision in *Trump v. Anderson*. *See, e.g.*, *People v. Pavia*, 129 Misc. 2d 427, 429 (Crim. Ct. Richmond Cnty. 1985) ("The advent of a United States Supreme Court case touching on the same 'seizure' question upon which this case turns is sufficient good cause for this court to consider a motion to suppress upon the eve of trial."); *People v. Bostic*, 97 Misc.2d 1039, 1044 (Dist. Ct. Nassau Cnty. 1978) (reasoning that "CPL 255.20 also provides for an extension of time beyond the 45-day period for the making of a motion in the event that the defendant could not with due diligence have made such a motion" in order to "protect the defendant *in the event the specifics had been delayed*" (emphasis added)).

Similarly, there could be no reasonable finding of untimeliness or a lack of good cause with respect to President Trump's proposed motion for discovery sanctions. *See Brathwaite*, 176 Misc. 2d at 80 ("In light of the fact that disclosure of the Grand Jury testimony was opposed by the District Attorney, and disclosure was not granted until the eve of trial, this Court rules that the present application is timely."). "Prosecutors must keep their promises. And if they do not, they must make things right quickly, clearly, and fully." *United States v. Cruz*, 2024 WL 997591, at *1 (3d Cir. Mar. 8, 2024). This fundamental concept includes serious consideration of, and appropriate sanctions for, discovery violations. There can be no reasonable suggestion that addressing a motion relating to such issues is not "in the interest of justice" and supported by "good

cause," CPL § 255.20(3), especially where the violations and resulting late productions of discovery are ongoing—as they are here.

## III. CONCLUSION

For the reasons described above, President Trump respectfully submits that the Court should vacate the March 8, 2024 Order and the rulings conveyed via email later that night.

Dated: March 10, 2024
New York, New York

By: /s/ Todd Blanche

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*Attorneys for President Donald J. Trump*

# EXHIBIT 1

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

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|---|---|
| THE PEOPLE OF THE STATE OF NEW YORK<br><br>- against –<br><br>DONALD J. TRUMP<br><br>Defendant | COURT ORDER ON THE FILING OF FUTURE MOTIONS<br><br>Ind. No. 71543/2023 |

JUAN M. MERCHAN, A.J.S.C.:

Trial on this matter is scheduled to commence on March 25, 2024. Although the deadline for motions *in limine* was February 22, 2024, Defendant yesterday, filed a substantive motion seeking among other things, an adjournment on the grounds of presidential immunity. Defendant does not explain the reason for the late filing, a mere two and a half weeks before jury selection is set to begin. The People have been granted until March 13, 2024, to respond.

Effective immediately, the parties are hereby directed to obtain leave of the Court before filing any additional motions prior to March 25, 2024. A party seeking such leave must file a letter ("pre-motion letter") with the Court, no more than one page in length. The pre-motion letter must set forth the basis for the motion and the relief that is being sought. The opposing party will be given one day to respond, should it choose to. The Court will then grant or deny the request. If leave is granted, the Court will notify the parties of the briefing schedule. In appropriate cases, the Court may exercise its discretion to construe the pre-motion letter, along with the opposition letter, if any, as the motion itself.

The foregoing constitutes the Order of the Court.

Dated: March 8, 2024
New York, New York

MAR 0 8 2024

Juan M. Merchan
Judge of the Court Claims
Acting Justice of the Supreme Court

HON. J. MERCHAN

# EXHIBIT 2

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

March 8, 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. We seek permission to file the enclosed motion for discovery sanctions based on the People's violations of CPL Article 245, which we were in the process of finalizing when we received the order at approximately 4:10 pm today.[1] As set forth in the motion papers, we seek dismissal of the Indictment or, in the alternative, (1) preclusion of testimony from Michael Cohen and Stephanie Clifford, as well as the preclusion of certain testimony from Adav Noti that is not proper rebuttal expert testimony, and (2) an adjournment of the trial date of at least 90 days. There are two principal bases for the motion.

First, the USAO-SDNY has produced over 73,000 pages of materials relating to Cohen since Monday, March 4, 2024. Those productions are not complete. The People should have obtained and produced these materials long ago, and instead they chose to seek unsuccessfully to obstruct our access to them. President Trump requires additional time to review these untimely disclosures, potentially seek relief in motion practice depending on what is uncovered, and incorporate them into his defense strategy.

Second, also on March 4, 2024, the People produced a [redacted]. [redacted] is core impeachment material subject to the People's automatic discovery obligations. They have been aware of [redacted] since at least December 2023, but chose not to obtain and produce it until this month. They apparently did so because [redacted] is working with NBCUniversal to release [redacted] on March 18, 2024, which we learned in the news yesterday and would cause extraordinarily prejudicial—and unacceptable—pretrial publicity on the current schedule. President Trump requires additional time to review [redacted], and the Court must allow additional time for the prejudice from its release to abate prior to commencing jury selection.

We respectfully submit that the Court should deem the enclosed motion filed immediately and direct the People to respond forthwith.

Respectfully Submitted,

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

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

*Attorneys for President Donald J. Trump*

[1] Because this motion is based on facts and documents revealed only within the last few days, we cannot possibly have made it by the motion *in limine* deadline, and therefore it is proper to file now. With respect to the March 7, 2024 motion, we explained the reason for the timing of that filing: recent actions by the U.S. Supreme Court and ambiguities in the People's *in limine* filings. Moreover, while we have no objection to the Court seeking previews of incoming motions as a docket-management measure, we believe that it violates the CPL, the Sixth Amendment and other constitutional rights of President Trump if the Court were to refuse to permit the defense to file any particular motion and set forth all of the authorities in support of that motion.

# EXHIBIT 3

**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

Get Outlook for iOS

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**From:** Todd Blanche [redacted]
**Sent:** Friday, March 8, 2024 7:56:50 PM
**To:** Hon. Juan M. Merchan <[redacted] PART59 <[redacted]>
**Cc:** Steinglass, Joshua [redacted]>; Hoffinger, Susan [redacted]>; Conroy, Christopher <[redacted]>; Mangold, Rebecca [redacted]>; [redacted] Susan Necheles [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

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