

RECEIVED
CENTRAL CLERK'S OFFICE

March 28, 2024

MAR 29 2024

SUPREME COURT
CRIMINAL TERM
NEW YORK COUNTY

By Email

Hon. Juan M. Merchan
New York State Supreme Court
100 Centre Street
New York, New York 10013

Your Honor:

We respectfully submit this pre-motion letter requesting that the Court (1) clarify or confirm that its March 26, 2024 Order Restricting Extrajudicial Statements protects family members of the Court, the District Attorney, and all other individuals mentioned in the Order; and (2) direct that defendant immediately desist from attacks on family members. *Cf.* 22 N.Y.C.R.R. § 604.2(c) (“[j]udicial warning of possible contempts” can prevent “further offensive conduct”). If the Court grants leave, we respectfully request that this pre-motion letter be accepted as our application.

The Court’s March 26 Order directed defendant to refrain from, *inter alia*, making public statements about “the family members of any counsel or [court] staff member, if those statements are made with the intent to materially interfere with, or cause others to materially interfere with, counsel’s or staff’s work in this criminal case, or with the knowledge that such interference is likely to result. . . .” Just one day later, defendant made two social media posts targeting a family member of this Court.¹

The People believe that the March 26 Order is properly read to protect family members of the Court. But to avoid any doubt, *see Matter of Dep’t of Env’tl Prot. of City of New York v. Dep’t of Env’t Conservation of State of N.Y.*, 70 N.Y.2d 233, 240 (1987) (requiring that order “clearly express[] an unequivocal mandate”), this Court should now clarify or confirm that the Order protects family members of the Court, the District Attorney, and all other individuals mentioned in the Order.² Such protection is amply warranted. The People’s motion specifically referenced defendant’s threatening and alarming remarks about family members of trial participants—in this proceeding and others—and the harms that those family members have suffered. *See, e.g.*, Motion ¶¶ 11, 16, 24, 44, 51-52. This Court’s March 26 Order itself referred to the “impact of the statements made against this Court and a family member thereof.” Order at 2. And the D.C. Circuit specifically referred to trial participants’ “objectively reasonable concerns about their safety and that of their family members” in imposing similar restrictions on defendant. *United States v. Trump*, 88 F.4th 990, 1014 (D.C. Cir. 2023).

Moreover, “[t]he undertow generated by such statements does not stop with the named individual. It is also highly likely to influence other witnesses” and other trial participants. *Id.* at 1013. That is, potential trial witnesses and prospective jurors who are not currently the subject of defendant’s invective will likely fear having themselves and their family members be subject to similar attacks. This fear is not hypothetical: in the course of preparing for trial, multiple potential witnesses have already expressed grave concerns to the People about their own safety and that of their family members should they appear as witnesses against defendant.

As a result, this Court should make abundantly clear that the March 26 Order protects family members of the Court, the District Attorney, and all other individuals mentioned in the Order. Furthermore, the Court should warn defendant that his recent conduct is contumacious and direct him to immediately desist. If defendant continues to disregard such orders, he should face sanctions under Judiciary Law §§ 750(A)(3) and 751.

¹ *See* <https://truthsocial.com/@realDonaldTrump/112168132432855508> and <https://truthsocial.com/@realDonaldTrump/112168131310885618>.

² The order in the D.C. criminal proceeding against defendant also extended to family members. *See United States v. Trump*, 88 F.4th 990, 1014 (D.C. Cir. 2023); Tr. 83, *United States v. Trump*, No. 23-00257, Dkt. No. 103 (D.D.C. Oct. 16, 2023) (“It should go without saying that statements targeting the families of any of these people are absolutely prohibited as well.”).

Respectfully Submitted,

/s/ Joshua Steinglass

Joshua Steinglass

Matthew Colangelo

Christopher Conroy

Katherine Ellis

Susan Hoffinger

Becky Mangold

Assistant District Attorneys