

April 17, 2024

Via Email

Honorable Juan M. Merchan
Acting Justice - Supreme Court, Criminal Term

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

Dear Justice Merchan:

We respectfully submit this pre-motion letter seeking reargument of the Court's April 15, 2024 clarification of the March 18, 2024 *in limine* ruling relating to the so-called "Access Hollywood tape" (the "Recording"). See Tr. 28-36. President Trump respectfully requests that the Court either preclude evidence of the specific statements on the Recording as unduly prejudicial, or reserve ruling until after anticipated testimony from Stephanie Clifford and Karen McDougal.

The Recording was reported by the media on October 7, 2016. It is clear from the statements on the Recording that no one is discussing Ms. Clifford or Ms. McDougal during the recorded conversation. DANY has characterized the contents of the Recording as "an admission to or at least the description of a sexual assault." Tr. 29. In the *in limine* ruling, the Court addressed President Trump's objection to the Recording by seeking to strike the "proper" balance. 3/18/24 Op. at 12. The Court ruled that DANY could "elicit testimony about a videotaped interview which surfaced on October 7, 2016, that contained *comments of a sexual nature* which Defendant feared could hurt his presidential aspirations." *Id.* (emphasis added).

On April 15, 2024, DANY sought clarification of the *in limine* ruling by requesting permission to elicit testimony regarding specific statements on the Recording, and to offer an October 7, 2016 email thread that includes a purported "transcript" of the Recording, which is currently marked for identification as People's Exhibit 218.¹ With respect to other unproven sexual assault allegations proffered by DANY, the Court correctly reasoned that the proffered evidence was "very, very prejudicial." Tr. 40. So too would be admitting a transcript of the Recording. See *Boyce v. Weber*, 2021 WL 2821154, at *9 (S.D.N.Y. 2021) ("[T]he more attenuated the legal claims at issue are from sexual assault, the less relevant and more prejudicial the admission of other act evidence generally will be.").

The risk of unfair prejudice is greatly increased by the fact that Ms. Clifford has more recently couched her account in terms that we very much dispute but that some jurors may consider to describe a non-consensual encounter. Disclosing the Recording's specific contents to the jury, even in written transcript-like format, would require President Trump to address the references that DANY will seek to attribute to him. On the other hand, in terms of probative value, DANY indicated on April 15 that they seek to argue that the Recording "sent the campaign into a tailspin precisely because the comments . . . were so incendiary," and to offer evidence that news relating to the Recording "interrupted and eclipsed" preparations for a debate on October 9, 2016. Tr. 29. DANY will have an adequate opportunity to make these arguments if evidence of the Recording is limited in substance, as contemplated in the *in limine* ruling, to testimony that the Recording contained "comments of a sexual nature." Redacting the "transcript" from People's Exhibit 218 would not unfairly restrict DANY's ability to invite the jury to draw favorable inferences from the remainder of that thread. Accordingly, President Trump respectfully requests that the Court either adhere to the more restricted scope of the *in limine* ruling, or reserve decision until after the anticipated testimony from [REDACTED].

¹ Our objection to the entirety of People's Exhibit 218—as insufficiently probative in light of the hearsay that it contains—has been noted for the record. We are not rearguing the admissibility of the remainder of the email in this submission, though we will renew our objection when the email is offered based on the trial record developed by DANY at that point.

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Respectfully Submitted,

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