



PART 59 JUL 25 2024

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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 reiterating our request to file a reply in further support of President Trump's Presidential immunity motion. Def. Mot. at 1 n.1. DANY did not address the request in their July 24 opposition filing, and a reply submission not to exceed 30 pages is fully warranted here. Similar to DANY's misguided and inaccurate assertions to the Court that a previous motion was untimely pursuant to CPL § 255.20(1)—which they still make no effort to defend—DANY's July 24 filing contains several legal and factual misrepresentations that invite further error with respect to the historic issues of first impression that the Court must address. We are constrained by the Court's page restriction on pre-motion letters, so non-exhaustive examples must suffice:

- As to preservation, President Trump objected to the admission of the challenged evidence prior to and during the trial. In response to a trial objection, the Court responded, "I ruled on this," "the objection is noted," and "I don't think you need to object as to each question." Tr. 2122. DANY self-servingly attributes a non-immunity basis for President Trump's subsequent trial objection to Twitter evidence. *See* Opp'n at 10-11. That inaccurate speculation is no basis to deny relief to President Trump, however, in light of the Court's prohibition on speaking objections. Tr. 80. In urging otherwise, DANY relies on *Cabrera*. *E.g.*, Opp'n at 11. On the contrary, the Court of Appeals' preservation reasoning focused on the fact that "the appellate record is inadequate to fairly assess the merits." 41 N.Y.3d 35, 45 (2023). That cannot be said here, as the Court had—and still has—the opportunity to address the objections and engage in fact finding.
- DANY completely ignores the significance of the Take Care Clause as a Constitutional basis of authority for President Trump's official acts, including evidence of his actions with the White House Communications Director and regarding investigations that targeted him and impeded his ability to devote attention to his official duties. *Trump v. United States*, 144 S. Ct. 2312, 2335 (2024) ("The President may discuss potential investigations and prosecutions with his Attorney General and other Justice Department officials to carry out his constitutional duty to 'take Care that the Laws be faithfully executed.' Art. II, § 3.").
- Compounding that error, DANY contends that President Trump lacked "supervisory authority" over the FEC. Opp'n at 32. To the contrary, the FEC is an Executive branch agency that President Trump oversaw pursuant to authority that he wielded under the Executive Vesting Clause. *See Trump*, 144 S. Ct. at 2327 (reasoning that the President "bears responsibility for the actions of the many departments and agencies within the Executive Branch").
- DANY mischaracterizes their evidence relating to FEC inquiries as efforts by President Trump to "interfere" with investigations. Opp'n at 30, 31 n.6, 32. That false claim requires exactly the type of motive inquiry that the Supreme Court expressly forbid. *Trump*, 144 S. Ct. at 2333 ("[C]ourts may not inquire into the President's motives.").
- As to the unavailability of harmless error analysis, DANY unsuccessfully strains to draw parallels to qualified privileges and non-structural Constitutional errors. *E.g.*, Opp'n at 36 nn.7-8. Such review is an "inadequate safeguard" for "peculiarly disruptive" President-immunity errors, and therefore unavailable. *Trump*, 144 S. Ct. at 2341.

For all of the above reasons, and more, we urge the Court to authorize a 30-page reply submission to provide President Trump with a complete opportunity to address the inaccuracies that DANY seeks to press on the Court in a

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desperate attempt to counter President Trump's arguments for total dismissal of the lawless indictment and vacatur of the jury's flawed and unjust verdicts.

Respectfully Submitted,

/s/ Todd Blanche
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Cc: DANY attorneys of record