

PART 59 JUN 04 2024



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June 3, 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 requesting that Your Honor terminate the gag order restricting President Trump's extrajudicial statements. For the reasons set forth below, because the trial has concluded, the stated bases for the gag order no longer exist.¹ Unless the Court grants the requested relief based on this letter and any response from the government, we further request an opportunity to submit briefing on this issue.

The proffered justifications for the gag order, which we disagree with, related to the trial. The government's February 22, 2024 motion stated that the prosecution was seeking to "protect the integrity of this criminal proceeding and avoid prejudice to the jury." Mot. at 1; *see also id.* at 24 (argument regarding "significant and imminent threat to the trial"); *id.* at 25 (argument regarding "the jury's functioning"). In the March 26, 2024 Order, the Court reasoned that "the eve of trial is upon us." 3/26/24 Decision and Order at 3. On March 29, 2024, the government filed a letter seeking expansion of the gag order based on concerns relating to "trial participants," "trial witnesses," and "prospective jurors." In the April 1, 2024 Order, the Court referred to concerns about "a juror," "a witness," and personnel participating in the trial "in some other capacity." 4/1/24 Decision and Order at 3.

Now that the trial is concluded, the concerns articulated by the government and the Court do not justify continued restrictions on the First Amendment rights of President Trump—who remains the leading candidate in the 2024 presidential election—and the American people. The constitutional mandate for unrestrained campaign advocacy by President Trump is even stronger in light of: (1) President Biden's May 28 campaign event outside the courthouse during the defense summation; (2) President Biden's public comments regarding the jury's verdict on May 31; (3) continued public attacks against President Trump by government witnesses Michael Cohen and Stormy Daniels; and (4) the presidential debate scheduled for June 27, 2024. *See, e.g., Republican Party of Minnesota v. White*, 536 U.S. 765, 781 (2002) ("[D]ebate on the qualifications of candidates is at the core of our electoral process and of the First Amendment freedoms, not at the edges." (cleaned up)); *Brown v. Hartlage*, 456 U.S. 45, 60 (1982) ("It is simply not the function of government to select which issues are worth discussing or debating, in the course of a political campaign." (cleaned up)); *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 842 (1978) ("An enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect." (cleaned up)).

¹ The defense does not concede that there was ever a valid basis for the gag order and reserves the right to challenge the irreparable First Amendment harms caused by the order.

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Respectfully Submitted,

/s/ Todd Blanche
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Attorneys for President Donald J. Trump

Cc: DANY attorneys of record

AFFIRMATION OF SERVICE

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I, Gedalia M. Stern, an attorney admitted to practice in the State of New York and counsel for President Donald J. Trump, hereby affirm, under the penalties of perjury, that on June 3, 2024, Todd Blanche, my co-counsel in this case, served President Trump's pre-motion letter seeking to terminate the gag order, by causing a true copy of the same to be emailed to Joshua Steinglass and Susan Hoffinger.



Gedalia M. Stern