

Supreme Court  
of the  
State of New York



**JUAN M. MERCHAN**  
JUDGE OF THE COURT OF CLAIMS  
SUPREME COURT, CRIMINAL TERM  
FIRST JUDICIAL DISTRICT

CHAMBERS  
100 CENTRE STREET  
NEW YORK, N.Y. 10013

Via Email

December 16, 2024

Todd Blanche, Esq.  
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ADA Joshua Steinglass  
New York County District Attorney's Office  
One Hogan Place  
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Re: *People v. Trump*, Ind. No. 71543-2023

Dear Counsel:

Pending before this Court are three open matters: Defendant's motion to set aside the jury verdict pursuant to CPL § 330.30(1) ("CPL § 330.30(1) Motion"); Defendant's Motion to Dismiss pursuant to CPL § 210.20(1)(h) and § 210.40(1) ("Clayton Motion"); and Defendant's recent claim of juror misconduct, contained in his letter of December 3, 2024.

On July 10, 2024, Defendant filed the CPL § 330.30(1) Motion. The People filed their response on July 24, 2024, and Defendant filed a Reply on July 31, 2024. Decision on the motion was scheduled to be rendered on September 6, 2024, with sentencing, if necessary, to follow on September 18, 2024.<sup>1</sup> On August 14, 2024, Defendant requested an adjournment of sentencing until after the 2024

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<sup>1</sup> Defendant filed an intervening Recusal Motion thereby causing the decision date for the CPL § 330.30(1) Motion to be delayed 10 days to September 16, 2024.

Presidential election. The People did not oppose Defendant’s request. As a result, on September 6, 2024, this Court agreed to hold its decision in abeyance until November 12, 2024, and sentencing, if necessary, to November 26, 2024. As stated in its letter of September 6, 2024, this Court did so to “avoid any appearance – however unwarranted – that the proceeding has been affected by or seeks to affect the approaching Presidential election in which the Defendant is a candidate.”

On November 10, 2024, Defendant requested a “stay [of] the existing scheduled dates, including the dates for a decision on the pending Presidential immunity motion and sentencing [...], and eventual dismissal of the case in the interests of justice, under the US Supreme Court’s decision in *Trump v. United States* and the Presidential Transition Act of 1963.” The Court granted the stay that same day to allow the People to submit their position on proceedings going forward.<sup>2</sup> On November 19, 2024, the People filed a letter reflecting their intention to oppose any motion to dismiss but agreeing to a further stay of the issuance of the Court’s decision on the pending CPL § 330.30(1) Motion to “permit litigation of Defendant’s forthcoming motion to dismiss.” Defendant responded seeking leave to file a [Clayton Motion]. On November 22, 2024, the Court granted Defendant leave to file the motion, set a motion schedule, and granted the joint request to further stay issuance of its Decision.

Defendant filed his Clayton Motion on December 2, 2024. The People filed their Response on December 9, 2024, and Defendant filed his Reply on December 13, 2024.

It is Defendant’s position that this Court is precluded from issuing its Decision on the CPL § 330.30(1) Motion. In support, Defendant points to the recent United States Supreme Court Decision in *Trump v. United States*, 603 U.S. 593 [2024]; The Presidential Transition Act of 1963; 1973 OLC Memorandum *Amenability of the President, Vice President and other Civil Officers to Federal Criminal Prosecution while in Office*; 2000 OLC Memorandum *A Sitting President’s Amenability to Indictment and Criminal Prosecution*, 2000 WL 33711291 (Oct. 16, 2000); the pending appeal on Defendant’s Removal action currently before the Second Circuit; the Supremacy Clause; and other caselaw. In substance, Defendant argues that the aforementioned authorities stand for the proposition that this Court has been divested of authority to issue the Decision now that Defendant is the President-elect. This Court is not persuaded.

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<sup>2</sup> The People initiated the email exchange with the Court, requesting a stay for the People to consider the implications of the 2024 election results on the pending proceedings, a request which followed a previous conversation between the parties.

First, the OLC Memoranda and *Trump* speak to the need for a *sitting President* to be free to fully discharge the powers and duties of his office without criminal process interfering with his ability to carry out his constitutional functions. Defendant argues, and asks this Court to infer, that the same protection extends to a President-elect and applies to the rendering of a decision, that has already been briefed by both parties. This Court does not agree. The act of rendering a decision, which has been held in abeyance for months, requires no effort on the part of the Defendant and does not implicate the concerns set forth by Defendant in his papers.

Second, Defendant argues that this Court must refrain from issuing its decision until after the Second Circuit decides his appeal for removal. Should this Court not refrain, the Defendant argues, it would demonstrate “an improper lack of respect to the federal Court of Appeals and to the Executive Branch.” In the alternative, Defendant requests a stay of the implementation of the ruling to permit interlocutory appellate review.

This Court is bound by the principles of *stare decisis* and the rule of law. As such, 28 USC § 1455 does not preclude this Court from issuing this Decision: “The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further [...]” 28 USC § 1455(b)(3). Further, while Defendant is currently appealing Judge Hellerstein’s denial of Defendant’s Motion for Leave to File a Second Removal Notice, he has not obtained a stay of these proceedings. Of course, should a stay be granted that impacts the current matter, this Court will honor such order. And finally, 28 USC § 1455(b)(5) identifies when proceedings of this nature should be halted, and that is only when a “United States district court determines that removal shall be permitted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.” This Court has received no such notification and is therefore not aware of any legal impediment preventing it from issuing the pending decision.

Finally, Defendant’s claim that this Court must render a decision on his “Clayton” motion, but that the Court has been divested of authority to render a decision on any other motion before it is internally inconsistent. This Court is either authorized to accept, consider, and rule on substantive motions or it is not. Accordingly, because there exists no legal barrier to the issuance of its Decision on Defendant’s CPL § 330.30(1) Motion, it will be filed and disseminated to the parties today.

Turning next to Defendant’s letter of December 3, 2024, alleging juror misconduct. This Court must first determine whether that letter, and the subsequent submissions by both parties of December 5, 2024, and December 9, 2024, should be sealed in their entirety, or redacted in part to permit them to be filed on the public docket. Defendant argues that the letters should be filed on the

public docket, with certain proposed redactions. The People argue that the letters should be sealed in their entirety. In the alternative, the People submit that if the Court allows public filing, then the letters should contain additional redactions.

In deciding this issue, this Court must balance the competing interests of the public's right to transparency of these proceedings against the very real need to protect the privacy and safety of the jurors. Indeed, the issue of juror safety is hardly in dispute, as the parties have made clear, not only in their December letters, but in their respective filings in connection with the People's Motion for an Order Pursuant to CPL § 270.15(1-a). It is significant to this analysis that Defendant's letter consists entirely of unsworn allegations. Thus, this Court finds that to allow the public filing of the letters without redactions and without the benefit of a hearing, would only serve to undermine the integrity of these proceedings while simultaneously placing the safety of the jurors at grave risk.

Taking the positions of each party into consideration, the Court agrees with Defendant that the referenced letters should be filed on the public docket, albeit with redactions. To that end, the Court accepts the respective proposed redactions of both parties. These measures are necessary to ensure public access while protecting the safety and privacy of the jurors in compliance with this Court's March 7, 2024, Decision and Order Regulating Disclosure of Juror Information and the May 8, 2023, Protective Order.

Turning to the substance of Defendant's letter of December 3, 2024, Defendant states that he "*could* file a motion to vacate the verdicts pursuant to CPL § 330.30(2)(a)," but will not. (emphasis added). Further, he argues that while this Court must take into consideration his allegations for purposes of his Clayton Motion, the Court must not, and is not authorized to, pursue any claims contained therein. Indeed, counsel opposes a hearing to explore his claims.

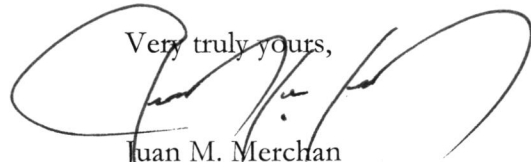
The CPL provides a mechanism whereby a defendant may move to set aside a verdict on the grounds of juror misconduct. Thus, Defendant has an avenue for this Court to consider his claim, should it be properly brought. CPL § 330.30(2)(a). Such a motion "must contain sworn allegations[.]" CPL § 330.40(2)(a). A court may then decide the motion on written submissions. If it does not, the court "must conduct a hearing and make findings of fact essential to the determination thereof." CPL § 330.40(2)(f). Allegations of juror misconduct should be thoroughly investigated. However, this Court is prohibited from deciding such claims on the basis of mere hearsay and conjecture.

In addition to the redactions made by each party, this Court has made additional redactions to Defendant's December 3, 2024 Letter consistent with those proposed by Defendant. After reviewing the redacted documents for their accuracy, which are being provided to the parties under separate

cover, the parties are directed to file the respective letters on the public docket. Unless and until a properly filed claim under CPL § 330.30(2)(a) is submitted, this Court cannot allow the public filing of unsworn, and admittedly contested statements. To do so would threaten the safety of the jurors and violate the agreed upon Order Regulating Disclosure of Juror Information. Should a properly filed claim be submitted, these redactions will be revisited.

Finally, as to Defendant's Clayton Motion, having been fully briefed as of December 13, 2024, the motion is under review by this Court.

Very truly yours,



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

**JUAN M. MERCHAN**

cc: Counsel of record  
Assistant District Attorneys of record  
Court file