SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

THE PEOPLE OF THE STATE OF NEW YORK -against- DONALD J. TRUMP, Defendant.	PEOPLE'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S NOTICE OF AUTOMATIC STAY OR MOTION FOR IMMEDIATE STAY Ind. No. 71543-23

INTRODUCTION

The Court should deny defendant's request that the Court "immediately vacate the sentencing hearing scheduled for January 10, 2025, and suspend all proceedings in the case until the conclusion" of defendant's interlocutory appeals. Def.'s Mem. 2. The notices of appeal that defendant will file with the Appellate Division do not divest this Court of jurisdiction or otherwise automatically stay proceedings in this Court. As is clear from the relevant authorities, the purpose of pre-trial immunity determinations is to foreclose a potentially unnecessary trial. But here, the trial concluded more than seven months ago; all post-trial motions have been fully adjudicated; and as to the only remaining proceeding—the January 10 sentencing—the Court has already stated its intent to impose the lowest possible sentence authorized by law: an unconditional discharge. There is no risk here of an "extended proceeding" that impairs the discharge of defendant's official duties—duties he does not possess before January 20, 2025 in any event. *See infra* Point I.

Nor should the Court grant a stay as a matter of its discretionary authority. The balance of equities weighs heavily in the People's favor given the strong public interest in prompt prosecution and the finality of criminal proceedings—interests that are particularly salient here in light of the jury's guilty verdict, because "the sanctity of a jury verdict and the deference that must be accorded to it" are "bedrock principle[s] in our Nation's jurisprudence." Jan. 3, 2025 Order 3. Defendant

will suffer no prejudice from the conclusion of criminal proceedings in the trial court given the Court's intended sentence of an unconditional discharge and defendant's decision to appear for sentencing virtually instead of in person—indeed, entry of judgment is necessary to allow the appeal defendant has repeatedly stated he will pursue. And the current schedule is entirely a function of defendant's repeated requests to adjourn a sentencing date that was originally set for July 11, 2024; he should not now be heard to complain of harm from delays he caused. Nor is defendant likely to succeed on the merits of his interlocutory appeals because the Court's rulings on defendant's CPL § 330.30 motion and *Clayton* motion were correct. *See infra* Point II. Defendant's motion should be denied.

ARGUMENT

Defendant has advised the Court of his intent to file notices of appeal from two interlocutory orders issued by this Court: the Court's December 16, 2024 order denying defendant's CPL § 330.30 motion, which sought to set aside the jury verdict on the ground that certain evidence had been improperly admitted during the trial; and the Court's January 3, 2025 order denying defendant's *Clayton* motion, which asserted that this criminal case should be dismissed in light of defendant's recent reelection as President. Defendant asserts that he is entitled to either an automatic stay or discretionary stay that would adjourn the January 10 sentencing date until the conclusion of appellate proceedings concerning these interlocutory orders. Def.'s Mem. 1. For the reasons that follow, defendant's interlocutory appeals do not automatically stay sentencing in this case, and the Court should reject defendant's alternative request for a discretionary stay of sentencing.

I. Defendant's appeals do not automatically stay this case.

Contrary to defendant's claim, the mere fact that he has invoked presidential immunity in an interlocutory appeal does not entitle him to an automatic stay of further trial proceedings

pending appeal. To the extent that federal courts have recognized such an automatic stay—before trial—in the immunity context, they have done so only when a defendant claims that a lawsuit improperly seeks to hold him liable for his official conduct, or when participating in a lawsuit would unduly interfere with official functions. Setting aside (as addressed further below) that the trial has long since concluded, neither of these circumstances is present here. It is undisputed that the criminal charges are based on defendant's purely unofficial conduct. And, until his inauguration on January 20, 2025, defendant is simply not engaged in any official presidential functions that would support a claim of immunity from ordinary criminal process. Because the charges on which defendant was convicted are wholly unrelated to his official conduct, and because defendant relies on a purported "President-elect" immunity doctrine that does not exist (*see* Jan. 3, 2025 Order 5-7), his invocation of immunity does not entitle him to an automatic stay pending appeal. *See Coinbase, Inc. v. Bielski*, 599 U.S. 736, 745 (2023) (recognizing that trial courts may proceed when a defendant raises a patently meritless interlocutory appeal); *Behrens v. Pelletier*, 516 U.S. 299, 310-11 (1996) (recognizing that "frivolous" claims of qualified immunity on appeal will not stay trial-court proceedings).

In support of his automatic-stay argument, defendant relies heavily on the U.S. Supreme Court's discussion of presidential immunity in *Trump v. United States*, 603 U.S. 593 (2024), as well as that decision's invocation of the related doctrines of absolute and qualified immunity. In those contexts, the Court has recognized that a public official's interlocutory appeal of a denial of immunity may warrant a stay of further trial proceedings because a claim of presidential, absolute, or qualified immunity is a claim of "*immunity from suit* rather than a mere defense to liability," and such immunity from suit would be lost if the public official were subject to further proceedings. *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).

Critically, however, such an automatic stay is only available when a public official claims immunity because the lawsuit seeks to hold him liable for his official conduct. For example, in the context of absolute and qualified immunity, the question is always whether a public official may be required to stand trial for "the consequences of official conduct." *Mitchell*, 572 U.S. at 527. By contrast, "[t]he principal rationale for affording certain public servants immunity from suits . . . arising out of their official acts is inapplicable to unofficial conduct." *Clinton v. Jones*, 520 U.S. 681, 692-93 (1997).

The U.S. Supreme Court has applied a similar distinction between official and unofficial conduct when it comes to presidential immunity. In *Trump v. United States*, the dispute was over whether defendant could be criminally prosecuted for "official acts during his tenure in office." 603 U.S. at 606. For official acts—i.e., actions performed under the President's official authority—the Court held that the President has at least presumptive immunity from criminal liability. *Id.* at 616. But "[a]s for a President's unofficial acts, there is no immunity" from criminal liability at all. *Id.* at 615. Indeed, the lack of any protection for unofficial conduct is so clear that the Court held that a President can even be "subject to criminal prosecution for unofficial acts committed *while in office*." *Id.* at 606 (emphasis added). And it was in the context of defendant's "prosecution for . . . official acts" that the U.S. Supreme Court recognized that a "denial of immunity would be appealable before trial." *Id.* at 635; *see also Blassingame v. Trump*, 87 F.4th 1, 30 (D.C. Cir. 2023) (in civil suit, recognizing that defendant was entitled to pre-trial process to resolve his immunity based on "the official actions of an office-holder").

To be sure, a defendant need not *conclusively* establish that he was engaged in official conduct in order to raise a colorable immunity claim that would then support an automatic stay pending appeal. *Cf. Trump*, 603 U.S. at 617 ("Distinguishing the President's official actions from

his unofficial ones can be difficult."); *Blassingame*, 87 F.4th at 30 (remanding for further pretrial proceedings on "the President's official-act immunity"). But there must at least be a live dispute over whether the defendant's conduct was official. Here, by contrast, there is no such live dispute. The U.S. District Court for the Southern District of New York—in addressing the closely related question of whether the charged conduct involved "any act under color of office" for purposes of federal-officer removal, 28 U.S.C. § 1442(a)(1)—rightly concluded that the conduct charged "was purely a personal item of the President—a cover-up of an embarrassing event. Hush money paid to an adult film star is not related to a President's official acts. It does not reflect in any way the color of the President's official duties." *New York v. Trump*, 683 F. Supp. 3d 334, 345 (S.D.N.Y. 2023). And since that ruling, defendant has never contested that the conduct underlying these criminal charges were wholly unofficial. *See* Dec. 16, 2024 Order 16 ("[T]his court need not decide whether the crimes of which defendant was convicted constitute official acts because Defendant concedes that they were decidedly unofficial."). Defendant's recent *Clayton* motion did not take a different approach: instead of arguing that defendant's charged conduct was official and thus subject to an immunity defense, defendant instead made the novel argument that his reelection as President entitled him to immediate dismissal of the criminal charges because further proceedings would distract him from his official duties during the transition period before his inauguration. *See* Def.'s *Clayton* Mot. 41-43 (Dec. 2, 2024). Defendant thus has not raised any plausible claim that he is immune from criminal prosecution for the unofficial conduct charged in the indictment, and accordingly is not entitled to an automatic stay on that ground.

Nor has defendant raised any substantial claim of immunity based on his recent reelection that would support an automatic stay. *Cf. Mitchell*, 472 U.S. at 525 (recognizing that only "a substantial claim of absolute immunity" may entitle the defendant to an interlocutory appeal

"before final judgment"). In his *Clayton* motion, defendant relied on guidance from the U.S. Department of Justice's Office of Legal Counsel opining that a sitting President should not be subject to criminal prosecution. Defendant makes the conclusory claim that the temporary immunity of a sitting President "extends into the brief transition period during which the President-elect prepares to assume the Executive Power of the United States" (Def.'s Mem. 7), but this Court correctly rejected that novel claim. Put simply, presidential immunity under Article II of the Constitution does not extend to the President-elect. Article II vests the entirety of the executive power in the incumbent President, *see Trump*, 603 U.S. at 607 (quoting U.S. Const. art. II, § 1, cl. 1), and the U.S. Supreme Court has long recognized that "only the incumbent is charged with performance of the executive duty under the Constitution." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 448 (1977). The President-elect is, by definition, not yet the President. The President-elect therefore does not perform any Article II functions under the Constitution, and there are no Article II functions that would be burdened by ordinary criminal process involving the President-elect. *See United States v. Williams*, 7 F. Supp. 2d 40, 51 (D.D.C. 1998) (holding that Presidential Transition Act "does not—and cannot—deem any of the President-elect's actions 'official' before he or she complies with the Oath and Affirmation Clause"), *vacated in part on other grounds sub nom. United States v. Schaffer*, 240 F.3d 35 (D.C. Cir. 2001).

The rationales that support presidential immunity from prosecution for official conduct also do not apply to the President-elect. "The 'justifying purposes'" of presidential immunity for official actions "are to ensure that the President can undertake his constitutionally designated functions effectively, free from undue pressures or distortions." *Trump*, 603 U.S. at 615-16 (quoting *Clinton v. Jones*, 520 U.S. 681, 694 & n.19 (1997), and *Nixon v. Fitzgerald*, 457 U.S. 731, 755 (1982)). But only the incumbent President has any "constitutionally designated

functions," *id.*, *see Nixon*, 433 U.S. at 448; and because the President-elect is not the President, there is no risk that "the President's decisionmaking is . . . distorted" by a pre-existing criminal case against a defendant who later becomes the President-elect. *Trump*, 603 U.S. at 615.

The advanced stage of this proceeding provides additional reason to conclude that the automatic stay that the U.S. Supreme Court recognized in *Trump* does not apply here. In recognizing the appealability "before trial" (*id.* at 635) of a "substantial claim of absolute immunity" based on official conduct (*Mitchell*, 472 U.S. at 525), the U.S. Supreme Court made clear its concern for the possibility of "an extended proceeding" that "may render [the President] unduly cautious in the discharge of his official duties. *Trump*, 603 U.S. at 637. That concern is triply inapplicable here: (1) trial concluded seven months ago and there are mere days left in the trial court proceedings, which will conclude with sentencing on January 10, so there is no risk of an "extended proceeding"; (2) this case does not involve prosecution for official conduct, so there is no risk of any impact on defendant's "discharge of his official duties"; and (3) sentencing is scheduled to occur before defendant's inauguration, so the criminal proceeding will conclude before defendant has any official duties in any event.

Finally, defendant's separate appellate claim that this Court improperly admitted "*evidence* of immune official acts" during the trial (Def.'s Mem. 10) also provides no basis for an automatic stay of further proceedings. An objection to the improper admission of evidence is simply not a claim of immunity from suit altogether. The cases recognizing an automatic stay of trial proceedings to protect a public official's immunity from suit thus do not extend to an evidentiary claim like defendant's, whatever its legal basis.

II. The Court should deny defendant's motion for an immediate stay.

Defendant has also established no basis for a discretionary stay of his forthcoming sentencing. As a general matter, there is a long-standing policy in this State against appellate

interference with ongoing criminal prosecutions. *See, e.g.*, *Kelly's Rental v. City of New York*, 44 N.Y.2d 700, 702 (1978); *Matter of State v. King*, 36 N.Y.2d 59, 63 (1975); *see also* CPL § 450.10(1) (generally prohibiting interlocutory appeals in criminal cases). Here, defendant has not come close to making the extraordinary showing that would be necessary to override this policy.

A. The balance of the equities tips decisively in the People's favor, and defendant will not be prejudiced by the denial of a stay.

A stay pending appeal that would interrupt a pending criminal proceeding is a drastic remedy that is warranted only if a defendant shows that a stay would be in the public interest and the balance of equities tips in his favor. Here, these equitable factors weigh heavily against the issuance of any stay that would prevent this Court from proceeding to sentencing on January 10.

First, there is a compelling public interest in proceeding to sentencing. New York law requires that the sentence "be pronounced without unreasonable delay." CPL § 380.30(1). And the Court of Appeals has recognized that "[s]ociety, as well as the defendant, has an important interest in assuring prompt prosecution of those suspected of criminal activity." *People v. Staley*, 41 N.Y.2d 789, 792 (1977). That societal interest supports proceeding to sentencing now.

Indeed, the least burdensome time for defendant to be sentenced is now, before his inauguration on January 20, 2025. As this Court has noted (Jan. 3, 2025 Order 17), and defendant has argued (Def.'s Mem. 11-12), sentencing a sitting President during his term in office raises heightened and potentially insuperable obstacles. Defendant has also vociferously objected to being sentenced after the end of his forthcoming presidential term. *See* Def.'s *Clayton* Mot. 51-54. By contrast, sentencing on January 10 raises none of these concerns: defendant has no viable claim of presidential immunity from ordinary criminal process; he is not yet engaged in any official presidential functions that would be disrupted by the sentencing; and given this Court's

accommodations—by which defendant has elected to appear virtually rather than in person—sentencing can proceed in a manner that is minimally disruptive to defendant's transition activities.

Second, proceeding to sentencing now is also consistent with defendant's own litigation requests. As this Court correctly noted (Jan. 3, 2025 Order 7), it was defendant who asked that sentencing be adjourned until after the presidential election. Implicit in that request was defendant's "consent that he would face sentence during the window between the election and the taking of the oath of office." *Id.*

As the Court has also correctly observed (*id.* at 17), sentencing would also enable defendant to pursue the full range of appellate challenges that he has repeatedly indicated he intends to bring. In this interlocutory posture, defendant's appellate arguments are limited to those that have some connection to his assertions of presidential immunity. By contrast, after sentencing, defendant would be entitled to raise a much broader range of objections—including not just the immunity-based claims that he has asserted in his CPL § 330.30 and *Clayton* motions, but also the various state-law and trial-based objections that he has preserved throughout this proceeding. Proceeding to sentencing would thus avoid the type of piecemeal appellate litigation that the CPL attempts to prevent by severely limiting interlocutory appeals. Indeed, defendant himself previously argued that it would be improper to delay sentencing until after his presidency because delayed sentencing results in lack of a judgment, which prevents an appeal. *See* Def.'s *Clayton* Mot. 53-54.

Third, defendant will suffer no prejudice by proceeding to sentencing on January 10. The sentencing hearing itself will impose minimal burdens on defendant because the Court has allowed defendant to appear virtually; and in the People's experience, it would be feasible to complete the sentencing proceeding in less than an hour. In addition, the Court has declared its inclination to impose "a sentence of an unconditional discharge" (Jan. 3, 2025 Order 17), which will prevent

defendant from being subject to any ongoing criminal supervision or other obligations during his presidential term. And sentencing will not foreclose defendant from pursuing any of his challenges to this criminal proceeding on appeal, including the claims of presidential immunity that are the basis of his current stay request.

Defendant's claim that the January 10 sentencing is somehow being "rushed," Def.'s Mem. 5, is not supported by the record. Defendant was convicted seven months ago on May 30, 2024, and was originally scheduled to be sentenced on July 11, 2024. Every adjournment of the sentencing date since then has been to accommodate defendant's requests for more time—including more time for post-trial briefing and more time to get past the date of the presidential election. Moreover, although the scheduled sentencing is now only a few days away, there are no more trial court proceedings left to complete or pending motions to be decided, especially because the pre-sentence report was completed "months ago." Jan. 3, 2025 Order 7 n.5.[1] Thus, far from rushing to sentencing, this Court has instead bent over backwards to give defendant ample time after the trial and before sentencing to fully litigate his various post-trial motions.

[1] Defendant argues (Def.'s Mem. 8-9) that the January 10 sentencing will prevent him from preparing a sentencing memorandum under CPL § 390.40(1). But defendant has had more than seven months to prepare such a memorandum, because he was convicted by the jury on May 30 and sentencing was originally scheduled for July 11, 2024. In any event, the purpose of such a memorandum is to "set[] forth [for the Court] any information [defendant] may deem pertinent to the question of sentence," CPL § 390.40(1), and the Court has already indicated that its sentence will be an unconditional discharge—the lowest available sentence by law—so defendant could not possibly show any harm even if his sentencing memorandum were in fact rushed (which it is not). Likewise, this Court's schedule does not impair the People's ability to submit an optional sentencing memorandum because the People have determined not to submit one given the Court's indication of its intended sentence.

B. Defendant is unlikely to succeed on the merits of his interlocutory appeals.

These equitable considerations alone would warrant denial of any discretionary stay. But a stay should be further denied because defendant is unlikely to obtain any interlocutory appellate relief. The Court's decisions on defendant's post-trial motions were correct.

1. The Court's ruling on defendant's CPL § 330.30 motion was correct.

The Court correctly denied defendant's CPL § 330.30 motion to vacate his conviction and dismiss the indictment. *See* Dec. 16, 2024 Order. The following discussion summarizes the relevant arguments; the People also incorporate by reference their July 24, 2024 opposition to defendant's CPL § 330.30 motion.

As noted, the U.S. Supreme Court issued its decision in *Trump v. United States*, 144 S. Ct. 2312 (2024), on July 1, 2024. In addition to holding that the President may not be directly prosecuted for certain official acts committed during his Presidency, the Court also limited the use of evidence of "official conduct for which the President is immune," "even on charges that purport to be based only on his unofficial conduct." *Id.* at 2341. In light of that ruling, defendant moved on July 10, 2024 to vacate his conviction under CPL § 330.30(1) based on the allegedly improper admission of certain evidence at trial that he claimed concerned official acts for which he enjoyed presidential immunity.

CPL § 330.30(1) authorizes a trial court to set aside a guilty verdict based on "[a]ny ground appearing in the record which, if raised upon an appeal from a prospective judgment of conviction, would require a reversal or modification of the judgment as a matter of law by an appellate court." A trial court may not set aside a verdict based on an alleged error that was not properly preserved at trial. *See, e.g.*, *People v. Everson*, 100 N.Y.2d 609, 610 (2003); *People v. Sudol*, 89 A.D.3d 499, 499-500 (1st Dep't 2011). Under these standards, the Court properly denied defendant's motion on three independent grounds.

First, defendant failed to preserve any immunity-based objection to most of the evidence that was the subject of his CPL § 330.30 motion. *See* Dec. 16, 2024 Order 9-16. The Court held that defendant preserved an objection to only three narrow categories of evidence: (1) Hope Hicks's testimony about "statements by Defendant while he was President of the United States," *id.* at 12; (2) a financial disclosure form defendant submitted to the federal Office of Government Ethics in 2018 (People's 81), *id.* at 13; and (3) four social media posts defendant posted publicly to his Twitter account while he was President (People's 407-F, 407-G, 407-H, and 407-I), *see* Dec. 16, 2024 Order 14 & n.11. As to *all* of the remaining evidence that defendant later claimed was erroneously admitted because of official-acts immunity, he raised no objection during trial, including as to (1) other testimony from Hope Hicks about events that occurred while she was the White House Communications Director; (2) testimony from Madeleine Westerhout about office process and procedures when she worked in the White House; (3) testimony from Michael Cohen about why he lied to Congress; and (4) testimony from Cohen about conversations he had with third parties about Federal Election Commission investigations. *See id.* at 8, 14. The quantum of purportedly improper evidence that was subject to a valid objection was thus vanishingly small, as this Court correctly recognized.

Second, all of defendant's evidentiary arguments were meritless in any event. *See id.* at 16 (noting that "[d]espite Defendant's failure to preserve the objections his raises in the instant motion [except as noted above], this Court will nonetheless consider his motion on the merits, in its entirety"). The evidence defendant challenged in his post-trial motion either concerned unofficial conduct that is not subject to any immunity, or is a matter of public record that is not subject to preclusion. *See id.* at 16-35 (rejecting defendant's arguments on the merits). And as this Court properly recognized, in many instances it was defendant himself who first elicited testimony on

the subject matter he later opposed in his post-trial motion. *See id.* at 22-23. And the objected-to testimony was also in almost every instance heavily corroborated by testimony that could not be subject to any evidentiary objection at all. *See id.* at 21.

Third, the Court correctly concluded that even if some of this evidence were improperly admitted (which it was not), any error was harmless in light of the overwhelming evidence of defendant's guilt. *See id.* at 35-38. The trial record contains "overwhelming evidence of guilt," including the "invoices, general ledger entries, recorded phone conversations, text messages, e-mails, Mr. Weisselberg's handwritten notes, and video footage"; testimony from Michael Cohen, David Pecker, Stormy Daniels, Jeff McConney, Keith Davidson, and Gary Farro, among others; as well as "Defendant's own words." *Id.* at 38. Thus, if any error occurred through the introduction of official-acts evidence, it was harmless in light of this mountain of evidence proving defendant's guilt beyond all reasonable doubt. *See People v. Crimmins*, 36 N.Y.2d 230, 237 (1975). Defendant is not likely to succeed on his appeal from the Court's denial of his CPL § 330.30 motion.

2. The Court's ruling on defendant's *Clayton* motion was correct.

Likewise, the Court properly denied defendant's *Clayton* motion. As above, the following discussion summarizes the relevant arguments; the People also incorporate by reference their December 9, 2024 opposition to defendant's *Clayton* motion.

As an initial matter, and as the Court recognized, the "primary issue" presented in that motion is "whether a President-elect must be afforded the same immunity protections from a state prosecution as a sitting President." Jan. 3, 2025 Order 4. For the reasons described above, the answer to this question is no. *See supra* at 6-7; *see also* Jan. 3, 2025 Order 5-7. There is no reasonable likelihood that defendant will persuade an appellate court that this Court's analysis regarding the non-existence of "President-elect immunity" was legally flawed. "[T]he Constitution dictates that only a President, after taking the oath of office, has the authority of the Chief

Executive; a President-elect does not." Jan. 3, 2025 Order 5; *see also Nixon*, 433 U.S. at 448 ("[O]nly the incumbent is charged with performance of the executive duty under the Constitution.").

Apart from defendant's claim of President-elect immunity, none of the other *Clayton* factors support dismissal either. CPL § 210.40 authorizes dismissal only when there is "some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such indictment or count would constitute or result in injustice." *Id.* § 210.40(1). Dismissal in the interest of justice is an "extraordinary remedy" that "should be exercised sparingly," *People v. Hernandez*, 198 A.D.3d 545, 545 (1st Dep't 2021), and is appropriate only in "that rare and unusual case where it cries out for fundamental justice beyond the confines of conventional considerations." *People v. Williams*, 145 A.D.3d 100, 107 (1st Dep't 2016) (quoting *People v. Harmon*, 181 A.D.2d 34, 36 (1st Dep't 1992)).

The Court properly concluded after analyzing the ten *Clayton* factors that *none* support dismissal of the indictment or vacatur of the jury verdict. *See* Jan. 3, 2025 Order 10-16. The crimes that the jury convicted defendant of committing are serious offenses that caused extensive harm to the sanctity of the electoral process and to the integrity of New York's financial marketplace. *See* CPL §§ 210.40(1)(a), (b). Defendant falsified business records to "conceal a conspiracy to promote a presidential election by unlawful means," Jan. 3, 2025 Order 10—a crime this Court aptly described as "the premeditated and continuous deception by the leader of the free world." *Id.* To vacate the jury's verdict—particularly given the seriousness of defendant's crimes—would "cause immeasurable damage to the citizenry's confidence in the Rule of Law." *Id.*; *see* CPL § 210.40(1)(g).

In addition, the evidence of defendant's guilt is overwhelming. *See* CPL § 210.40(1)(c). The trial record overwhelmingly established that defendant made or caused false entries in the business records of an enterprise, and did so with the intent to defraud that included the intent to commit or conceal another crime. *See* People's Mem. Opp. *Clayton* Mot. 39-48 (Dec. 9, 2024); People's Mem. Opp. Post-Trial Mot. 39-60 (July 24, 2024). This Court has repeatedly and carefully examined that evidence and concluded—correctly—that the trial record strongly supports the jury's verdict. *See* Jan. 3, 2025 Order 10-11 ("[A] total of 22 witnesses testified at trial, and over 500 exhibits were admitted, all of which supported the jury's verdict."); Dec. 16, 2024 Order 38 (holding that if any evidence were improperly admitted, that error was harmless "in light of the overwhelming evidence of guilt").

And notwithstanding defendant's past and upcoming service as President, his history, character, and condition—and especially his open disregard for the justice system—do not support dismissal. *See* CPL § 210.40(1)(d). As this Court recognized, defendant has pursued "unrelenting and unsubstantiated attacks against the integrity and legitimacy of this process, individual prosecutors, witnesses, and the Rule of Law"; and "has gone to great lengths to broadcast on social media and other forums his lack of respect for judges, juries, grand juries, and the justice system as a whole." Jan. 3, 2025 Order 10-11; *see also* People's Mem. Opp. *Clayton* Mot. 48-57 (Dec. 9, 2024). This conduct resulted in ten findings of criminal contempt by this Court during trial, and similar conduct has resulted in contempt findings and court sanctions in other proceedings as well. *See* Decision & Order on Contempt, *People v. Trump*, 2024 N.Y. Slip Op. 24148, at *2 (Sup. Ct. N.Y. Cnty. Apr. 30, 2024); Decision & Order on Contempt, *People v. Trump*, 83 Misc. 3d 1202(A), at *3 (Sup. Ct. N.Y. Cnty. May 6, 2024); Jan. 3, 2025 Order 11-12 & n.8 (citing cases).

There is no evidence of any law enforcement misconduct, *see* CPL § 210.40(1)(e), and defendant's arguments to the contrary are—as this Court correctly recognized—"unsupported" claims that "mischaracterize the record" and have largely "been raised previously and rejected" by the Court. Jan. 3, 2025 Order 12-13. The remaining factors, as the Court has explained, likewise do not support dismissal. *See id.* at 13-16 (holding that public confidence in the justice system would be undermined by dismissal, and rejecting—again—defendant's arguments that the jury pool was tainted and that the Court should have recused itself). Defendant is not likely to succeed on his appeal from the Court's denial of his *Clayton* motion.

CONCLUSION

The Court should deny defendant's motion for an immediate stay and should proceed to sentencing as scheduled on January 10, 2025.

DATED: January 6, 2025

Respectfully submitted,

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