SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, - against - DONALD J. TRUMP, Defendant.	Ind. No. 71543-23

PRESIDENT TRUMP'S NOTICE OF AUTOMATIC STAY OF CRIMINAL PROCEEDINGS OR, IN THE ALTERNATIVE, MOTION FOR IMMEDIATE STAY

President Donald J. Trump hereby provides notice to the Court and DANY that he will initiate appellate proceedings on January 6, 2025[1] to challenge both (1) this Court's December 16, 2024 ruling wrongly denying President Trump's Post-Trial Presidential Immunity Motion, which arose from, among other established law and jurisprudence, President Trump's claim of Presidential immunity based on evidentiary use of official acts; and (2) this Court's January 3, 2025 ruling wrongly denying President Trump's Motion to Dismiss Pursuant to CPL §§ 210.20(1)(h) and 210.40(1), which was based on, without limitation, President Trump's claim of sitting-President immunity, as extended into the transitional period while President Trump is President-elect. As discussed herein, the commencement of appellate proceedings—which should result in a dismissal of this politically-motivated prosecution that was flawed from the very beginning, centered around the wrongful actions and false claims of a disgraced, disbarred serial-liar former attorney, violated President Trump's due process rights, and had no merit—seeking interlocutory review of these claims of Presidential immunity immediately results in an automatic stay of proceedings in this Court under *Trump v. United States*, 603 U.S. 593 (2024), and related case law, as conceded by the Manhattan DA in past filings. *See, e.g.*, Nov. 19, 2024 DANY Ltr. at 2. Due to the fact that further criminal proceedings are automatically stayed by operation of federal constitutional law, the Court will lack authority to proceed with sentencing, must therefore immediately vacate the sentencing hearing scheduled for January 10, 2025, and suspend all proceedings in the case until the conclusion of President Trump's appeal on Presidential immunity.

In the alternative, even if the filing of President Trump's appeal does not automatically stay these proceedings—which it does—the Court should grant an immediate stay of all pending

[1] President Trump will file an Article 78 proceeding as well as a direct appeal in the Appellate Division, First Department, seeking review of the Court's two recent incorrect rulings on Presidential immunity.

proceedings, including the sentencing scheduled for January 10, 2025, pending the outcome of appellate review, for the same reasons set forth herein.

LEGAL ANALYSIS

I. The U.S. Supreme Court's Decision in *Trump v. United States* Mandates a Stay of Further Trial-Court Proceedings Pending President Trump's Immunity Appeal.

Before the U.S. Supreme Court decided *Trump v. United States*, 603 U.S. 593 (2024), the only court to consider whether the filing of an appeal on Presidential immunity mandates a stay of the underlying criminal proceedings pending appeal—the U.S. District Court for the District of Columbia—held that "Defendant's appeal [on Presidential immunity grounds] ***automatically stays*** any further proceedings that would move this case towards trial or impose additional burdens of litigation on Defendant." *United States v. Trump*, 706 F. Supp. 3d 91, 93 (D.D.C. 2023) (emphasis added). This holding was correct, as DANY has effectively conceded in this very case. *See* Nov. 19, 2024 DANY Ltr. at 2 ("[A]s a practical matter, Defendant's stated plan to pursue immediate dismissal and file interlocutory appeals will likely lead to a stay of proceedings in any event."). The U.S. Supreme Court's subsequent decision in *Trump* reaffirms that such a stay pending interlocutory review is mandatory and automatic, arising directly from the constitutional doctrine of Presidential immunity.

A. *Trump* Mandates That President Trump May Pursue an Interlocutory Appeal on Presidential Immunity Supported by an Automatic Stay.

In recognizing Presidential immunity from criminal prosecution for official acts, the Supreme Court emphasized that "[t]he essence of immunity 'is its possessor's entitlement not to have to answer for his conduct' in court." *Trump*, 603 U.S. at 630 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985)). Because "the President is . . . immune from prosecution, a district court's denial of immunity" is "*appealable before trial*." *Id.* at 635 (emphasis added) (citing

Mitchell, 472 U.S. at 524-30). The Supreme Court repeatedly emphasized that the federal doctrine of separation of powers mandates that an *interlocutory* appeal of questions of Presidential immunity must be available. The Court interpreted *Mitchell* to stand for the proposition that "questions of immunity are *reviewable before trial* because the essence of immunity is the entitlement not to be subject to suit." *Id.* (emphasis added). The criminal process's extensive "safeguards, though important, do not alleviate the need for *pretrial review*," because "under our system of separated powers, criminal prohibitions cannot apply to certain Presidential conduct to begin with. . . . [W]hen the President acts pursuant to his exclusive constitutional powers, Congress cannot—as a structural matter—regulate such actions, and courts cannot review them." *Id.* at 636 (emphasis added). That is because "the interests that underlie Presidential immunity seek to protect not the President himself, but the institution of the Presidency." *Id.* at 632.

Accordingly, "[q]uestions about whether the President may be held liable for particular actions, consistent with the separation of powers, must be addressed at the outset of a proceeding," which includes interlocutory review before further trial-court proceedings on the merits. *Trump*, 603 U.S. at 636. "Even if the President were ultimately not found liable for certain official actions, the possibility of an extended proceeding alone may render him unduly cautious in the discharge of his official duties." *Id.* (cleaned up). "Vulnerability to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute." *Id.* (cleaned up). "The Constitution does not tolerate such impediments to 'the effective functioning of government,'" *id.* at 636-37(quoting *Nixon v. Fitzgerald*, 457 U.S. 731, 751 (1982))—and thus the Constitution requires that appellate review of questions of Presidential immunity proceed to completion *before* further proceedings in the trial court. *See id.* at 635-37 (holding that questions of Presidential immunity from criminal prosecution are "appealable before trial" and, under

Mitchell, "reviewable before trial because the essence of immunity is the entitlement not to be subject to suit").

The Supreme Court's repeated citation of *Mitchell v. Forsyth* is particularly telling on this point. Like *Trump* itself, *Mitchell* mandates an automatic stay of trial-court proceedings while the immunity claim is on appeal, and it is widely cited for that very proposition. *See Mitchell*, 472 U.S. at 525-26; *see also, e.g.*, *Apostol v. Gallion*, 870 F.2d 1335 (7th Cir. 1989) (citing *Mitchell* to conclude that an automatic stay applies in an immunity appeal); *Chuman v. Wright*, 960 F.2d 104, 104-05 (9th Cir. 1992) (same). *Mitchell* held that "the denial of a substantial claim of absolute immunity is an order appealable before final judgment, for the essence of absolute immunity is its possessor's entitlement not to have to answer for his conduct . . . ." 472 U.S. at 525. This requires a stay to protect officials from any burdens of litigation while the question of immunity is under review on appeal, including preventing "the general costs of subjecting officials to the risks of trial," and protecting those officials from "even such pretrial matters as discovery." *Id.* at 526 (cleaned up). Immunity, *Mitchell* held, is "an entitlement not to stand trial or face the other burdens of litigation." *Id.* "The entitlement is an *immunity from suit* rather than a mere defense to liability; and . . . it is effectively lost if a case is erroneously permitted to go to trial." *Id.* Immunity entails "an entitlement *not to be forced to litigate the consequences of official conduct*," *id.* at 527 (emphasis added), at *any* stage of criminal proceedings—which is exactly what the automatic stay implements.

B. At Minimum, Three Features of *Trump* Reinforce the Requirement of an Automatic Stay.

At minimum, three features of the U.S. Supreme Court's opinion in *Trump* mandate an automatic stay, all confirming that the interlocutory appellate rights that *Trump* recognizes as part and parcel of Presidential immunity include an automatic stay of trial-court proceedings pending

interlocutory appeals relating to the Court's rulings regarding official-acts and Presidential immunity.

1. Forcing President Trump to face sentencing and judgment while his claims of Presidential immunity are still pending on appeal would "deprive immunity of its intended effect."

As noted above, *Trump* held that "[t]he essence of [Presidential] immunity 'is its possessor's entitlement not to have to answer for his conduct" in court." *Trump*, 603 U.S. at 630 (quoting *Mitchell*, 472 U.S. at 525). Forcing a President to continue to defend a criminal case—potentially through trial or, even more dramatically here, through *sentencing and judgment*—while the appellate courts are still grappling with his claim of immunity would, in fact, force that President "to answer for his conduct in court" before his claim of immunity is finally adjudicated. *Id.* The *Trump* Court's references to "the threat of trial, *judgment*, and *imprisonment*" make clear that Presidential immunity violations cannot be ignored in favor of a rushed pre-inauguration sentencing, based on a fatally flawed record that would lead to a wrongful judgment of conviction. *Id.* at 613 (emphasis added). Thus, denying a stay pending appeal would do exactly what *Trump* repeatedly warned against—it would "depriv[e] immunity of its intended effect." *Id.* at 619.

It is of no moment that the Court has suggested an intention to impose a sentence of unconditional discharge. While it is indisputable that the fabricated charges in this meritless case should have never been brought, and at this point could not possibly justify a sentence more onerous than that, no sentence at all is appropriate based on numerous legal errors—including legal errors directly relating to Presidential immunity that President Trump will address in the forthcoming appeals. The Court's non-binding preview of its current thinking regarding a hypothetical sentencing does not mitigate these bedrock federal constitutional violations. *Cf. Trump*, 603 U.S. at 637 ("We do not ordinarily decline to decide significant constitutional

questions based on the Government's promises of good faith."); *United States v. Stevens*, 559 U.S. 460, 480 (2010) ("We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.").

The *Trump* Court repeatedly rejected the arguments that would have rendered Presidential immunity ineffective in this fashion. Holding that a mere allegation of unlawfulness cannot deprive a President of immunity, the Supreme Court reasoned that, if it were "[o]therwise, Presidents would be subject to trial on every allegation that an action was unlawful, depriving immunity of its intended effect." 603 U.S. at 619 (cleaned up). Likewise, regarding the government's demand to admit *evidence* of official acts at trial—which underlies one of President Trump's key enumerations of error here—the Supreme Court held "[t]hat proposal threatens to *eviscerate the immunity we have recognized*." *Id.* at 631 (emphasis added). "[T]he Government's position is untenable in light of the separation of powers principles we have outlined." *Id.* "If official conduct for which the President is immune may be scrutinized to help secure his conviction, even on charges that purport to be based only on his unofficial conduct, the 'intended effect' of immunity would be defeated." *Id.* (quoting *Fitzgerald*, 457 U.S. at 756).

Given that Presidential immunity entails immunity from the burdens of criminal litigation such as trial and sentencing, forcing the President to defend a criminal case—*especially* at a sentencing hearing ten days before he is due to become President again—while his claim is adjudicated on appeal would "eviscerate" immunity by "depriving immunity of its intended effect." *Trump*, 603 U.S. at 619, 631. The automatic stay pending appeal prevents this very injury.

2. Presidential immunity nullifies the power of trial courts to act.

Second, as the U.S. Supreme Court emphasized, the doctrine of Presidential immunity nullifies the power of trial courts to act. "Congress cannot act on, and *courts cannot examine*, the

President's actions on subjects within his 'conclusive and preclusive' constitutional authority." *Trump*, 603 U.S. at 609 (emphasis added). "Neither may the courts adjudicate a criminal prosecution that examines such Presidential actions." *Id.* Indeed, "pretrial review" by interlocutory appeal is mandated because "under our system of separated powers, criminal prohibitions cannot apply to certain Presidential conduct to begin with." *Id.* at 635-36. "[W]hen the President acts pursuant to his exclusive constitutional powers, Congress cannot—as a structural matter—regulate such actions, and *courts cannot review them*." *Id.* at 636 (emphasis added). This fact renders a stay pending appeal particularly necessary—the court should not continue to act while its very power to act in the first place is under appellate consideration.

This conclusion, moreover, is even more forceful when it comes to President Trump's claim of sitting-President immunity, which all parties agree becomes comprehensive and absolute as soon as President Trump takes office. *See generally* Memorandum from Randolph D. Moss, Assistant Attorney General, OLC, *A Sitting President's Amenability to Indictment and Criminal Prosecution*, 2000 WL 33711291, at *29 (Oct. 16, 2000) ("[A] sitting President is constitutionally immune from indictment and criminal prosecution."). Sitting-President immunity extends into the brief transition period during which the President-elect prepares to assume the Executive Power of the United States, and the courts thus lack authority to adjudicate criminal claims against him. *See, e.g.*, 3 U.S.C. § 102 note, § 2 ("Any disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the United States and its people. . . . [A]ll officers of the Government [should] conduct the affairs of the Government . . . to take appropriate lawful steps to avoid or minimize disruptions that might be occasioned by the transfer of the executive power . . . ."). That is exactly why the Special Counsel's Office dismissed, during the transition period, their politically-motivated charges brought in Florida and Washington,

D.C. against President Trump, and there is no basis for proceeding differently here by forcing a sentencing rather than allowing President Trump to pursue constitutionally mandated interlocutory appellate rights, which will result in the mandated dismissal of this case.

3. A stay allows for orderly resolution of critical issues.

Third, the U.S. Supreme Court in *Trump* instructed that issues of Presidential immunity should be resolved in a methodical, orderly fashion—not at the attempted breakneck speed of the lower courts in that case. The Supreme Court chastised the lower courts for proceeding without due care and caution: "Despite the unprecedented nature of this case, and the very significant constitutional questions that it raises, the lower courts rendered their decisions on a highly expedited basis." 603 U.S. at 616. "[T]he underlying immunity question . . . raises multiple unprecedented and momentous questions about the powers of the President and the limits of his authority under the Constitution," *id.*, and even the Supreme Court was "deciding [the case] on an expedited basis, less than five months after we granted the Government's request" to expedite the case. *Id.* at 616-17. Allowing a criminal case to proceed to sentencing, while a federal appeal is pending about whether the case should be proceeding in New York County at all, and another appeal is pending directly challenging the Court's Presidential immunity rulings, would constitute "highly expedited" treatment at its worst. *See id.* at 616. Indeed, this Court's current schedule—denying President Trump's sitting-President immunity motion on January 3, 2025, and then scheduling a sentencing hearing just seven days later, immediately before President Trump's inauguration—typifies the "highly expedited" treatment that the U.S. Supreme Court cautioned against. For example, the rushed timing in the current schedule forecloses DANY from making a sentencing submission, which has to be served no less than ten days before sentencing, CPL § 390.40(2), and violates President Trump's right to a full opportunity to prepare his own. *See* CPL

§ 390.40(1). It cannot be ignored that this rushed seven-day period between the ruling and the sentencing has been imposed in a case that dates back to 2018, and includes an enormous record of discovery and trial proceedings. In that context, there is no legal basis to rush ahead to sentencing rather than impose a stay, other than DANY's preference to get this done prior to President Trump's inauguration, and in advance of New York' so that DA Bragg can tell voters in his upcoming election that he completed the case.

Likewise, in such appeals, "whether 'the litigation may go forward in the district court is precisely what the court of appeals must decide.'" *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 741 (2023) (quoting *Bradford-Scott Data Corp. v. Physician Computer Network, Inc.*, 128 F.3d 504, 506 (7th Cir. 1997)). "[T]he district court must stay its proceedings while the interlocutory appeal . . . is ongoing." *Id.* This logic applies with even greater force to an interlocutory appeal on the far more momentous question of Presidential immunity from criminal prosecution.

Indeed, the "common practice" of entering such automatic stays "reflects common sense." *Coinbase*, 599 U.S. at 742-43. "Absent an automatic stay of district court proceedings," the U.S. Supreme Court's "decision . . . to afford a right to an interlocutory appeal would be largely nullified." *Id.* at 743. "If the district court could move forward with pre-trial and trial proceedings"—or worse, as here, criminal sentencing and judgment—while the appeal was ongoing, "then many of the asserted benefits" of Presidential immunity "would be irretrievably lost." *Id.* "[C]ontinuation of proceedings in the district court 'largely defeats the point of the appeal.'" *Id.* (quoting *Bradford-Scott*, 128 F.3d at 505). "A right to interlocutory appeal of the [immunity] issue without an automatic stay of the district court proceedings is therefore like a lock without a key, a bat without a ball, a computer without a keyboard—in other words, not especially sensible." *Id.*

C. The Automatic Stay Extends to Both Claims of Presidential Immunity That President Trump Is Currently Raising on Appeal.

The automatic stay of trial-court proceedings required by *Trump*, *Coinbase*, and other jurisprudence, extends to both claims of Presidential immunity that President Trump is currently raising on appeal: (1) Presidential immunity based on evidentiary misuse of official acts, and (2) absolute sitting-President immunity from criminal process, extended to the President-elect.

First, an interlocutory appeal is appropriate to challenge the erroneous widespread admission of *evidence* of immune official acts—including (as here) the unlawful presentation of such evidence both to the grand jury, and to the trial jury. As *Trump* explained, immunity from the evidentiary misuse of official acts is just as fundamental to the doctrine of Presidential immunity as immunity from prosecution for official acts: "If official conduct for which the President is immune may be scrutinized to help secure his conviction, even on charges that purport to be based only on his unofficial conduct, the 'intended effect' of immunity would be defeated." 603 U.S. at 631 (quoting *Fitzgerald*, 457 U.S. at 756). DANY's use of official-acts evidence to probe a President's motives "risk[s] exposing even the most obvious instances of official conduct to judicial examination on the mere allegation of improper purpose, thereby intruding on the Article II interests that immunity seeks to protect." *Id.* at 618. "Indeed, it would seriously cripple the proper and effective administration of public affairs as entrusted to the executive branch of the government if in exercising the functions of his office, the President was under an apprehension that the motives that control his official conduct may, at any time, become the subject of inquiry." *Id.* (cleaned up). "The President's immune conduct would be subject to examination by a jury on the basis of generally applicable criminal laws. Use of evidence about such conduct, even when an indictment alleges only unofficial conduct, would thereby heighten the prospect that the President's official decisionmaking will be distorted." *Id.* at 631. Because evidentiary-use

immunity implicates the same constitutional concerns as direct-prosecution immunity, *see id.*, it directly follows that the automatic stay pending appeal applies to evidentiary-use appeals as well.

Second, President Trump's claim of sitting-President immunity implicates all the same policies and concerns as official-act immunity and heightens the need for the automatic stay. All parties agree that, once President Trump assumes office, he will be absolutely immune from any criminal process, state or federal, under the doctrine of sitting-President immunity. But this Court's decision to schedule a sentencing hearing on January 10, 2025, at the apex of Presidential transition and ten days before President Trump assumes Office, necessitates that President Trump will be forced to continue to defend his criminal case while he is in Office—at the very least, on appeal from judgment, as this Court's January 3 Order repeatedly and expressly recognizes. *See, e.g.*, Jan. 3, 2025, Decision and Order, at 17 ("Defendant must be permitted to avail himself of every available appeal, a path he has made clear he intends to pursue but which only becomes fully available upon sentencing. . . . [A] sentence of an unconditional discharge appears to be the most viable solution to ensure finality and allow Defendant to pursue his appellate options."). Moreover, DANY could also pursue an appeal of any sentencing determination they view as contrary to law. *See* CPL § 450.20(4). Thus, under the current schedule, instead of facing no further criminal proceedings while he is President, President Trump will be forced to deal with criminal proceedings for years to come, which is the opposite of what the doctrine of sitting-President immunity requires. Forcing President Trump to prosecute, or even defend, a criminal appeal during his term of Office—an appeal that could result in a remand for *another criminal trial* during President Trump's term—is itself a clear-cut violation of sitting-President immunity.

Moreover, the prospect of imposing a sentence on President Trump just before he assumes Office as the 47th President raises the specter of other possible restrictions on liberty, such as

travel, reporting requirements, registration, probationary requirements, and others—all of which would be constitutionally intolerable under the doctrine of sitting-President immunity. These constitutional errors would compound the already grave constitutional problems with this proceeding raised in our prior pleadings, including forcing a jury on the Defendant in record time and without proper process.

D. The Automatic Stay Extends to Criminal *Sentencing* as Well as Trial.

Because the right of interlocutory appeal and automatic stay prevent a trial court from proceeding to *trial* pending appeal on immunity, it follows *a fortiori* that the same rights prevent the trial court from forcing President Trump from undergoing *criminal sentencing and judgment* while his immunity appeal is pending. As *Trump* repeatedly emphasizes, Presidential immunity protects the President from the entire "suit," not just certain procedural stages of the suit. "The essence of immunity is its possessor's entitlement not to have to answer for his conduct in court." 603 U.S. at 630 (cleaned up). "Official immunity, including the President's official-act immunity, is '*immunity from suit* rather than a mere defense to liability.'" *Blassingame v. Trump*, 87 F.4th 1, 29 (D.C. Cir. 2023) (emphasis in original) (quoting *Mitchell*, 472 U.S. at 526). "It is 'an entitlement not to stand trial or face the other burdens of litigation.'" *Id.* (quoting *Mitchell*, 472 U.S. at 526). "Those concerns are particularly pronounced when the official claiming immunity from suit is the President." *Id.* Thus, the President's "immunity from suit," *id.*, extends to immunity from the imposition of criminal sentence and final judgment as well as trial, because "[t]he Framers' design of the Presidency did not envision such counterproductive burdens on the 'vigor' and 'energy' of the Executive." *Trump*, 603 U.S. at 614 (cleaned up) (quoting The Federalist No. 70, at 471-72). Thus, President Trump "must be afforded that opportunity" to litigate his claims on appeal "before the proceedings can mov[ing] ahead to the merits, including

before any merits-related discovery," *Blassingame*, 87 F.4th at 29—or, as here, before "moving ahead to" a *final judgment* on "the merits," *id.* (emphasis added). Indeed, undergoing a criminal sentencing is the most extreme example of "hav[ing] to answer for his conduct in court," *Trump*, 603 U.S. at 630 (cleaned up)—exactly what the doctrine of Presidential immunity forbids and why an automatic stay is mandated.

E. New York Appellate Law and Practice Support an Immediate Stay.

To be clear, the filing of President Trump's appeal on immunity *automatically* stays further criminal proceedings in this Court—including the imminent sentencing hearing scheduled for January 10, 2025—pending the outcome of the appeal, and it does so as a matter of federal constitutional law. *See Trump*, 706 F. Supp. 3d at 93 ("Defendant's appeal *automatically stays* any further proceedings that would move this case towards trial or impose additional burdens of litigation on Defendant") (emphasis added). As the U.S. Supreme Court's *Trump* decision makes clear, this automatic stay is an essential part of the federal doctrine of Presidential immunity itself, which arises from the very structure of the U.S. Constitution. *Trump*, 603 U.S. at 629-30, 634-38. As a matter of federal constitutional law, the doctrine of Presidential immunity binds New York courts under the Supremacy Clause. *See e.g.*, *Trump v. Vance*, 591 U.S. 786, 810 (2020) (holding that a President can raise federal challenges to a state criminal subpoena under "the Supremacy Clause," which is an "avenue [that] protects against local political machinations 'interposed as an obstacle to the effective operation of federal constitutional power'") (quoting *United States v. Belmont*, 301 U.S. 324, 332 (1937)). When the "judicial authority is invoked in aid" of the United States' authority in the "field of its powers," "State Constitutions, state laws, and state policies are irrelevant to the inquiry and decision. It is inconceivable that any of them can be interposed as an

obstacle to the effective operation of a federal constitutional power." *Belmont*, 301 U.S. at 331-32.

Vitally, there is no conflict between the Supreme Court's automatic-stay doctrine in *Trump* and New York appellate law and practice here, because President Trump is equally entitled to a stay under New York law. Section 7805 of the CPLR expressly authorizes stays of "further proceedings" in the trial court pending resolution of an Article 78 proceeding. CPLR § 7805 ("On the motion of any party or on its own initiative, *the court may stay further proceedings*, or the enforcement of any determination under review . . . ." (emphasis added)). Relying on this provision, New York appellate courts routinely grant stays of criminal proceedings while the trial court's authority to conduct further proceedings is subject to appellate review in an Article 78 proceeding. *See, e.g.*, *Kisloff v. Covington*, 73 N.Y.2d 445, 448 (1989) (noting the Appellate Division stayed the prosecution after the filing of an Article 78 petition "seeking to prohibit further prosecution"); *Dow v. Tomei*, 107 A.D.3d 986, 987 (2d Dep't 2013) (staying enforcement of order "compelling the petitioner to appear in court for resentencing"); *Gorghan v. DeAngelis*, 25 A.D.3d 872, 872-73 (3d Dep't 2006) ("Thereafter, County Court . . . summarily denied petitioner's motion which sought an order prohibiting retrial based on double jeopardy grounds and petitioner initiated this proceeding. By order of this Court, all further proceedings in County Court have been stayed pending this decision."); *McLaughlin v. Eidens*, 292 A.D.2d 712, 713 (3d Dep't 2002) ("By order of this Court, all proceedings have been stayed" pending resolution of an Article 78 proceeding challenging the trial court's authority to proceed); *Van Wie v. Kirk*, 244 A.D.2d 13, 23 (4th Dep't 1998) ("Upon filing the instant CPLR article 78 petition, petitioner obtained a stay of proceedings" preventing the criminal trial from proceeding); *Lacerva v. Dwyer*, 177 A.D.2d 747, 748 (3d Dep't 1991) ("Further proceedings were then stayed by the court to permit preparation of this CPLR

article 78 proceeding to prohibit retrial on the ground of double jeopardy. This court stayed the criminal trial pending determination of this proceeding."); *see also Rush v. Mordue*, 68 N.Y.2d 348, 352 n.1 (1986) (noting the parties stipulated to a stay in the underlying criminal case pending the outcome of the proceedings and appeal in the Court of Appeals); *James N. v. D'Amico*, 139 A.D.2d 302, 309-10 (4th Dep't1988) (Boomer, J., concurring) (arguing that stays should be issued under CPLR 7805 upon a "showing of probability of success on the merits of the [Article 78] proceeding").

Such stays of criminal proceedings include cases granting a stay to prevent the trial court from conducting a sentencing hearing pending decision on an Article 78 petition to block the sentencing from occurring—the exact procedural posture of this case. *See, e.g., Dow*, 107 A.D.3d at 986. They also include stays issued at the prosecution's request, not just the defense. *See Vance v. Roberts*, 176 A.D.3d 492, 493 (1st Dep't 2019) ("The People sought and obtained a stay of this order and commenced this article 78 proceeding."); *Hoovler v. DeRosa*, 143 A.D.3d 897, 899 (2d Dep't 2016) ("On July 6, 2016, the . . . District Attorney of Orange County commenced this proceeding pursuant to CPLR article 78 . . . to prohibit Judge DeRosa from enforcing his order dated July 1, 2016. This Court stayed enforcement of that order, as well as the trial in the criminal action, pending determination of this proceeding.").

Section 7805's authorization of stays of all "further proceedings" in criminal cases, and New York courts' common practice of granting such stays in Article 78 proceedings challenging the trial court's authority to proceed in criminal cases, implement the same policy reflected in the U.S. Supreme Court's decision in *Trump*. In fact, it would be astonishing if such a stay, which is routinely granted in garden-variety criminal cases, were denied to a President of the United States asserting claims of Presidential immunity from prosecution that "raise[s] multiple unprecedented

and momentous questions about the powers of the President and the limits of his authority under the Constitution." *Trump*, 603 U.S. at 616.

CONCLUSION

By virtue of President Trump's filing of appellate proceedings raising his claims of Presidential immunity, all proceedings in this Court are automatically stayed by operation of federal constitutional law. In the alternative, even if such a stay were discretionary, the Court should grant such a stay. The Court should vacate the sentencing hearing scheduled for January 10, 2025, and suspend all further deadlines in the case until President Trump's immunity appeals are fully and finally resolved, which should result in a dismissal of this case, which should have never been brought in the first place. Further, President Trump respectfully requests that this Court notify the parties by Monday, January 6, 2025, at 2 p.m., whether the Court intends to proceed with the sentencing hearing on January 10, 2025, which should not occur, notwithstanding President Trump's interlocutory appeal on immunity, to allow sufficient time for President Trump to seek an emergency appellate review.

Dated: January 5, 2025
New York, New York

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