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March 4, 2024

Via Email
District Attorney Alvin L. Bragg, Jr.
New York County District Attorney's Office
1 Hogan Place
New York, New York 10013

Re: Prosecutorial Misconduct Concerning Michael Cohen And Allen H. Weisselberg

Dear District Attorney Bragg:

We write regarding ongoing prosecutorial misconduct in connection with the prosecution of President Donald J. Trump—in violation of the federal and state constitutions and your ethical obligations—concerning DANY's simultaneous (1) decision to turn a blind eye to the admitted and repeated perjury of your star witness, Michael Cohen; and (2) vindictive and oppressive pressure and plea negotiations leading, today, to a forced-upon guilty plea for 2 counts of perjury by Allen H. Weisselberg. This conduct by DANY was obviously part of an effort to impact the outcome of the flawed proceedings in *People by James v. Trump* and/or Mr. Weisselberg's role at trial in *People v. Trump*, although he does not as of now appear on any witness list. DANY's conscious choice to ignore obvious and admitted criminal conduct by Cohen and to instead deploy unethical, strong-armed tactics against an innocent man in his late 70s underscores the irresponsibility of your conduct in office. Indeed, while you waste public resources in a desperate attempt to impede President Trump's ongoing ascent to the White House, in violation of applicable prosecutorial guidelines prohibiting such election interference, you regularly and repeatedly allow those guilty of brutal attacks on law enforcement and murderers to roam free. This dereliction of duty renders you fully unfit to serve as District Attorney, and exposes innocent citizens, like Mr. Weisselberg, to irreparable and life-altering harm.

Today, your office has forced Mr. Weisselberg into pleading guilty to nonexistent perjury offenses by threatening him with years in state prison should he not succumb to your demands. As we understand it, your prosecutors presented Mr. Weisselberg with an impossible choice: (1) plead guilty to perjury crimes he did not commit in exchange for another relatively short stint in prison, or (2) face arrest and incarceration, as well as the risk that an unsuccessful effort to fight the unwarranted charges will result in yet another draconian sentence by Judge Merchan.[1] Indeed, to compel a plea today to drummed-up charges of which a jury would never convict, we understand DANY threatened to file a sham indictment against Mr. Weisselberg and then to immediately ask Judge Merchan to violate Mr. Weisselberg, who is on probation, risking further jail time even

[1] *See, e.g.*, N.Y. Rules of Prof'l Conduct Rule 8.4, Note 5A (explaining that "harassment in the practice of law" can "undermine confidence in the legal profession and the legal system").

though he is, in fact, innocent of any crime. Such tactics have no place in our American justice system, and you should be alarmed by and ashamed of this tyrannical conduct.

By contrast, Cohen *admitted* to multiple instances of perjury and then committed perjury in open court during *People by James v. Trump*—including by trying to walk back sworn federal guilty pleas and mischaracterizing his interactions with those federal prosecutors. At the February 15, 2024 status conference in *People v. Trump*, Assistant District Attorney Colangelo essentially confirmed that DANY is not investigating these blatant violations of the New York Penal Law. In essence, he asserted to Judge Merchan that the only appropriate remedy for perjury by Cohen in a New York State proceeding is for President Trump to cross-examine Cohen regarding these uncharged crimes at trial. We appreciate the tip and will be sure to add this issue to our cross-examination outline near the questions about the gift DANY gave to Cohen by not charging him with the same "crimes" charged in the Indictment against President Trump.

Your office warmly embraced Cohen and doubled down on this position in the February 29, 2024 opposition to President Trump's motions *in limine*. In that filing, DANY also endorsed the ridiculous February 16, 2024 findings by Justice Engoron that Cohen "told the truth" and was "credible" at the *People by James v. Trump* trial. Justice Engoron's findings as to Cohen's purported "credibility" were made despite perjury by Cohen that is more central to these proceedings than the sham trial Justice Engoron himself facilitated. The reality is the opposite: Justice Engoron is obviously wrong. But whatever the merit of Justice Engoron's flawed views, if you choose to present testimony from Cohen in *People v. Trump*, that decision will have serious legal and ethical consequences for the integrity of the proceedings and for individual prosecutors who choose to suborn Cohen's perjury.[2] To do so would be unethical and illegal. And it would also be a clear violation of DANY's "special duty to seek justice, not merely try to convict." *Connick v. Thompson*, 563 U.S. 51, 65-66 (2011) (cleaned up).

The inclination to look past the grave problems with Cohen's perjury and credibility suggested by your February 29 filing is even more egregious—and should be completely unacceptable to anyone concerned about the limits of prosecutorial discretion—when considered relative to DANY's treatment of Allen H. Weisselberg as discussed below in Part I. Indeed, the selective prosecution of Mr. Weisselberg is an affront to justice. Cohen has not been prosecuted for any of the crimes you alleged against President Trump and faces no consequences as a result of his admitted, recurring perjury. By contrast, in 2022, DANY improperly relied on unlawful leverage by Judge Merchan in order to pressure Mr. Weisselberg to plead guilty, admit to alleged facts that he disputed but fit DANY's preferred narrative about the events at issue, and cooperate at the *Trump Corporation* trial. As you know, Judge Merchan's failure to recuse himself from

[2] *See, e.g.*, N.Y. Rules of Prof'l Conduct Rule 8.4(d) (prohibiting "conduct that is prejudicial to the administration of justice"); *id.* Rule 8.4, Note 5 ("Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers."); *see also id.* Rule 3.8, Note 1 ("A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.").

People v. Trump despite, *inter alia*, his participation in those shameful negotiations is currently on appeal before the Appellate Division. As with suborning Cohen's perjury, individual prosecutors' facilitation of Judge Merchan's handling of the plea negotiations with Mr. Weisselberg has serious ethical implications.[3]

There is deep irony, with due process implications, in your decision to pursue a perjury case against Mr. Weisselberg that purportedly relates in part to the *People by James v. Trump* trial during the same time period when you are steadfastly refusing to even investigate Cohen's admitted perjury at the same trial. We understand that Mr. Weisselberg is serving a term of probation imposed in connection with his 2022 guilty plea. However, Cohen was serving a term of federal supervised release in *United States v. Cohen*, No. 18 Cr. 602 (S.D.N.Y.), when he committed perjury. The terms of Cohen's supervised release required him not to commit state or federal crimes. We recognize that you are not in a position to pursue a violation of supervised release and we are concerned by the failure of federal probation authorities to do so. However, your cynical inaction with respect to the violations of New York Penal Law resulting from Cohen's perjury are equally problematic, and even more so when compared to the callous and vindictive approach you are taking with Mr. Weisselberg.

DANY's inaction with respect to its star witness while actively pursuing an unfair and unwarranted perjury plea from Mr. Weisselberg cannot be a resources issue. Nine prosecutors proudly signed the February 29 filing on your behalf and in support of Cohen. So we are left with the impression that some other motive must drive your decision to put Cohen on a public pedestal, which he is actively monetizing as he sells a completely fabricated story to the public, as you seek to re-incarcerate Mr. Weisselberg, a 76-year-old man who poses no threat to anyone, all while violent crime rates impacting all New Yorkers skyrocket on your watch. Whether that is part of a coordinated effort with the Attorney General to enhance her position in *People by James v. Trump*, or a strategy to impact Mr. Weisselberg's role in *People v. Trump*, your corrupt tactics are improper and contrary to basic principles of decency. We urge you to reconsider as to both Mr. Weisselberg and Cohen.

I. Allen H. Weisselberg

During *People v. Weisselberg*, the prosecution team insisted on a state prison term, meaning at least one to three years' imprisonment, unless Mr. Weisselberg cooperated with and provided helpful evidence to DANY. When Mr. Weisselberg resisted that approach, DANY sought to use Judge Merchan as an arm of the prosecution by suggesting that Mr. Weisselberg's attorneys meet with the court. On June 17, 2022, Mr. Weisselberg's attorneys met with Judge

[3] *See, e.g.*, N.Y. Rules of Prof'l Conduct Rule 8.4(f) (prohibiting "knowingly assist[ing] a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law"); *see also* 22 N.Y.C.R.R. § 100.2 ("A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities"); *People v. Towns*, 33 N.Y.3d 326, 332 (2019) (reasoning that a court must remain "a neutral arbiter stationed above the clamor of counsel or the partisan pursuit of procedural or substantive advantage" and therefore cannot "improperly assume[] the advocacy role traditionally reserved for counsel." (cleaned up)).

Merchan. During the meeting, Judge Merchan indicated that unless Mr. Weisselberg cooperated against President Trump and others, he would only offer Mr. Weisselberg a state prison sentence of at least one to three years imprisonment. In other words, he adopted DANY's position. Judge Merchan also stated that if Mr. Weisselberg went to trial and was convicted, Judge Merchan would sentence Mr. Weisselberg to a longer prison term. Judge Merchan stated further that he would remand Mr. Weisselberg as soon as the verdict was returned and deny bail pending appeal so that Mr. Weisselberg would serve most or all of his sentence even if his conviction was ultimately overturned. In short, Judge Merchan indicated that the "only way to avoid serving time behind bars . . . was if Mr. Weisselberg cooperated and pleaded guilty."[4]

Mr. Weisselberg's attorneys agreed to talk to DANY about whether Mr. Weisselberg had truthful information DANY deemed useful. However, it became clear during those communications that Mr. Weisselberg did not have any information that fit the District Attorney's preconceived version of the facts. As a result, Mr. Weisselberg's attorneys sent Judge Merchan a letter regarding the parties' impasse.

Over the next few weeks, DANY, Mr. Weisselberg's attorneys, and Judge Merchan met in connection with the plea negotiations. During a meeting with Judge Merchan on August 15, 2022, DANY suggested that it would recommend a sentence of six months' imprisonment plus five-years' probation if Mr. Weisselberg would, *inter alia*, (1) plead guilty to the entire 15-count Indictment, (2) adopt a detailed factual allocution written by DANY to serve in investigations of President Trump and related entities, (3) agree to testify against President Trump's entities in the *Trump Corporation* trial in a manner consistent with DANY's allocution, and (4) agree that his sentence would be held in abeyance until after the *Trump Corporation* trial. To further pressure Mr. Weisselberg, Judge Merchan agreed to impose a five-month jail term if Mr. Weisselberg fulfilled all of DANY's conditions.

On the afternoon of August 17, 2022, Judge Merchan met with DANY and Mr. Weisselberg to confirm the plea allocution. The next day, Mr. Weisselberg pleaded guilty to a series of felonies, including tax fraud. At that hearing, Judge Merchan questioned Mr. Weisselberg using the allocution written by the People. Judge Merchan also told Mr. Weisselberg that if he did not comply with any of the terms of his plea deal, Judge Merchan would be free to impose a sentence of up to 5 to 15 years in prison.

Mr. Weisselberg testified in the *Trump Corporation* trial over the course of three days in November 2022. On January 10, 2023, Judge Merchan sentenced Mr. Weisselberg—as promised—to five months' imprisonment and five years' probation. According to the *New York Times*, almost a year later in early 2024, DANY contacted Mr. Weisselberg's counsel regarding alleged perjury during his testimony in the investigation and proceedings relative to *People by James v. Trump*. We necessarily lack detailed information regarding those negotiations, but as we understand it you presented Mr. Weisselberg with two unfair options. First, plead guilty to perjury

[4] Jonah E. Bromwich, Ben Protess and William K. Rashbaum, *Inside the Negotiations That Led a Top Trump Executive to Plead Guilty*, N.Y. TIMES (Aug. 18, 2022), https://www.nytimes.com/2022/08/18/nyregion/weisselberg-trump-guilty-plea.html.

crimes he did not commit in exchange for a somewhat minimal prison term. Second, if Mr. Weisselberg refuses, you will promptly indict him and immediately seek to have him jailed for a probation violation, forcing a senior, innocent man to suffer and sit in jail awaiting a hearing on an alleged violation of probation, which has a low burden of proof. Then, if Mr. Weisselberg was unsuccessful fighting the probation violation charge, it would result in a sentencing before Judge Merchan, who has promised to send Mr. Weisselberg to jail for several years in that event.

Ultimately, Mr. Weisselberg succumbed to the out-sized pressure and today pled guilty to a two-count information, charging him with Perjury in the First Degree, a class D felony, in violation of Penal Law § 210.15, with an agreed upon term of imprisonment of 5 months. Mr. Weisselberg appeared before the Honorable Laurie Peterson to enter the plea of guilty. Despite Judge Merchan's role in the recent plea negotiations, to the extent that term captures the tactics your office used, it appears Mr. Weisselberg will be sentenced in approximately 6 weeks. There is no publicly available information as to why, after improperly selecting Judge Merchan to preside over all of the Trump-related cases, he is not the presiding judge over Mr. Weisselberg's Perjury prosecution.

II. Michael Cohen

A. Federal Guilty Pleas And Sentencing

On August 21, 2018, Cohen pleaded guilty to, *inter alia*, five counts of federal tax evasion in violation of 26 U.S.C. § 7201 (Counts 1-5) and one count of making false statements to a financial institution in violation of 18 U.S.C. § 1014 (Count 6).[5] In his allocution, Cohen purported to accept full responsibility for the criminal conduct to which he pleaded guilty:

> THE DEFENDANT: . . . [I]n the tax years of 2012 to 2016, I evaded paying substantial taxes on certain income received that I knew was not reflected on the return and that I caused to be filed. . . . [O]n or about February of 2016, in order to be approved for a HELOC, a home equity line of credit, I reviewed an application form that did not accurately describe the full extent of my liabilities. I did not correct the inaccurate information on the form. . . .
>
> THE COURT: Well, you knew it was false; that it falsely depicted your financial condition, didn't you?
>
> THE DEFENDANT: Yes, your Honor."

8/21/2018 Tr. 21-22, *United States v. Cohen*, No. 18 Cr. 602 (S.D.N.Y. Sept. 14, 2018), ECF No. 7.

[5] The U.S. Attorney's Office for the Southern District of New York ("SDNY") prosecuted Michael Cohen in *United States v. Cohen*, No. 18 Cr. 602 (S.D.N.Y.).

On November 29, 2018, Cohen pleaded guilty in a separate federal criminal case to making false statements to Congress, in violation of 18 U.S.C. § 1001(a)(2):

> THE DEFENDANT: . . . In 2017, I was scheduled to appear before the Senate Select Committee on Intelligence as well as the House Permanent Select Committee on Intelligence concerning matters under their investigation, including principally whether Russia was involved in or interfered in the 2016 campaign and election.
>
> In connection with my appearances, I submitted a written statement to Congress, including, amongst other things, a description of a proposed real estate project in Moscow that I had worked on while I was employed by the Trump Organization.
>
> That description was false. . . .

11/29/2018 Tr. 25-29, *United States v. Cohen*, No. 18 Cr. 850 (S.D.N.Y. Dec. 7, 2018), ECF No. 13.[6]

The cases were consolidated for purposes of sentencing, and, on December 12, 2018, Judge Pauley sentenced Cohen to 36 months' imprisonment and a three-year term of supervised release. Notably, Cohen was given full credit for his purported acceptance of responsibility and received a below-Guidelines sentence. *See* 12/12/2018 Tr. 34-35, *United States v. Cohen*, No. 18 Cr. 602 (S.D.N.Y. Jan. 8, 2019), ECF No. 31.

B. Cohen's Efforts To Shift Blame For His Own Conduct

Even before his sentencing, Cohen began to "minimize the seriousness of his decision not to report millions of dollars of income over a period of years by blaming his accountant for not uncovering the reported income." SDNY's Sentencing Submission at 5-6, *United States v. Cohen*, No. 18 Cr. 602 (S.D.N.Y. Dec. 7, 2018), ECF No. 27.

Specifically, in connection with his submission to the Probation Department, Cohen asserted that "all relevant bank records were provided annually by [him] to [his accountant] for the relevant years." *Id*. at 6. Cohen repeated these efforts to blame his accountant in his sentencing submissions. *See id*. According to the SDNY, however, Cohen's statements were "simply false," and the Government was prepared to prove at trial that the limited information Cohen did provide his accountant could not have led his accountant to uncover the unreported income. *Id*.

In December 2019, less than one year into his 36-month sentence, Cohen sought a sentence reduction pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure. The SDNY opposed

[6] The Special Counsel's Office ("SCO") led by Robert Mueller prosecuted Cohen in *United States v. Cohen*, No. 18 Cr. 850 (S.D.N.Y.).

the motion and informed Judge Pauley that the prosecutors had "substantial concerns about Cohen's credibility as a witness," based in part on lies during proffers that included "material false statements"—*i.e.*, further violations of 18 U.S.C. § 1001—in January and February 2019. SDNY's Opp'n at 1, 4, ECF No. 58. The prosecutors also expressed concern regarding (1) "apparent contradictions" between Cohen's post-sentencing congressional testimony and his guilty pleas and certain filings in the SDNY case, and (2) a "litany of public comments" made by Cohen and his surrogates concerning his federal case, many of which minimized his acceptance of responsibility and were inconsistent with his guilty pleas or other undisputed facts. *Id*. at 5-6.[7]

Judge Pauley denied Cohen's motion, finding that he "made material and false statements in his post-sentencing proffer sessions" and that his and his surrogates' "ad hominem attacks" against the SDNY lacked any substance. *United States v. Cohen*, 2020 WL 1428778, at *1 (S.D.N.Y. 2020).[8]

In the following years, Cohen filed several unsuccessful motions seeking early termination of his supervised release. In a June 2023 filing opposing one of Cohen's requests, the SDNY noted that it "previously delineated many of Cohen's lies that undermined his attempts at cooperation and pointed to Cohen's repeated attempts to downplay his own conduct after his guilty plea." SDNY's Opp'n at 3, ECF No. 86. The SDNY also noted that his attempts have continued without ceasing:

> More recently, just before making his last motion, he falsely wrote in a book he authored that he 'did not engage in tax fraud,' that the tax charges were 'all 100 percent inaccurate,' and that he was 'threatened' by prosecutors to plead guilty. *See* Michael Cohen, REVENGE 54 (2022). Additionally, in a recent attempt to distance himself from his guilty plea to making false statements to a financial institution about tax medallion liabilities, Cohen stated on television, "first and foremost, there was no fraud in the medallions, I don't know even what he's talking about." *See* The Beat with Ari Melber, MSNBC (Mar. 20, 2023), https://shorturl.at/cvDI8. Cohen's recent statements are belied by his under-oath statements when he pled guilty, which included that he was guilty of tax evasion and false statements to banks, and that he had not been threatened or forced to plead guilty. And they are

[7] For example, the SDNY cited: (1) Cohen's repeatedly attempts to walk back his own guilty pleas, including statements that "[t]here is no tax evasion. . . . It's a lie."; (2) a televised interview during which Cohen described his role in one of the campaign finance charges by saying "I just reviewed the documents"; and (3) Cohen's claims in litigation with the Trump Organization that *all eight* of the federal charges against him "arose from conduct undertaken by Cohen in furtherance of and at the behest of the Trump Organization and its principals, directors, and officers" when, indisputably, six counts to which he pled guilty had nothing to do with the Trump Organization. *See* SDNY's Opp'n at 6, ECF No. 58.

[8] The Bureau of Prisons, during the COVID-19 period, nevertheless transferred Cohen to furlough and then home confinement, such that Cohen only served slightly more than one year of his three-year custodial sentence. *See* SDNY's Opp'n at 2, ECF No. 82.

> evidence that Cohen has not "taken full responsibility for his actions," as he assets in his motion. Indeed, quite the opposite. As the Government stated previously, while Cohen is free to write and say what he wants, he cannot simultaneously distance himself from his conduct on cable news, while cloaking himself in claims of acceptance of responsibility in court filings.

Id. (cleaned up).

Remarkably, Cohen's most recent request for relief has been overshadowed by revelations that he caused his counsel to cite federal cases that do not exist.

On November 29, 2023, counsel for Cohen submitted a letter to Judge Furman requesting that he discharge Cohen from supervised release. Letter Motion, ECF No. 88. In the submission, counsel for Cohen argued that his client's "unwavering cooperation" and "critical testimony" in the *State of New York v. Donald J. Trump*—supposed "*truthful accounts of his experiences*"—demonstrate "an exceptional level of remorse and a commitment to upholding the law that cannot be denied." *Id*. at 1. Further, counsel cited three examples where, "[a]s recently as 2022, there have been District Court decisions, affirmed by the Second Circuit Court, granting early termination of supervised release": (1) "United States v. Figueroa-Flores, 64 F. 4th 223 (2d Cir. 2022)"; (2) "United States v. Ortiz (No. 21-3391). 2022 WL 4424741 (2d Cir. Oct. 11, 2022)"; and (3) "United States v. Amato, 2022 WL 1669877 (2d Cir. May 10, 2022)." *Id*. at 2-3.

On December 12, 2023, Judge Furman entered an Order to Show Cause why sanctions should not be imposed relating to the three cases cited in Cohen's motion. Order to Show Cause at 1, ECF No. 96 ("As far as the Court can tell, none of these cases exist."). In response, the attorney who filed the motion on behalf of Cohen retained counsel and informed Judge Furman that Cohen sent him the citations. Schwartz Letter at 6, ECF No. 103. The attorney asserted that he believed, at the time, based on comments made to him by Cohen, that the citations originated from another attorney representing Cohen, but that he learned after the court's Show Cause Order that Cohen admitted to his other attorney that he found the cases "on Google." *Id*. at 6-7.

In a separate filing, Cohen sought to minimize his role in the incident. "[T]his is a simple case of a client making a well-intentioned but poorly-informed suggestion; trusting—as he was entitled to do—that his attorney would vet that suggestion before incorporating it; and his attorney's mistaken failure to do so." Perry Letter at 2, ECF No. 104.[9] Moreover, Cohen asserted that his recollection differs from Mr. Schwartz's in that he "is certain" that he did not tell Mr. Schwartz that Ms. Perry would provide or had provided cases of any sort. *Id*. at 4. *But see* Schwartz Reply Letter at 1-2, ECF No. 105 (disputing Cohen's claim); Schwartz Decl. at ¶ 12 & n.2, ECF No. 106 ("After receiving

[9] The letter asserts that the "invalid citations at issue" were produced by Google Bard, which Cohen "misunderstood to be a supercharged search engine, not a generative AI service like Chat-GPT." *Id*. at 3

the [November 12, 2023] redline changes from Ms. Perry, through Cohen, I spoke with Cohen via telephone, as I did frequently. On those calls, he reiterated to me that Ms. Perry 'would be' providing the cases.). It is clear that, once again, Cohen is lying.

C. Cohen's Perjured Testimony In New York State Court

As you are aware, Cohen also recently testified in the civil case, *People by James v. Trump*, Ind. No. 452564/2022 (Sup. Ct. N.Y. Cnty). During his testimony, he committed perjury by: (1) falsely testifying that he "refused" a motion pursuant to U.S.S.G. § 5K1.1 from the USAO, *see* 10/24/2023 Tr. 2187; and (2) testifying falsely that he did not commit the crimes charged in Counts One through Six. *See, e.g., id.* at 2188-2189, 2288.

Most notably, Cohen testified that he was not guilty of the federal tax evasion charges to which he pleaded guilty and that he *lied* to U.S. District Court Judge William H. Pauley III during his sworn plea allocution in 2018. This included the following sworn testimony regarding his guilty plea:

> Q: Have you ever made any public statements concerning the legitimacy of [your] convictions?
> A: More than one.
> Q: And why did you do that?
> A: Because there was no tax evasion. At best, it could be characterized as a tax omission. I have never in my life not paid taxes. I have never requested an extension until 2017. Every year I had paid, no extensions on time, what my CPA accountant directed me to pay.

Id. at 2188-2189.

> Q: Did you lie to Judge Pauley when you said that you were guilty of the counts that you said under oath that you were guilty of? Did you lie to Judge Pauly?
> A: Yes.

Id. at 2288.

> Q: So, sir, you lied at the time -- you lied more than once in federal court, correct?
> A: Correct.
> Q: When the stakes affected you personally, right?
> A: Correct.
> Q: And you mislead a federal judge?
> A: Yes.

Id. at 2437.

Cohen then reiterated in public statements, on the steps of the courthouse where the trial in *People v. Trump* is due to take place, that he has repeatedly lied and committed perjury. At a bare minimum, Cohen's testimony demonstrates that he has committed perjury—either when pleading

guilty to the federal charges or when recently testifying in New York state court that he did not commit the crimes to which he pleaded guilty. The truth cannot cut both ways.

The SDNY prosecutors responsible for bringing the federal charges against Cohen have represented to the federal court their belief that it is the latter, that Cohen lied in his recent court testimony. Citing his recent testimony, the SDNY opposed another attempt by Cohen in November 2023 to terminate his supervised release, in part, because he "appears to have lied under oath in a court proceeding." SDNY's Opp'n at 1, *United States v. Cohen*, No. 18 Cr. 602 (S.D.N.Y. Dec. 4, 2023), ECF No. 90. The prosecutors also say they have the evidence to prove it:

> To be clear, Cohen was guilty of tax evasion over a period of years. He pled guilty to it, purported to take responsibility for it at his sentencing (and received credit for accepting responsibility***)***, and the Government had sufficient evidence to prove him guilty of tax evasion beyond a reasonable doubt had he gone to trial. . . .

Id. at 3.

Further, after admitting to multiple past instances of perjury before both courts and Congress, Cohen once again committed perjury right in front of Justice Engoron. In response to questions by the Attorney General, Cohen first claimed to have been specifically "tasked by [President Trump] to increase the total assets" to falsely inflate the total net worth. 10/24/2023 Tr. 2211, 2232. Cohen doubled down on this falsehood when confronted with his previous testimony to Congress that he did not recall ever being directed by President Trump to inflate the numbers, claiming that he lied under oath to Congress in that instance. 10/25/2023 Tr. 2410.

Shortly thereafter, Cohen reversed course and stated that he in fact did not lie to Congress. *Id*. at 2439. Moreover, he then admitted he lied earlier and admitted that President Trump never actually told him to falsely inflate asset values. *Id*. at 2440. Yet, despite all these admissions of perjury and despite his blatant perjury during that trial, you have refused to even investigate, much less prosecute, Cohen, and plan fully to call him as a witness in the upcoming criminal trial.

D. The People's Obligation To Remove Cohen From Its Witness List

DANY has indicated that you continue to intend to call Cohen as a witness in *People v. Trump*. *See* 1/29/2024 Supplemental Addendum to Automatic Discovery Form. Cohen will presumably falsely testify yet again that he did not commit the tax evasion crimes to which he pleaded guilty in 2018 and may even try to shift blame to federal prosecutors for charging him with "bogus" crimes. Based on this, we urge the People to remove Cohen from its witness list to avoid the illegal act of suborning perjury.

As officers of the court, the People are charged with the duty to ensure that evidence and testimony presented to the court are truthful. *See* N.Y.C.R.R. 1200, Rules 3.3(a)(3), 3.4(a)(4). This includes an obligation to "prevent[] false or perjured testimony and calling only those witnesses whom [the People] believe[] to be truthful witnesses testifying to facts as they understand them to be." *In re Schapiro*, 144 A.D. 1, 9 (1st Dept. 1911).

As prosecutors, the People are also held to the highest standards of conduct in criminal cases. "The [District Attorney] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *People v. Garcia*, 72 A.D.2d 356, 361 (App. Div. 1st Dept. 1980) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). "[H]e must never lose sight of the fact that a defendant, as an integral member of the body politic, is entitled to a full measure of fairness." *People v. Waters*, 35 Misc. 3d 855, 859 (Sup. Ct. Bronx Cnty. 2012) (quoting *People v. Zimmer*, 51 N.Y.2d 390, 393 (1980)). "It is fundamentally unfair and a clear violation of a defendant's right to due process for a prosecutor to present testimony that he knew, or should have known, was perjured." *Id*. at 861.

* * *

These issues demand careful consideration because of the legal, ethical, and constitutional issues they implicate. We again urge you to reconsider your positions regarding Cohen and Mr. Weisselberg and put an end to the selective and oppressive misconduct of your office. In addition, because of the manner in which your office has selectively leaked information you deem favorable throughout the investigation and prosecution, as well as the extensive redactions you have convinced Judge Merchan to authorize in otherwise-public filings, we will be making this letter public.

Respectfully Submitted,

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

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(Via Email)