PART 59 APR 16 2024

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.	Ind. No. 71543-23

PEOPLE'S MEMORANDUM OF LAW
IN SUPPORT OF THE MOTION FOR CONTEMPT

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INTRODUCTION

On April 1, 2024, this Court entered an order directing defendant to refrain from, among other things, "[m]aking or directing others to make public statements about known or reasonably foreseeable witnesses concerning their potential participation in the investigation or in this criminal proceeding" (Aff. of Christopher Conroy ("Conroy Aff.") Ex. B, at 4). Such extrajudicial statements, the Court found, pose a "very real" "threat to the integrity of the judicial proceedings" by intimidating both defendant's direct targets as well as others who may be "called upon to participate in these proceedings" and who rightly fear being subject to similar vitriol (*id.* at 2). Defendant then sought an emergency stay from the Appellate Division, First Department, but that court denied such relief on April 9.

The very next day, and continuing through this past weekend, defendant willfully violated this Court's order by publishing several social media posts attacking two known witnesses—Michael Cohen and Stormy Daniels. These attacks unquestionably violate the Court's April 1 order. And defendant's violation is willful: a continuation of conduct that this Court has already found to be "deliberate and intended to intimidate this Court and impede the orderly administration of this trial" (*id.* at 3).

This Court warned defendant that "any violation of this Order will result in sanctions under Judiciary Law §§ 750(A)(3) and 751" (*id.* at 5). This Court should now hold defendant in criminal contempt for willfully disobeying a lawful mandate. Defendant is not above the law, and he cannot simply disregard judicial orders that upset him. And both the public and the participants in the criminal trial deserve reassurance that the judicial system stands ready to protect them and to preserve the rule of law in the face of defendant's extreme and deliberate provocations.

BACKGROUND

On March 26, 2024, this Court issued its original order restricting defendant's extrajudicial statements (Conroy Aff. Ex. A). This Court concluded that defendant's "inflammatory extrajudicial statements undoubtedly risk impeding the orderly administration of this Court" and warranted restricting his speech (*id.* at 2).

Defendant responded not by tempering his inflammatory rhetoric, but instead by deliberately turning his vitriol to this Court's family. As a result, on April 1, 2024, the Court issued a further order restricting defendant's extrajudicial statements. As amended, the Order prohibits defendant from:

- Making or directing others to make public statements about known or reasonably foreseeable witnesses concerning their potential participation in the investigation or in this criminal proceeding;

- Making or directing others to make public statements about (1) counsel in the case other than the District Attorney, (2) members of the court's staff and the District Attorney's staff, or (3) the family members of any counsel, staff member, the Court or the District Attorney, if those statements are made with the intent to materially interfere with, or to cause others to materially interfere with, counsel's or staff's work in this criminal case, or with the knowledge that such interference is likely to result; and

- Making or directing others to make public statements about any prospective juror or any juror in this criminal proceeding.

(Conroy Aff., Ex. B, at 4.) The Court warned defendant that "any violation of this Order will result in sanctions under Judiciary Law §§ 750(A)(3) and 751" (*id.* at 5). The Court also warned defendant that he would "forfeit any statutory right he may have to access juror names if he engages in any conduct that threatens the safety and integrity of the jury or the jury selection process" (*id.* at 4).

On Monday, April 8, defendant filed a petition under C.P.L.R. article 78 in the Appellate Division, First Department seeking to prohibit enforcement of certain aspects of this Court's April

1 order—including, as relevant here, its "restrictions on speech regarding Michael Cohen" and "Stephanie Clifford." Verified Article 78 Petition ("Pet.") ¶ 42, *Matter of Trump v. Merchan*, No. 2024-02369, NYSCEF Doc. No. 5 (1st Dep't Apr. 8, 2024). Defendant also sought an interim "stay of proceedings pending resolution of the Article 78 proceeding in the nature of prohibition." Sum. Stmt. on Application for Interim Relief at 1, *Matter of Trump v. Merchan*, No. 2024-02369, NYSCEF Doc. No. 6 (1st Dep't Apr. 8, 2024). On April 9, a justice of the Appellate Division denied defendant's application for interim relief. Defendant's underlying article 78 petition is currently returnable on April 29. *See* Order, *Matter of Trump v. Merchan*, No. 2024-02369, NYSCEF Doc. No. 14 (1st Dep't Apr. 8, 2024).

On April 10—just one day after defendant was denied any interim relief by the Appellate Division—defendant posted two social media statements on Truth Social referring directly to witnesses in this criminal proceeding.

The first statement (*see* Conroy Aff., Ex. C), posted on April 10, 2024, at 10:07 a.m., reproduced a social media post by Michael Avenatti, a former lawyer of Stormy Daniels's who was later convicted of stealing from her. The Avenatti post republished by defendant states "We can't be hypocrites when it comes to the 1st Amendment. It is outrageous that Cohen and Daniels can do countless TV interviews, post on social, & make $$ on bogus documentaries – all by talking shit about Trump – but he's gagged and threatened with jail if he responds." Defendant added, in his own words: "Thank you to Michael Avenatti—for revealing the truth about two sleaze bags who have, with their lies and misrepresentations, cost our Country dearly!"

Defendant's second statement (*see* Conroy Aff., Ex. D), posted on April 10, 2024, at 10:48 a.m., contained a picture of a document titled "Official Statement of Stormy Daniels," dated January 30, 2018, which refers to facts that are directly at issue in this criminal trial. Defendant

accompanied the picture with his own statement : "LOOK WHAT WAS JUST FOUND! WILL THE FAKE NEWS REPORT IT?"

The third statement (*see* Conroy Aff., Ex. E), posted on April 13, 2024, at 12:56 p.m., stated: "Has Mark POMERANTZ been prosecuted for his terrible acts in and out of the D.A.'s Office. Has disgraced attorney and felon Michael Cohen been prosecuted for LYING? Only TRUMP people get prosecuted by this Judge and these thugs! A dark day for our Country. MAGA2024!!!"

ARGUMENT

"Allegations of willful disobedience of a proper judicial order strike at the core of the judicial process and implicate weighty public and institutional concerns regarding the integrity of and respect for judicial orders." *Matter of Dep't of Envt'l Protection of City of New York v. State Dep't of Envt'l Conservation*, 70 N.Y.2d 233, 240 (1987). To vindicate these interests and "to protect the dignity of the judicial system and to compel respect for its mandates," *Matter of McCormick v. Axelrod*, 59 N.Y.2d 574, 583 (1983), the Judiciary Law authorizes a court to hold a party in criminal contempt for their "willful disobedience of a court's lawful mandate," *Town of Riverhead v. T.S. Haulers, Inc.*, 68 A.D.3d 1103 (2d Dep't 2009); *see* Judiciary Law § 750(A)(3).

For criminal contempt, the moving party must establish: (1) the existence of a lawful order expressing an unequivocal mandate, and (2) a violation of the order (3) that is made with knowledge and is willful. *See Matter of Dep't of Envt'l Protection of City of New York*, 70 N.Y.2d at 240; *see also McCormick*, 59 N.Y.2d at 583. The moving party must establish these elements beyond a reasonable doubt. *See, e.g.*, *Town of Southampton v. R.K.B. Realty, LLC*, 91 A.D.3d 628, 629 (2d Dep't 2012); *N.A. Dev. Co. Ltd. v. Jones*, 99 A.D.2d 238, 242 (1st Dep't 1984).

Each of these elements is established here. The Court's April 1 order is unequivocal and lawful. Defendant's recent social media posts plainly violate the order because they target known witnesses concerning their participation in this criminal proceeding. And defendant's violations

were knowing and willful—indeed, they are the latest in what this Court has already recognized as a deliberate strategy to impede this criminal trial. This Court should accordingly impose sanctions under Judiciary Law § 751; direct defendant to remove the social media posts that violate the April 1 order; remind defendant again of his obligations under the order; and warn defendant that future violations can be punished with additional sanctions, including imprisonment.

1. The Court's order restricting extrajudicial statements is a lawful order expressing an unequivocal mandate.

The first element of criminal contempt is the existence of a "lawful order of the court clearly expressing an unequivocal mandate." *Matter of Dep't of Envtl. Protection of City of New York*, 70 N.Y.2d at 240. To establish the existence of a lawful order, a party need demonstrate only "an order of a court of competent jurisdiction which is not void on its face." *Dalessio v. Kressler*, 6 A.D.3d 57, 65 (2d Dep't 2004). In addition, the court's directive must be sufficiently definite to rule out the possibility that a violation was "inadvertent or mistaken," *El-Dehdan v. El-Dehdan*, 114 A.D.3d 4, 16-17 (2d Dep't 2013), *aff'd*, 26 N.Y.3d 19 (2015); *see also Ketchum v. Edwards*, 153 N.Y. 534, 539 (1897), or based on a "legitimate disagreement" about what was permitted, *Matter of King v. King*, 249 A.D.2d 395, 396 (2d Dep't 1998),.

Each of these requirements is plainly satisfied here. First, the Court's order restricting defendant's extrajudicial statements is lawful: the Court properly obtained jurisdiction over defendant at arraignment, *see* CPL § 1.20(9); *People v. Grant*, 16 N.Y.2d 722, 723 (1965), and the order restricting extrajudicial statements was one that courts are authorized to issue in criminal cases, *see, e.g.*, *Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966); *Matter of Fischetti v. Scherer*, 44 A.D.3d 89, 91 (1st Dep't 2007). Second, the order's directives are unequivocal: defendant is prohibited from "making or directing others to make public statements about known or reasonably foreseeable witnesses concerning their potential participation in the investigation or in this

criminal proceeding" (Conroy Aff., Ex. B, at 4). There is no reasonable room for disagreement or confusion about the individuals or subject matters covered by this restriction.[1]

To be sure, defendant has loudly and repeatedly complained that the order is unlawful, in both court filings and other public statements. But no court has agreed with his objections, and a defendant's mere disagreement with a court's order is no defense to criminal contempt, since "a party may not challenge a [court's] order by violating it." *United States v. Cutler*, 58 F.3d 825, 832 (2d Cir. 1995). To the contrary, "'persons subject to an injunctive order . . . are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.'" *In re Criminal Contempt Proceedings*, 329 F.3d 131, 138 (2d Cir. 2003) (quoting *GTE Sylvania, Inc. v. Consumers Union of the United States, Inc.*, 445 U.S. 375, 386 (1980)). A party may even be held in contempt for violating an order that "was issued in error," *Schmude v. Sheahan*, 420 F.3d 645, 651 (7th Cir. 2005), or that was later "set aside on appeal," *In re Criminal Contempt Proceedings*, 329 F.3d at 139; *see also State v. Congress of Racial Equality*, 92 A.D.2d 815, 817 (1st Dep't 1983). Defendant is entitled to pursue any legal objections to the April 1 order in his pending article 78 proceeding. In the meantime, he must comply with this Court's directive.

2. Defendant violated the Court's order.

Defendant's social media statements violated the order's restrictions on statements about witnesses. As noted above, the order prohibits defendant from "making or directing others to make public statements about known or reasonably foreseeable witnesses concerning their potential

[1] Defendant's C.P.L.R. article 78 petition seeking a writ of prohibition against the April 1 order raises a vagueness challenge, but that challenge is not directed in any way at the restriction on statements about witnesses that is at issue here. Instead, the vagueness challenge focuses exclusively on the order's "mens rea requirement," which applies to a separate restriction in the order that is not at issue here (Pet. ¶ 188; *see also id.* ¶¶ 15, 184-189).

participation in the investigation or in this criminal proceeding" (Conroy Aff., Ex. B, at 4). Evidence establishes defendant's violation of this unequivocal directive beyond a reasonable doubt.

First, defendant made the statements posted to his social media account. This Court's April 1 order was based in overwhelming part on statements from defendant's Truth Social account; defendant has never disclaimed that he is the author of those statements. To the contrary, the fundamental premise of defendant's pending article 78 petition is that the April 1 order unconstitutionally restrains his right to speak on Truth Social and elsewhere. Defendant has also acknowledged in filings before this Court that he is the author of his Truth Social posts. *See* Def.'s Mem. Opp. People's Mot. to Clarify at 7 (Apr. 1, 2024). And defendant has recently admitted on Truth Social that "when I put out a statement or message, it is SPREAD all over the place," and if Truth Social "didn't work, or properly get the word out, I wouldn't use it" (Conroy Aff., Ex. F).

Second, defendant's social media posts are indisputably about known witnesses in this criminal proceeding: he explicitly names both Michael Cohen and Stormy Daniels.

Third, defendant's social media posts concern Cohen's and Daniels's participation in this criminal proceeding. Timing alone supports such a conclusion. It is no coincidence that defendant has ramped up his attacks on these two individuals just as his criminal trial is about to begin. The sheer proximity of defendant's statements to these witnesses' forthcoming testimony establishes that his attacks are directed at their involvement in this trial.

Context further reinforces this connection. Defendant's April 10 posts about Cohen and Daniels were made shortly after he published a lengthy screed calling this trial "Communism at its worst, and Election Interference at its Best"; describing this Court as "a HIGHLY CONFLICTED & CORRUPT JUDGE, whose hatred for me has no bounds"; labeling the District Attorney a "Soros Prosecutor"; and insulting the Court and District Attorney as "animals" who "want to put

the former President of the United States . . . IN JAIL, for doing absolutely nothing wrong" (Conroy Aff., Ex. G). Defendant's April 13 post about Cohen was similarly made in the middle of five successive posts all about this criminal trial, several of which specifically criticize this Court and the District Attorney. Defendant's statements about these two witnesses were thus of a piece with his broader invective about this criminal trial, making unmistakably clear that his attacks concerned the witnesses' involvement in this proceeding.

Finally, the content of defendant's social media posts all relate to matters that are directly connected to Cohen's and Daniels's participation in this criminal trial. For example, defendant's April 13 post asks whether "Michael Cohen [has] been prosecuted for LYING?", and his April 10 post vilifies Cohen (as well as Daniels) as a "sleaze bag[]" who engages in "lies and misrepresentations" (Conroy Aff., Ex. E). That claim parallels defendant's efforts in this trial to preclude Cohen's testimony because of his purported lack of credibility. *See* Def.'s Mot. in Limine at 4 (Feb. 22, 2024) ("Michael Cohen is a liar."). Indeed, defense counsel has told the Court and the People in multiple filings that he intends to confront Cohen on cross-examination with past incidents of untruthfulness. Defendant's extrajudicial statements are thus a direct attack on Cohen's credibility in this trial that parallel the overt defense strategy here.

The same is true of defendant's statements about Daniels. Defendant's April 10 social media posts reproduces a statement by Daniels from 2018 that directly concerns events relevant to the criminal charges here—including an explicit reference to "hush money." There is little doubt that defense counsel will seek to use this very statement to attempt to impeach Daniels's credibility at the forthcoming trial. Defendant's extrajudicial preview of that defense tactic thus constitutes a statement about a witness concerning her participation in this criminal trial.

3. Defendant willfully violated the order.

Establishing criminal contempt requires proof that the defendant's violation was willful. *See, e.g.*, *Matter of McCormick*, 59 N.Y.2d at 583. Although the term is not explicitly defined in the Judiciary Law or the CPL, courts have typically equated it with "intentional." *El-Dehdan v. El-Dehdan*, 114 A.D.3d 4, 16 (2d Dep't 2013), *aff'd*, 26 N.Y.3d 19 (2015); *see also People v. Solomon*, 150 Misc. 873, 878 (N.Y. Gen. Sess. 1934) ("deliberate intent" to violate the court's order). "Knowingly failing to comply with a court order gives rise to an inference of willfulness." *Dalessio v. Kressler*, 6 A.D.3d 57, 66 (2d Dep't 2004).

Here, defendant's violations of this Court's order restricting extrajudicial speech was willful. First, defendant is indisputably aware of the terms of the April 1 order. Defendant has repeatedly complained of the order on his social media account—including, on April 11, by posting a minute-long video criticizing the order's restrictions and attacking this Court as "conflicted." Moreover, defendant has now engaged in multiple rounds of briefing involving the April 1 order and its earlier iteration, including several filings in this Court and in the Appellate Division, all of which have required defendant to engage in detail with the order's specific directives. Indeed, defendant's Appellate Division filing specifically criticizes and seeks to prohibit enforcement of the April 1 order's restrictions on his extrajudicial statements regarding Cohen and Daniels. There can thus be no question that defendant is aware of the order's requirements; that knowledge alone indicates that his disobedience of the order was willful.

Second, both the People and the Court have made clear that the April 1 order leaves defendant substantial room to engage in speech about this criminal proceeding, including criticisms of this Court and the District Attorney. Defendant has shown his ability to understand the significant leeway left to him by making multiple social media posts and other public statements that criticize the criminal trial without violating the April 1 order. His decision to go

beyond such criticisms and launch separate, specific attacks on two witnesses should be understood as nothing less than a knowing and intentional breach of the unequivocal lines set by this Court to protect the integrity of the ongoing proceeding.

Third, defendant's recent experience with orders restricting his extrajudicial speech provides further support for a finding that his flouting of this Court's order was willful. In the civil-enforcement proceeding, Justice Engoron twice held defendant in civil contempt of orders prohibiting him from making public statements about court staff. Both times, Justice Engoron rejected defendant's attempt to excuse his violations, ultimately finding that defendant's explanations "ring[] hollow and untrue" and that he had "intentionally violated" the orders. *See* Order, *People ex rel. James v. Trump*, Index No. 452564/2022, NYSCEF Doc. No. 1598 (Sup. Ct. N.Y. County Oct. 26, 2023); Order, *People ex rel. James v. Trump*, Index No. 452564/2022, NYSCEF Doc. No. 1584 (Sup. Ct. N.Y. County Oct. 20, 2023). This judicial finding confirms that defendant fully understands when an order prohibits him from speaking publicly about particular persons, and further understands when his public statements transgress such a directive.

4. The Court should impose sanctions.

Upon a finding of criminal contempt, the Judiciary Law authorizes a court to impose a fine not exceeding $1,000 or to sentence the contemnor to no more than 30 days' jail "or both, in the discretion of the court." Judiciary Law § 751. Here, this Court should impose the maximum $1,000 fine for each of defendant's three violations of the April 1 order. As this Court has already found, defendant's inflammatory attacks "undoubtedly interfere with the fair administration of justice and constitute[] a direct attack on the Rule of Law itself" (Conroy Aff., Ex. B, at 3). Such grave harm warrants imposition of the maximum fine permitted under the law.

This Court should also order defendant to remove the social media posts attacking Cohen and Daniels. Justice Engoron imposed such relief in the civil-enforcement proceeding. *See* Order,

People ex rel. James v. Trump, Index No. 452564/2022, NYSCEF Doc. No. 1584 (Sup. Ct. N.Y. County Oct. 20, 2023). Removing these violative posts would also provide some indication that defendant is willing to "desist[] from further offensive conduct" in a way that could ward off further findings of contempt. 22 N.Y.C.R.R. § 604.2(c). And removal would also help to alleviate the intimidation and alarm intended to be inflicted by defendant's posts on both Cohen and Daniels, as well as on other potential witnesses and prospective jurors.

In addition, this Court should again admonish defendant to comply with his obligations under the order. And finally, this Court should warn defendant that future violations of the Court's restrictions on his extrajudicial statements can be punished not only with additional fines, but also with a term of incarceration of up to thirty days.

It is absolutely critical that defendant immediately halt any conduct that would violate the April 1 order's narrow restrictions to protect the integrity of the ongoing trial. A finding of criminal contempt, imposition of sanctions, and stark warnings from this Court are the minimum remedies necessary to achieve this indispensable objective.

DATED: April 15, 2024

Respectfully submitted,

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