

United States Senate
WASHINGTON, DC 20510

May 29, 2024

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Attorney General Garland,

I write to bring to your attention a possible criminal deprivation of rights in violation of 18 U.S.C. §§ 241–42. The public evidence suggests that an investigation is warranted at least. And all indications are that the responsible parties have their sights set, not only on rights protected by the Constitution, but on rightsholders of core federal concern, including the leading candidate for the presidency.

You should be well acquainted with the relevant statutes. Prosecutors in your Department of Justice included Section 241 in a misguided indictment of President Trump last year.¹ Section 241, which criminalizes conspiracies to “injure, oppress, threaten, or intimidate” others in the enjoyment of federally protected rights, was enacted during Reconstruction in an effort by Congress to stamp out race-based violence in the former Confederacy.² When your prosecutors revived it, even sympathetic media “were surprised by the inclusion of § 241 in the indictment.”³ That is because few jurists had any clue that a Reconstruction-era law designed to protect newly freed slaves had any bearing on the dispute between Republicans and Democrats after the 2020 election. Nevertheless, DOJ prosecutors defied the critics. They argued then as they argue now that President Trump engaged in a conspiracy to “threaten” voters, though the details of the alleged threat have not been forthcoming.⁴

Section 242 may not have featured as notoriously in the indictment of President Trump, but it is just as well known to the prosecutors you oversee. The statute even has its own write-up on your agency’s website. As the DOJ reads it, “Section 242 of Title 18 makes it a crime for a person

¹ Indictment, Dkt. 1, *United States v. Trump*, No. 1:23-CR-00257 (D.D.C. Aug. 8, 2023).

² Jason D’Andrea & Kai Wiggins, *Three Questions About Section 241, the Conspiracy Against Rights Statute*, LAWFARE, Aug. 16, 2023, <https://www.lawfaremedia.org/article/three-questions-about-section-241-the-conspiracy-against-rights-statute>.

³ *Id.*

⁴ *Supra*, n.1.

acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.”⁵ This includes both state officials acting “within their lawful authority” and those acting “beyond the bounds of [their] lawful authority.”⁶ The deprivation of rights need not be motivated “by animus toward the race, color, religion, . . . or national origin of the victim.”⁷

These statutes would seem to have quite a lot to say about the conduct of Juan Merchan, the New York trial judge and Democratic political donor who has set up a kangaroo court for Donald Trump in Manhattan. It makes no difference that Merchan is a judge, or a “justice” as trial judges are called in New York. “Whatever may be the case with respect to civil liability generally,” the Supreme Court has “never held that the performance of the duties of judicial, legislative, or executive officers, requires or contemplates the immunization of otherwise criminal deprivation of constitutional rights.”⁸ In fact, Supreme Court precedent expressly declares that judges are proper subjects of prosecution under Section 242.⁹ And even your website acknowledges that state judges who trample over constitutional rights are proper targets for prosecution in an appropriate case.¹⁰

Well, Merchan’s inquisition of Donald Trump has all the markings of an appropriate case. Merchan has imposed a prior restraint on the protected speech of a former president who is now leading presidential polling of the next election. On Merchan’s orders, a Republican presidential candidate has been made powerless to question the credibility of the witnesses testifying against him, the motivations of the prosecutors pursuing him, or the impartiality of the apparently conflicted judge fining him.

That would be disfavored in the best of circumstances. It was not long ago that even the most liberal justices on the Supreme Court denounced so-called “gag orders.” Justice Brennan once said that “even a short-lived ‘gag’ order in a case of widespread concern to the community constitutes a substantial prior restraint and causes irreparable injury to First Amendment interests as long as it remains in effect.”¹¹ Merchan has imposed a gag order in the first-ever criminal prosecution of a former president and leading presidential candidate at the hands of the opposing party. Talk about a “case of widespread concern to the community.”

Merchan has not been content to deprive President Trump of only his First Amendment rights, either. As a criminal defendant, President Trump is entitled to a fair trial by an impartial jury.¹² Merchan has done his best to deprive Trump of both. During jury selection, Merchan refused to dismiss prospective jurors with obvious bias. One had scoffed on social media that “Republicans

⁵ *Deprivation Of Rights Under Color Of Law*, Department of Justice, May 31, 2021, <https://www.justice.gov/crt/deprivation-rights-under-color-law>.

⁶ *Id.*

⁷ *Id.*

⁸ *O’Shea v. Littleton*, 414 U.S. 488, 503 (1974).

⁹ *Imbler v. Pachtman*, 424 U.S. 409, 429 (1976).

¹⁰ *Supra*, n.5.

¹¹ *Cap. Cities Media, Inc. v. Toole*, 463 U.S. 1303, 1304 (1983) (Brennan, J., in-chambers).

¹² *Skilling v. United States*, 561 U.S. 358, 378 (2010).

[were] projected to pick up 70 seats in prison.”¹³ Another posted a video on social media showing her participation in an anti-Trump street demonstration.¹⁴ But Merchan was willing to impanel them anyway, forcing President Trump’s attorneys to burn critical peremptory strikes.¹⁵

When it comes to the admission and exclusion of evidence, Merchan has been just as shameless. He has bent over backwards to allow the prosecution to introduce whatever evidence it wants, *e.g.*, by allowing a prosecution witness to testify at length about the alleged details of an unproven sexual episode with no relevance to the underlying charges.¹⁶ But he has taken a strong hand against defense evidence at every opportunity. In one ludicrous example, he ruled that President Trump’s lawyers could not even mention to the jury that the prosecution of President Trump is “novel, unusual, or unprecedented”—even though by that point liberal law professors, newspapers, and former prosecutors had all conceded that the Bragg prosecution depended on a “novel interpretation” of state law “with many significant legal problems.”¹⁷

Barring exculpatory evidence revealed in a future investigation, Merchan’s culpability under Section 242 for “subject[ing] [a] person . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution or laws of the United States” seems plain. As for a possible conspiracy under Section 241, there are many likely coconspirators to consider. For one, Merchan’s daughter Loren seems to be an obvious beneficiary of Merchan’s biased rulings. She works as a fundraiser for Democratic officials and organizations, and she helped her clients raise \$93 million from donors during Trump’s trial in New York, partly by invoking the case and smearing the defendant in solicitation emails.¹⁸

Prosecutors in the office of Manhattan District Attorney Alvin Bragg—from Christopher Conroy to Matthew Colangelo to Bragg himself—have also shown themselves to be plausible coconspirators. After all, they have repeatedly urged Merchan to deprive President Trump of his First Amendment rights in court filings and oral advocacy. One can only wonder what sort of *ex parte* communications might have led Merchan to so enthusiastically embrace a prior restraint on speech that he would have known to be repugnant to the Constitution.

¹³ Erica Orden, *Judge denies Trump effort to dismiss another prospective juror over social posts*, POLITICO, Apr. 16, 2024, <https://www.politico.com/live-updates/2024/04/16/trump-hush-money-criminal-trial/prospective-juror-stays-00152615>.

¹⁴ *Potential Juror says she understands the job of the jury, regardless of any political convictions*, CNN, https://www.cnn.com/politics/live-news/trump-hush-money-trial-04-16-24/h_076dc337a513b5e4e12936f708cf8384.

¹⁵ *Merchan says juror provided “reasonable explanations” for posts*, CNN, https://www.cnn.com/politics/live-news/trump-hush-money-trial-04-16-24/h_10e115ae3376930fc8911d3fdf2ec434.

¹⁶ Andrew C. McCarthy, *Stormy Testimony Shows: Trump’s Humiliation Is the Point of Bragg’s Prosecution*, NAT. REV., May 7, 2024, <https://www.nationalreview.com/corner/stormy-testimony-shows-trumps-humiliation-is-the-point-of-braggs-prosecution/>.

¹⁷ Jed Handelsman Shugerman, *I Thought the Bragg Case Against Trump Was a Legal Embarrassment. Now I Think It’s a Historic Mistake.*, N.Y. TIMES, Apr. 23, 2024, <https://www.nytimes.com/2024/04/23/opinion/bragg-trump-trial.html>; Ben Protess, Kate Christobek, Jonah E. Bromwich, William K. Rashbaum & Sena Piccoli, *In Trump Case, Bragg Pursues a Common Charge With a Rarely Used Strategy*, N.Y. TIMES, May 7, 2023, <https://www.nytimes.com/2023/05/07/nyregion/trump-indictment-bragg-strategy.html>; Nada Tawfik & Kayla Epstein, *Trump New York hush-money trial is far from a slam dunk*, BBC NEWS, Apr. 13, 2024, <https://www.bbc.com/news/world-us-canada-68737723>.

¹⁸ Jon Levine & Rich Calder, *Dem clients of daughter of NY judge in Trump hush-money trial raised \$93M off the case*, N.Y. POST, Mar. 30, 2024, <https://nypost.com/2024/03/30/us-news/dem-clients-of-daughter-of-judge-in-trump-trial-raised-90m-off-case/>.

To ensure that you are faithfully and evenhandedly applying federal criminal law, please tell me by **June 28, 2024**, whether you will open a criminal investigation into the conduct of Juan Merchan and his possible coconspirators. If you will not open an investigation, please let me know whether you will consider issuing a document-retention request to allow a future administration to consider taking up the case.

Sincerely,



JD Vance
United States Senator