

MEMO ENDORSED
tacopina seigel trial lawyers

TACOPINA SEIGEL & DEOREO

JOSEPH TACOPINA
EMAIL: jtacopina@tacopinalaw.com
www.tacopinalaw.com

275 Madison Avenue, 35th Floor
New York, NY 10016
Telephone (212) 227-8877
Facsimile (212) 619-1028

April 19, 2023

The Honorable Lewis A. Kaplan
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *E. Jean Carroll v. Donald J. Trump*, 22-cv-10016 (LAN)

Your Honor:

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 4-20-2023

In light of the Court's Order requesting counsel to advise whether their respective clients intend to be present throughout the trial, we think it necessary to bring the following concern to Your Honor's attention given the unique status of our client, Defendant Donald J. Trump ("Trump"), as a former president.

Specifically, as counsel who appeared with Defendant Trump during his recent arraignment in New York Supreme Court, in *People v. Trump*, Indictment No. 7145/2023, I have personal knowledge of the logistical burdens associated with his appearance in a courtroom, much of which was witnessed during televised broadcasts. As a former president, the defendant was always accompanied by approximately a dozen secret service agents, the FDR Drive was shut down for a significant amount of time while he traveled to the courthouse, the courthouse itself was frozen while he was present, and the streets, within a three block radius of the courthouse, were blocked off while he was there. Defendant Trump's appearance in the Southern District of New York in connection with this matter would result in similar logistical and financial burdens upon New York City, its residents, and the Court itself. With respect to the latter, in order for Defendant Trump to appear, his movement would need to be coordinated preliminarily by a Secret Service advance team hours beforehand each day that he is present, so that a tactical plan may be developed. As part of that plan, according to Secret Service, courthouse floors would need to be locked down, elevators shut down, courthouse personnel confined to their offices, and members of the public restricted from the area.

Although Defendant Trump wishes to appear at trial, in order to avoid the burdens outlined above, if he does not do so, we respectfully request that the Court issue to the jury the following preliminary instruction: "While no litigant is required to appear at a civil trial, the absence of the defendant in this matter, by design, avoids the logistical burdens that his presence, as the former president, would cause the courthouse and New York City. Accordingly, his presence is excused unless and until he is called by either party to testify."

Mr. Trump's lead counsel expresses Mr. Trump's alleged desire to testify at trial but seeks an order from the Court excusing his presence unless either party calls him as a witness and, in the event he does not testify, instructing the jury that his "absence . . . by design, avoids the logistical burdens that his presence, as the former president, would cause the courthouse and New York City." Dkt 118.

First, the Court neither excuses nor declines to excuse Mr. Trump from attending the trial or from testifying in this case. As far as the Court is aware, Mr. Trump is under no legal obligation to be present or to testify. The plaintiff has made clear that she does not intend to call him as a witness. The decision whether to attend or to testify is his alone to make. There is nothing for the Court to excuse.

Second, the Court notes but does not accept Mr. Trump's counsel's claims concerning alleged burdens on the courthouse or the City were Mr. Trump to attend or testify. Mr. Trump is entitled by law to the protection of the United States Secret Service, which he now has enjoyed as a former president for more than two years. He has a right to testify in this case. As it would do for any person with business before the Court, the Court will do everything within its power to enable Mr. Trump to exercise that right. Moreover, it is entirely confident that the United States Marshals Service and the City of New York will do their parts in securing that right to Mr. Trump, just as they repeatedly have done in other cases involving security concerns.¹ Moreover, the Court notes from Mr. Trump's campaign web site and media reports that he announced earlier this week that he will speak at a campaign event in New Hampshire on April 27, 2023, the third day of the scheduled trial in this case.² If the Secret Service can protect him at that event, certainly the Secret Service, the Marshals Service, and the City of New York can see to his security in this very secure federal courthouse.

Finally, Mr. Trump has been on notice of the April 25 trial date in this case since on or about February 7, 2023. Dkt 49, ¶ 1(c). There has been quite ample time within which to make whatever logistical arrangements should be made for his attendance, and certainly quite a bit more time than the five or six days between his recent indictment on state criminal charges and his arraignment on that indictment approximately one block from the location of the trial of this case.

The question of the requested jury instruction is premature. Mr. Trump is free to attend, to testify, or both. He is free also to do none of those things. Should he elect not to appear or testify, his counsel may renew the request. In the meantime, there shall be no reference by counsel for Mr. Trump in the presence of the jury panel or the trial jury to Mr. Trump's alleged desire to testify or to the burdens that any absence on his part allegedly might spare, or might have spared, the Court or the City of New York.

SO ORDERED.

Dated: April 20, 2023



Lewis A. Kaplan
United States District Judge

1

This included, in the case of the City and the State of New York, providing security for the recent arrest and arraignment of Mr. Trump, which occurred after Mr. Trump issued a post on Truth Social in which he urged people to protest the arrest and to "take our nation back." Maggie Haberman, et al., *Trump Claims His Arrest Is Imminent and Calls for Protests, Echoing Jan. 6*, N.Y. TIMES, <https://www.nytimes.com/2023/03/18/us/politics/trump-indictment-arrest-protests.html>.

2

<https://www.donaldjtrump.com/events> (last visited Apr. 20, 2023).