FREE + FAIR LITIGATION GROUP | Advocates for Democracy in Crisis

Via ECF

February 17, 2025

Judge Dale E. Ho
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *United States of America v. Adams* (1:24-cr-00556-DEH)

Dear Judge Ho,

Undersigned counsel represent a group of former United States Attorneys.[1] We respectfully request leave to submit a brief, as *amici curiae*, in support of the Court's authority to conduct a factual inquiry into the government's pending request for a nolle prosequi in the instant matter. (Dkt. No. 122).[2]

Amici have served as former United States Attorneys for the Southern District of New York, the District of New Jersey, and the District of Connecticut. They have collectively been responsible for thousands of federal criminal prosecutions. They understand federal prosecutors' ethical and professional obligations and the imperative that prosecutors act without regard to partisan politics. *See, e.g.*, U.S. Dep't. of Justice, *Justice Manual* § 9-27.260 (2018). They also share a respect for the rule of law, the separation of powers, and the importance of preserving the integrity of the federal criminal justice system.

In the views of amici, the events of the last week in *United States of America v. Adams* have been unprecedented. As detailed in amici's proposed brief—attached as Exhibit 1—the government's February 14, 2025 request for a nolle prosequi in the instant matter was preceded

[1] The group consists of John S. Martin Jr. (former United States Attorney for the Southern District of New York (1980-1983) and former Judge for the United States District Court for the Southern District of New York (1990-2003)); Robert J. Cleary (former United States Attorney for the District of New Jersey (1999-2002)); and Deirdre M. Daly (former United States Attorney for the District of Connecticut (2013-2017)).

[2] Amici confirm that no counsel for a party authored this brief in whole or in part and that no person other than amici or their counsel made any monetary contributions intended to fund the preparation or submission of this brief.

by resignations of numerous senior federal prosecutors, as well as allegations of an improper "quid pro quo" agreement between the U.S. Department of Justice and the Mayor of New York City, Eric Adams. These extraordinary events raise serious questions about the appropriateness of the government's dismissal request. Amici respectfully submit that these events call for a factual inquiry, initiated by the Court, into whether the government's request for dismissal has been made in good faith and is consistent with the public interest, as required by Federal Rule of Criminal Procedure 48(a).

Amici's proposed brief describes the Court's authority and obligation to conduct such an inquiry under Rule 48(a). (Ex. 1, Part I). It also reviews the relevant law concerning permissible and impermissible bases for dismissal under Rule 48(a) (*id.*, Part II), and explains why the events of the last week raise serious questions about the appropriateness of the government's request for a dismissal (*id.*, Part III). It also proposes a list of specific issues and questions the Court may use to help guide a factual inquiry into the unprecedented recent events. (*Id.*, Introduction).

Amici should be granted leave to file their proposed brief because it is both "timely and useful" to the Court. *See Andersen v. Leavitt*, No. 03-CV-6115 DRHARL, 2007 WL 2343672, at *2 (E.D.N.Y. Aug. 13, 2007) (citation omitted). In light of the government's request to dismiss the case, as well as Mr. Adams' statements suggesting he has no intention of contesting the requested dismissal,[3] the parties are no longer in an adversarial position. There is no reason for either party to seek the probing factual inquiry that amici believe is warranted and required by Rule 48(a). Amici, therefore, are advancing a position that is "not available from the parties," *Auto. Club of New York, Inc. v. Port Auth. of New York & New Jersey*, No. 11 CIV. 6746 RJH, 2011 WL 5865296, at *1 (S.D.N.Y. Nov. 22, 2011), and are offering a unique perspective that "could prove helpful to the Court in shedding light on those aspects of the case that the immediate parties may not [be] best situated to address," *Weininger v. Castro*, 418 F. Supp. 2d 553, 555 (S.D.N.Y. 2006).

In doing so, amici are serving the "primary role of [an] amicus," which is to "assist the Court in reaching the right decision in a case affected with the interest of the general public." *See Russell v. Bd. of Plumbing Examiners of Cnty. of Westchester*, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999), *aff'd*, 1 F. App'x 38 (2d Cir. 2001). Indeed, other courts have granted leave to former federal prosecutors to file amicus briefs in similar circumstances. *See United States v. Flynn*, No. 1:17-cr-00232 (D.D.C. May 13, 2020) (Dkt. No. 275) (granting leave to former federal prosecutors and DOJ officials to file an amicus brief regarding a district court's authority to refuse a request to dismiss under Rule 48(a)).

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[3] *See* Dkt. No. 122 ¶ 2 (noting Mr. Adams' consent to the request for a nolle prosequi); *see also* Kyla Guilfoil, *Eric Adams thanks Justice Department for ordering dismissal of corruption charges*, NBC News, Feb. 11, 2025 (noting that after DOJ directed Southern District of New York prosecutors to dismiss the charges against Mr. Adams, Mr. Adams stated: "I thank the Justice Department for its honesty. Now we can put this cruel episode behind us and focus entirely on the future of our city. It's time to move forward.").

Sincerely,

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Exhibit 1
Amici's Proposed Brief

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America -against- Eric Adams, Defendant.	Case No. 24-CR-00556 (DEH) District Judge Dale E. Ho

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BRIEF OF AMICI FORMER UNITED STATES ATTORNEYS

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IDENTITY AND INTERESTS OF AMICI

Amici are former United States Attorneys who served in New York City and the Tri-state area.[1] During their tenure, amici acted to uphold a set of values that have guided the United States Department of Justice ("DOJ") for decades. Amici believe that federal prosecutors are duty-bound to exercise their tremendous power fairly, without regard to partisan politics, and in furtherance of the rule of law.

Amici believe that federal prosecutors should not make criminal charging decisions based on political associations, political activities, or personal allegiances. They believe that it is inappropriate to treat a defendant more leniently because the defendant is powerful or well-connected. They directed those who worked for them to pursue justice without fear or favor, and they made their charging decisions based entirely on the facts and the law. They believe that these values are foundational to a fair and just legal system.

Amici believe that these values have been tested by the recent actions of the leadership of the Department of Justice in this case. They are deeply concerned that those actions threaten public confidence in federal law enforcement, and that the federal courts must not be seen as endorsing law enforcement decisions based on political expediency or false and misleading information. In this respect, amici believe that they collectively represent the views of the vast majority of men and women, here and elsewhere, who served as federal prosecutors and who

[1] Amici consist of John S. Martin Jr. (former United States Attorney for the Southern District of New York (1980-1983) and former Judge for the United States District Court for the Southern District of New York (1990-2003)); Robert J. Cleary (former United States Attorney for the District of New Jersey (1999-2002)); and Deirdre M. Daly (former United States Attorney for the District of Connecticut (2013-2017)).

faithfully supported and defended the Constitution and the laws of the United States.[2] Amici submit this brief to respectfully advise the Court about the procedural steps the Court can take to ensure that the Court's integrity and the rule of law are protected before ruling on the pending motion to dismiss.

INTRODUCTION

In the considerable experience of the amici, the events of the past week are unprecedented. We witnessed a directive from a senior DOJ official to the United States Attorney for the Southern District of New York to dismiss the pending prosecution of the Mayor of New York City, Eric Adams.[3] (Ex. 2). The United States Attorney refused the directive, and wrote a letter to the Attorney General saying she could not in good faith move to dismiss the case. The letter closed with an offer to resign if the DOJ insisted on the dismissal. (Ex. 3).

The DOJ responded by castigating the United States Attorney, placing members of the prosecution team on administrative leave, opening investigations of the United States Attorney and members of her staff, and removing the United States Attorney's Office ("USAO") from the case. (Ex. 4). A member of the prosecution team then wrote a letter saying that the DOJ's stated reasons to dismiss the case were pretextual and opining that only a "fool" or a "coward" would sign the dismissal motion. (Ex. 5). When the DOJ subsequently approached the leadership of its

[2] Amici note, in this regard, that a public statement regarding recent events in this case was issued on February 14, 2025, by former United States Attorneys Robert B. Fiske, Jr., John S. Martin, Jr., Mary Jo White, James B. Comey, David N. Kelley, Geoffrey S. Berman, and Audrey Strauss. *See* Benjamin Weiser, *Seven Former Manhattan U.S. Attorneys Voice Support for Sassoon*, New York Times, February 14, 2025. Additional public statements regarding these events, joined in by hundreds of former federal prosecutors, have been issued or will be issued shortly.

[3] For the Court's convenience, and to make sure that relevant materials are included in the public record of this case, we have attached the materials from the public record to which this brief refers.

Public Integrity Section, the leadership resigned their jobs. Thereafter, the remaining members of the Public Integrity Section were reportedly given an hour to decide who would file the motion and led to believe that they might be fired if no one came forward. (Ex. 6). One senior member of the Section agreed to sign the motion, apparently motivated by the desire to save the jobs of his colleagues. (*Id.*). An application for a nolle prosequi finally emerged (Dkt. No. 122), along with a public statement from the DOJ claiming that the Adams prosecution amounted to a "politically motivated witch hunt." (Ex. 7 at 3–4).

These striking and unprecedented facts raise important issues about the rule of law, executive power, and the authority of courts to preserve the integrity of the federal criminal justice system. They also raise questions about the use of the machinery of justice to serve political expediency, the professional obligations of federal prosecutors, and the independence of the Department of Justice and its components. For this Court, the events pose one central question: is the pending motion to dismiss the Adams indictment advanced in good faith, consistent with the public interest?

Amici believe that this Court should conduct a factual inquiry before ruling on the pending request for a nolle prosequi. Under Rule 48(a) of the Federal Rules of Criminal Procedure, the Court has the authority—indeed the responsibility—to determine if dismissal is sought for appropriate reasons and in the interests of justice. Accordingly, we believe that the Court should develop a full factual record with respect to the following issues, among others:

- Does the DOJ possess information to support its assertion that the Adams prosecution was brought as a "politically motivated witch hunt?" Conversely, do the nature of the charges, the strength of the evidence, and the surrounding circumstances indicate that the Adams prosecution was pursued for bona fide law enforcement reasons?

- Are there facts that would warrant a finding that the Adams investigation and prosecution were pursued for illegitimate reasons? Specifically, does the

Department have evidence that the investigation and prosecution were brought as political retribution related to Mayor Adams' calls upon the Biden administration to provide greater resources to address immigration in New York?

- Can the DOJ present evidence to suggest that the return of the indictment was intended or timed to damage the electoral prospects of Mr. Adams?

- Does or will the pendency of the indictment preclude Mayor Adams from enforcing federal, state, and local laws concerning immigration?

- Did Mayor Adams request, or did DOJ offer, the dismissal of Mayor Adams' indictment in exchange for his assistance in immigration enforcement? If so, was this an appropriate use of federal law enforcement authority?

- Did counsel for Mayor Adams meet and/or negotiate with DOJ personnel, without the involvement of SDNY prosecutors, to develop a rationale for dismissing the case against him?

- Does the DOJ have any evidence that Damian Williams, while United States Attorney, took any actions in this case to further a personal political agenda? Is there any reason to believe that any actions he took after leaving the United States Attorney's Office would interfere with the pending prosecution of Mayor Adams?

- To what extent, if any, did Mayor Adams inappropriately attempt to curry favor with President Trump, and did any such efforts influence the decision of DOJ to seek the dismissal of the indictment?

- Is the request to dismiss the indictment without prejudice intended to induce Mayor Adams to cooperate with the Trump Administration's policy objectives or political efforts?

- Given the nature of the charges, the strength of the evidence, and the defendant's position of public responsibility, what facts exist to indicate that dismissal of the indictment would be in the public interest? What impact would such a dismissal have on the public's confidence in the integrity of the judicial process, including among the voters and taxpayers of New York City, who are the constituencies most affected by the crimes charged in the indictment?

We demonstrate below that the Court has abundant authority under Rule 48(a) to consider these and related matters in deciding whether dismissal of the indictment is appropriate and in the public interest.

ARGUMENT

I. The District Court's Gatekeeping Role under Rule 48(a)

Prosecutors have broad discretion to determine "whether *or not* to prosecute." *United States v. Blaszczak*, 56 F.4th 230, 238 (2d Cir. 2022) (citation omitted, emphasis in original). But the Federal Rules of Criminal Procedure do not permit, much less require, this Court simply to acquiesce to the government's request to dismiss this case. The Adams indictment was presented to a properly constituted grand jury, and the grand jury voted the indictment and returned it to the Court. The case is therefore "no longer entirely within the realm of . . . executive authority." *United States v. Stevenson*, 425 F. Supp. 3d 647, 651 (S.D.W. Va. 2018) (emphasis removed).

Rule 48(a) makes this clear in conferring authority on a prosecutor to dismiss an indictment only "*with leave of court*." That operative phrase originates with an amendment to draft Rule 48 made by the Supreme Court, subsequently adopted by Congress, and "manifest[ly] . . . intended to make a significant change in the common law rule by vesting in the courts the power and the duty to exercise a discretion for the protection of the public interest." *United States v. Cowan*, 524 F.2d 504, 510–13 (5th Cir. 1975) (discussing history of Rule 48(a)) (quoted in *Blaszczak*, 56 F.4th at 240). The rule "modif[ies] and condition[s] the absolute power of the Executive, consistently with the Framer's concept of Separation of Powers, by erecting a check on the abuse of Executive prerogatives." *Cowan*, 524 F.2d at 513.

Significantly, Rule 48(a) "may serve an important interest as an information- and accountability-producing vehicle . . . that exposes the reasons for prosecutorial decisions." *In re Richards*, 213 F.3d 773, 788 (3d Cir. 2000). As the *Richards* court put it, "the public has a generalized interest in the processes through which prosecutors make decisions about whom to prosecute," and courts can serve that interest "by inquiring into the reasons for [the] requested

dismissal." *Id.* at 789. Accordingly, the "leave of court" requirement in Rule 48(a) "allow[s] a court to force prosecutors to publicly reveal their reasons for not proceeding before granting a requested dismissal." *Id.* This process "may, in turn, lead to attempts by the public to influence these decisions through democratic channels." *Id.*

Under the case law, two requirements follow from Rule 48(a)'s "leave of court" clause. First, a court presented with a motion to dismiss an indictment under Rule 48(a) has the authority to develop a factual record sufficient to support the court's decision to grant or deny leave to dismiss. "[T]he Rule contemplates public exposure of the reasons for the abandonment of an indictment . . . in order to prevent abuse of the uncontrolled power of dismissal previously enjoyed by prosecutors." *United States v. Greater Blouse, Skirt & Neckwear Contractors Ass'n*, 228 F. Supp. 483, 486 (S.D.N.Y. 1964); *see also United States v. Ammidown*, 497 F.2d 615, 622 (D.C. Cir. 1973) ("The requirement of judicial approval entitles the judge to obtain and evaluate the prosecutor's reasons."). A court, "to honor the purpose of the rule . . . at the very least must know the prosecutor's reasons for seeking to dismiss the indictment and the facts underlying the prosecutor's decision." *United States v. Derr*, 726 F.2d 617, 619 (10th Cir. 1984). Further, the prosecutor seeking dismissal "is under an obligation to supply sufficient reasons [to support the motion to dismiss]—reasons that constitute more than a mere conclusory interest." *United States v. Salinas*, 693 F.2d 348, 352 (5th Cir. 1982) (internal quotation marks, citation and footnote omitted); *see also Richards*, 213 F.3d at 788.

Second, in assessing the factual record, Rule 48(a)'s touchstone is good faith. *Blaszczak*, 56 F.4th at 240. As the Second Circuit has explained, a district court should grant a motion brought under Rule 48(a) "absent a finding of bad faith or disservice to the public interest." *Id.* at 240–41 (citation omitted). The court's examination of the "public interest" should focus on

"the motive of the prosecutor" in seeking dismissal of the case. *Id.* "The salient issue" under Rule 48(a) is whether the government's effort to "terminate the prosecution" is "tainted with impropriety." *Rinaldi v. United States*, 434 U.S. 22, 30 (1977); *see also* Thomas Ward Frampton, *Why Do Rule 48(a) Dismissals Require "Leave of Court,"* 73 Stan. L. Rev. Online 28, 37 (2020) ("[Rule 48(a)] arm[s] district judge[s] with a powerful tool to halt corrupt or politically motivated dismissals of cases").

One reason that Rule 48(a) requires court approval to dismiss an indictment is to prevent unfairness to the defendant, and to prevent the government from gaining tactical advantage by dismissing a case and then later obtaining a new indictment. Here, of course, Mr. Adams will not interpose an objection to the dismissal of the case, particularly since the Department has indicated that any reexamination of the case will not take place until after the November mayoral election. But that does not alter the Court's authority: Rule 48(a) has "been held to permit the court to deny a Government dismissal motion to which the defendant has consented if the motion is prompted by considerations clearly contrary to the public interest." *Rinaldi*, 434 U.S. at 29 n.15 (declining to decide the issue); *Ammidown*, 497 F.2d at 620 (noting that the court must determine whether a Rule 48(a) motion is proper even where a defendant consents to the motion); *United States v. Flynn*, 507 F. Supp. 3d 116, 128–29 (D.D.C. 2020). The Court has the authority under Rule 48(a) and otherwise to protect the integrity of the judicial process irrespective of Mr. Adams' position on the motion.

II. "Good Faith" and the "Public Interest" under Rule 48(a)

Courts tasked with assessing a Rule 48(a) motion have equated "bad faith" with requests to dismiss that are "contrary to the public interest" and "good faith" with requests that are "not clearly contrary to manifest public interest." *United States v. Rosenberg*, 108 F. Supp. 2d 191,

204 (S.D.N.Y. 2000). The Second Circuit has noted in dicta that some courts have "equat[ed] a dismissal that is clearly contrary to the public interest with one in which the prosecutor appears motivated by bribery, animus towards the victim, or a desire to attend a social event rather than trial." *United States v. HSBC Bank USA, N.A.*, 863 F.3d 125, 141 (2d Cir. 2017) (quoting *Richards*, 213 F.3d at 78–88). The D.C. Circuit has explained that "bad faith" in this context means an act that so departs "from sound prosecutorial principle as to mark it an abuse of prosecutorial discretion." *Ammidown*, 497 F.2d at 622. And, as the Third Circuit has noted, a district court may conduct a hearing in furtherance of its "inherent authority to ensure that its processes are not being abused." *Richards*, 213 F.3d at 788–99.

Opinions authorizing dismissal under Rule 48(a) help to illuminate a court's role in assessing a prosecutor's dismissal request. It is permissible under Rule 48(a), for example, for a prosecutor to dismiss an indictment that violates a newly "announced [] general policy against multiple prosecutions arising out of a single transaction or against a federal prosecution that would be duplicative of a state prosecution," *Blaszczak*, 56 F.4th at 238 (quoting *Petite v. United States*, 361 U.S. 529 (1960)), or a change in generally applicable immigration policy relevant to the charges brought in a particular case. *Id.* at 239 (quoting *Gaona-Romero v. Gonzales*, 497 F.3d 694 (5th Cir. 2007)). A prosecutor's motion to dismiss under Rule 48(a) is similarly appropriate where the prosecutor represents that she has "developed a serious and substantial doubt as to [the defendant's] guilt," *id*. at 239 (quoting *United States v. Weber*, 721 F.2d 266 (9th Cir. 1983)), or the prosecutor confesses error on the ground that the charges cannot meaningfully be distinguished from charges found to be legally deficient in another case. *Id*. at 241 (quoting *United States v. Aytes*, No. 19-3981, Dkt. No. 70 (2d Cir. Apr. 13, 2021)). In sum, the Second Circuit has explained that a Rule 48(a) motion should be granted on a record that demonstrates

that "the prosecutor acted in good faith at the time he moved for dismissal." *Id.* at 240 (citation omitted); *United States v. Hayden*, 860 F.2d 1483, 1488 (9th Cir. 1988) ("As the district judge properly found, when the government requests a Rule 48(a) dismissal in good faith, the district court is duty bound to honor the request.").

The way to develop an appropriate record lies within the court's discretion. In *United States v. Flynn,* Judge Emmett Sullivan appointed the Honorable John Gleeson as amicus curiae to present arguments in opposition to the government's Rule 48(a) application to dismiss the pending charges. No. 1:17-cr-00232 (D.D.C. May 13, 2020) (Dkt. No. 205). A Presidential pardon ultimately rendered the matter moot. *Id.* (Dkt. No. 311). In the prosecution of United States Senator Ted Stevens, after being presented with a defense motion to dismiss the indictment for prosecutorial misconduct, the court appointed outside counsel to investigate whether the Department of Justice had committed contempt of court, and directed the Department to cooperate with outside counsel and to provide counsel with "access to investigative files, witnesses, and other information as requested." *United States v. Stevens,* No. 1:08-cr-00231 (D.D.C. April 8, 2009) (Dkt. No. 375).[4]

III. The Facts in this Case Warrant a Factual Inquiry

Although a factual inquiry may not be necessary in every case, this case is extraordinary. Here, the DOJ does not seek dismissal for well-recognized law enforcement purposes. On the contrary, the facts in the public record suggest that the government is seeking a nolle prosequi for reasons that may be pretextual, and contrary to the public interest. The DOJ's asserted reasons

[4] Here, the Court's factfinding process could seek written and testimonial evidence as appropriate. For instance, the Court could require testimony and documents regarding communications among Mr. Bove, counsel for Mr. Adams, and others. The Court could also inspect the handwritten notes the DOJ apparently seized from counsel during a meeting that took place on January 31, 2025. (*See* Ex. 3 at 3 n.1).

for seeking dismissal are not supported by any facts in the record, and the existing incomplete record contradicts its claims. The public record to date therefore could be read to suggest that the application for a nolle prosequi amounts to an abuse of the Court's processes.

The DOJ's bare-bones application for a nolle prosequi avoids any reference to the extraordinary circumstances that preceded its filing. (Dkt. No. 122). There is no reference to the resignation of the Acting United States Attorney, no reference to her lengthy letter to the Attorney General explaining why dismissal of the Adams indictment is not appropriate, no mention of the views of the SDNY prosecution team agreeing with Ms. Sassoon's analysis, and no discussion of the resignations of members of the DOJ's Public Integrity Section, who likewise believed that a dismissal would be contrary to the public interest.

In the accompanying attachments, amici have placed more of the surrounding circumstances into the record. We respectfully refer the Court to the letter dated February 12, 2025, from Danielle Sassoon to Attorney General Bondi. (Ex. 3). That letter speaks for itself. At a minimum, the letter demonstrates why the Court should question whether a nolle prosequi is in the public interest, and why there should be a searching inquiry into the DOJ's asserted bases for seeking a nolle.

The DOJ's response to the Sassoon letter reinforces the need for further inquiry. Mr. Bove's letter to Ms. Sassoon, dated February 13, 2025, refers to this case as "a politically motivated prosecution," and the DOJ thereafter issued a public statement referencing a "politically motivated witch hunt." (Exs. 4, 7 at 3–4). Its application for a nolle prosequi does not use this language; it refers obliquely to "appearances of impropriety" and risks of electoral

interference. (Dkt. No. 122 ¶ 5).[5] By conducting a factual inquiry including, if necessary, an evidentiary hearing, the Court can determine whether the *Adams* prosecution was politically inspired or litigated to achieve political ends, or whether the DOJ's "weaponization" claim is pretextual and itself represents a politicization of the criminal justice process.

Further inquiry is also appropriate to test the DOJ's assertion that the pendency of the indictment interferes with Mr. Adams' "ability to govern" in New York City, which exposes the city to "unacceptable threats to public safety, national security, and related federal immigration initiatives and policies." (Dkt. No. 122 ¶ 6). Amici note, in this regard, that Mayor Adams himself has repeatedly and vociferously stated that the pending indictment has had no impact on his mayoral duties.[6] And the DOJ's stated concern about the Mayor's inability to get a security clearance is insubstantial; the Court can take judicial notice that President Trump has by Executive Order both revoked security clearances and ordered them granted.

A further inquiry is also necessary to determine whether, as Ms. Sassoon and Mr. Scotten have claimed, the DOJ is attempting to use a dismissal of the indictment without prejudice, and the prospect of its reinstatement, as a means of securing Mr. Adams' cooperation with the Administration's anti-immigration policies. Ms. Sassoon's concerns regarding a "quid pro quo" are based on statements she personally heard at a January 31, 2025 meeting involving Mr.

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[5] The application also cites a website maintained by Damian Williams, along with an op-ed he wrote. (Dkt. No. 122 ¶ 5). Mr. Williams created the website and wrote the op-ed after he left public service. The DOJ asserts that the website and the op-ed establish Mr. Williams' ambition to pursue a political career. But this obviously does not automatically transform an indictment prosecuted during his tenure into a political "witch hunt," particularly where there has not even been a claim of vindictive or selective prosecution. (*Cf.* Dkt. No. 103 at 5 (concluding that Mr. Williams' op-ed and website did "not change the Court's analysis" regarding its decision to deny Mr. Adams' motion for an evidentiary hearing and sanctions)).

[6] Gregory Kreig, *Eric Adams faces pressure to resign as New York Democrats plot next moves*, CNN, Sept. 16, 2024.

Adams' counsel, Mr. Bove, and prosecutors from the Southern District of New York. (Ex. 3 at 3 n.1). Although Mr. Bove has denied the existence of any "quid pro quo" relationship with Mayor Adams, amici direct the Court's attention to Mr. Adams' recent appearance on a television show with Thomas Homan, the Administration's "border czar."[7] During that appearance, the Mayor reiterated his intention to work with the President to detain and deport immigrants who have committed crimes. Mr. Homan then warned Mr. Adams that the Administration would be watching for his compliance, and he added the following: "If he doesn't come through, I'll be back in New York City, and we won't be sitting on the couch — I'll be in his office, up his butt, saying, 'Where the hell is the agreement we came to?'"[8]

If indeed there was a "quid pro quo" agreement between the DOJ and Mayor Adams that resulted in the pending request for a nolle prosequi, amici believe that the Court should not become a party to its implementation. To be sure, the Department of Justice is part of the Executive Branch of government and should act to carry out the policies of the President. However, this proposition has its limits. Amici have long believed that, while the President has the right to set broad law enforcement priorities, law enforcement decisions in individual cases should not be politicized, and the President should not direct individual prosecutive decisions within the DOJ. The DOJ's Principles of Federal Prosecution forbid prosecutors from making decisions for political purposes. U.S. Dep't. of Justice, *Justice Manual* § 9-27.260 (2018). Although the Constitution does not expressly establish prosecutorial independence, it has been for many decades a defining feature of the federal system for the administration of justice.

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[7] Fox News, *Tom Homan, Mayor Adams reveal 'game changer' move on ICE deportations*, YouTube, Feb. 14, 2025, available at: https://www.youtube.com/watch?v=wy6gmUL-_9I

[8] Emma Fitzsimmons, *Eric Adams Highlights Coordination With Trump's Border Czar on Fox News*, New York Times, Feb. 14, 2025.

Trading a dismissal of an indictment for the defendant's adherence to political objectives would be a departure from the finest traditions of the Department of Justice and the United States Attorney's Office for the SDNY.

Even if such an agreement were to lie within the authority of the Executive Branch, the Court need not, and in our view should not, lend its approval to it. Once the government obtains an indictment and presents it to a court, it no longer has unfettered discretion to use or to abandon the legal process to achieve its objectives. Ours is a system of checks and balances. A grand jury indictment signifies the existence of probable cause to believe that the defendant has committed crimes; the decision whether to abandon the prosecution is no longer within the sole province of the Executive—the court has the authority to decide whether a dismissal is appropriate and in the public interest. Certainly a court should afford the Executive, which speaks through the Department of Justice, a large measure of discretion to weigh competing interests. But where, as here, there are compelling reasons to question whether a dismissal is in the public interest, and whether a dismissal would amount to an abuse of the Court's processes, the Court should not hesitate to withhold its approval, and it should closely examine the underlying facts and circumstances. To do otherwise could undermine the public's confidence in the judiciary as a neutral arbiter free from political or personal influence. And whatever may be the Executive's power to make prosecutive decisions, it clearly does not have the power to enlist the Court's approval on the basis of false, misleading, or incomplete information. The materials in the public record, including Ms. Sassoon's letter to the Attorney General (Ex. 3), raise abundant concerns in this regard.

If the Court should determine, after making a searching inquiry, that the dismissal of the case is not appropriate or in the public interest, it will have to consider what further action might

be warranted. Amici recognize that simply directing the Department of Justice to proceed with the prosecution may be fraught with legal and practical difficulty. But there may be other available remedies if the public interest so requires. In certain contempt cases, courts have appointed special prosecutors where a United States Attorney declined to bring charges. *United States v. Donziger*, 38 F.4th 290, 294 (2d Cir. 2022) (upholding a criminal contempt conviction brought by a special prosecutor appointed under Federal Rule of Criminal Procedure 42(a)(2)). Courts also have the authority to direct federal prosecutors to make evidence, including grand jury materials, available to state and local prosecutors where necessary and appropriate. *See* Federal Rule of Criminal Procedure 6(e)(3)(E).

Aside from continued prosecution, a thorough fact finding may also lead to other necessary and important outcomes. Depending on the evidence developed, these could include a contempt proceeding based on the conduct examined; criminal referrals if warranted; and/or disciplinary recommendations. In short, depending on the circumstances, the Court could have a variety of procedural avenues available to protect the integrity of the Court and the justice system from abuse.

At this stage, however, amici submit that the question of remedy is premature. In the view of amici, the Court need not confront that question until it determines whether to grant the pending application for an order of nolle prosequi. In the extraordinary circumstances of this case, that determination warrants a searching factual inquiry, which the Court unquestionably has the authority to order. What is at stake here is far more than an internal prosecutorial dispute about an individual case. The public furor that has arisen during the past week raises concerns about respect for the rule of law and the division of power between the Executive and Judicial Branches of government in our nation. The best way to address these concerns is to conduct an

inquiry that will allow the Court—and ultimately the public—to determine where the interests of justice may lie.

Dated: February 17, 2025

Respectfully submitted,

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Exhibit 2

Memorandum from the Acting Deputy Attorney General to the Acting United States Attorney for the Southern District of New York (Feb. 10, 2025)

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, DC 20530

February 10, 2025

MEMORANDUM FOR ACTING UNITED STATES ATTORNEY, UNITED STATES ATTORNEY'S OFFICE FOR THE SOUTHERN DISTRICT OF NEW YORK

FROM: THE ACTING DEPUTY ATTORNEY GENERAL GB3 2/10/25

SUBJECT: Dismissal Without Prejudice of Prosecution of Mayor Eric Adams

You are directed, as authorized by the Attorney General, to dismiss the pending charges in *United States v. Adams*, No. 24 Cr. 556 (SDNY) as soon as is practicable, subject to the following conditions: (1) the defendant must agree in writing to dismissal without prejudice; (2) the defendant must agree in writing that he is not a prevailing party under the Hyde Amendment, Pub. L. 105-119 (Nov. 26, 1997); and (3) the matter shall be reviewed by the confirmed U.S. Attorney in the Southern District of New York, following the November 2025 mayoral election, based on consideration of all relevant factors (including those set forth below). There shall be no further targeting of Mayor Adams or additional investigative steps prior to that review, and you are further directed to take all steps within your power to cause Mayor Adams' security clearances to be restored.

The Justice Department has reached this conclusion without assessing the strength of the evidence or the legal theories on which the case is based, which are issues on which we defer to the U.S. Attorney's Office at this time. Moreover, as I said during our recent meetings, this directive in no way calls into question the integrity and efforts of the line prosecutors responsible for the case, or your efforts in leading those prosecutors in connection with a matter you inherited. However, the Justice Department has determined that dismissal subject to the above-described conditions is necessary for two independent reasons.

First, the timing of the charges and more recent public actions by the former U.S. Attorney responsible for initiating the case have threatened the integrity of the proceedings, including by increasing prejudicial pretrial publicity that risks impacting potential witnesses and the jury pool. It cannot be ignored that Mayor Adams criticized the prior Administration's immigration policies before the charges were filed, and the former U.S. Attorney's public actions created appearances of impropriety that implicate the concerns raised in the Attorney General's February 5, 2025 memorandum regarding *Restoring The Integrity and Credibility of the Department of Justice*, as well as in Executive Order 14147, entitled *Ending The Weaponization*

Of The Federal Government. These actions and the underlying case have also improperly interfered with Mayor Adams' campaign in the 2025 mayoral election. *See* Justice Manual § 9-85.500, entitled *Actions that May Have an Impact on an Election*.

Second, the pending prosecution has unduly restricted Mayor Adams' ability to devote full attention and resources to the illegal immigration and violent crime that escalated under the policies of the prior Administration. We are particularly concerned about the impact of the prosecution on Mayor Adams' ability to support critical, ongoing federal efforts "to protect the American people from the disastrous effects of unlawful mass migration and resettlement," as described in Executive Order 14165.[1] Accomplishing the immigration objectives established by President Trump and the Attorney General is every bit as important—if not more so—as the objectives that the prior Administration pursued by releasing violent criminals such as Viktor Bout, the "Merchant of Death."[2] Accordingly, based on these additional concerns that are distinct from the weaponization problems, dismissal without prejudice is also necessary at this time.

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[1] Your Office correctly noted in a February 3, 2025 memorandum, "as Mr. Bove clearly stated to defense counsel during our meeting [on January 31, 2025], the Government is not offering to exchange dismissal of a criminal case for Adams's assistance on immigration enforcement."

[2] According to an October 2024 *Wall Street Journal* article, Bout has already started to participate in arms deals again, including negotiations with representatives of Ansar Allah, also known as the Houthis. https://www.wsj.com/world/russia/putins-merchant-of-death-is-back-in-the-arms-business-this-time-selling-to-the-houthis-10b7f521.

Exhibit 3

Letter from Acting United States Attorney Danielle Sassoon to Attorney General Pamela Bondi (Feb. 12, 2025)

U.S. Department of Justice

United States Attorney
Southern District of New York

The Jacob K. Javits Federal Building
26 Federal Plaza, 37th Floor
New York, New York 10278

February 12, 2025

BY EMAIL
The Honorable Pamela Jo Bondi
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Re: United States v. Eric Adams, 24 Cr. 556 (DEH)

Dear Attorney General Bondi:

On February 10, 2025, I received a memorandum from acting Deputy Attorney General Emil Bove, directing me to dismiss the indictment against Mayor Eric Adams without prejudice, subject to certain conditions, which would require leave of court. I do not repeat here the evidence against Adams that proves beyond a reasonable doubt that he committed federal crimes; Mr. Bove rightly has never called into question that the case team conducted this investigation with integrity and that the charges against Adams are serious and supported by fact and law. Mr. Bove's memo, however, which directs me to dismiss an indictment returned by a duly constituted grand jury for reasons having nothing to do with the strength of the case, raises serious concerns that render the contemplated dismissal inconsistent with my ability and duty to prosecute federal crimes without fear or favor and to advance good-faith arguments before the courts.

When I took my oath of office three weeks ago, I vowed to well and faithfully discharge the duties of the office on which I was about to enter. In carrying out that responsibility, I am guided by, among other things, the Principles of Federal Prosecution set forth in the Justice Manual and your recent memoranda instructing attorneys for the Department of Justice to make only good-faith arguments and not to use the criminal enforcement authority of the United States to achieve political objectives or other improper aims. I am also guided by the values that have defined my over ten years of public service. You and I have yet to meet, let alone discuss this case. But as you may know, I clerked for the Honorable J. Harvie Wilkinson III on the U.S. Court of Appeals for the Fourth Circuit, and for Justice Antonin Scalia on the U.S. Supreme Court. Both men instilled in me a sense of duty to contribute to the public good and uphold the rule of law, and a commitment to reasoned and thorough analysis. I have always considered it my obligation to pursue justice impartially, without favor to the wealthy or those who occupy important public office, or harsher treatment for the less powerful.

I therefore deem it necessary to the faithful discharge of my duties to raise the concerns expressed in this letter with you and to request an opportunity to meet to discuss them further. I cannot fulfill my obligations, effectively lead my office in carrying out the Department's priorities,

or credibly represent the Government before the courts, if I seek to dismiss the Adams case on this record.

A. The Government Does Not Have a Valid Basis To Seek Dismissal

Mr. Bove's memorandum identifies two grounds for the contemplated dismissal. I cannot advance either argument in good faith. As you know, the Government "may, with leave of court, dismiss an indictment" under Federal Rule of Criminal Procedure 48(a). "The principal object of the 'leave of court' requirement is apparently to protect a defendant against prosecutorial harassment, *e.g.*, charging, dismissing, and recharging, when the Government moves to dismiss an indictment over the defendant's objection." *Rinaldi v. United States*, 434 U.S. 22, 30 n.15 (1977). "But the Rule has also been held to permit the court to deny a Government dismissal motion to which the defendant has consented if the motion is prompted by considerations clearly contrary to the public interest." *Id.*; *see also* JM § 9-2.050 (reflecting Department's position that a "court may decline leave to dismiss if the manifest public interest requires it"). The reasons advanced by Mr. Bove for dismissing the indictment are not ones I can in good faith defend as in the public interest and as consistent with the principles of impartiality and fairness that guide my decision-making.

First, Mr. Bove proposes dismissing the charges against Adams in return for his assistance in enforcing the federal immigration laws, analogizing to the prisoner exchange in which the United States freed notorious Russian arms dealer Victor Bout in return for an American prisoner in Russia. Such an exchange with Adams violates commonsense beliefs in the equal administration of justice, the Justice Manual, and the Rules of Professional Conduct. The "commitment to the rule of law is nowhere more profoundly manifest" than in criminal justice. *Cheney v. United States Dist. Ct.*, 542 U.S. 367, 384 (2004) (alterations and citation omitted). Impartial enforcement of the law is the bedrock of federal prosecutions. *See* Robert H. Jackson, *The Federal Prosecutor*, 24 J. Am. Jud. Soc'y 18 (1940). As the Justice Manual has long recognized, "the rule of law depends upon the evenhanded administration of justice. The legal judgments of the Department of Justice must be impartial and insulated from political influence." JM § 1-8.100. But Adams has argued in substance—and Mr. Bove appears prepared to concede—that Adams should receive leniency for federal crimes solely because he occupies an important public position and can use that position to assist in the Administration's policy priorities.

Federal prosecutors may not consider a potential defendant's "political associations, activities, or beliefs." *Id.* § 9-27.260; *see also Wayte v. United States*, 470 U.S. 598, 608 (1985) (politically motivated prosecutions violate the Constitution). If a criminal prosecution cannot be used to punish political activity, it likewise cannot be used to induce or coerce such activity. Threatening criminal prosecution even to gain an advantage in civil litigation is considered misconduct for an attorney. *See, e.g.*, D.C. Bar Ethics Opinion 339; ABA Criminal Justice Standard 3-1.6 ("A prosecutor should not use other improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion."). In your words, "the Department of Justice will not tolerate abuses of the criminal justice process, coercive behavior, or other forms of misconduct." Dismissal of the indictment for no other reason than to influence Adams's mayoral decision-making would be all three.

The memo suggests that the issue is merely removing an obstacle to Adams's ability to assist with federal immigration enforcement, but that does not bear scrutiny. It does not grapple with the differential treatment Adams would receive compared to other elected officials, much less other criminal defendants. And it is unclear why Adams would be better able to aid in immigration enforcement when the threat of future conviction is due to the possibility of reinstatement of the indictment followed by conviction at trial, rather than merely the possibility of conviction at trial. On this point, the possibility of trial before or after the election cannot be relevant, because Adams has selected the timing of his trial.

Rather than be rewarded, Adams's advocacy should be called out for what it is: an improper offer of immigration enforcement assistance in exchange for a dismissal of his case. Although Mr. Bove disclaimed any intention to exchange leniency in this case for Adams's assistance in enforcing federal law,[1] that is the nature of the bargain laid bare in Mr. Bove's memo. That is especially so given Mr. Bove's comparison to the Bout prisoner exchange, which was quite expressly a *quid pro quo*, but one carried out by the White House, and not the prosecutors in charge of Bout's case.

The comparison to the Bout exchange is particularly alarming. That prisoner swap was an exchange of official acts between separate sovereigns (the United States and Russia), neither of which had any claim that the other should obey its laws. By contrast, Adams is an American citizen, and a local elected official, who is seeking a personal benefit—immunity from federal laws to which he is undoubtedly subject—in exchange for an act—enforcement of federal law—he has no right to refuse. Moreover, the Bout exchange was a widely criticized sacrifice of a valid American interest (the punishment of an infamous arms dealer) which Russia was able to extract only through a patently selective prosecution of a famous American athlete.[2] It is difficult to imagine that the Department wishes to emulate that episode by granting Adams leverage over it akin to Russia's influence in international affairs. It is a breathtaking and dangerous precedent to reward Adams's opportunistic and shifting commitments on immigration and other policy matters with dismissal of a criminal indictment. Nor will a court likely find that such an improper exchange is consistent with the public interest. *See United States v. N.V. Nederlandsche Combinatie Voor Chemische Industrie ("Nederlandsche Combinatie"),* 428 F. Supp. 114, 116-17 (S.D.N.Y. 1977) (denying Government's motion to dismiss where Government had agreed to dismiss charges against certain defendants in exchange for guilty pleas by others); *cf. In re United States*, 345 F.3d 450, 453 (7th Cir. 2003) (describing a prosecutor's acceptance of a bribe as a clear example of a dismissal that should not be granted as contrary to the public interest).

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[1] I attended a meeting on January 31, 2025, with Mr. Bove, Adams's counsel, and members of my office. Adams's attorneys repeatedly urged what amounted to a *quid pro quo*, indicating that Adams would be in a position to assist with the Department's enforcement priorities only if the indictment were dismissed. Mr. Bove admonished a member of my team who took notes during that meeting and directed the collection of those notes at the meeting's conclusion.

[2] *See, e.g.*, https://thehill.com/homenews/3767785-trump-pans-prisoner-swap-brittney-griner-hates-our-country/.

Second, Mr. Bove states that dismissal is warranted because of the conduct of this office's former U.S. Attorney, Damian Williams, which, according to Mr. Bove's memo, constituted weaponization of government as defined by the relevant orders of the President and the Department. The generalized concerns expressed by Mr. Bove are not a basis to dismiss an indictment returned by a duly constituted grand jury, at least where, as here, the Government has no doubt in its evidence or the integrity of its investigation.

As Mr. Bove's memo acknowledges, and as he stated in our meeting of January 31, 2025, the Department has no concerns about the conduct or integrity of the line prosecutors who investigated and charged this case, and it does not question the merits of the case itself. Still, it bears emphasis that I have only known the line prosecutors on this case to act with integrity and in the pursuit of justice, and nothing I have learned since becoming U.S. Attorney has demonstrated otherwise. If anything, I have learned that Mr. Williams's role in the investigation and oversight of this case was even more minimal than I had assumed. The investigation began before Mr. Williams took office, he did not manage the day-to-day investigation, and the charges in this case were recommended or approved by four experienced career prosecutors, the Chiefs of the SDNY Public Corruption Unit, and career prosecutors at the Public Integrity Section of the Justice Department. Mr. Williams's decision to ratify their recommendations does not taint the charging decision. And notably, Adams has not brought a vindictive or selective prosecution motion, nor would one be successful. *See United States v. Stewart*, 590 F.3d 93, 121-23 (2d Cir. 2009); *cf. United States v. Biden*, 728 F. Supp. 3d 1054, 1092 (C.D. Cal. 2024) (rejecting argument that political public statements disturb the "'presumption of regularity' that attaches to prosecutorial decisions").

Regarding the timing of the indictment, the decision to charge in September 2024—nine months before the June 2025 Democratic Mayoral Primary and more than a year before the November 2025 Mayoral Election—complied in every respect with longstanding Department policy regarding election year sensitivities and the applicable Justice Manual provisions. The Justice Manual requires that when investigative steps and charges involving a public official could be seen as affecting an election the prosecuting office must consult with the Public Integrity Section, and, if directed to do so, the Office of the Deputy Attorney General or Attorney General. *See* JM §§ 9-85.210, 9-85.500. As you are aware, this office followed this requirement. Further, the Justice Department's concurrence was unquestionably consistent with the established policies of the Public Integrity Section. *See, e.g.*, Public Integrity Section, Federal Prosecution of Election Offenses 85 (2017) (pre-election action may be appropriate where "it is possible to both complete an investigation and file criminal charges against an offender prior to the period immediately before an election"). The Department of Justice correctly concluded that bringing charges nine months before a primary election was entirely appropriate.

The timing of the charges in this case is also consistent with charging timelines of other cases involving elected officials, both in this District and elsewhere. *See, e.g.*, *United States v. Robert Menendez*, 23 Cr. 490 (SHS) (S.D.N.Y.) (indictment in September 2023); *United States v. Duncan Hunter*, 18 Cr. 3677 (S.D. Cal.) (indictment in August 2018). I am not aware of any instance in which the Department has concluded that an indictment brought this far in advance of an election is improper because it may be pending during an electoral cycle, let alone that a validly returned and factually supported indictment should be dismissed on this basis.

When first setting the trial date, the District Court and the parties agreed on the importance of completing the trial *before* the upcoming mayoral election—including before the Democratic primary in which Adams is a candidate—so that the voters would know how the case resolved before casting their votes. (*See* Dkt. 31 at 38-44). Adams has decided that he would prefer the trial to take place before rather than after the June 2025 primary, notwithstanding the burden trial preparation would place on his ability to govern the City or campaign for re-election. But that is his choice, and the District Court has made clear that Adams is free to seek a continuance. (*See* Dkt. 113 at 18 n.6). The parties therefore cannot argue with candor that dismissing serious charges before an election, but holding open the possibility that those charges could be reinstated if Adams were re-elected, would now be other than "clearly contrary to the manifest public interest." *United States v. Blaszczak*, 56 F.4th 230, 238-39 (2d Cir. 2022) (internal quotation marks omitted).

Mr. Bove's memo also refers to recent public actions by Mr. Williams. It is not my role to defend Mr. Williams's motives or conduct. Given the appropriate chronology of this investigation and the strength of the case, Mr. Williams's conduct since leaving government service cannot justify dismissal here. With respect to pretrial publicity, the District Court has already determined that Mr. Williams's statements have not prejudiced the jury pool. The District Court has also repeatedly explained that there is no evidence that any leaks to the media came from the prosecution team—although there is evidence media leaks came from the defense team—and no basis for any relief. (*See* Dkt. 103 at 3-6; Dkt. 49 at 4-21). Mr. Williams's recent op-ed, the Court concluded, generally talks about bribery in New York *State*, and so is not a comment on the case. (Dkt. 103 at 6 n.5). Mr. Williams's website does not even reference Adams except in the news articles linked there. (*See* Dkt. 99 at 3). And it is well settled that the U.S. Attorneys in this and other districts regularly conduct post-arrest press conferences. *See United States v. Avenatti*, 433 F. Supp. 3d 552, 567-69 (S.D.N.Y. 2020) (describing the practice); *see also, e.g.*, "New Jersey U.S. Attorney's Office press conference on violent crime," YouTube, https://www.youtube.com/watch?v=oAEDHQCE91A (announcing criminal charges against 42 defendants). In short, because there is in fact nothing about this prosecution that meaningfully differs from other cases that generate substantial pretrial publicity, a court is likely to view the weaponization rationale as pretextual.

Moreover, dismissing the case will amplify, rather than abate, concerns about weaponization of the Department. Despite Mr. Bove's observation that the directive to dismiss the case has been reached without assessing the strength of the evidence against Adams, Adams has already seized on the memo to publicly assert that he is innocent and that the accusations against him were unsupported by the evidence and based only on "fanfare and sensational claims." Confidence in the Department would best be restored by means well short of a dismissal. As you know, our office is prepared to seek a superseding indictment from a new grand jury under my leadership. We have proposed a superseding indictment that would add an obstruction conspiracy count based on evidence that Adams destroyed and instructed others to destroy evidence and provide false information to the FBI, and that would add further factual allegations regarding his participation in a fraudulent straw donor scheme.

That is more than enough to address any perception of impropriety created by Mr. Williams's personal conduct. The Bove memo acknowledges as much, leaving open the possibility

of refiling charges after the November 2025 New York City Mayoral Election. Nor is conditioning the dismissal on the incoming U.S. Attorney's ability to re-assess the charges consistent with either the weaponization rationale or the law concerning motions under Rule 48(a). To the contrary, keeping Adams under the threat of prosecution while the Government determines its next steps is a recognized reason for the *denial* of a Rule 48(a) motion. *See United States v. Poindexter*, 719 F. Supp. 6, 11-12 (D.D.C. 1989) (allowing Government to "to keep open the option of trying [certain] counts" would effectively keep the defendant "under public obloquy for an indefinite period of time until the government decided that, somehow, for some reason, the time had become more propitious for proceeding with a trial").

B. Adams's Consent Will Not Aid the Department's Arguments

Mr. Bove specifies that Adams must consent in writing to dismissal without prejudice. To be sure, in the typical case, the defendant's consent makes it significantly more likely for courts to grant motions to dismiss under Rule 48(a). *See United States v. Welborn*, 849 F.2d 980, 983 (5th Cir. 1988) ("If the motion is uncontested, the court should ordinarily presume that the prosecutor is acting in good faith and dismiss the indictment without prejudice."). But Adams's consent—which was negotiated without my office's awareness or participation—would not guarantee a successful motion, given the basic flaws in the stated rationales for dismissal. *See Nederlandsche Combinatie,* 428 F. Supp. at 116-17 (declining to "rubber stamp" dismissal because although defendant did not appear to object, "the court is vested with the responsibility of protecting the interests of the public on whose behalf the criminal action is brought"). Seeking leave of court to dismiss a properly returned indictment based on Mr. Bove's stated rationales is also likely to backfire by inviting skepticism and scrutiny from the court that will ultimately hinder the Department of Justice's interests. In particular, the court is unlikely to acquiesce in using the criminal process to control the behavior of a political figure.

A brief review of the relevant law demonstrates this point. Although the judiciary "[r]arely will . . . overrule the Executive Branch's exercise of these prosecutorial decisions," *Blaszczak*, 56 F.4th at 238, courts, including the Second Circuit, will nonetheless inquire as to whether dismissal would be clearly contrary to the public interest. *See, e.g.*, *id.* at 238-42 (extended discussion of contrary to public interest standard and cases applying it); *see also* JM § 9-2.050 (requiring "a written motion for leave to dismiss . . . explaining fully the reason for the request" to dismiss for cases of public interest as well as for cases involving bribery). At least one court in our district has rejected a dismissal under Rule 48(a) as contrary to the public interest, regardless of the defendant's consent. *See Nederlandsche Combinatie*, 428 F. Supp. at 116-17 ("After reviewing the entire record, the court has determined that a dismissal of the indictment against Mr. Massaut is not in the public interest. Therefore, the government's motion to dismiss as to Mr. Massaut must be and is denied."). The assigned District Judge, the Honorable Dale E. Ho, appears likely to conduct a searching inquiry in this case. Notably, Judge Ho stressed transparency during this case, specifically explaining his strict requirements for non-public filings at the initial conference. (*See* Dkt. 31 at 48-49). And a rigorous inquiry here would be consistent with precedent and practice in this and other districts.

Nor is there any realistic possibility that Adams's consent will prevent a lengthy judicial inquiry that is detrimental to the Department's reputation, regardless of outcome. In that regard,

although the *Flynn* case may come to mind as a comparator, it is distinct in one important way. In that case, the Government moved to dismiss an indictment with the defendant's consent and faced resistance from a skeptical district judge. But in *Flynn*, the Government sought dismissal with prejudice because it had become convinced that there was insufficient evidence that General Flynn had committed any crime. That ultimately made the Government's rationale defensible, because "[i]nsufficient evidence is a quintessential justification for dismissing charges." *In re Flynn*, 961 F.3d 1215, 1221 (D.C. Cir.), *reh'g en banc granted, order vacated*, No. 20-5143, 2020 WL 4355389 (D.C. Cir. July 30, 2020), and *on reh'g en banc*, 973 F.3d 74 (D.C. Cir. 2020). Here no one in the Department has expressed any doubts as to Adams's guilt, and even in *Flynn*, the President ultimately chose to cut off the extended and embarrassing litigation over dismissal by granting a pardon.

C. I Cannot in Good Faith Request the Contemplated Dismissal

Because the law does not support a dismissal, and because I am confident that Adams has committed the crimes with which he is charged, I cannot agree to seek a dismissal driven by improper considerations. As Justice Robert Jackson explained, "the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst." The Federal Prosecutor, 24 J. Am. Jud. Soc'y 18 ("This authority has been granted by people who really wanted the right thing done—wanted crime eliminated—but also wanted the best in our American traditions preserved."). I understand my duty as a prosecutor to mean enforcing the law impartially, and that includes prosecuting a validly returned indictment regardless whether its dismissal would be politically advantageous, to the defendant or to those who appointed me. A federal prosecutor "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." *Berger v. United States*, 295 U.S. 78, 88 (1935).

For the reasons explained above, I do not believe there are reasonable arguments in support of a Rule 48(a) motion to dismiss a case that is well supported by the evidence and the law. I understand that Mr. Bove disagrees, and I am mindful of your recent order reiterating prosecutors' duty to make good-faith arguments in support of the Executive Branch's positions. *See* Feb. 5, 2025 Mem. "General Policy Regarding Zealous Advocacy on Behalf of the United States." But because I do not see any good-faith basis for the proposed position, I cannot make such arguments consistent with my duty of candor. N.Y.R.P.C. 3.3; *id.* cmt. 2 ("A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal.").

In particular, the rationale given by Mr. Bove—an exchange between a criminal defendant and the Department of Justice akin to the Bout exchange with Russia—is, as explained above, a bargain that a prosecutor should not make. Moreover, dismissing without prejudice and with the express option of again indicting Adams in the future creates obvious ethical problems, by implicitly threatening future prosecution if Adams's cooperation with enforcing the immigration laws proves unsatisfactory to the Department. *See In re Christoff*, 690 N.E.2d 1135 (Ind. 1997) (disciplining prosecutor for threatening to renew a dormant criminal investigation against a potential candidate for public office in order to dissuade the candidate from running); Bruce A.

Green & Rebecca Roiphe, *Who Should Police Politicization of the DOJ?*, 35 Notre Dame J.L. Ethics & Pub. Pol'y 671, 681 (2021) (noting that the Arizona Supreme Court disbarred the elected chief prosecutor of Maricopa County, Arizona, and his deputy, in part, for misusing their power to advance the chief prosecutor's partisan political interests). Finally, given the highly generalized accusations of weaponization, weighed against the strength of the evidence against Adams, a court will likely question whether that basis is pretextual. *See, e.g.*, *United States v. Greater Blouse, Skirt & Neckwear Contractors*, 228 F. Supp. 483, 487 (S.D.N.Y. 1964) (courts "should be satisfied that the reasons advanced for the proposed dismissal are substantial and the real grounds upon which the application is based").

I remain baffled by the rushed and superficial process by which this decision was reached, in seeming collaboration with Adams's counsel and without my direct input on the ultimate stated rationales for dismissal. Mr. Bove admonished me to be mindful of my obligation to zealously defend the interests of the United States and to advance good-faith arguments on behalf of the Administration. I hope you share my view that soliciting and considering the concerns of the U.S. Attorney overseeing the case serves rather than hinders that goal, and that we can find time to meet.

In the event you are unwilling to meet or to reconsider the directive in light of the problems raised by Mr. Bove's memo, I am prepared to offer my resignation. It has been, and continues to be, my honor to serve as a prosecutor in the Southern District of New York.

Very truly yours,

DANIELLE R. SASSOON
United States Attorney
Southern District of New York

Exhibit 4

Letter from Acting Deputy Attorney General Emil Bove to the Acting United States Attorney Danielle Sassoon (Feb. 13, 2025)

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

February 13, 2025

Via Email & Hand Delivery
Danielle Sassoon
Acting U.S. Attorney
U.S. Attorney's Office, SDNY

Re: United States v. Adams, No. 24 Cr. 556 (S.D.N.Y.)

Ms. Sassoon:

In response to your refusal to comply with my instruction to dismiss the prosecution of Mayor Eric Adams, I write to notify you of the following:

First, your resignation is accepted. This decision is based on your choice to continue pursuing a politically motivated prosecution despite an express instruction to dismiss the case. You lost sight of the oath that you took when you started at the Department of Justice by suggesting that you retain discretion to interpret the Constitution in a manner inconsistent with the policies of a democratically elected President and a Senate-confirmed Attorney General.

Second, you indicated that the prosecution team is aware of your communications with the Justice Department, is supportive of your approach, and is unwilling to comply with the order to dismiss the case. Accordingly, the AUSAs principally responsible for this case are being placed on off-duty, administrative leave[1] pending investigations by the Office of the Attorney General[2] and the Office of Professional Responsibility, both of which will also evaluate your conduct. At

[1] This leave status will remain in effect until further notice. This is not a disciplinary or adverse action, and the AUSAs will continue to receive full salary and benefits during administrative leave. While the AUSAs are in an off-duty status, they are not to use their government-issued laptop, phone, and ID badge/PIV card to access duty stations or any other Federal facility unless explicitly directed to do so. While on administrative leave, if contacted by management, the AUSAs must respond by phone or email no later than the close of business the following business day.

[2] The investigation by the Office of the Attorney General will be conducted pursuant to, *inter alia*, Executive Order 14147, entitled *Ending the Weaponization of the Federal Government*, and on the basis of the Attorney General's February 5, 2025 memorandum regarding *Restoring the Integrity and Credibility of the Department of Justice*.

the conclusion of these investigations, the Attorney General will determine whether termination or some other action is appropriate.

Based on attendance at our recent meetings, I understand the relevant AUSAs to be Hagan Scotten and Derek Wikstrom. If either of these AUSAs wished to comply with my directive but was prohibited from doing so by you or the management of your office, or if these AUSAs wish to make me aware of other mitigating considerations they believe are relevant, they can contact my office directly. The Justice Management Division and EOUSA have taken steps to remove access to electronic devices, and I ask that you and the AUSAs cooperate with those efforts and preserve all electronic and hard copy records relating to this matter whether they are stored on official or personal devices.

Third, under your leadership, the office has demonstrated itself to be incapable of fairly and impartially reviewing the circumstances of this prosecution. Therefore, the prosecution of Mayor Adams is transferred to the Justice Department, which will file a motion to dismiss the charges pursuant to Rule 48 of the Federal Rules of Criminal Procedure. My prior directive regarding no further targeting of Mayor Adams or additional investigative steps related to this matter remains in place.

I. Background

On January 20, 2025, in Executive Order 14147, President Trump established the following policy: "It is the policy of the United States to identify and take appropriate action to correct past misconduct by the Federal Government related to the weaponization of law enforcement." In a February 5, 2025 memorandum setting forth the Department's general policy regarding zealous advocacy on behalf of the United States, the Attorney General stated:

> [A]ny attorney who because of their personal political views or judgments declines to sign a brief or appear in court, refuses to advance good-faith arguments on behalf of the Administration, or otherwise delays or impedes the Department's mission will be subject to discipline and potentially termination, consistent with applicable law.

Your Office was not exempted from the President's policy or the Attorney General's memorandum.

On February 10, 2025, I directed you to dismiss the prosecution of Mayor Adams based on well-founded concerns regarding weaponization, election interference, and the impediments that the case has imposed on Mayor Adams' ability to govern and cooperate with federal law enforcement to keep New York City safe. My February 10, 2025 memorandum indicated that I acted pursuant to the authorization of the Attorney General. The mechanism for seeking dismissal is Rule 48 of the Federal Rules of Criminal Procedure. Note 2 to Rule 48 explains that "[t]he rule confers *the power to file a dismissal by leave of court on the Attorney General*, as well as on the United States attorney, since under existing law the Attorney General exercises 'general superintendence and direction' over the United States attorneys." *See* 28 U.S.C. § 509 ("All

functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General . . . ."); *see also* 28 C.F.R. § 0.15(b).

Prior to issuing the February 10, 2025 memorandum, I reviewed public filings in this matter, and your office's prosecution memoranda and classified submissions. I met with you and the prosecution team, held a separate meeting that involved you, the prosecution team, and defense counsel, and then met with you privately in my office.[3] During those meetings, I invited written submissions from both sides, and I carefully reviewed those submissions. Thus, your recent suggestions about a lack of process around the Justice Department's decision are not grounded in reality.

You have not complied with the clear directives in my February 10, 2025 memorandum. Further, you made clear that you did not intend to do so during telephone calls with myself and Chad Mizelle, the Attorney General's Chief of Staff, on February 11, 2025, as well as in a written submission to the Attorney General that day. You also stated that the prosecution team had reviewed your letter to the Attorney General, and that they would not file a motion to dismiss the case.

At approximately 1:50 p.m. today, you tendered your resignation via email.

II. Discussion

The weaponization finding in my February 10, 2025 memorandum was made pursuant to a policy set forth by President Trump, who is the only elected official in the Executive Branch, in connection with a decision that was authorized by the Senate-confirmed Attorney General of the United States, and entirely consistent with guidance issued by the Attorney General shortly after that confirmation. Your Office has no authority to contest the weaponization finding, or the second independent basis requiring dismissal set forth in my memorandum. The Justice Department will not tolerate the insubordination and apparent misconduct reflected in the approach that you and your office have taken in this matter.

A. Improper Weaponization

You are well aware of the Department's weaponization concerns regarding the handling of the investigation and prosecution of Mayor Adams. Those concerns include behavior that supports, at minimum, unacceptable appearances of impropriety and the politicization of your office. The investigation was accelerated after Mayor Adams publicly criticized President Biden's failed immigration policies, and led by a former U.S. Attorney with deep connections to the former

[3] You correctly noted in your letter to the Attorney General that during the second meeting I questioned why a member of the prosecution team appeared to have been brought for the sole purpose of transcribing our discussion. You failed to note, however, that I made those comments in the context of a conversation about leaks relating to our deliberations.

Attorney General who oversaw the weaponization of the Justice Department. Based on my review and our meetings, the charging decision was rushed as the 2024 Presidential election approached, and as the former U.S. Attorney appears to have been pursuing potential political appointments in the event Kamala Harris won that election.

After President Trump won the election, in late-December 2024, the former U.S. Attorney launched a personal website—which closely resembles a campaign website—that touts articles about the ongoing prosecution of Mayor Adams with titles such as "U.S. Attorney Damian Williams has come for the kings," "A mayor, a rapper, a senator, a billionaire: Meet the man who has prosecuted them all," and "Federal Prosecutor Damian Williams Flexes SDNY Power Against Eric Adams and Sean Combs." The former U.S. Attorney increased the appearances of impropriety by releasing an op-ed on January 16, 2025 entitled, "An indictment of the sad state of New York government." In that piece, he disparaged Mayor Adams with the following comment: "America's most vital city is being led with a broken ethical compass." The former U.S. Attorney also made what I reasonably interpreted as a reference to himself in that piece when he suggested that there was a need for "elected officials" willing to "disrupt the status quo."

You did not directly defend the former U.S. Attorney's behavior in response to a recent defense motion. Nor could you. His actions inappropriately politicized and tainted your office's prosecution, potentially permanently. Instead of addressing these concerns with the district court, you simply claimed that these actions were "beside the point." ECF No. 102 at 1. Not true. The actions by the former U.S. Attorney implicate the concerns that President Trump raised in Executive Order 14147, in connection with the prosecution of an elected official "who voiced opposition to the prior administration's policies." *Id.* The fact that the district court denied the defense motion does not establish that continuing the prosecution of Mayor Adams reflects an appropriate exercise of prosecutorial discretion. Similarly, the fact that AUSAs convinced a grand jury to return an indictment based on a one-sided and inherently partial presentation of the evidence does not establish that the case was appropriate at the time, much less that it would be appropriate to continue to pursue the case based on events that occurred after the True Bill was returned.

The Justice Department will not ignore the fact that the timing of charges authorized by a former U.S. Attorney with apparent political aspirations interferes with Mayor Adams' ability to run a campaign in the 2025 election. Your reference to the schedule underlying the prosecution of Senator Robert Menendez is not in any way persuasive in light of the evidence-handling issues that arose in connection with that trial. If anything, that experience counsels in favor of more caution in these matters, not less. But the record does not reflect such caution. In October 2024, an AUSA responsible for the prosecution of Mayor Adams represented that the "first batch" of discovery in the case included "about 560 gigabytes" of data. ECF No. 31 at 18. Thus, as a trial date was negotiated, Mayor Adams was faced with an impossible choice between seeking to defend himself at a pre-election trial in the hopes that he could campaign based on exoneration, and taking

a reasonable amount of time to review the discovery and prepare his defense at a post-election trial. His acquiescence in the former option does not justify your office's decision.

In your letter to the Attorney General, you made the dubious choice to invoke Justice Scalia. As you are likely aware from your professional experience, Justice Scalia fully understood the risks of weaponization and lawfare:

> Nothing is so politically effective as the ability to charge that one's opponent and his associates are not merely wrongheaded, naive, ineffective, but, in all probability, "crooks." And nothing so effectively gives an appearance of validity to such charges as a Justice Department investigation and, even better, prosecution.

Morrison v. Olson, 487 U.S. 654, 713 (1988) (Scalia, J., dissenting). While the former U.S. Attorney is not a special counsel, Justice Scalia's *Morrison* dissent aptly summarized the Department's weaponization concerns here.

There is also great irony in your invocation of the famous speech by former Attorney General Robert Jackson. His remarks are unquestionably relevant here, but not in the way you have suggested. Jackson warned that "some measure of centralized control" over federal prosecutors was "necessary." Robert H. Jackson, *The Federal Prosecutor*, 24 J. Am. Jud. Soc'y 18, 18 (1940). The senior leadership of the Justice Department exercises that control. Moreover, one of Jackson's concerns was that "the most dangerous power of the prosecutor" arises from the risk that the prosecutor would "pick people that he thinks he should get, rather than pick cases that need to be prosecuted." *Id.* at 19.

> It is in this realm—in which the prosecutor picks some person whom he dislikes or desires to embarrass . . . that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself.

Id. Regardless of how the investigation of Mayor Adams was initiated, by 2024 your office's work on the case was extremely problematic in that regard.

Finally, your suggestion that President Trump should issue a pardon to Mayor Adams reveals that your office's insubordination is little more than a preference to avoid a duty that you regard as unpleasant and politically inconvenient. Your oath to uphold the Constitution does not permit you to substitute your policy judgment for that of the President or senior leadership of the Justice Department, and you are in no position to suggest that the President exercise his exclusive Article II authority to make your job easier.

For all of these reasons, dismissal is necessary in the interests of justice. Your refusal to recognize that fact and comply with my directive has only exacerbated the concerns I raised initially.

B. Interference With Mayor Adams' Ability To Govern

Your objections to the second basis for my February 10, 2025 directive—that the "pending prosecution has unduly restricted Mayor Adams' ability to devote full attention and resources to illegal immigration and violence crime"—are based on exaggerated claims that further illustrate your office's inability to grapple with the problems that this case actually presents.

As a result of the pending prosecution, Mayor Adams is unable to communicate directly and candidly with City officials he is responsible for managing, as well as federal agencies trying to protect the public from national security threats and violent crime. Mayor Adams has been denied a security clearance that limits his access to details of national security issues in the City he was elected to govern and protect. He cannot speak to federal officials regarding imminent security threats to the City. And he cannot fully cooperate with the federal government in the manner he deems appropriate to keep the City and its residents safe. This situation is unacceptable and directly endangers the lives of millions of New Yorkers. My directive to you reflected a determination by the Justice Department that these public safety risks greatly outweigh any interest you have identified. It is not for local federal officials such as yourself, who lack access to all relevant information, to question these judgments within the Justice Department's chain of command.

You claim to find my reference to Viktor Bout to be "alarming," but you have missed the fundamental point. Presidents frequently make policy decisions that the Justice Department is charged with implementing. In connection with the case against Bout, President Biden made a questionable decision to release the "Merchant of Death" from prison. Once the decision was made, it was the responsibility of the Department and your office to execute it. Regardless of anyone's personal views of the policy choice, an AUSA from your office filed a motion to assist in effectuating the decision. *See* ECF No. 130, *United States v. Bout*, No. 08 Cr. 365 (S.D.N.Y. Nov. 29, 2022). That was your job here, and the job of the AUSAs assigned to the case. You have all violated your oaths by failing to do it. In no valid sense do you uphold the Constitution by disobeying direct orders implementing the policy of a duly elected President, and anyone romanticizing that behavior does a disservice to the nature of this work and the public's perception of our efforts.

You have also strained, unsuccessfully, to suggest that some kind of *quid pro quo* arises from my directive. This is false, as you acknowledged previously in writing. The Justice Department is charged with keeping people safe across the country. Your office's job is to help keep the City safe. But your actions have endangered it.

C. Rule 48 Dismissal

More broadly, you are simply incorrect to contend that there is no "valid" basis to seek dismissal. The contention is a dereliction of your duty to advocate zealously on behalf of the United States.

The main citation you have offered, *United States v. N.V. Nederlandsche Combinatie Voor Chemische Industrie*, 428 F. Supp. 114 (S.D.N.Y. 1977), involved a motion based on "expense and inconvenience." *Id.* at 117. Those issues are not the drivers of this decision, as you know. Moreover, as you and your team undoubtedly learned during the research that led you to rely on a 57-year-old district court case:

> The government may elect to eschew or discontinue prosecutions for any number of reasons. Rarely will the judiciary overrule the Executive Branch's exercise of these prosecutorial decisions.

United States v. Blaszczak, 56 F.4th 230, 238 (2d Cir. 2022). In other words, the Attorney General has "a virtually absolute right" to dismiss this case. *United States v. Salim*, 2020 WL 2420517, at *1 (S.D.N.Y. 2020). Any judicial discretion conferred by Rule 48(a) is "severely cabined" and likely limited to instances of "bad faith." *United States v. HSBC Bank USA, N.A.*, 863 F.3d 125, 141 (2d Cir. 2017) (cleaned up); *see also In re Richards,* 213 F.3d 773, 786 (2000) ("[T]he substantive reach of . . . [R]ule [48] appears to be effectively curtailed by the fact that even if the judge denies the motion to dismiss, there seems to be no way to compel the prosecutor to proceed."). Accordingly, any concerns that you and your office had about the prospects of a Rule 48 motion were not a valid basis for insubordination.

D. Additional Issues To Be Addressed

Finally, and to be clear, while I elected to address two particular dispositive concerns in my February 10, 2025 memorandum, I have many other concerns about this case.

The case turns on factual and legal theories that are, at best, extremely aggressive. For example, the district court explained that "[i]t is not inconceivable that the Second Circuit or the Supreme Court might, at some point in the future, hold that an 'official act' as defined in *McDonnell* is necessary under § 666, at least as to government actors." ECF No. 68 at 18-19. The district court also acknowledged that there is "some force" to Mayor Adams' challenges to the office's *quo* theories in the case. The "thing[s] of value" in this case are campaign contributions, which require heightened proof under *McCormick*, as the office knows from the challenges you encountered in connection with the decision to dismiss the *Benjamin* case.

There is also questionable behavior reflected in certain of the prosecution team's decisions, which will be addressed in the forthcoming investigations. Witnesses in the case do not appear to have been treated in a manner that is consistent with your claims about the seriousness of your

allegations against Mayor Adams. It is my understanding that, around the time the charges were filed, the prosecution team made representations to defense counsel regarding Mayor Adams' status in the investigation that are inconsistent with the Justice Manual's definitions of "target" and "subject." Justice Manual § 9-11.151. In the same period, despite having already started to draft a prosecution memo proposing to charge Mayor Adams, the prosecution team invited Mayor Adams to a proffer—in effect, baiting him to make unprotected statements after the line prosecutors had already decided to try to move forward with the case.

* * *

I take no pleasure in imposing these measures, initiating investigations, and requiring personnel from the Justice Department to come to your District to do work that your team should have done and was required to do. In this instance, however, that is what is necessary to continue the process of reconciliation and restoration of the Department of Justice's core values, as the Attorney General explained on February 5, 2025.

Respectfully,

/s/ *Emil Bove*

Emil Bove
Acting Deputy Attorney General

Cc: Matthew Podolsky
(Via Email)

Hagan Scotten
Derek Wikstrom
(By Hand Delivery)

Exhibit 5
Letter from AUSA Hagan Scotten to Acting Deputy Attorney General Emil Bove

BY EMAIL

Re: United States v. Eric Adams, 24 Cr. 556 (DEH)

Mr. Bove,

I have received correspondence indicating that I refused your order to move to dismiss the indictment against Eric Adams without prejudice, subject to certain conditions, including the express possibility of reinstatement of the indictment. That is not exactly correct. The U.S. Attorney, Danielle R. Sassoon, never asked me to file such a motion, and I therefore never had an opportunity to refuse. But I am entirely in agreement with her decision not to do so, for the reasons stated in her February 12, 2025 letter to the Attorney General.

In short, the first justification for the motion—that Damian Williams's role in the case somehow tainted a valid indictment supported by ample evidence, and pursued under four different U.S. attorneys—is so weak as to be transparently pretextual. The second justification is worse. No system of ordered liberty can allow the Government to use the carrot of dismissing charges, or the stick of threatening to bring them again, to induce an elected official to support its policy objectives.

There is a tradition in public service of resigning in a last-ditch effort to head off a serious mistake. Some will view the mistake you are committing here in the light of their generally negative views of the new Administration. I do not share those views. I can even understand how a Chief Executive whose background is in business and politics might see the contemplated dismissal-with-leverage as a good, if distasteful, deal. But any assistant U.S. attorney would know that our laws and traditions do not allow using the prosecutorial power to influence other citizens, much less elected officials, in this way. If no lawyer within earshot of the President is willing to give him that advice, then I expect you will eventually find someone who is enough of a fool, or enough of a coward, to file your motion. But it was never going to be me.

Please consider this my resignation. It has been an honor to serve as a prosecutor in the Southern District of New York.

Yours truly,

Hagan Scotten
Assistant United States Attorney
Southern District of New York

Exhibit 6

Devlin Barrett, Glenn Thrush, and Adam Goldman, *Under Pressure to Drop Charges, Career Prosecutors Weighed Stark Options*, New York Times, Feb. 14, 2025

Under Pressure to Drop Charges, Career Prosecutors Weighed Stark Options

Lawyers in the Justice Department's public integrity section came to believe that to save their jobs, one of them would have to sign the official request to dismiss corruption charges against Mayor Eric Adams.

By Devlin Barrett, Glenn Thrush and Adam Goldman
Reporting from Washington

Feb. 14, 2025

About two dozen lawyers in the Justice Department's public integrity section conferred on Friday morning to wrestle with a demand from a Trump political appointee that many of them viewed as improper: One of them needed to sign the official request to dismiss corruption charges against Mayor Eric Adams.

The acting deputy attorney general, Emil Bove III, told the shellshocked staff of the section responsible for prosecuting public corruption cases that he needed a signature on court motions. The lawyers knew that those who had already refused had resigned, and they could also be forced out.

By Friday afternoon, a veteran prosecutor in the section, Ed Sullivan, agreed to submit the request in Manhattan federal court to shield his colleagues from being fired, or resigning en masse, according to three people briefed on the interaction, speaking on the condition of anonymity for fear of retribution.

The filing landed in the court docket Friday evening, bearing the name of Mr. Sullivan and that of a criminal division supervisor as well as the signature of Mr. Bove.

Mr. Bove, the filing said, "concluded that dismissal is necessary because of appearances of impropriety and risks of interference with the 2025 elections in New York City." The stated justification was remarkable because of its acknowledgment that politics, not the evidence in the case, had played a guiding role.

On Thursday, six lawyers — the Trump-appointed acting U.S. attorney for the Southern District of New York and five prosecutors in Washington — resigned rather than accede to Mr. Bove's demands. On Friday, a seventh stepped down, writing in his resignation letter that only a "fool" or a "coward" would sign off on the dismissal.

But those close to the public integrity section prosecutors described Mr. Sullivan's decision to put his name on the document as heroic. The reason for someone to sign it is to protect others, said one of the people with knowledge of Friday's call.

Before being summoned for the tense meeting, lawyers in the section debated their bad options, but came to increasingly believe that someone should step forward to save the jobs of the others, people familiar with the discussions said.

Mr. Bove, speaking on a video call, demanded that the court motions be signed within an hour, according to people later briefed on the conversation, leaving participants with the impression that they might face disciplinary action if no one complied.

Lawyers in the section understand that the outcome is in many ways already determined: Judges have little discretion but to ultimately accept such a motion. Nevertheless, it appears increasingly likely that the trial judge may hold a hearing

to question department officials about the decision. Such a hearing could be difficult and embarrassing for the department's new leaders.

Part of the consideration for Justice Department lawyers is whether simply signing the document would mean risking their bar license, since major ethical objections have already been made to dropping the case.

But in those private discussions, many of the lawyers believed it would be a worse outcome if all the section's lawyers were fired or forced to resign over the Adams case.

Current and former officials praised those who had already stepped down, saying they sacrificed their livelihoods and dream jobs because they were put in an impossible position — told to do something they considered immoral, illegal or unethical.

Glenn Thrush covers the Department of Justice and has also written about gun violence, civil rights and conditions in the country's jails and prisons. More about Glenn Thrush

Adam Goldman writes about the F.B.I. and national security. He has been a journalist for more than two decades. More about Adam Goldman

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A version of this article appears in print on , Section A, Page 13 of the New York edition with the headline: Career Prosecutors Weighed Stark Options

Exhibit 7

Kara Scannell, Evan Perez, Hannah Rabinowitz, and Jeremy Harb, *'It was never going to be me': How Trump's DOJ sparked a crisis and mass resignations over the Eric Adams case*, CNN, Feb. 15, 2025

‘It was never going to be me’: How Trump’s DOJ sparked a crisis and mass resignations over the Eric Adams case

By Kara Scannell, Evan Perez, Hannah Rabinowitz and Jeremy Herb, CNN

9 minute read · Updated 7:16 AM EST, Sat February 15, 2025

(CNN) — The morning after the mass resignation of prosecutors sparked a crisis inside the Trump Justice Department, acting Deputy Attorney General Emil Bove led a meeting with the Justice Department's public integrity section. His message: They had to choose one career lawyer to file a dismissal of the corruption charges against New York City Mayor Eric Adams, according to three people briefed on the meeting.

Bove didn't make an explicit threat to fire anyone for refusing – but Thursday's trail of resignations from prosecutors in New York and the public integrity unit made clear the stakes of the demand.

After Friday's meeting with Bove, the public integrity lawyers met separately to discuss a strategy. A mass resignation was among the options that was considered, but in the end, most coalesced around picking one person to file the dismissal as a way to end the stand-off, two of the people briefed said.

Late Friday, Bove, along with prosecutors Ed Sullivan and Antoinette Bacon, entered the filing that could end the case after an extraordinary wave of resignations from the Southern District of New York and the Justice Department public integrity section that's shaken the foundation of a Trump administration that says it wants to end the "weaponization" of DOJ.

Over the past 36 hours, seven prosecutors in New York and Washington – including the Trump-installed acting US attorney in the Southern District of New York and the top career prosecutors overseeing public corruption cases – have resigned rather than carry out the order to dismiss the corruption case against Adams, a Democrat. The prosecutors have decried Bove's Monday order to drop the charges – which cited in part Adams' role as mayor helping the Trump administration combat illegal immigration – as a bargain amounting to a "quid pro quo."

The prosecutors who resigned in New York were not Biden appointees. The acting US attorney for the Southern District, Danielle Sassoon, who was elevated by Trump, clerked for the late Supreme Court Justice Antonin Scalia. And Assistant US Attorney Hagan Scotten, a line prosecutor who resigned in a blistering letter Friday, once clerked for Chief Justice John Roberts.

"Any assistant U.S. attorney would know that our laws and traditions do not allow using the prosecutorial power to influence other citizens, much less elected officials, in this way," Scotten wrote in his resignation letter on Friday.

"If no lawyer within earshot of the President is willing to give him that advice, then I expect you will eventually find someone who is enough of a fool, or enough of a coward, to file your motion," Scotten wrote. "But it was never going to be me."

Interviews with more than a dozen officials in New York and Washington show how the case against Adams – and the refusal to accede to the demand to drop it – has become a flashpoint in a Trump Justice Department that's led by Attorney General Pam Bondi, who represented Trump at his Senate impeachment trial, and Todd Blanche and Bove, who both defended Trump in his criminal cases.

Bove, who will assume one of the most powerful positions in the department under Blanche, should Blanche be confirmed as deputy attorney general, has been at the forefront of the firings of prosecutors from the Trump criminal cases and the review of thousands of FBI agents who investigated the January 6 attack on the US Capitol. Now he's caught in the middle of a standoff with the US attorney's office where he worked for a decade until leaving in 2021.

The Trump DOJ leadership is leaving no doubt as to what it wants.

"The decision to dismiss the indictment of Eric Adams is yet another indication that this DOJ

will return to its core function of prosecuting dangerous criminals, not pursuing politically motivated witch hunts," Justice Department chief of staff Chad Mizelle said in a Friday afternoon memo.

"The fact that those who indicted and prosecuted the case refused to follow a direct command is further proof of the disordered and ulterior motives of the prosecutors," he added. "Such individuals have no place at DOJ."

To the bar and back

The public integrity section has seen a target on its back since Trump took office, as the Trump administration has gutted the federal government's ability to fight public corruption in its first weeks. Senior administration officials have considered eliminating the unit, which was created after Watergate to combat public corruption.

After Sassoon resigned on Thursday, Bove turned to the public integrity unit to carry out his order to dismiss the Adams case. He was met with more resignations.

First came Kevin Driscoll, the top career criminal division prosecutor who oversaw the public integrity section, and John Keller, who had been named the acting head of the unit. After they resigned, the office's prosecutors gathered at a bar nearby to toast their departing colleagues, according to sources familiar with the matter.

Then another message came: Bove wanted to speak with three more prosecutors from the office.

They returned to the office to jump on a video call with Bove, who told them the Justice Department needed a career public integrity lawyer to file the dismissal of the case against Adams.

The prosecutors initially tried to talk Bove out of forcing them to sign the filing. When Bove insisted, the trio resigned on the spot, people familiar with the discussion told CNN.

Then they returned to the bar.

'Only if the indictment were dismissed'

The Southern District of New York last year brought public corruption charges against Adams in the first prosecution of a sitting mayor in the city's modern history. Adams pleaded not guilty, and the case was set to go to trial this spring.

Trump's reelection changed everything. Three days before Trump was sworn in, Adams traveled down to Mar-a-Lago to meet with Trump, setting off speculation about what was to come in his criminal case. He also accepted a last-minute invitation to the inauguration.

Soon after Trump took office, Adams' attorneys approached the White House counsel's office to inquire about a pardon for Adams but never heard back, one person familiar with the matter said.

About one week later, Bove contacted Adams attorney Alex Spiro to set up a meeting. He told him the Justice Department was familiar with the legal arguments and the weaknesses of the case were obvious, one person familiar with the matter said. Bove added they were considering dismissing the charges and wanted to hear from them about how the prosecution was impacting Adams' ability to do his job and for specific examples of the alleged weaponization of the Justice Department, people familiar with the matter said.

On January 31, Bove convened the meeting in Washington. Bove was the only senior member of the Justice Department present. He was joined by Adams' attorneys, Spiro and William Burck, as well as Sassoon, Scotten and two others from SDNY.

Adams' legal team argued the looming criminal charges made it difficult for Adams to lead the city and prepare for trial at the same time, along with as much as two months he would have to sit in a courtroom, the people said.

In her resignation letter, Sassoon wrote that Adams' attorneys "repeatedly urged what amounted to a quid pro quo, indicating that Adams would be in a position to assist with the Department's enforcement priorities only if the indictment were dismissed." She alleged that her colleagues took notes on the meeting but were forced to hand them over to Bove once it concluded.

The mayor's attorneys also raised recent actions by the former US attorney for the Southern District of New York, Damian Williams, the people said.

Williams had resigned from the US attorney's office in mid-December and launched a website with color photos and links to press coverage, which has sparked speculation it could be a potential vehicle for a future political campaign.

On January 16, Williams wrote an op-ed for City & State titled, "An indictment of the sad state of New York government," which Adams attorneys seized on as being part of the politicalization of the case.

Spiro accused Williams of ethical misconduct and violating rules governing what prosecutors can say about cases. He raised it with the trial judge, Dale Ho, who concluded that Williams

can say about cases. He raised it with the trial judge, Dale Ho, who concluded that Williams didn't violate the rules.

Ho, a Biden appointee, will decide the motion to dismiss the case.

'The ever-present partner that DHS needs'

After the January 31 meeting, Bove asked SDNY and Adams legal team to submit more information in writing.

Adams' attorneys asked for an outright dismissal of the case – emphasizing the impact the trial would have on Adams' ability to lead the city and his "longtime desire to confront the migrant crisis head-on." The letter even noted that if Adams' was removed from office, his replacement would be "a frequent outspoken critic of Mayor Adams's desire to protect New Yorkers by combating the migrant crisis."

"As his trial grows near, it will be untenable for the Mayor to be the ever-present partner that DHS needs to make New York City as safe as possible," Spiro wrote.

When Bove issued his directive ordering a dismissal of the case this week he did so without prejudice, meaning the case could be revived in the future after the mayoral election in November 2025.

"The pending prosecution has unduly restricted Mayor Adams' ability to devote full attention and resources to the illegal immigration and violent crime that escalated under the policies of the prior Administration," wrote Bove.

His memo noted that the order was issued "without assessing the strength of the evidence or the legal theories on which the case is based," which Sassoon cited in her decision to defy his order.

The day after being directed to drop the charges, Sassoon told Bove on the phone and Bondi in writing that she would not dismiss the case. She called an "all hands" meeting of her office on Wednesday, but that was abruptly canceled.

A little more than 24 hours later, Sassoon submitted her eight-page resignation letter to Bondi. Moments later, she told her staff in New York that she had submitted her resignation, people familiar with the matter said.

'You lost sight of the oath'

Last year, Bove and Blanche represented Trump in multiple criminal cases. Now Trump's

criminal defense attorneys are his go-to at the Justice Department.

Blanche and Bove were skeptical of the Adams prosecution from the outset, specifically whether prosecutors could prove Adams intentionally violated campaign finance laws. They view dismissing the case as carrying out Trump's executive order to review all cases of aggressive prosecutions and the president's desire to have partners in states to further his political agenda, people familiar with their thinking said.

Soon after arriving at DOJ, Bove asked all US attorney offices to look at cases in their districts where there was overreach, especially on public corruption and business cases, the person said.

In a letter accepting Sassoon's resignation, Bove defended the decision to drop the case against Adams, arguing Sassoon did not have the right to ignore the policies of the president and the attorney general.

"You lost sight of the oath that you took when you started at the Department of Justice by suggesting that you retain discretion to interpret the Constitution in a manner inconsistent with the policies of a democratically elected President and a Senate-confirmed Attorney General," Bove wrote.