UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| UNITED STATES OF AMERICA<br><br>-against-<br><br>ERIC ADAMS,<br><br>Defendant. | Case No.: 24 Cr. 556 (DEH) |

**BRIEF *AMICUS CURIAE* OF STATE DEMOCRACY DEFENDERS FUND, LAWYERS DEFENDING AMERICAN DEMOCRACY, AND INDIVIDUAL EXPERTS IN LEGAL ETHICS**

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## INTEREST OF AMICI IN THIS CASE

State Democracy Defenders Fund, Inc. ("SDDF"), Lawyers Defending American Democracy, Inc. ("LDAD"), distinguished ethics professors, and individual experts in legal ethics (collectively "Amici") submit this brief as *amicus curiae* in this matter. Individual amici are listed on the signature page.

LDAD and SDDF are nonpartisan, nonprofit organizations devoted to defending the rule of law. In pursuit of their missions, LDAD and SDDF seek to ensure that lawyers involved in matters bearing on our democratic institutions and processes conduct themselves in accordance with the applicable rules of professional responsibility. LDAD and SDDF and other Amici believe that lawyers who engage in conduct inimical to the rule of law must be held accountable both to enforce professional standards and to maintain public confidence that the conduct of lawyers conforms to the ethical standards set forth the Rules of Professional Responsibility.

The Court has raised a series of questions regarding the application of Federal Rule of Criminal Procedure 48(a) to the pending motion to dismiss the indictment against Mayor Eric Adams, dated February 14, 2025 ("Motion"). Amici submit that the inquiry should include whether Acting Deputy Attorney General Emil Bove violated the Rules of Professional Responsibility and applicable Department of Justice guidelines in his conduct of this matter. Amici's brief reviews the relevant ethical rules and publicly available information that implicates those rules and concludes that Mr. Bove may have violated his ethical duties. Those potential ethical violations bear on the Court's analysis of the Rule 48(a)'s public interest factor and ultimately on public confidence in the Department of Justice and this Court.

## INTRODUCTION

This brief summarizes facts in the public record that raise serious questions about whether Mr. Bove violated several of his ethical duties under the New York State Rules of Professional Conduct ("RPC").

The ethical duties Mr. Bove may have violated include the following:

- **RPC 5.1(b)(2)**. This Rule requires that Mr. Bove, as a supervising lawyer in the Department of Justice, ensures that the lawyers he supervises comply with the Rules of Professional Conduct, including Acting U.S. Attorney for the Southern District of New York Danielle Sassoon, and lawyers in the Department of Justice's Public Integrity Section, whom Mr. Bove directed to sign the Motion;

- **RPC 1.11(f)(3)**. This Rule prohibits a lawyer who is a public official from accepting an offer of anything of value in exchange for influencing official action. If, in fact, Mr. Bove accepted an offer from Mayor Adams as a *quid pro quo* in the form of cooperating in the enforcement of the Administration's immigration policies, he may have violated this ethical duty;

- **RPC 3.3(a)(1)**. This Rule prohibits Mr. Bove from knowingly making a false statement of fact or law to a tribunal. If the reasons given by Mr. Bove in support of his Motion and his statement that there was no *quid pro quo* are false, he may have violated this ethical duty; and

- **RPC 8.4(d)**. This Rule prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. If Mr. Bove's justifications for the Motion are pretextual and an abuse of his prosecutorial power, granting the Motion may be prejudicial to the administration of justice.

As we discuss below, Mr. Bove's conduct also calls into question whether he complied with the requirements of the U.S. Department of Justice Principles of Federal Prosecution.

## FACTS RELEVANT TO BOVE'S POSSIBLE ETHICAL VIOLATIONS

On January 31, 2025, Ms. Sassoon and members of her legal team met with Mr. Bove and counsel for Mayor Eric Adams to discuss the indictment in this case. Letter from D. Sassoon, Acting U.S. Att'y, S.D.N.Y, to P. Bondi, Att'y Gen. at 3 n.1 (Feb. 12, 2025), Ex. 1. According to

Ms. Sassoon, at the meeting, Adams's lawyers proposed a *quid pro quo* in which the indictment against Adams would be dismissed. In her letter to Mr. Bove, Ms. Sassoon states:

> "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."

*Id.*at 3 n.1.[1]

Ten days after Mr. Bove and the Mayor's attorneys met with Ms. Sassoon and her staff, Mr. Bove sent Ms. Sassoon a letter directing her to dismiss the indictment against Mayor Adams without prejudice and subject to certain conditions. Memorandum from E. Bove, Acting Dep. Att'y Gen., to Acting U.S. Att'y, S.D.N.Y. at 1 (Feb. 10, 2025), Ex. 2. In his letter, Mr. Bove gave the following reasons for his directive: First, the timing of the proceedings and recent public actions of Damian Williams, the former U.S. Attorney who initiated the case, "threatened the integrity of the proceedings, including by increasing prejudicial pretrial publicity that risks impacting potential witnesses and the jury pool" and improperly interfering with Mayor Adams's campaign in the 2025 election. *Id.* at 1-2. And second, the prosecution had "unduly restricted Mayor Adams's ability to devote full attention and resources to the illegal immigration and violent crime that escalated under the policies of the prior Administration." *Id.* at 2.

On February 12, 2025, Ms. Sassoon sent a forceful response to Pamela Jo Bondi, United States Attorney General. Ms. Sassoon requested a meeting with the Attorney General to discuss

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[1] In an interview on "Fox and Friends" on February 14, 2025, with Mayor Adams and Tom Homan, President Trump's "Border Czar," Mr. Homan implicitly acknowledged there was a *quid pro quo* agreement with Mayor Adams when he stated without objection from Mayor Adams:

> If he doesn't come through, I'll be back in New York City and we won't be sitting on a couch, I'll be in his office, up his butt saying "Where the hell is the agreement we came too?"

https://www.foxnews.com/video/6368821459112 at 19:35.

her concerns with Mr. Bove's dismissal directive stating that she could not "fulfill [her] obligations, effectively lead [her] office in carrying out the Department's priorities, or credibly represent the Government before the courts, if [she sought] to dismiss the Adams case on this record." Exh. 1 at 1-2 (Sassoon Letter).

Ms. Sassoon's response provides an extensive refutation of the two grounds alleged by Mr. Bove in support of dismissing the indictment and suggests there **was** a *quid pro quo* between Mr. Bove and Mayor Adams. *Id*. at 2-6. In her response, Ms. Sassoon stated that because she was confident that "Adams ha[d] committed the crimes with which he is charged, [she could not] agree to seek a dismissal driven by improper considerations." *Id*. at 7. Ms. Sassoon further stated:

> 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. . . [B]ecause 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

Ms. Sassoon concluded her letter by offering to resign if the Attorney General declined to meet her to discuss the letter or reconsider Mr. Bove's directive to dismiss the indictment. *Id*. at 8.

On February 13, 2025, Mr. Bove responded to Ms. Sassoon's letter, but instead of arranging a meeting with the Attorney General, he "accepted" her resignation. Letter from E. Bove, Acting Dep. Att'y Gen., to D. Sassoon, Acting U.S. Att'y, S.D.N.Y. at 1 (Feb. 13, 2025), Ex. 3 ("Bove Letter"). Mr. Bove's response also stated that because Ms. Sassoon's prosecution team "is unwilling to comply with the order to dismiss the case," they would be placed on off-duty administrative leave pending investigation by the Office of the Attorney General and the Office of Professional Responsibility, both of which would also evaluate Ms. Sassoon's conduct. *Id.*

After Ms. Sassoon's resignation, the Adams case was transferred from the U.S. Attorney's Office in the Southern District of New York to the Department of Justice's Public Integrity Section

in Washington, DC, triggering the resignation of five Public Integrity Section lawyers. W.K. Rashbaum et al., *Order to Drop Adams Case Prompts Resignations in New York and Washington*, N.Y. Times (Feb. 13, 2025), https://www.nytimes.com/2025/02/13/nyregion/danielle-sassoon-quit-eric-adams.html). The New York Times article also reported that hours after Ms. Sassoon's resignation on February 13th, Mayor Adams stated he would issue an executive order allowing federal immigration authorities into the Rikers Island jail complex, "a clear shift in the city's sanctuary policies" and that "[t]he move followed a meeting earlier in the day between Mr. Adams and Mr. Trump's border czar, Thomas Homan." *Id.* The following morning, the lead S.D.N.Y. prosecutor in the Adams case resigned. Letter from H. Scotten, Assistant U.S. Att'y, S.D.N.Y., to E. Bove, Acting Dep. Att'y Gen (Feb. 14, 2025), Ex. 4.

According to a report in the New York Times, on Friday, February 14, 2025, "based on interviews with people with knowledge of the events," Mr. Bove summoned the staff of the Department of Justice's Public Integrity Section to participate in a videoconference call in which Mr. Bove stated that two lawyers in the Section needed to sign a motion to dismiss the case against Mayor Adams. D. Barrett al., *In Moving to Stop Adams Case, Career Lawyer Sought to Stave Off Deeper Crisis*, N.Y. Times (Feb. 16, 2025), https://www.nytimes.com/2025/02/16/us/politics/justice-department-trump-eric-adams.htm.

Mr. Bove gave the lawyers an hour to make up their minds. According to the New York Times report, "[t]he threat of a mass firing was unspoken but loomed over the videoconference call." *Id.* During the discussion among the lawyers, Ed Sullivan, a longtime prosecutor, said he would sign the Motion to "protect the other lawyers." *Id.* Sullivan and Antoinette Bacon, who headed the Department of Justice Criminal Division, signed the Motion. *Id.* Mr. Bove also signed

the Motion. Nolle Prosequi, *United States v. Adams*, 1;24-cr-00556 (S.D.N.Y. Feb. 14, 2025), Ex. 5 ("Motion").

The Motion gives the same reasons for dismissing the indictment that Mr. Bove gave in his February 10, 2025 letter to Ms. Sassoon. The Motion states that "the Acting Deputy Attorney General" has "concluded" that dismissal is necessary because of "appearance[] of impropriety", "risks of interference with the 2025 elections in New York City" and because "continuing these proceedings would interfere with the defendant's ability to govern in New York City." Motion at ¶¶ 5 6. Mr. Bove gave the same reasons in his argument to this Court during its hearing on February 19, 2025. Tr. of Hr'g, *United States v. Adams*, 1:24-cr-00556 at 23-24, 26 (S.D.N.Y. Feb. 14, 2025), Ex. 6 ("Hearing Transcript"). At the hearing, Mr. Bove also denied there was a *quid pro quo* agreement between the Department of Justice and Mayor Adams, stating that "you have a record undisputed that there is no *quid pro quo*." *Id.* at 49.

## ARGUMENT

### I. BOVE'S CONDUCT IS RELEVANT TO THE COURT'S DECISION ON THE MOTION

As stated in this Court's Order of February 18, 2025, "[i]n granting a motion under Rule 48(a), the Court 'should be satisfied that the reasons advanced for the proposed dismissal are substantial'" and should not disturb the prosecutor's decision to terminate the prosecution "'unless clearly contrary to manifest public interest.'" Order, *United States v. Adams*, 1:24-cr-00556 at 1-2 (S.D.N.Y. Feb. 18, 2025) (citations omitted), Ex. 7.

In his Motion and statements in Court, Mr. Bove contends that the indictment against Mayor Adams should be dismissed because of the appearance of impropriety, interference with the 2025 New York City elections, and to prevent interference in the Mayor's ability to govern New York City. Motion at ¶¶ 5-6. However, Mr. Bove's conduct is relevant to the Court's exercise

of its discretion in deciding the Motion not only with respect to his representations to the Court but also with respect to his conduct before the Motion was filed. Mr. Bove's role with respect to the Motion goes far beyond his role as an advocate for the Department of Justice in filing and arguing the Motion. He was a major force in the events leading up to filing the Motion:

- He participated in the January 31, 2025 meeting at which Adams's counsel "urged what amounted to a *quid pro quo*". Sassoon Letter at 3 n.1;

- He decided on the purported factual grounds for the Motion. *See* Transcript at 23 (Hearing transcript) ("And basically what is set forth here is my conclusion that this case, as a matter of prosecutorial discretion, should not proceed because it reflects, at minimum, appearances of impropriety that give cause for concern about the abuse of the criminal justice process.") and 23-24 ("Specifically, paragraph six sets forth my concerns that the continuation of this prosecution is interfering with both national security and immigration enforcement initiatives being run and conducted by the Executive Branch.");

- He directed Ms. Sassoon to file the Motion. Memorandum from E. Bove, Acting Dep. Att'y Gen., to Acting U.S. Att'y, S.D.N.Y. at 1 (Feb. 10, 2025), Ex. 2. When Sassoon refused to do so because she believed the dismissal was "driven by improper considerations," he responded to her request to meet with the U.S. Attorney General to address her concerns by "accept[ing]" her offer to resign, advising her that Assistant U.S. Attorneys on the Adams prosecution team would be placed on off-duty administrative leave and that she and the team would be investigated by the Office of the Attorney General and the Office of Professional Responsibility. Sassoon Letter at 7; Bove Letter at 1;

- After transferring the case to the Justice Department's Public Integrity Office, Mr. Bove gave almost 20 lawyers in the office one hour for two of them to decide which one of them would sign the Motion, with what the New York Times described as an "unspoken threat of a mass firing" looming over the discussion. D. Barrett et al., *In Moving to Stop Adams Case, Career Lawyer Sought to Stave Off Deeper Crisis*, N.Y. Times (Feb. 16, 2025), https://www.nytimes.com/2025/02/16/us/politics/justice-department-trump-eric-adams.html

Because Mr. Bove's potentially unethical conduct was so deeply connected with events leading up to filing the Motion, it calls into question whether the "reasons advanced for the proposal dismissal are substantial." Order, *United States v. Adams,* 1:25-cr-00556 at 2 (S.D.N.Y. Feb. 18, 2025) (citations omitted), Ex. 7. at 2.

As discussed in more detail in the following Section, if Mr. Bove violated Rule 5.1(b)(2) by insisting that Ms. Sassoon and the lawyers in the Public Integrity Section file the Motion, he sought to deprive them of their professional duty to exercise their independent judgment, under Rule 2.1, to determine whether the grounds for the Motion were valid. Mr. Bove's instructions to the lawyers under his supervision to file the Motion immediately further suggests that the stated basis of the Motion was pretextual.

If Mr. Bove violated Rule 3.3(a)(1) by making false statements in his Motion or in Court, that too would cast doubt on the merits of the Motion. If Mr. Bove violated Rule 1.11(f)(3) because he accepted an offer from Mayor Adams's lawyer to aid in the enforcement of federal immigration laws and President Trump's immigration policies in exchange for a dismissal of the indictment, the Court should consider whether dismissal of the indictment based on a *quid pro quo* is compatible with the "public interest" and "substantial reasons" factors that the Court considers in deciding the Motion. And if Mr. Bove's conduct runs counter to the fair administration of justice in violation of Rule 8.4(d), that is yet another reason that militates in favor of denying the motion.

## II. POSSIBLE RULE VIOLATIONS

### A. Pressuring Lawyers to Sign a Pleading Against Their Professional Judgment Would Violate the Rules of Professional Conduct and Taint the Motion to Dismiss.

Mr. Bove's refusal to acknowledge Ms. Sassoon's ethical concerns and his reported pressuring of other Justice Department lawyers, if true, may violate core Rules of Professional Conduct. Rule 2.1 mandates that lawyers "exercise independent professional judgment and render candid advice." As the comment to the Rule makes clear, "a lawyer should not be deterred by the prospect that the advice will be unpalatable to the client." Rule 2.1 cmt. 1. Under Rule 5.2(a), Rule 2.1's requirements extend to subordinate lawyers: "A lawyer is bound by these rules notwithstanding that the lawyer acted at the direction of another person."

As the Acting Deputy Attorney General, Mr. Bove stood in a supervisory position with respect to Ms. Sassoon and the lawyers in the Criminal Division, including the Public Integrity Section. All these lawyers were entitled and indeed required to exercise their independent professional judgment with respect to whether the motion could be filed in good faith and whether it was otherwise consistent with their professional duties. Ethically, they could put aside any misgivings only if they regarded Mr. Bove's position as the "reasonable resolution of an arguable question of professional duty" (Rule 5.2(b)).

Rather than acknowledging and accommodating their concerns and professional obligations, Mr. Bove accepted Ms. Sassoon's resignation, moved the case to the Public Integrity Section, and called a meeting with attorneys in the unit in which he told them two attorneys needed to come forward and sign a motion to dismiss, giving them an hour to sign as the threat of dismissal from the Department hung over the conversation (*see* page 5, *supra*). These actions, if established, could violate his own ethical duty under Rule 5.1(b)(2) to make reasonable efforts to ensure that the lawyers he supervises adhere to the rules – in fact, Mr. Bove's actions would represent an attempt to pressure other lawyers to violate the rules rather than comply with them. *See* Rule 5.2(b).

If either or both of the lawyers who signed the Motion were pressured into doing so, as has been reported, this would irrevocably taint the Motion. By signing the Motion, under Rule 3.3(a)(1), Mr. Bove represented to this Court that the Motion did not contain a false statement of fact or law. There is a substantial basis here to inquire whether Mr. Bove made representations knowing at the time that they were false. The Court should not be placed in the position of granting a Motion lacking in honesty and integrity.

An evidentiary hearing is the appropriate procedure for further inquiry into whether there were ethical violations leading up to the signing and filing of the Motion.

### B. Misrepresentations to the Court Would Violate the Duty of Candor and Provide Grounds to Deny the Motion.

There is a factual dispute whether the Motion was part of a *quid pro quo* arrangement. Mr. Bove denied that one existed:

> [Y]ou have a record undisputed that there is no *quid pro quo*. . . . . [A] *quid pro quo* . . . doesn't exist . . . . .

Hearing Transcript at 49.

These unequivocal denials go to the heart of the Motion and to whether Mr. Bove was truthful. If he was not, his false statements would violate the lawyers' duty of candor to the courts established in Rule 3.3(a)(1) and would be attorney misconduct. Importantly, Mr. Bove put his own credibility at issue when he stated the following: "Based on my representations as the decision maker, that's why I'm here today, is to make very clear and so you can look me in the eye and see how I came to these conclusions and we can talk about them." *Id.* at 51. As the comment to Rule 3.3 makes clear, Mr. Bove's assertions about the facts may be made to the Court only if he "knows the assertion to be true or believes it to be true on the basis of a reasonably diligent inquiry." Rule 3.3 cmt. 3.

There is reason to doubt the government's denial of a *quid pro quo* in view of Ms. Sassoon's letter and Mr. Homan's reference to "the agreement" during his appearance with the Mayor Adams on Fox and Friends (*see* page 3 n.1, *supra*). Any hearing ordered in this case should therefore include an inquiry into whether the government violated its duty of candor in its Motion and in Your Honor's courtroom.

### C. Rule 1.11(f)(3) Prohibits Accepting Anything of Value to Influence Official Actions.

Based on public information and the court record, there is reason to question whether Mr. Bove violated Rule 1.11(f)(3), which prohibits a government lawyer from "accept[ing] anything

of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official."[2] The publicly available information indicates that Mr. Bove agreed to drop the criminal charges against Mayor Adams in exchange for the Mayor's cooperation on federal immigration enforcement, a policy priority of the current Administration. See, e.g., Sassoon Letter at 3 n.1; *'Game changer': Homan and Adams Collaborate on NYC Immigration Enforcement* at 19:35, Fox and Friends (Feb. 14, 2025) https://www.foxnews.com/video/6368821459112.

Having the mayor of the City of New York direct city officials to effectuate the immigration policy objectives of the current administration undoubtedly constitutes a thing of value to the government. And it was this thing that Mr. Adams offered, and which appears to have led the Department of Justice to file the pending Motion. If the Court determines that this was precisely what occurred, then Mr. Bove may have violated the plain language and purpose of Rule 1.11(f)(3). The prohibition in Rule 1.11(f)(3) serves to prevent precisely this type of improper quid pro quo arrangement, where official prosecutorial acts are traded for things of value, including policy concessions.[3]

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[2] Rule 1.11(f) was added to the New York rules at the behest of the judiciary, and it is based on the former DR 8-101. *See* Simon's NY Rules of Prof. Conduct § 1.11:50 ("Rule 1.11(f) was not recommended by COSAC or the State Bar but was instead added by the Courts *sua sponte* by borrowing verbatim from former DR 8-101(A)(1)-(3)."). Although misconduct under this provision is thankfully rare, a prosecutor in Virginia was found to violate DR 8-101 by agreeing to reduce charges against a defendant in partial exchange for a $25,000 contribution to various charities hand-picked by the prosecutor. *Morrissey v. Virginia State B.*, 448 S.E.2d 615 (Va. 1994). When the defendant's attorney expressed concern that the prosecutor "was planning to use the checks for political purposes," the prosecutor responded "[w]e've got a deal and you better live up to it,"—a statement that the defense attorney took "as a threat that [the prosecutor] might have [his client] re-indicted on the abduction charge that had been nol-prossed pursuant to the plea agreement."

[3] NYSBA Ethics Opinion No. 1170 (July 9, 2019); *see also* Miano v. AC & R Advert., Inc., 148 F.R.D. 68, 83 (S.D.N.Y. 1993), as amended (Mar. 4, 1993), adopted, 834 F. Supp. 632 (S.D.N.Y. 1993) ("Although bar opinions are not binding on this Court, they are instructive in applying

An evidentiary hearing is necessary to determine what benefit of the bargain Mr. Bove received from Mr. Adams and how this exchange influenced the Department's decision to seek dismissal of the indictment. If the facts are as indicated in the public record, Mr. Bove's conduct may represent a violation of the ethical rules governing lawyers in public office.

**D. Rule 8.4(d) Forbids Conduct Prejudicial to the Administration of Justice.**

Finally, Mr. Bove's conduct appears to implicate New York Rule of Professional Conduct 8.4(d), which prohibits attorneys from engaging in "conduct that is prejudicial to the administration of justice." According to the Committee on Professional Ethics of the New York State Bar Association, Rule 8.4(d) applies "if the conduct in question is likely to cause substantial individual or systemic harm to the administration of justice, regardless of the motivation of the party." N.Y. State Bar Assoc., *Ethics Opinion No. 1098* (June 10, 2016).[4] Thus, for example, the Committee has concluded that "[a] prosecutor may not ethically require, as a routine condition of a plea bargain, that a defendant waive ineffective assistance of counsel claims," in part because such waivers prejudice the administration of justice by creating systemic conflicts of interest. *Id.* In particular, the Committee explained that such waivers both create "enormous pressure for courts and defense lawyers to ignore the potential conflicts created by IAC waiver demands," and also "create an incentive for prosecutors to employ them to conceal IAC claims that are known to prosecutors but unknown to defendants and their lawyers." *Id.*

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ethical rules to attorney conduct in litigation and provide guidance to attorneys themselves in conforming their conduct to ethical proscriptions.").For example, in NYSBA Opinion 1170, the Committee on Professional Ethics considered whether a Village Attorney could also represent private clients in defense of traffic violations and other proceedings; the Committee wrote that "[i]It goes without saying that the Village Attorney may not accept anything of value to influence the lawyer's exercise of that role."

[4] NYSBA Ethics Opinion No. 1098 (June 10, 2016).

Similar systemic conflict risks appear in this case. The current record raises troubling questions about Mr. Bove's adherence to Department of Justice policies and procedures in his handling of this case, ultimately leading to his decision to move to dismiss an indictment returned by a duly authorized grand jury and which Ms. Sassoon stated in her letter was "well supported by the evidence and the law." Sassoon Letter at 7. The information available indicates that Mr. Bove personally negotiated with Mayor Adams's defense counsel, agreed to move to dismiss the indictment before any substantive review of the merits, and then directed career prosecutors to file a motion advancing rationales that they considered so baseless as to be "pretextual." Memorandum from E. Bove, Acting Dep. Att'y Gen., to Acting U.S. Att'y, S.D.N.Y. at 1 (Feb. 10, 2025), Ex. 2; Letter from H. Scotten, Assistant U.S. Att'y, S.D.N.Y., to E. Bove, Acting Dep. Att'y Gen (Feb. 14, 2025), Ex. 4. When the prosecutors on the team prosecuting Mayor Adams expressed concerns about the legal and ethical propriety of the dismissal, Mr. Bove responded with a campaign of retaliation — placing them on administrative leave and initiating investigations. Bove Letter at 1. These actions are inconsistent with Mr. Bove's duty to seek justice.[5]

This course of conduct, if established, evinces a disregard for the Department's own policies, discussed more fully in Section III below, and a willingness to abuse prosecutorial authority to achieve a predetermined outcome—that is, a systemic conflict of interest that creates an incentive for lawyers to ignore their ethical duties in the interest of political expediency and job protection. *See, e.g.*, *Matter of Kurtzrock*, 138 N.Y.S.3d 649, 665 (N.Y. App. Div. 2d Dept. 2020) (upholding discipline under Rule 8.4(d) and (h) of a prosecutor who failed to properly disclose exculpatory evidence, and explaining that the prosecutor "abdicated his duty as a public officer to

[5] Comment 1 to Rule 3.8 states that "[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate."

ensure that justice shall be done and allowed his advocacy role to eclipse and supplant his role as a public officer"). As Assistant U.S. Attorney Hagan Scotten stated in his letter of resignation: "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. . . [A]ny 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." Letter from H. Scotten, Assistant U.S. Att'y, S.D.N.Y., to E. Bove, Acting Deputy Att'y Gen (Feb. 14, 2025), Ex. 4.

Mr. Scotten's decision to resign rather than support dismissal of the case demonstrates how far the Department deviated from the norms and traditions that safeguard the fair and evenhanded administration of justice. Punishment of career prosecutors for adhering to their oaths and ethical obligations, if proven, would certainly constitute conduct prejudicial to the administration of justice. A hearing is required to determine whether Mr. Bove in fact engaged in the coercive and retaliatory conduct suggested by the public record.

The Court should not countenance the misuse of prosecutorial power to extract policy concessions or the punishment of career public servants who refuse to go along. The questions surrounding Mr. Bove's conduct go to the heart of the integrity of the prosecutorial function and the Department of Justice itself. This Court should direct further inquiry to ensure that the laws are faithfully executed and justice is properly administered.

As with the other Rules in play, the issues under Rule 8.4(d) are inescapably intertwined with the merits of the Motion: there are substantial grounds for believing that the Motion is tainted by unethical conduct inconsistent with the administration of justice, and under these

circumstances, the Court should not indulge the prosecution with a presumption of good faith in bringing the Motion before the Court, or grant it in the face of such ethical doubts.

For all of the above reasons, the Court should evaluate whether Mr. Bove violated his ethical duties in ordering his subordinates to sign the Motion, signing the Motion himself, and his representations in arguing the Motion. This evaluation should include an evidentiary hearing at which Mr. Bove is called to testify as a witness to these events.

## III. PRINCIPLES OF FEDERAL PROSECUTION

As Acting Deputy Attorney General, Mr. Bove is bound by Department of Justice policies, outlined in the Department of Justice Manual. The manual seeks to promote the "evenhanded administration of justice" and to ensure that the Department's actions are "impartial" and "free from even the appearance of political influence." U.S. Dep't of Just., Just. Manual § 1-8.100, https://www.justice.gov/jm/jm-1-8000-congressional-relations#1-8.100. The principles of prosecution, part of the DOJ manual, exist to ensure "fair and effective exercise of prosecutorial discretion" and to promote confidence that "prosecutorial decisions will be made rationally and objectively based on an individualized assessment of the facts and circumstances of the merits of each case." *Id.* at §9-27.001.

In determining whether to commence or recommend prosecution or take other action against a person, Department attorneys may not be influenced by the person's political association, activities, or beliefs. *Id.* at § 9-27.260. In addition, federal prosecutors and agents may never make a decision regarding an investigation or prosecution or select the timing of investigative steps or criminal charges, for the purpose of affecting any election, or for the purpose of giving an advantage or disadvantage to any candidate or political party. *Id.* Because the Department's ethical principles serve to promote public confidence in the fair administration of justice, any actions

taken or directed by Mr. Bove that are not in conformity with the Department's ethical principles would be contrary to the public interest.

Since the nature of any agreement between counsel for Mayor Adams and Bove is in dispute, a hearing would allow the Court to examine factual evidence relevant to this matter so it can be assured that the Motion to dismiss without prejudice put forth by Mr. Bove is based on a rational and objective analysis of the facts and circumstances of the merits of the case rather than political considerations. While Mr. Bove has represented that "there is no quid pro quo," Exh. 6 at 49 (Hearing Transcript), Ms. Sassoon reported she attended a meeting with Mr. Bove and counsel for Mayor Adams in which counsel sought dismissal of the case in exchange for Adams's agreement to enforce federal immigration laws. Ms. Sassoon described the nature of the proposed exchange as follows:

> 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.

Sassoon Letter at 3 n.1. A hearing would allow the Court to determine if Mayor Adams is obtaining favorable treatment beyond what other elected officials and criminal defendants receive. As Ms. Sassoon has pointed out, the proposed deal makes no sense from a law enforcement perspective since "it does not grapple with the differential treatment Adams would receive compared to other elected officials, much less other criminal defendants." *Id.*

An evidentiary hearing would help the Court determine whether the alleged interference in national security and immigration enforcement initiatives are a legitimate basis for Mr. Bove to seek dismissal. In raising concerns that the prosecution is interfering with both national security

and immigration enforcement initiatives being run and conducted by the Executive Branch, he appeared to be relying on Mayor Adams's lack of a security clearance. Hearing Transcript at 27. Mr. Bove has now admitted to the Court that the issuance of Mayor Adams's security clearance was a matter within the discretion of the Executive Branch. However, Mr. Bove undermined the credibility of his own argument when he acknowledged to the Court in last week's hearing that Mayor Adams's security clearance could be restored independently of how the Motion is resolved. *Id.* at 30.

An evidentiary hearing is also necessary to ascertain whether the dismissal sought by Mr. Bove is politically motivated and intended to influence the outcome of the upcoming primary election in violation of his ethical obligations. By arguing to the Court that the prosecution should be dismissed because it is interfering with Mayor Adams's ability to run for re-election, Mr. Bove has raised the specter that dismissal is being sought with the purpose of affecting the upcoming June 24 primary election—now just a few months away—in which Mayor Adams is a candidate. Hearing Transcript at 26. It is also apparent that dismissal would give Mayor Adams an electoral advantage he otherwise would not have. In sharp contrast, Ms. Sassoon has explained that the decision to bring the indictment in September 2024 was made nine months before the June 2025 Democratic Mayoral Primary and more than a year before the November 2025 Mayoral Election and "complied in every respect with longstanding Department policy regarding election year sensitivities and the applicable Justice Manual provisions." Sassoon Letter at 4.

Mr. Bove has further undermined public confidence in the administration of justice by failing to inform the Court of the government's stated position on the merits of the case in terms of fact and law. Hearing Transcript at 22. To restore public trust, an evidentiary hearing is necessary to determine whether Mr. Bove exercised his prosecutorial discretion for political

reasons in violation of his professional obligations as a federal prosecutor. There is evidence that he did not. In his February 10 memorandum to Ms. Sassoon, Mr. Bove explained that he reached his conclusions "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." Memorandum from E. Bove, Acting Dep. Att'y Gen., to Acting U.S. Att'y, S.D.N.Y. at 1 (Feb. 10, 2025), Ex. 2. He added that "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." *Id.*

A hearing is also necessary to assess whether there is sufficient credible evidence to support a finding of political weaponization that has been alleged by Mr. Bove. Mr. Bove undermined public confidence when he invoked the appearance of impropriety as the basis for dismissing the case. He did so in reliance on President Trump's Executive Order 14147, but without having introduced sufficient evidence to support a finding of political weaponization. Hearing Transcript at 23. In doing so, Mr. Bove appears to have acted without the requisite impartiality.

Indeed, there is ample evidence to undermine Mr. Bove's claims of weaponization. In her letter to Attorney General Bondi, Ms. Sassoon concluded that the "generalized" concerns expressed by Mr. Bove regarding weaponization were not a sufficient 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." Sassoon Letter at 4. Ms. Sassoon also pointed out, based on her personal knowledge, the integrity of the line attorneys who prosecuted the case and the limited role played by former U.S. attorney Damian Williams. She wrote:

> [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.

*Id.*

**CONCLUSION**

In the typical case involving allegations of prosecutorial misconduct, the remedy may be dismissal of the indictment. In the unusual circumstances presented here, the potential misconduct goes to the propriety of the dismissal motion itself. At bottom, Mr. Bove is asking the Court simply to take his word for it that there is nothing amiss, when there are ample grounds for questioning that assertion. Absent an evidentiary hearing into whether his actions complied with his ethical responsibilities, the Court cannot make an informed ruling on the Motion.

For the reasons set forth above, Amici respectfully request the Court to take the following actions:

First, to direct Mr. Clement to conduct a factual inquiry into whether Mr. Bove violated any of the Rules of Professional Conduct or Department of Justice prosecutorial policies or standards; and

Second, to hold an evidentiary hearing to determine whether, in fact, Mr. Bove violated any of the Rules of Professional Conduct or Department of Justice prosecutorial policies or standards.[6]

[6] Pursuant to Canon 3(B)(6) of the Code of Conduct for United States Judges, this Court has the discretion to impose a remedy – beyond denial of the Motion to Dismiss – if it determines that Mr. Bove violated any of the Rules of Professional Conduct. The Canon provides that "[a] judge should take appropriate action upon receipt of reliable information indicating the likelihood that . . . a lawyer violated applicable rules of professional conduct." (Emphasis added.)

February 28, 2025

Respectfully submitted,

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* Affiliations are provided for identification purposes only. The views expressed in the proposed amicus brief reflect only those of the individual and do not necessarily reflect the institution with which they are affiliated.

**CERTIFICATION OF WORD COUNT**

In compliance with Local Civil Rule 7.1(c) of the Joint Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, the undersigned hereby certifies that the word count in this Brief (excluding the caption, index, table of contents, table of authorities, signature block, the certificate of service, and this certification), as established using the word-count function of the word-processing system used to prepare it, is 6,427 words.

Dated: New York, New York
March 3, 2025

Ilene Jaroslaw

**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2025, I emailed the foregoing to the Chambers of the Honorable Dale E. Ho and to all counsel of record in this case. On March 3, 2025, I electronically filed the same with the clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

Dated: New York, New York
March 3, 2025

Ilene Jaroslaw

# Exhibit 1

**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 2

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

**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)

**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 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA | **NOLLE PROSEQUI** |
| - v. – | 24 Cr. 556 (DEH) |
| ERIC ADAMS, | |
| Defendant. | |

1. The United States respectfully submits this motion seeking dismissal without prejudice of the charges in this case, with leave of the Court, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure.[1] *See United States v. Blaszczak*, 56 F.4th 230, 238 (2d Cir. 2022) (reasoning that "[t]he government may elect to eschew or discontinue prosecutions for any of a number of reasons," including based on announcements relating to "general policy."); *United States v. Fokker Servs. B.V.*, 818 F.3d 733, 742 (D.C. Cir. 2016) ("[D]ecisions to dismiss pending criminal charges—no less than decisions to initiate charges and to identify which charges to bring—lie squarely within the ken of prosecutorial discretion."); *United States v. Amos*, 2025 WL 275639, at *2 (D.D.C. 2025) ("[T]he government's view of the public interest does not clearly fall within the types of reasons found to provide legitimate grounds to deny the government Rule 48(a) motion to dismiss charges.").

2. Through counsel, Defendant Eric Adams has consented in writing to this motion and agreed that he is not a "prevailing party" for purposes of the Hyde Amendment. *See* P.L. 105-119, § 617, 111 Stat. 2440, 2519; 18 U.S.C. § 3006A note.

[1] The undersigned attorneys from the Department of Justice have replaced AUSAs from the U.S. Attorney's Office for the Southern District of New York as counsel of record in this case. The Department of Justice will handle this matter and any related decision-making in the future.

3. On September 24, 2024, Adams was charged in a five-count Indictment, 24 Cr. 556 (DEH).

4. The Acting Deputy Attorney General has determined, pursuant to an authorization by the Attorney General, that dismissal is necessary and appropriate, and has directed the same, based on the unique facts and circumstances of this case.

5. In connection with that determination and directive, the Acting Deputy Attorney General concluded that dismissal is necessary because of appearances of impropriety and risks of interference with the 2025 elections in New York City, which implicate Executive Order 14147, 90 Fed. Reg. 8235. The Acting Deputy Attorney General reached that conclusion based on, among other things, review of a website[2] maintained by a former U.S. Attorney for the Southern District of New York and an op-ed published by that former U.S. Attorney.[3]

6. In connection with that determination and directive, the Acting Deputy Attorney General also concluded that continuing these proceedings would interfere with the defendant's ability to govern in New York City, which poses unacceptable threats to public safety, national security, and related federal immigration initiatives and policies. *See, e.g.*, Executive Order 14159, 90 Fed. Reg. 8443; Executive Order 14165, 90 Fed. Reg. 8467. The Acting Deputy Attorney General reached that conclusion after learning, among other things, that as a result of these proceedings, Adams has been denied access to sensitive information that the Acting Deputy Attorney General believes is necessary for Adams to govern and to help protect the City.

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[2] https://www.damianwilliamsofficial.com.

[3] https://www.cityandstateny.com/opinion/2025/01/opinion-indictment-sad-state-new-york-government/402235/?oref=csny-author-river.

7. Accordingly, the United States respectfully requests, on consent, that the Court enter an order of *nolle prosequi* pursuant to Rule 48(a), without prejudice, with respect to all of the charges in Indictment 24 Cr. 556 (DEH).

Dated: February 14, 2025

/s/
Antoinette T. Bacon
Supervisory Official
Criminal Division
United States Department of Justice

Edward Sullivan
Senior Litigation Counsel
Public Integrity Section
Criminal Division
United States Department of Justice
(202) 514-2000

Based on the foregoing, I hereby direct, with leave of the Court, that an order of *nolle prosequi* pursuant to Rule 48(a), without prejudice, be filed as to Defendant Eric Adams with respect to Indictment 24 Cr. 556 (DEH).

Dated: February 14, 2025

Emil Bove
Acting Deputy Attorney General
United States Department of Justice

SO ORDERED:

THE HONORABLE DALE E. HO
United States District Judge
Southern District of New York

Dated:
New York, New York

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will serve all counsel of record.

_____/s_____
Edward Sullivan
Senior Litigation Counsel

Dated: February 14, 2025

# Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,

v. 24 Cr. 556 (DEH)

ERIC ADAMS,

Defendant.

----------x

New York, N.Y.
February 19, 2025
2:00 p.m.

Before:

HON. DALE E. HO,

District Judge

APPEARANCES

EMIL J. BOVE III
Acting Deputy Attorney General

QUINN EMANUEL URQUHART & SULLIVAN LLP
Attorneys for Defendant
BY: ALEX SPIRO
WILLIAM A. BURCK

(Case called)

THE DEPUTY CLERK: Counsel, can you please state your name for the record, starting with the government.

MR. BOVE: Thank you.

Good afternoon, your Honor. Emil Bove for the government.

THE COURT: Good afternoon. Please have a seat.

MR. SPIRO: Good afternoon, your Honor. It's Alex Spiro and William Burck on behalf of Eric Adams.

THE COURT: Good afternoon to you both. Good morning, Mayor Adams. Please have a seat.

First of all, thank you all for coming in on such short notice. On February 14, the government filed a motion to dismiss the charges in the indictment without prejudice under Rule 48. I believe it is at ECF No. 122. I called this conference because I have a few questions.

But before I jump in, I just want to emphasize a few things. The first is that, while there is not a lot of authority on Rule 48, at least two basic things are relatively clear to me. One is that a court has very little discretion here. I'm well aware of that. And that the government, in the words of the Second Circuit, is the first and presumptively best judge of whether a prosecution should be terminated.

Second, notwithstanding what I just said, the case law in this area also makes clear that the court does have a

limited role to play. Otherwise, there would be no purpose for the requirement of leave under Rule 48. And so, to properly discharge my duty, I want to proceed carefully starting by making sure that I understand a few basic things about the government's motion and where we are today.

Having reviewed it, I do have some basic questions about issues, including the effect of the motion, if granted, mayor Adams' consent to it, the basis for the motion, and what I'm allowed to consider in resolving the motion. So we'll get to all of that in turn.

Second thing that I want to emphasize before we get started is, I want to make very clear that the mere fact that I have a few questions today is in no way a commentary on the merits of this case. For one thing, and most obviously, any criminal defendant, and Mayor Adams, is presumed innocent in the eyes of the law and this court.

For another thing, as I understand it, although I'll want to confirm this as we go, my understanding is that the government's motion to dismiss the indictment is being made without reference to the strength of the case either in terms of the facts or the government's legal theory. So the questions that I have today go to issues regarding the motion to dismiss the indictment and not to the indictment itself.

So with that, I just want to reiterate that I really appreciate you all coming in here today on short notice because

I need your assistance in sorting out how to handle what I think everyone would agree is a somewhat unusual situation.

So I just want to start with the motion itself. I've reviewed it. It was filed on February 14, and it's at ECF No. 122. It's probably easiest for everyone to follow along if I ask my courtroom deputy to bring it up on the screen. So I'm going to do that.

Ms. Morales, would you please bring up ECF No. 122 on to the screen.

I want to ask about paragraph two, which states:

Through counsel, Defendant Eric Adams has consented in writing to this motion and agreed that he is not a prevailing party for purposes of the Hyde Amendment. So I want to ask about that written consent. I believe that it was filed by defense counsel yesterday and is on the document on ECF 131-1.

Ms. Morales, would you please bring that up.

Thank you.

So this is a letter dated February 14, 2025, from Mr. Spiro and addressed to Mr. Bove. And I assume the parties have all seen this document.

Mr. Bove?

MR. BOVE: Yes, Judge.

MR. SPIRO: Yes, your Honor.

THE COURT: OK. And, Mr. Bove, is this the written consent that is referenced in the government's motion?

MR. BOVE: Yes, your Honor.

THE COURT: OK. And, Mr. Spiro, it's signed by you?

MR. SPIRO: Yes, your Honor.

THE COURT: OK. And the letter is not signed by Mayor Adams, is that right?

MR. SPIRO: That's correct.

THE COURT: OK. So, Mayor Adams, I have to ask you some questions about your consent to the motion, because my understanding is that by entering your consent, you're waiving certain rights which I intend to go over to make sure that your consent is knowing and voluntary.

So in order to ensure that your consent is valid, I have to ask two sets of questions. One is a standard set of questions about your mental state and your ability to understand today's proceedings that I always ask of any defendant that seeks, who seeks to waive certain rights. And then the second is a series of questions that is specific to this consent and the scope of your consent.

I just have to do this to establish to my satisfaction that you understand what you'll be waiving and that you're doing so knowingly and voluntarily. And I want to make clear, I don't intend to ask you any questions about anything beyond those two topics.

Is that OK?

THE DEFENDANT: Yes, it is.

THE COURT: With respect to the questions that I do have, I have to -- and my typical practice is -- and I think I have to ask you these questions under oath to ensure that your consent to the motion and waiver of certain rights is knowing and voluntary.

I just want to confirm that you and your counsel are OK with that before I proceed.

MR. SPIRO: No issue, your Honor.

THE COURT: OK. All right. Ms. Morales, would you please swear in Mayor Adams.

(Defendant sworn)

THE DEPUTY CLERK: Please state your name for the record.

THE DEFENDANT: Eric Leroy Adams.

THE COURT: Thank you, Mr. Adams. Please have a seat.

So, as I mentioned, I'm going to ask you a few questions about your mental state today.

Is that OK?

THE DEFENDANT: Yes, your Honor.

THE COURT: OK. Is your mind clear today?

THE DEFENDANT: Yes, it is, your Honor.

THE COURT: And you understand what's happening in these proceedings today?

THE DEFENDANT: Yes, I do.

THE COURT: OK. I'm going to ask you a few standard

questions about issues that sometimes come up when a defendant purportedly waives some rights, but later there will questions about the validity of that waiver.

I'm going to ask about certain circumstances and whether or not those are present, and if so, whether they affect your ability to participate in today's proceedings.

But at the same time, I want to be mindful of your privacy and I don't want to make you uncomfortable. I want to make clear I'm not going to pry into any details. Again, these are standard questions that I ask defendants in cases when they seek to waive rights.

Is that OK and may I proceed?

THE DEFENDANT: Yes, it is.

THE COURT: Thank you.

Are you now or have you recently been under the care of a doctor or mental health professional, such as a psychiatrist or a psychologist, and if so, I don't want to ask you any details about that, but if so, is there anything about such an experience, if you've had any, that would interfere with your ability to understand what is happening in these proceedings today?

THE DEFENDANT: No, I have not.

THE COURT: OK. And, again, I won't pry into details, but I have to ask if you have been treated or hospitalized for any type of addiction, such as drug or alcohol addiction, and

if so, if there is anything about such an experience, if you have had any, that would interfere with your ability to understand what is happening in these proceedings today?

THE DEFENDANT: No, I have not.

THE COURT: And have you taken any drugs, medicine, pills, or drunk any alcoholic beverages in the past two days that could affect your ability to follow these proceedings today?

THE DEFENDANT: No, I have not.

THE COURT: OK. Mr. Spiro, you've discussed this matter with your client?

MR. SPIRO: I have, your Honor.

THE COURT: And in your judgment, is he capable of understanding today's proceedings?

MR. SPIRO: Yes, sir.

THE COURT: OK. And does counsel for either side have any doubt as to the defendant's competence to consent to the government's motion at this time?

MR. BOVE: No, Judge.

MR. SPIRO: No, your Honor.

THE COURT: Thank you both.

On the basis of Mayor Adams' responses to my questions, my observations of his demeanor here in court, and the representations of counsel, I find that he is fully competent to enter a knowing and voluntary consent at this

time.

So I want to ask about now, turn to the second bucket of questions about the scope of your consent, Mayor Adams.

And, Ms. Morales, if you could please bring the government's motion back up. ECF No. 122. Could you scroll to the top of it, please.

And I don't know if you have a hard copy of it there, Mr. Spiro, that you could show to Mayor Adams, or we could flip through it.

But I just want to ask, Mayor Adams, if you have seen the government's motion to dismiss this matter?

THE DEFENDANT: Yes, I have, your Honor.

THE COURT: Have you had a chance to read it?

THE DEFENDANT: Yes, your Honor.

THE COURT: And did you have a chance to read it before you consented to it?

THE DEFENDANT: No, your Honor. It was explained to me.

THE COURT: It was explained to you by your attorney, Mr. Spiro?

THE DEFENDANT: Yes, it was, your Honor.

THE COURT: And we'll go over the content of the motion. But did you fully understand the substance of the motion before you authorized your consent to it?

THE DEFENDANT: Yes, I did, your Honor.

THE COURT: OK. I want to turn back to your consent letter, if I could, the document at ECF 131-1.

This is a pretty short letter, Mayor Adams, but did you have a chance to read this letter indicating your consent in writing before your attorney signed it?

THE DEFENDANT: I did not read it. It was explained to me, your Honor.

THE COURT: OK. So you discussed it with Mr. Spiro?

THE DEFENDANT: Yes, your Honor.

THE COURT: And you authorized him to sign this consent letter on your behalf?

THE DEFENDANT: Yes, I have, your Honor.

THE COURT: Did you fully understand it before you did so and before he signed it?

THE DEFENDANT: Yes, I did, your Honor.

THE COURT: Now, Mayor Adams, you understand that in this consent letter, you're waiving the right to assert that you're a prevailing party for purposes of a Hyde Amendment?

THE DEFENDANT: Yes, your Honor.

THE COURT: And you understand that the Hyde Amendment provides, in relevant part, that the court in any criminal case ... may award to a prevailing party, other than the United States, a reasonable attorney's fee and other litigation expenses where a court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the

court finds that special circumstances make such an award unjust.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: And so you understand that by consenting to the government's motion, you are giving up your right to obtain attorneys' fees resulting from a finding that the United States was vexatious, frivolous, or in bad faith in prosecuting you unless the government finds that special circumstances would make such an award unjust?

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: OK. Now, Mr. Bove, the motion represents that Mayor Adams has consented to dismissal without prejudice, is that right?

MR. BOVE: Yes. Correct, Judge.

THE COURT: OK. And, Mayor Adams, you understand that you're consenting to dismissal of your case without prejudice?

THE DEFENDANT: Yes, your Honor.

THE COURT: OK. I want to confirm that everyone is on the same page about what that means, what effect that granting the motion to dismiss without prejudice would have. And I would like to ask you, Mr. Bove, some questions, if I may, because I confess I'm not entirely sure about what that effect would be. So I appreciate you helping me out here.

Mr. Bove, if and when the motion is granted, can these charges be brought again?

MR. BOVE: They could be, in the Department's discretion, yes, Judge.

THE COURT: OK. So Mayor Adams could be reindicted at a future date?

MR. BOVE: It's possible, in the Department's discretion, as is standard and would be the default even if the motion didn't say that under Rule 48 and the governing law.

THE COURT: OK. If the motion is granted, are there any limits as to the circumstances under which the government could bring charges again in the future?

MR. BOVE: I mean, there is some standard limitations on the Department's discretion relating to impermissible considerations, protect the classes, things like that. I think those would apply. Otherwise not.

THE COURT: OK. And if the motion's granted, would there be any time limits as to when the government could reindict on these charges, other than the statute of limitations?

MR. BOVE: Well, I think there would be -- I'm just going off-the-cuff here. There is a statute of limitations, I agree. There is separate speedy trial obligations that are both constitutional that could come into play, if we're talking about a situation that involves pre-indictment delay, and the

statute could also potentially come into play.

THE COURT: I'm sorry. What was the last thing that you said?

MR. BOVE: I think the Speedy Trial Act could also come into play. Certainly, there would be a constitutional concern if there was a long delay in the charges and then they were refiled. Just to clarify, right now as the record stands, the Department and the Department's criminal division is responsible for all of these decisions.

THE COURT: The main Justice's Department?

MR. BOVE: Correct.

THE COURT: OK. Is there currently any anticipated timeframe in which the government would make such a determination? And the analogy I'm thinking about is with something like a deferred prosecution agreement where the government says, you know, in a year or two years, three years or something like that, we'll come back.

MR. BOVE: There is not, Judge.

I think you may have seen, in some of the attachments to one of the amicus filings, the correspondence that I had with the U.S. Attorney's office for the Southern District of New York that contemplated that office revisiting the situation when there was a Senate-confirmed U.S. Attorney in that seat.

That is not a condition on this motion. And so, right now, and I think this is really important, right now this is a

standard Rule 48 motion where we memorialize the default, which is that the dismissal would be without prejudice. That's all that is.

And the Department Main Justice, the Criminal Division, in its discretion, may or may not at some point revisit whether these charges are appropriate. I don't have any plans for that at this time.

THE COURT: OK. In the motion, is the government committing to stopping any additional investigative steps with respect to Mayor Adams?

MR. BOVE: No.

THE COURT: OK. Thank you for clarifying all of that with me. I appreciate it.

I just want to now turn to defense, and I want to confirm that defense shares the same understanding now.

Let me start with Mr. Spiro. Does defense counsel understand that granting the motion would not prohibit the government from, just starting with that last question that I posed to Mr. Bove, taking any additional investigative steps right now?

MR. SPIRO: We agree with everything that was just said.

THE COURT: OK. Sorry. I just want the record to be very clear as to what everything constitutes.

MR. SPIRO: Sure.

THE COURT: So defense counsel understands that the government, in its discretion, could bring these charges again?

MR. SPIRO: Yes.

THE COURT: Subject to, obviously, the limitations that Mr. Bove identified, protected classes, improper motives, and the like.

MR. SPIRO: Yes.

THE COURT: And that with respect to time limits, the government could bring these charges again at any time subject to statute of limitations and speedy trial, both constitutional and statutory speedy trial concerns.

MR. SPIRO: Yes. Again, I don't know that it's been fully exhaustive of what would prevent them from re-bringing a case, but we understand that the case could be re-brought. It's a dismissal without prejudice.

THE COURT: Could I just ask you to elaborate on what you just said about exhaustive?

MR. SPIRO: Well, sure. Your Honor was listing reasons why, you know, protected classes and things like that, that it could never be brought, that would be a problem with them bringing it back, and then some speedy trial and statute of limitations concerns.

I agree in large part. I can't say exclusively those are the things that would prevent it from being brought back. This motion, we understand, allows them to bring it back.

THE COURT: OK. And you've discussed this with Mayor Adams?

MR. SPIRO: I have.

THE COURT: OK. And, Mayor Adams, I just want to confirm with you that, under the terms of the motion to which you're consenting, the government may reindict you on charges arising from the same events underlying your current indictment subject to, you know, prohibitions on protected classes and statute of limitations, but that they could do that in the future in their discretion?

(Defendant confers with counsel)

THE DEFENDANT: Yes, I understand that, Judge. I have not committed a crime and I don't see them bringing it back. I'm not afraid of that.

THE COURT: OK. Thank you, Mayor Adams.

If at any time you want to consult with Mr. Spiro or your legal team, just let me know. It's really important that, you know, to have a valid understanding of what is happening today, that you have any questions answered before you answer any of mine.

THE DEFENDANT: I appreciate that because I failed my law class.

THE COURT: I'm sorry. The first question I posed to Mr. Spiro, I just want to make sure that I pose to you.

You understand that granting the motion would not

prohibit the government from taking any additional investigative steps at this time, there is no binding agreement with the government with respect to that, and so if they do take additional investigative steps and then you're reindicted later, you won't be able to argue that they violated some agreement not to take additional investigative steps.

You understand that?

THE DEFENDANT: Yes, I fully understand that.

THE COURT: OK. And I just want to confirm that no one has told you anything to the contrary that, for example, the government cannot reindict you in the future?

No one said that to you?

THE DEFENDANT: Not at all.

THE COURT: OK. And no one has told you that the government will not reindict you on these charges in the future?

THE DEFENDANT: Not at all.

THE COURT: OK. Here is a set of questions that I always request when someone waives something or consents to something, that they understand they have the right not to do those things.

I just want to confirm with you that you understand that, just as you have the right to consent to this motion in its current form, you also have the right not to consent to this motion.

Do you understand that?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: OK. And to clarify what that means, you have the right to oppose this motion in whole or in part.

Do you understand that?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: OK. And you understand that you have the right to oppose the government's motion solely with respect to the issue of whether or not dismissal is without prejudice and that you could request that the case be dismissed with prejudice.

You understand that?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: And if the government were to dismiss with prejudice, assuming that there would be a valid -- I'm sorry, excuse me.

If the court were to dismiss with prejudice, assuming that there was some valid basis for that, that would mean that the government would not be able to reindict you on the same charges.

Do you understand that?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: OK. And hearing all of that, you are consenting to the motion for dismissal without prejudice, is that right?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: Now, Mayor Adams, you understand that under normal circumstances, you have the right to a speedy trial?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: And you understand that if, for whatever reason, this motion were withdrawn or denied, the government would have to bring you to trial within the period prescribed under the Speedy Trial Act, I think most relevant here, within 70 days of indictment minus any time that has already been or could be excluded by the court. And if the government failed to do that, it would face dismissal of the charges.

Do you understand that?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: You understand that you're consenting to a motion that, if granted, would mean that there is no trial, right?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: Now, Mr. Bove, if I may ask, you said something earlier that about the Speedy Trial Act. And what's unclear to me, please enlighten me here, if I were to grant the motion, but the government, if the government were to, at a subsequent time, reindict Mayor Adams, my understanding is that the speedy trial clock would restart from the date of a new indictment, that is, the clock with respect to the time for

trial.

Do I have that right?

MR. BOVE: I believe so, yes.

THE COURT: OK. So, Mr. Spiro, is that the defense's understanding as well?

MR. SPIRO: I believe so as well, yes.

THE COURT: OK. So, Mayor Adams, you understand that if the government were to reindict you on these charges in the future, it wouldn't give you an ability to -- you wouldn't have the ability to argue that your right to a speedy trial under the Speedy Trial Act had been violated based on the passage of time between this indictment and this hypothetical future one?

Do you understand that?

THE DEFENDANT: Yes, I do, your Honor.

THE COURT: OK. Just a few more questions for you, Mayor Adams, before I wrap up and turn to a different topic.

Does the consent in writing, that letter from Mr. Spiro that we were talking about earlier, does that constitute the sum total of your agreement with the government?

THE DEFENDANT: Yes, your Honor.

THE COURT: Has there been anything left out of your consent in writing?

THE DEFENDANT: No, your Honor.

THE COURT: Are there any other agreements, written or otherwise, that you've entered into with the government?

THE DEFENDANT: No, your Honor.

THE COURT: And then other than what's in the government's motion itself, has anything been promised to you to induce you to consent to the motion?

THE DEFENDANT: Not at all, your Honor.

THE COURT: OK. Has anyone threatened you in any way to induce you to consent to the motion?

THE DEFENDANT: No, your Honor.

THE COURT: Thank you, Mayor Adams. I think those are all the questions that I'll have for you today.

Just so the parties understand, I'm going to review this transcript to ensure that I've asked all the correct questions. But does counsel for either side believe that there is any reason that I should not find that Mayor Adams has knowingly and voluntarily consented to the motion for a dismissal without prejudice?

MR. BOVE: No, Judge.

MR. SPIRO: No, your Honor.

THE COURT: OK. Thank you.

If we could, I would like to turn back to the basis for the motion itself. That's at ECF No. 122. The motion, I mean.

Ms. Morales, would you please bring it back up on the screen, back up on the screen.

While she's doing that, Mr. Bove, just so you see

where I'm going, I just have a few questions so that I can understand the basis for the motion and what I should or should not consider while I'm reviewing the motion.

MR. BOVE: Yes, Judge.

THE COURT: OK. The first thing, though, before I dive into the contents of it, I just want to confirm that the motion is a full and complete statement of the government's reasons for the motion. That is, beyond what is stated in the motion, is the government asserting any other reasons for dismissal.

MR. BOVE: We're not asking the court to rely on any. I do have other concerns, but these are the ones that I think are dispositive here.

THE COURT: I think I heard you say that you're not asking the court to rely on any reasons other than what is stated in the motion, is that right?

MR. BOVE: Correct.

THE COURT: OK. And I just want to confirm my understanding that the motion contains no statement about the government's views regarding the strength of the case in terms of the facts or the legal theory?

MR. BOVE: That's correct.

THE COURT: OK. Could you please, Mr. Bove, just give me a very high-level overview of the bases for the motion?

MR. BOVE: Yes, your Honor. There are two. They are

laid out and they are articulated at paragraphs five and six of the motion that's on the screen right now.

The first is just a straightforward exercise of prosecutorial discretion guided by President Trump's Executive Order 14147 relating to weaponization of the criminal justice process as well as guidance issued by the Attorney General on the day she was sworn in, February 5, 2025.

And basically what is set forth here is my conclusion that this case, as a matter of prosecutorial discretion, should not proceed because it reflects, at minimum, appearances of impropriety that give cause for concern about abuse of the criminal justice process. And I believe it actually goes further than that and it is an abuse of the criminal justice process.

That matter, which, again, in an exercise of prosecutorial discretion, is, I think, as your Honor alluded to earlier, virtually unreviewable in this courtroom, especially where guided by an Executive Order and direct guidance from the Attorney General.

Paragraph six sets forth a separate basis, which I believe invocates concerns about executive power that go right to the core of Article II of the Constitution, as does paragraph five, in such serious ways that they are also virtually unreviewable in this courtroom.

Specifically, paragraph six sets forth my concerns

that the continuation of this prosecution is interfering with both national security and immigration enforcement initiatives being run and conducted by the Executive Branch. Again, pursuant to just vital core Article II powers of President Trump.

THE COURT: OK. Thank you.

So, just so I understand, I just want to confirm my understanding. Broadly speaking, there are two bases for the motion, and that's the appearances of impropriety as set forth in paragraph five and the interference with the mayor's ability to govern in New York City, as set forth in paragraph six.

MR. BOVE: Five and six set forth my conclusions, and I was mindful while preparing the motion of the need to give the court more than just conclusory assertions. There is also each paragraph includes a partial factual basis that led to my conclusions. I emphasize partial.

THE COURT: OK. With respect to paragraph -- the conclusion in paragraph five, which maybe for short I'll refer to as appearances of impropriety, I just have a few questions about the contours of what is here. And, again, I just want to be clear. I'm not taking issue with it.

What I'm wanting to do is make sure that I understand the metes and bounds of what the government's position is here. And I guess the first question is whether what's asserted in paragraph five refers to the actual purpose of the prosecution,

the appearances around it, or both?

I guess what I mean is, is paragraph five saying that the prosecution was actually motivated by improper reasons, has the appearance of being motivated by improper reasons, or both?

MR. BOVE: I use the word "appearances" in paragraph five because I believe that's sufficient to merit the motion that I filed.

THE COURT: OK. But just in terms of what you're asking the court to rely on, you're not asking the court to rely on any representation about the actual purpose of the prosecution, but merely -- and when I say "merely," I don't mean to downplay it, I mean to distinguish it -- the appearances of impropriety?

Do I have that right?

MR. BOVE: Well, I would -- I would say that the actual purpose in the prosecution is the subject of a couple ongoing investigations at the Department. What I've relied on in paragraph five is the appearances.

I respectfully submit that this paragraph is independently sufficient for the court to grant the motion. Obviously, I'm here personally to answer your Honor's questions to give you the assurance you need to sign this.

I want to be clear, I think the only question is whether there is any basis to believe that I made these representations to the court in bad faith, and the answer to

that question is absolutely not.

THE COURT: OK. Well, Mr. Bove, I'm certainly not taking any issue with that right now. What I'm just trying to make sure that I understand what the representation is. And what I hear you saying is the appearances of impropriety.

Now, so let me just stop there. That's right, appearances?

MR. BOVE: That's what it says, yes.

THE COURT: OK. There is also a reference, I think, in the paragraph to interference with the 2025 mayoral election. I have a similar question here, and it's whether or not that's a representation about the purpose or the effect of the prosecution or both?

MR. BOVE: I mean, frankly, I think the fact that Mayor Adams is sitting to my left right now is part of the problem. He's not able to be out running the City and campaigning. I think that is actual interference with the election.

THE COURT: It's having that effect.

MR. BOVE: Correct. I think the pendency of this motion right now has that effect.

THE COURT: OK.

Can I ask about paragraph six. I think this is the ability to govern rationale.

MR. BOVE: I'm sorry to interrupt.

THE COURT: I think this is where you talk about the second rationale that you outlined at the top, the ability to govern. And the last sentence here refers to denial of access to sensitive information.

And is that a reference to Mayor Adams not having a security clearance?

MR. BOVE: Yes.

THE COURT: And let me make sure I have it right.

Is it that Mayor Adams had a security clearance before and then lost it as a result of this case?

MR. BOVE: I think defense counsel is probably in a better position to speak to that. My understanding is that he currently does not have one as a result, I think, it's my conclusion that he cannot communicate with the appropriate authorities in a full, candid, complete way that is necessary for Mayor Adams to protect the public.

I think, perhaps, more importantly for purposes of my motion, the concern is that Mayor Adams' inability to participate in that process impacts the national security and immigration objectives that are referenced in the first sentence, which, again, are core Article II powers of President Trump.

THE COURT: Mr. Spiro, perhaps I can --

Mr. Bove suggested I ask you. Is it that Mayor Adams had security clearance before the indictment was brought and

has lost it as a result?

MR. SPIRO: Yes, that's right. And he was also part of the Joint Task Force at certain levels that he can't be part of. And he also can't, as I have answered before, deal with and interact with the very federal government that brought a case.

I think the court knows well what I think of this case. But he can't interact with them in a normal fashion, in normal functioning, when they are the ones that brought this kind of a case against him.

THE COURT: Just focusing on the issue of the security clearance for now, I'm not sure who the question is best posed to.

Is the fact of an indictment the basis for losing a security clearance, or is it something more specific than that about the nature of the indictment?

MR. BOVE: I can't speak to the internal processes that led to that decision. My core concern here, whether it's the security clearance or more generally, is the mayor's inability to communicate directly in a fulsome way. I'm not saying there have been no communications, but I think there would be, my understanding, more and more complete communications were he not subject to an indictment.

That is the motivating factor here. Again, based on the national security and immigration concerns that are flagged

in the first sentence.

THE COURT: OK.

MR. SPIRO: Your Honor, I also should just add that there is other sensitive information that I don't know if it is directly tied to security clearances that he is not getting access to regarding terroristic threats and other things like that from the federal government because of the pendency of this case.

THE COURT: OK. Is Mayor Adams currently in the process of reobtaining his security clearance, or does that hinge upon resolution of this motion?

MR. SPIRO: It hinges upon resolution of this motion.

THE COURT: Is there any sense for how quickly security clearance can be restored?

MR. BOVE: Just a correction. I don't concede that it hinges, his security clearance resolution, hinges on the resolution of this motion, because the security clearance issue is another executive power issue that may or may not be addressed depending on what the court does here.

I think they are separate questions, and it's not my representation that that one is predicated on the other.

THE COURT: Are they, in fact, separate, Mr. Bove, just so I understand?

MR. BOVE: I think the President in the Executive Branch does have separate authority to grant a security

clearance. And right now, this Executive Branch could revisit that, but I think Mr. Spiro's point is the controlling one, which is that separate from whether or not there is a formal federal government security clearance for Mayor Adams, the continuation of these proceedings impedes his ability to communicate with federal authorities in a clear and complete way.

THE COURT: OK. But just so I understand the situation with the security clearance, it's possible that a security clearance could be restored independently of how this motion is resolved?

MR. BOVE: I believe so. That's just a matter of the discretion of the Executive Branch would have to go through the people who control those clearances. I don't have the particulars in front of me.

The sentence we're talking about is not limited to the security clearance issue, it refers to sensitive information, which is why I'm making the point that there is the security clearance issue that I think, if it wasn't caused by this case, it has happened concurrent to this case. And there is the related concern that, just more generally, a charged defendant represented by counsel cannot communicate with some of the federal authorities who are responsible for immigration initiatives in the City. For example, the U.S. Attorney's office for the Southern District of New York.

THE COURT: And just closing out on the security clearance issue, is there any sense of how long it might take, if the Executive decided to restore Mayor Adams' security clearance, how long that process takes?

MR. BOVE: No, because what I'm speaking about is the President's ability, as the one elected official responsible for the national security, to drive that process through his discretion. There is a lot of bureaucratic parts to these and processes that will have to take place to get it restored.

THE COURT: Do you have any sense as to how long those bureaucratic processes could take?

MR. BOVE: No.

THE COURT: OK. Mr. Bove, could I ask, are there other examples you could point me to where this rationale has been invoked in a decision to dismiss an indictment or to cease a prosecution in some way where the defendant is a public official with important responsibilities with respect to public safety, immigration, or national security, or the like?

MR. BOVE: I'm not aware of a case where it's a public official at issue.

But there are cases where the U.S. Attorney's office in this district has invoked "significant foreign policy interests" as a basis to seek relief in a case. One is the *Victor Bout* case, which is docketed at 08 CR 365, in this district. I quote "significant foreign policy interests." I'm

quoting from docket entry 130.

The second case that uses a very similar quote, "significant foreign policy interests," is *U.S. v.* -- I'm going to struggle with the pronunciation here -- *Goudarzi*, G-o-u-d-a-r-z-i, which is docketed in this district at 12 CR 830, at docket entry 8. That's the government's submission there.

And, you know, more broadly, the government, the prosecutors, federal prosecutors, make decisions all the time about how prosecutorial discretion is to be exercised and whether it merits continuing with a case or not. This motion reflects a decision made at the Department of Justice about this particular case.

Other than the fact that, you know, I think there is a lot of people in the courtroom today, I don't think there is anything particularly exotic about it. This is a standard exercise of prosecutorial discretion pursuant to guidelines that the President and the Attorney General have put in place.

THE COURT: If I may ask a question just about, again, kind of the contours of this argument. And, again, I'm not taking issue with it. I'm just trying to understand it.

Would a rationale like this, this ability to govern rationale, potentially apply to other public officials with significant public safety national security responsibilities here in New York, like, the police commissioner, for example?

Could it potentially be applicable in the event that the police commissioner were subject to some sort of investigation or prosecution?

MR. BOVE: Yes, absolutely. I think that it's an obligation of federal prosecutors at the outset of a case and throughout to consider whether their work is impacting the safety of the community in a public official's ability to protect the public, especially in such a critical time in this City with the immigration problems that we face, the violent crime problems that we face.

I say we. I'm not a resident here anymore. I think it's clear that we do. So it's absolutely an obligation of the Department to consider those things and totally appropriate exercise to do so as a matter of the Take Care Clause obligation under the Constitution.

THE COURT: And separate and apart from New York's, the context of New York City, could it apply to other chief executive-type public officials, like the mayor, like a governor of a border state, for example, who also has public safety immigration-related and national security responsibilities, if one of them were ever subject to investigation or prosecution?

MR. BOVE: Yes. You know, every case requires a fact-specific analysis about the federal interests in play, whether the case is worth bringing, what policy priorities it may or

may not interfere with. Absolutely.

If a case, if an ongoing prosecution presents national security concerns or concerns about the President's ability to maintain an immigration policy that he was elected to implement and enforce, then it would absolutely, the Department will absolutely consider that in connection with current cases, ongoing cases, cases that are under investigation. It's a totally appropriate consideration.

THE COURT: And just so, again, I'm trying to understand the rationales.

MR. BOVE: Yes.

THE COURT: The other one had to do with, in part anyway, the appearance of impropriety had to do with the election. So I guess I shouldn't assume. Again, I should ask you.

I'm sorry. Let me back up and ask you about that rationale.

My understanding of that rationale is that it arises from a defendant's status as a candidate. That it's because, at least that portion about election interference, I mean, it's because the defendant in this case is a candidate for office, not because he's a public official.

So, in other words, that rationale could apply to a candidate who's not a public official?

MR. BOVE: Correct.

THE COURT: And it wouldn't apply to a public official who's not a candidate, so an unelected public official or a retiring public official or retired public official wouldn't apply, the election interference component of what you're applying to?

MR. BOVE: It applies to candidates.

THE COURT: This rationale, the ability to govern, that doesn't apply to candidates?

I'm sorry that my questions are so elementary.

MR. BOVE: No, it's...

THE COURT: I'm trying...

MR. BOVE: We're talking about two separate paragraphs.

THE COURT: So this one applies to current public officials, not candidates, the ability to govern rationale.

MR. BOVE: Well, if I could, Judge.

THE COURT: Yes.

MR. BOVE: What I have emphasized here about paragraph six and the rationale is federal national security concerns and federal immigration concerns. Again, core constitutional powers of the Executive Branch.

So I don't think, in our exchange, I don't sense that there is an effort by the court to narrow the rationale, but I just want to place emphasis on the points that I think are dispositive, which is that paragraph six reflects an exercise

of prosecutorial discretion based on concerns that this particular case, under these current circumstances, interferes with the President's efforts in the national security realm and to implement his immigration agenda.

THE COURT: And I don't think I'm trying to narrow it. I'm trying to figure out who it potentially applies to. I think I just have one more question about it.

Is this a rationale that applies regardless of the -- is this a rationale that turns in any way on the nature of the charges?

Is it about the characteristics of the defendant, or is it some balancing between those things and the charges?

MR. BOVE: Well, I think in this particular case, one of the things that makes -- especially the concerns in paragraph six about interference with the mayor's ability to govern, arises from the complexity of the charges and the volume of discovery and the burdens on the mayor and the need to prepare for a trial. A trial that, I think, is worth noting is scheduled to begin just about only two months before the primaries in that election.

So part of the analysis here, the concerns that I have are about this specific case, the huge volume of discovery, and the need for any defendant to have a fair and reasonable amount of time to prepare for trial.

THE COURT: OK. Thank you, Mr. Bove.

I don't think I have any other questions about the motion right now. I'll circle back if I do. I don't think I do.

At this point, I really only have questions about some documents that were recently filed on the docket.

So maybe I could turn to you, Mr. Spiro.

MR. SPIRO: Yes, your Honor.

THE COURT: I'm not planning on getting into the substance of them, I just want to make sure I understand the timing and what they are.

MR. SPIRO: Your Honor, if I may just --

THE COURT: Oh, sure.

MR. SPIRO: -- comment on a couple of things the court asked me during that discussion of Mr. Bove.

THE COURT: Questions that I had for Mr. Bove, or questions that I had for you?

MR. SPIRO: Well, I did want to revisit just the revocation of the security clearance question that came to me and bounced off.

THE COURT: Oh, sure.

MR. SPIRO: Because, you know, I was there. It was revoked after and because of the indictment. I don't think it was an independent act. It was because of this case.

And I don't think that the theoretical ability of an executive order or some other, you know, third-tier ability for

somebody to get it back is sort of relevant to that analysis.

The other thing that I just wanted to say, because you asked the government about, sort of, these collateral issues that they talk about in the motion. You know, I will say, again, it comes up as a criminal defense lawyer constantly. If a doctor can't prescribe medication, if a company can't make some device, the government is always and constantly, and we are constantly as defense lawyers, telling the government that if a case makes very little sense and is very weak and the consequences to collateral consequences are very drastic, that it makes no sense to bring the prosecution or to continue with the prosecution.

It's literally an everyday thing. I just wanted to comment on those two notions that came up.

THE COURT: Thank you, Mr. Spiro.

To the point about, you just raised about the security clearance, I think my question was not geared so much at whether the loss of the security clearance here was independent of the indictment, but whether it was the result of the indictment itself or the specific nature of the charges in the -- if there was something about the nature of the charges in the indictment that affected the security clearance.

I'm not an expert in this, so I don't know if you have any indictment for any kind of offense on you, regardless of the nature of it. You know, it's hard for me to think of a

good example right now. But something that, I don't know, to an ordinary person's mind might not be obviously connected to something that might impinge upon security and whether you would lose your security clearance as a result of that, or if there was something specific about these charges. That's all.

MR. SPIRO: If they are revoking them on an airline upgrade case, I think they are revoking them on every case.

THE COURT: OK. Thank you, Mr. Spiro.

So I just want to ask you, I think, about some of the submissions that you've put in. I want to start with ECF, I guess it's, 130-1.

This was an exhibit that I think, if memory serves, you attached to in response to a couple of requests to put in amicus briefs in this case. It's a letter from you to Mr. Bove dated February 2 -- I'm sorry -- February 3, 2025.

MR. SPIRO: Yes, your Honor.

THE COURT: OK. I believe in this letter you make some of the same arguments that are raised by the government in its motion. You raise concerns about appearances of impropriety and also the mayor's ability to govern. I'm kind of talking about it at a very high level. And also about the strengths, or lack thereof, of the case in your view.

Is that basically right?

MR. SPIRO: Yes. The same, many of the same arguments that I've been making since this happened, that the court is

well aware, I think everyone is well aware of. Obviously at that time, I was pointing to a couple of additional questions the government had. And so I obviously addressed those as well.

THE COURT: OK. And the amicus brief that you're responding to, or I should say briefs, there is one at ECF No. 128 that's proposed by some former United States Attorneys and that's their letter. I want to ask about document 128-2.

(Continued on next page)

THE COURT: And, I'm sorry, this actually was not a question for Mr. Spiro. These questions will be addressed to Mr. Bove.

Mr. Bove, I believe this is a memorandum dated February 10, 2025, regarding the Justice Department's decision to dismiss the case, and that is titled "Dismissal Without Prejudice of Prosecution of Mayor Adams."

Is that right?

MR. BOVE: Yes, Judge.

THE COURT: And you're familiar with this memo?

MR. BOVE: Yes.

THE COURT: Are you the author of the memo?

MR. BOVE: Yeah. Those are my initials.

THE COURT: Okay. And this is authentic? It was submitted in connection with an amicus brief. I want to confirm that.

MR. BOVE: This is the memorandum I sent to Ms. Sassoon on that date.

I do have a procedural objection to the amicus brief we're talking about, but I want to be responsive first to the Court's question.

THE COURT: Okay. I mean, I haven't made any kind of ruling on the amicus brief.

MR. BOVE: I would like to be heard on that point.

THE COURT: I do want to address your views about

whether or not the Court should consider certain things, including the amicus brief.

But this memo, Mr. Bove, did this represent the official views of the Justice Department as of this date?

MR. BOVE: I mean, this is the authentic document that I sent to Danielle Sassoon.

THE COURT: Okay. And when I consider the government's motion to dismiss, is it appropriate for me to consider what's in this memo?

MR. BOVE: No.

THE COURT: Okay. Explain that to me.

MR. BOVE: The record here is the motion that I made. The only question -- basically, if you start with the *Rinaldi* footnote 15, the Supreme Court case, you look at the more recent Second Circuit cases, *Blaszczak*, *HSBC*, the only two questions are is there some concern about harassment. Your Honor has addressed that conclusively today.

And then, second, is there a question about whether the motion is so clearly contrary to the public interest that the Court should not grant it.

I'm not sure that I've seen a case where that conclusion has been reached. But I think what the Second Circuit has said is ultimately that boils down to whether there's bad faith. The question of bad faith is just me, as an officer of the Court, who has practiced in this district for

almost 10 years, here as the Deputy Attorney General, telling you these are the good faith bases for the motion based on prosecutorial discretion. That's the end of the inquiry. That is, first of all, I'm telling you as an officer of the court that that is made in good faith.

Second, I'm entitled to a presumption of regularity around that. That presumption is guided by the case law around selective and vindictive prosecution in *Armstrong*, the Supreme Court case. The only way that that presumption is really rebutted is by clear evidence to the contrary. That's a quote from *Armstrong*. There's no evidence to the contrary of my representation of good faith. I think what these amicus briefs have suggested is they believe -- they speculate about some kind of *quid pro quo*. Your Honor has conclusively addressed that on the record today by questions to Mayor Adams under oath.

And, so, I could go on. The fact of seeking dismissal without prejudice, as I've already said today, is the default state of matters under Rule 48. If I hadn't said that in the motion, the Court would presume that that was my intention. I think it's also, you know, there's no appearances of impropriety around a federal prosecution seeking dismissal without prejudice of a criminal case. The President of the United States is currently subject to a dismissal without prejudice of a case in the District of Columbia, where the

district court went out of its way to say that when the President's immunity no longer applies when he leaves office, in the district court's view, that that case could be resumed. So, if that was okay, there's no basis to question my representations to this Court, especially after the record your Honor created today, in the motion.

And so I do think -- you have some discretion here, and I think you noted at the outset that it was cabined. Considering documents outside the record I don't think is part of that discretion. Even if your Honor considers this, it's entirely consistent with everything that I've said.

THE COURT: Okay. Thank you, Mr. Bove.

I want to ask Mr. Spiro now about another letter you filed. I think it's at ECF 130.

Ms. Morales, will you please bring that up on the screen.

So, Mr. Spiro, this is a letter from you to the Court dated February 18, 2025, responding to the proposed amicus briefs. Actually, I just want to turn to the last sentences in it. The last two sentences are "what we never said or suggested to anyone was that Mayor Adams would do X in exchange for Y, and no one said or suggested to us that they would do Y in exchange for X. We are prepared to confirm these points under oath in sworn declarations."

I just want to understand what this is a reference to.

This is a response to a letter from the former acting U.S. Attorney, Ms. Sassoon. Is that right?

Or, rather, what the amicus briefs represent as one.

MR. SPIRO: Yeah. I don't know what I'm responding to anymore. But when somebody says something false enough, enough times, I'm going to say something. And so I think it's responding to anyone who suggests such a thing, because it never happened.

THE COURT: When you say "we are prepared to confirm these points under oath," may I ask just who you're referring to? It wasn't clear to me from reading this.

MR. SPIRO: My colleague and I who were at the meeting. And I don't expect -- in fact, I know no one is going to come in and say anything otherwise.

And I'm happy to raise my right hand right now.

THE COURT: Thank you, Mr. Spiro. I just wanted clarification on what you were referring to in that letter.

Thank you for all that. Unrelated question, and it may be a moot question. The last order that I issued on the speedy trial clock was I believe on November 1, 2024, which excluded time until the date of trial, which is set to begin on April 21st. Now, the basis for that was that the exclusion of time was necessary to give the parties time to review discovery, consider motions, including under CIPA, and to provide effective assistance while preparing for trial.

Now, I have a request before me to dismiss the case and not have trial. Does that have an effect on the order that I issued earlier? Or because the trial date has not been taken off the calendar, the motion has not yet been granted, does the previous order stay in place?

MR. SPIRO: I mean, I think it runs until this case is dismissed.

THE COURT: Mr. Bove?

MR. BOVE: I'm not following exactly the sequence here.

THE COURT: Well, I've excluded time through April 21st. And I'm asking if that order should be vacated given that it was premised on review of discovery in preparation for trial.

On the other hand, I still haven't granted the motion, so perhaps it shouldn't be. And, again, all of this might be moot very soon. There's also the provision under the Speedy Trial Act that automatically excludes time once a motion has been filed. I tend to think of that as applying to defense motions, not to government ones, but I'm just not sure how the pieces interlock, so I'm asking for your help.

MR. BOVE: I think the automatic exclusion does apply for government motions as well. But I think the effect of, if the Court were to grant this motion, would be to close the case and vacate all orders.

THE COURT: Yes. Understood. Okay. Thank you.

Mr. Spiro, do you have a different view?

MR. SPIRO: I think that if the case is dismissed, it will vacate the issue.

THE COURT: Yes. I just meant sitting here at this precise moment, what is the effect on the speedy trial clock?

MR. SPIRO: I hate to digress, your Honor, but sitting here, this precise moment, I'm looking and no appellate court in this country ever, never once, has upheld a district court's denial of an unopposed Rule 48 motion, ever. And so that's where my mind very much is.

And so the answer to the question, genuinely, is I haven't given the idea of what would happen if not much thought in terms of the Speedy Trial Act.

THE COURT: Fair enough. I think I got the answer from Mr. Bove, at least as things currently stand.

I appreciate your patience and your time answering these questions today. This is a very complicated situation, at least from where I sit.

The one other thing that I did reference and that you eluded to, Mr. Bove, the amicus briefs and whether or not they should be considered.

So I have two pending requests for amicus filings. Something I've given some thought to, but haven't decided, is whether it's helpful for me to consider either of those briefs

or the views of an appointed amicus on I know what seemed like very simple legal issues here, but just on things like the legal standard. From my limited research, Rule 48 motions are often unopposed, as this one is, but they are sometimes opposed, particularly on the issue of whether or not dismissal should be with or without prejudice.

As a general matter, in our system, adversarial testing of a position is sometimes helpful to clarify a Court's thinking and assist in the Court's decision making process to make sure that the right process is engaged and the correct results are achieved, but that may not be necessary here either.

So I just want to hear your views on those things, without regard to the specifics of these particular briefs, just in terms of the Court's decision making process. The Supreme Courts sometimes, when there's no one to defend the judgment below and the two sides that are normally adverse converge on a position, will sometimes hear from someone else to just kind of sharpen the thinking and make sure that the Court is considering everything that it ought to. And I just wonder what your views are as to that here.

MR. BOVE: I think that your Honor has created a very clear record today by putting Mayor Adams under oath and putting questions to him about -- that go I think directly to this *quid pro quo* claim that no party has made to your Honor,

but that the amicus, the proposed amicus briefs make. And I think the mayor's responses are dispositive and controlling on that issue. And you have a record undisputed that there is no *quid pro quo*.

I don't concede, and I don't think it's correct, that even if there was a *quid pro quo*, there would be any issue with this motion. But the Court doesn't even need to reach that based on the record that your Honor exercised discretion to create today, and I think in a very helpful way.

The government's position is that this motion should be resolved as soon as possible. And I say that because of the serious concerns that we have raised, particularly with respect to the national security issue and the immigration agenda issue. I do -- I acknowledge that the Court has a lot of discretion about consideration of amicus arguments, inviting amicus participation, but I don't think this is a case where that will meaningfully aid the record that your Honor created today. Particularly if you accept and consider the common cause amicus at Dkt. 124, to which the government has no objection.

I think what your Honor -- I have no doubt that you reviewed it already as a filing before the Court. That's just a document full of speculation about a *quid pro quo* that doesn't exist, that's been refuted today. And that gives, I think, the Court a sense of what smart, professional, educated,

prepared lawyers, when they take the opposite adversarial view to the parties here are going to come up with. I don't expect it would get any better.

I do object to consideration of the second amicus at Dkt. 128 purported to be filed on behalf of a series of former U.S. Attorneys. And, again, acknowledging the Court has broad discretion about if, how, and when to invite amicus participation, a brief authored by Carey Dunne and Mark Pomerantz, who are both central to the investigation at the New York District Attorney's Office of President Trump, it just comes from a place of such bias and lack of impartiality, that that's not a friend of the Court's submission. That's a group of people claiming that -- I think the words in the brief are there should be -- I think the word "roving" might have even been used, a roving factual inquiry into the situation.

That's just partisan noise. That's not an amicus brief actually trying to help your Honor with the issues that are before you. So I submit that the Court should not accept the amicus at Dkt. 128.

And, ultimately, as I've said, I think the legal issues, the legal issues that this motion presents, they are straightforward, Judge. They're controlled by Second Circuit authority in *Blaszczak* and in *HSBC*. There's only two prongs for the Court to consider, whether leave of the Court under Rule 48 is necessary. Neither is -- they're both consented to

here. The only one that I think even warrants a pause is the question of whether this motion is so clearly contrary to the public interest that the Court should intervene.

Your Honor has created a record here today that I think establishes that it's not based on Mayor Adams' sworn responses. Based on my representations as the decision maker, that's why I'm here today, is to make very clear and so you can look me in the eye and see how I came to these conclusions and we can talk about them.

There's no basis, legal basis -- I understand there's some people behind me who doubt me -- but there's no legal basis to question the things that I've said in that motion that I signed. And as a result of that, this motion should be granted promptly so that the mayor can get back to work, unhindered, unburdened, not having to deal with this case and he can focus on protecting the city.

THE COURT: Thank you, Mr. Bove.

Mr. Spiro, would you like to speak about the amicus briefs?

MR. SPIRO: Yes, your Honor.

So as the Court has pretty much said, and I'll paraphrase, this is an extremely simple and very narrow legal issue. Your Honor came out and correctly articulated the standard. Any nonparties involved in this at all create major issues in terms of separation of powers, due process rights.

Any appointment or allowance at all of doing anything beyond the submission of papers, which is -- it was already done, is fraught with peril.

Any person that comes before the Court could have political motivations. The Court would then have to assess all of that. Meanwhile, as this process has played out since the Department of Justice announced their dismissal, there have been prejudicial things, lies, misleading statements, leaks. Right? The Court may remember, I took issue with the Department of Justice prosecutors leaking all that information all that time.

Now we have letters going back and forth --

THE COURT: Mr. Spiro, I found that there wasn't evidence that any information out there in the media was attributable to the prosecution team.

MR. SPIRO: Well, I don't want to digress. We didn't have a hearing about it. But the reality is, the letter that leaked, the letter that I think we can both agree, sir, the letter that leaked with the back and forth between the Department of Justice did have prejudicial and false information about the mayor in it. There was a letter that leaked, that we can I hope both agree, couldn't have been leaked, since it was internal to the Department of Justice, from any third outside party or bogeyman.

THE COURT: I'm sorry. You're not referring to stuff

that was the subject of motions practice earlier?

MR. SPIRO: No, I'm talking about now.

THE COURT: Okay.

MR. SPIRO: Yes, your Honor.

THE COURT: I got confused. I apologize. Go ahead.

MR. SPIRO: Not at all. But I'm just saying, I think the Court has to think about that. And the Court can keep thinking about, and the Court can always revisit its beliefs.

Earlier in the case when I said things like, doesn't this seem a little off, and doesn't this seem a little politically motivated, and doesn't it seem there are a lot of leaks going on. The Court can look at the cavalier nature with which the prosecutors put things in those letters that went back and forth when the Department of Justice was discussing this matter.

Those prejudicial and harmful and untrue statements then leaked, those implicated 6(e), I don't think anyone can come to this Court and tell me credibly that that could have been anybody other than the people within the Department of Justice. How could that be? Didn't go to a defense lawyer. Didn't go to a bogeyman.

So we are, as we stand here today, being actively harmed by this ongoing process, which I think is another argument to curtail this, to keep it simple. And there's no reason to sort of carry on here.

Every day harms the election and those concerns harms democracy every minute that it's not entered. And so I think those arguments are fair to make in this unique circumstance in the Court evaluating. Again, all of this is a balancing, the kind of case that is brought versus the other equities and collateral issues. The amount of help the Court really needs -- the Court doesn't need legal help on this issue, I'm quite confident. The Court already stated the standard right.

So it's the value of that versus all these harms we're talking about, harms of delay, harms like the leaks that have happened because the case wasn't immediately dismissed when it should have been.

So I think all of those counts against expanded amicus submissions that the Court doesn't need.

THE COURT: Just so I understand it, what I heard from the government, and, Mr. Bove, correct me if I'm wrong, is that you object to the brief, the second of the two amicus briefs that was filed, the former U.S. Attorneys one, but not to the common cause one. Whereas, Mr. Spiro, you object to both?

MR. SPIRO: We take no position on whether the pending letter motion is part of the record. If it ends there.

THE COURT: I'm sorry. Do you object to the Court considering -- granting either of the motions? I shouldn't put it in terms of the Court.

Do you object to either of the motions for amicus

submissions? I just want to make sure my record is clear so I understand what I'm doing when I'm ruling.

MR. SPIRO: I don't take a position on the first letter motion.

THE COURT: Okay. Thank you.

MR. SPIRO: I don't take a position on it. Any further involvement, I rest on the record I just made.

THE COURT: The second letter motion you object to?

MR. SPIRO: Correct.

THE COURT: Okay.

MR. SPIRO: And any further involvement.

THE COURT: Okay. Thank you, Mr. Spiro.

So I think I understand your position on that. I think I understand your answers to my questions. I'm going to take everything that you said under careful consideration. I understand that there is an important interest here in -- I should say it's not in anyone's interest here for this to drag on. I understand that. It's not in the government's interest. It's not in Mayor Adams', as the defendant, and it's not in the public's interest. But to exercise my discretion properly, I'm not going to shoot from the hip right here on the bench. I want to take the time that is necessary to carefully consider everything that you have put before me and said today, and I am considering all of that. I want to make sure that I consider everything appropriate, and that I don't consider anything

inappropriate, and make a reasoned decision that is mindful of my role, which I understand here is quite narrow.

So I really appreciate you coming here on short notice. I appreciate the submissions. I am grateful for your patience as I consider these issues carefully.

Is there anything further that would you like to raise?

MR. BOVE: No, your Honor. Thank you for the time.

THE COURT: Thank you, Mr. Bove.

Mr. Spiro?

MR. SPIRO: No, your Honor. Thank you.

THE COURT: Thank you all very much. We're adjourned for today.

(Adjourned)

# Exhibit 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA,<br><br>v.<br><br>ERIC ADAMS,<br><br>Defendant. | 24 Cr. 556 (DEH)<br><br>**ORDER** |

DALE E. HO, United States District Judge:

On February 14, 2025, the Government filed a "motion seeking dismissal without prejudice of the charges in this case, with leave of the Court, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure." ECF No. 122 at 1. That Rule provides that "[t]he government may, with leave of court, dismiss an indictment, information, or complaint." Fed. R. Crim. P. 48(a). As the Second Circuit has explained,

> Rule [48(a)] was not promulgated to shift absolute power from the Executive to the Judicial Branch. Rather, it was intended as a power to check power. The Executive remains the absolute judge of whether a prosecution should be initiated and the first and presumptively the best judge of whether a pending prosecution should be terminated. The exercise of its discretion with respect to the termination of pending prosecutions should not be judicially disturbed unless clearly contrary to manifest public interest. In this way, the essential function of each branch is synchronized to achieve a balance that serves both practical and constitutional values.

*United States v. Blaszczak*, 56 F.4th 230, 240 (2d Cir. 2022) (quoting *United States v. Smith*, 55 F.3d 157, 158-59 (4th Cir. 1995)). The government's determination to abandon a prosecution is "entitled to great weight" and to a "presumption [of] good faith[,] . . . but it is not conclusive upon the Court; otherwise there would be no purpose to Rule 48(a), which requires leave of Court to enter the dismissal." *United States v. Greater Blouse, Skirt & Neckwear Contractors Ass'n*, 228 F. Supp. 483, 486 (S.D.N.Y. 1964) (Weinfeld, J.). Thus, "[w]hile there can be no

doubt that the government has broad discretion in deciding which cases to prosecute and how to prosecute those cases, once the government has involved the judiciary by obtaining an indictment or a conviction, its discretion is tempered by the courts' independent obligations." *Blaszczak*, 56 F.4th at 259 (Sullivan, J., dissenting).

"Rule 48(a)'s requirement of judicial leave . . . contemplates exposure of the reasons for dismissal." *United States v. Ammidown*, 497 F.2d 615, 620 (D.C. Cir. 1973). "Since the court must exercise sound judicial discretion in considering a request for dismissal, it must have sufficient factual information supporting the recommendation." 3B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 802 (4th ed. 2013). In granting a motion under Rule 48(a), the Court "should be satisfied that the reasons advanced for the proposed dismissal are substantial." *Ammidown*, 497 F.2d at 620.

The motion to dismiss states that "Defendant Eric Adams has consented in writing to this motion," *see* ECF No. 122 at 1, but no such document has been provided to the Court. Defendant is therefore **ORDERED** to file his "consent[] in writing" on the docket **by 5:00 pm ET today**. The parties are further **ORDERED** to appear before the Court for a conference on **February 19, 2025, at 2:00 pm in Courtroom 318 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, NY**. The parties shall be prepared to address, *inter alia*, the reasons for the Government's motion, the scope and effect of Mayor Adams's "consent[] in writing," ECF No. 122 at 1, and the procedure for resolution of the motion.

SO ORDERED.

Dated: February 18, 2025
New York, New York

DALE E. HO
United States District Judge