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February 28, 2025

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

Re: Motion for Leave to File Amicus Brief in *United States v. Adams* (1:24-cr-00556-DEH)

Dear Judge Ho,

Undersigned counsel represent a group of former federal district court judges.[1] They respectfully request leave to submit a brief, attached as Exhibit 1, as *amici curiae* to provide their collective perspective on the pending motion to dismiss the indictment against Mayor Eric Adams.[2]

Amici curiae are former federal jurists from across the nation, appointed by administrations of both parties, whose common interest arises from their service on district courts and their abiding dedication to the integrity and independence of those courts. Because the prosecution and defense in this case have effectively joined sides, the judiciary has "institutional interests that the parties cannot be expected to protect." *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851 (1986). *Amici*, therefore, respectfully seek leave to submit their brief in support of their interest in the "institutional integrity of the Judicial Branch." *Id.*

The circumstances of the dismissal appear to indicate that it is a *quid pro quo* in exchange for Mayor Adams's promise to comply with the administration's immigration objectives. Worse, the Justice Department appears to seek to hold the threat of future prosecution over Mayor Adams's head to maintain the pressure on him. From the perspective of *amici*, if the Court finds an

[1] *Amici* are: Hon. Andre Davis (Ret.); Hon. Nancy Gertner (Ret.); Andrew Guilford (Ret.); Hon. Thelton E. Henderson (Ret.); Hon. Richard J. Holwell (Ret.); Hon. D. Lowell Jensen (Ret.); Hon. George H. King (Ret.); Hon. A. Howard Matz (Ret.); Hon. Stephen M. Orlofsky (Ret.); Hon. Shira A. Scheindlin (Ret.); Hon. Fern Smith (Ret.); Hon. Thomas I. Vanaskie (Ret.); Hon. T. John Ward (Ret.); and Hon. Jeremy Fogel (Ret.).

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

improper *quid pro quo*, then the motion should be denied. The Court should not be used as the fulcrum for the administration's leverage against Mayor Adams. The Court may conduct further factual inquiry and may appoint a special prosecutor to advance the interests of justice if the Justice Department refuses to do so.

The Court should grant *amici*'s request for leave to file their proposed brief because the brief "could prove helpful to the Court in shedding light on those aspects of the case that the immediate parties may not [be] best situated to address." *Weininger v. Castro*, 418 F. Supp. 2d 553, 555 (S.D.N.Y. 2006). As former members of the bench, *amici* offer a unique perspective and "insights not available from the parties." *Lehman XS Trust, Series 2006-GP2 v. Greenpoint Mortg. Funding, Inc.*, 2014 WL 265784, at *2 (S.D.N.Y. Jan. 23, 2014). *Amici* "have relevant expertise and a stated concern in [the] case" which may aid the Court in reaching its decision. *District of Columbia v. Potomac Elec. Power Co.*, 826 F. Supp. 2d 227, 237 (D.D.C. 2011). *Amici* are serving the "primary role of [an] *amicus*," which is to "assist the Court in reaching the right decision in a case affected with the interest of the general public." *See Russell v. Bd. of Plumbing Exam'rs of Cnty. of Westchester*, 74 F. Supp. 2d 349, 351 (S.D.N.Y. 1999), aff'd, 1 F. App'x 38 (2d Cir. 2001).

For these reasons, the undersigned respectfully requests the Court grant this motion and consider the concurrently filed brief.

Sincerely,

/s/ *Robert A. Van Nest*
Robert A. Van Nest (*pro hac vice* pending)
Dan Jackson (*pro hac vice* pending)
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EXHIBIT 1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. ERIC ADAMS, Defendant.	Case No. 24 Cr. 556 (DEH)

AMICUS BRIEF OF FORMER FEDERAL JURISTS

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I. IDENTITY AND INTEREST OF AMICI

Amici curiae are former federal district court judges from across the nation. Specifically, *amici* are: Hon. Andre Davis (Ret.); Hon. Jeremy Fogel (Ret.); Hon. Nancy Gertner (Ret.); Andrew Guilford (Ret.); Hon. Thelton E. Henderson (Ret.); Hon. Richard J. Holwell (Ret.); Hon. D. Lowell Jensen (Ret.); Hon. George H. King (Ret.); Hon. A. Howard Matz (Ret.); Hon. Stephen M. Orlofsky (Ret.); Hon. Shira A. Scheindlin (Ret.); Hon. Fern Smith (Ret.); Hon. Thomas I. Vanaskie (Ret.); and Hon. T. John Ward (Ret.).

The common interest of *amici* here arises from their service on district courts, and their abiding dedication to the integrity and independence of those courts. Because the prosecution and defense in this case have effectively joined sides, the judiciary has "institutional interests that the parties cannot be expected to protect." *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851 (1986). *Amici*, therefore, submit this brief in support of their interest in the "institutional integrity of the Judicial Branch." *Id.*[1]

II. INTRODUCTION

Based on their years of experience and service, *amici* know the importance of maintaining the integrity of the judicial process. That integrity is imperiled if the Executive Branch seeks, and the Court allows, the dismissal of criminal charges for improper reasons. In requiring leave of court to dismiss an indictment, Federal Rule of Criminal Procedure 48(a) recognizes that judges may constitutionally guard against such impropriety in their own courts.

This Court has appointed an *amicus*, Paul Clement, to answer certain questions posed by the Court, which is entirely appropriate in *amici*'s experience and under the law. This brief offers *amici*'s support and endeavors to provide answers to some of the Court's questions from *amici*'s perspective. *Amici* believe that it is entirely appropriate—indeed, necessary—for the Court to

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

conduct further inquiry and ultimately to deny the Rule 48(a) motion if the Court finds that the appearance of impropriety here reflects actual impropriety.

As things currently stand, public confidence in the criminal justice system will be diminished if the Court grants leave to dismiss the indictment against New York City Mayor Eric Adams. The circumstances indicate that the dismissal is one half of an improper *quid pro quo*—the other half being Mayor Adams's agreement to further the administration's immigration policy objectives, which have nothing to do with the charges against Mayor Adams. This *quid pro quo* has nothing to do with the administration of justice; its goal is to advance the administration's political priorities.

Worse, by seeking to dismiss without prejudice, the administration apparently seeks to hold renewed prosecution over Adams's head to ensure his continued compliance with the administration's policies. The Justice Department seeks to use this Court as the fulcrum for its leverage against Mayor Adams. If so, the Court should not allow it.

Finally, under the present extreme circumstances, the Court may appoint a special prosecutor to advance the public interest in justice if the Justice Department refuses to do so.

III. BACKGROUND

A. The United States filed an indictment against Adams and vigorously pursued those charges.

In 2021, the United States began investigating Adams "based on concrete evidence that [his] campaign sought and received illegal campaign contributions." Dkt. No. 76 at 3.[2]

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[2] The Court has asked "[w]hether, and to what extent, a court may consider materials other than the Rule 48(a) motion itself." Dkt. No. 136 at 3. Under Rule 48(a), the Court has the authority—and indeed the duty—to determine if dismissal serves the public interest or, instead, is sought for improper reasons. Where, as here, there are serious questions regarding abuse of prosecutorial discretion, the Court's responsibility to safeguard the public interest is heightened. *See United States v. Hamm*, 659 F.2d 624, 629 (5th Cir. 1981) (in analyzing a Rule 48(a) motion, courts have a duty to "look to the motivation of the prosecutor at the time of the decision to dismiss"). Because of the unique procedural posture of the present case, the Court can, and should, consider information (including public statements), outside of the four corners of the Rule 48(a) motion to determine whether granting the motion would be contrary to the public interest.

Following that investigation, the United States indicted Adams for accepting illegal campaign contributions and improper personal benefits in exchange for favorable treatment for nearly a decade while holding political office. Dkt. No. 1 ¶ 1. The indictment stated, for example, that Adams accepted campaign contributions and other benefits from a Turkish official and, in exchange, facilitated the opening of a new skyscraper without a fire inspection at the official's direction. *Id.* ¶¶ 5–6. The Grand Jury charged Adams with (1) conspiracy to commit wire fraud, federal program bribery, and to receive campaign contributions by foreign nationals (Count I); (2) wire fraud (Count II); (3) solicitation of a contribution by a foreign national (Count III); (4) solicitation of a contribution by a foreign national (Count IV); and (5) bribery (Count V). *Id.* ¶¶ 50–63.

Over the next four months, the United States advanced its case against Adams. In October, it opposed Adams's motion to dismiss Count V of the indictment, explaining that Adams engaged in "a *quid pro quo* in which [he] sought and took luxury travel from a foreign official in exchange for influencing New York City's regulation of a Manhattan skyscraper–including by pressuring the FDNY to allow the building to open without an inspection." Dkt. No. 37 at 1. The United States reiterated that "[t]he charges in the Indictment stem from a long-running conspiracy in which the defendant accepted illegal campaign contributions and bribes consisting of various forms of luxury travel." *Id.* In November, the United States opposed Adams's numerous filings. Dkt. Nos. 51, 59, 64. In December, the United States sought sanctions based on Adams's counsel's statements that the "prosecution's case was 'contrived'" and counsel's "long-running and fallacious accusation that the Government obtained the Indictment because of improper and malicious motives." Dkt. No. 76 at 2. The Government stressed that "there are multiple witnesses who will expressly implicate the defendant in criminal

conduct, each of whom is corroborated by electronic communications and other data obtained from over 50 cellphones and other electronic devices and accounts." *Id.* And it reiterated that the investigation began in 2021 "based on concrete evidence that the defendant's campaign sought and received illegal campaign contributions." *Id.* at 3; *see also* Dkt. Nos. 86, 92.

In January and February, the United States continued to oppose Adams's attempts to dismiss the charges. In late January, the United States denounced Adams's "shifting attempts to suggest that he was indicted for any reason other than his crimes"; noted Adams's prior, debunked claim that "his indictment resulted from a policy disagreement with the prior presidential administration arising in October 2022"; and criticized Adams for "attempt[ing] to shift the focus away from the evidence of his guilt." Dkt. No. 102 at 2. The Government reiterated that "[t]he evidence of Adams's crimes was uncovered by career law enforcement officers performing their duties[] in an investigation . . . ." *Id.* On February 7, the United States informed the Court of its intent to charge Adams's employee for conspiring in conduct underlying Adams's indictment. Dkt. No. 116 at 2. That employee had indicated his intention to plead guilty. *Id.*

B. Outside of his criminal proceedings, Adams appealed to the new presidential administration.

While his attempts at dismissal failed in court, Adams separately appealed to the new presidential administration. Three days before President Trump was sworn in, Adams traveled to Mar-a-Lago to meet with him. Ex. 2. Following President Trump's inauguration, Adams's attorneys approached the White House counsel's office to ask about a pardon for Adams. *Id.* A week later, the Acting Deputy Attorney General, Emil Bove, contacted Adams's attorney to set up a meeting because the DOJ was considering dismissing the charges against him. *Id.* A meeting occurred on January 31, and Adams's attorneys "repeatedly urged what amounted to a *quid pro quo*" of Adams's assistance in exchange for dismissal. Ex. 3 at 3 n.1.

On February 3, Adams followed up with a letter to Mr. Bove explaining how his criminal proceedings were interfering with the administration's immigration objectives. Dkt. No. 130-1. He said that although he coordinated with the Department of Homeland Security in connection with recent immigration raids, "the federal government cannot possibly rely on Mayor Adams to be a fully effective partner in all situations in ongoing public-safety missions while he is under federal indictment and stripped of access to the most important information." *Id.* at 2. Adams explained that as trial approaches, "it will be untenable for the Mayor to be the ever-present partner that DHS needs to make New York City as safe as possible." *Id.* at 3; *see id.* ("As Mayor Adams continues to help with DHS' ramping enforcement operations, the risk that his political opponents . . . will try to remove him from power will only increase."); *id.* at 2 ("[H]e helped ensure that additional NYPD manpower was allocated to keep federal agents safe during dangerous criminal immigration raids."). Adams indicated dismissal was warranted in part because he is "the leader of this country's largest city and needs to be an important partner to the President and his administration." *Id.* at 4.

On February 13, Adams and the Trump administration's border czar, Tom Homan, announced following a meeting that Adams had agreed to sign an executive order reestablishing an office for U.S. Immigration and Customs Enforcement at Rikers Island jail, a reversal of a decade-long policy. Ex. 4. The next day, Homan said "I came to New York City and I wasn't going to leave with nothing," Ex. 5 and that this "was just one piece of a bigger collaboration" between Adams and the administration, Ex. 6. Homan then warned: "If [Adams] doesn't come through, I'll be back in New York City . . . . I'll be in his office, up his butt, saying, 'Where the hell is the agreement we came to?'" Ex. 5. Adams said: "Let's be clear – I'm not standing in the way. I'm collaborating against so many others who don't want to collaborate." Ex. 4.

C. The Department of Justice intervened after United States Attorneys refused its directive to seek dismissal.

On February 10, Mr. Bove directed the then-Acting U.S. Attorney for the Southern District of New York, Danielle Sassoon, to dismiss the charges against Adams, subject to the

following three conditions: (1) Adams's agreement in writing to dismissal without prejudice, (2) Adams's agreement in writing that he was not a prevailing party under the Hyde Amendment, and (3) that following the November 2025 mayoral election, the confirmed U.S. Attorney for the Southern District would review the matter. Ex. 7 at 1. The Department of Justice emphasized that it reached "this conclusion without assessing the strength of the evidence or the legal theories on which the case is based." *Id.* Nonetheless, the DOJ said dismissal subject to the conditions identified was appropriate because (1) the former U.S. attorney's actions created an appearance of impropriety and the proceedings interfered with Adams's mayoral campaign and (2) the proceedings interfered with Adams's ability "to devote full attention and resources" to illegal immigration. *Id.* at 1–2.

Ms. Sassoon promptly replied and stated there was no valid basis to seek dismissal. Ex. 3 at 1. She described the proposal to dismiss "the charges against Adams in return for his assistance in enforcing the federal immigration laws" as violating rules regarding the equal administration of justice. *Id.* at 2. Ms. Sassoon also detailed a January 31 meeting with Adams's counsel, the Acting Deputy Attorney General, and members of her office wherein "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. During that meeting, Mr. Bove admonished a member of her office for taking notes and directed the collection of those notes. *Id.* Ms. Sassoon also challenged Mr. Bove's claim that dismissal was warranted due to the conduct of the former U.S. Attorney, explaining those "generalized concerns" provided no basis to dismiss an indictment returned by a grand jury. *Id.* at 4. Ms. Sassoon said she would resign if forced to carry out the dismissal directive. *Id.* at 8. Other career prosecutors also resigned, and one wrote that the Justice

Department's "impropriety" suggestion was "so weak as to be transparently pretextual" and that "[n]o system of ordered liberty can allow the Government to use the carrot of dismissing charges, or the stick of threating to bring them again, to induce an elected official to support its policy objectives." Ex. 8; *see also* Ex. 9.

The next day, Mr. Bove transferred the case to the DOJ to file a motion to dismiss the charges. Ex. 10. But the DOJ's public integrity officials also refused to dismiss the case, prompting Mr. Bove to hold a meeting where he told career public integrity prosecutors that they had an hour to decide who would file the motion. Ex. 9. After those prosecutors contemplated resigning en masse, one prosecutor volunteered to alleviate pressure on his colleagues. *Id.*

Next, "attorneys from the DOJ replaced AUSAs from the U.S. Attorney's Office for the Southern District of New York as counsel of record in the case" and said they "will handle this matter and any related decision-making in the future." Dkt. No. 122 ¶ 1 n.1. They then sought to dismiss the charges against Adams without prejudice "based on the unique facts and circumstances of this case" and provided two bases for dismissal. *Id.* ¶¶ 1, 4. ***First***, citing an executive order titled "Ending the Weaponization of the Federal Government," they said dismissal was "necessary because of appearances of impropriety and risks of interference with the 2025 elections in New York City . . . ." *Id.* ¶ 5. ***Second***, citing executive orders regarding illegal immigration, the DOJ attorneys said the proceedings "would interfere with [Adams's] ability to govern in New York City, which poses unacceptable threats to public safety, national security, and ***related federal immigration initiatives and policies***." *Id.* ¶ 6 (emphasis added). They noted that Adams had been "denied access to sensitive information" because of the ongoing criminal proceedings. *Id.* Adams agreed to dismissal without prejudice. Dkt. No. 131-1.

IV. ARGUMENT

A. If the Court finds an improper *quid pro quo*, it should exercise its authority under Rule 48(a) to deny the DOJ's request for dismissal.

Federal Rule of Criminal Procedure 48(a) provides that "[t]he government may, with leave of court, dismiss an indictment, information, or complaint." "The words 'leave of court' were inserted in Rule 48(a)" and "obviously vest some discretion in the court." *Rinaldi v. United States*, 434 U.S. 22, 29 n.15 (1977); *see also United States v. N. V. Nederlandsche Combinatie Voor Chemische Industrie*, 75 F.R.D. 473, 475 (S.D.N.Y. 1977) ("*Nederlandsche II*") ("The effect of Rule 48(a) necessarily turns what was once solely the prerogative of the executive into a shared responsibility between the executive and judicial branches of government."). Rule 48(a) does not permit "the trial court to merely serve as a rubber stamp for the prosecutor's decision." *United States v. Ammidown*, 497 F.2d 615, 622 (D.C. Cir. 1973). Indeed, Rule 48(a) was amended to require leave of court precisely in order to prevent prosecutorial abuse. *See, e.g.*, Thomas Ward Frampton, *Why Do Rule 48(a) Dismissals Require "Leave of Court"?*, 73 Stan. L. Rev. Online 28 (2020).

In *Rinaldi*, the Supreme Court indicated that courts may deny leave under Rule 48(a) (1) "to protect a defendant against prosecutorial harassment" or (2) "if the motion is prompted by considerations clearly contrary to the public interest." *Rinaldi*, 434 U.S. at 29 n.15. The Second Circuit has likewise suggested that courts may deny Rule 48(a) motions where "dismissal is 'clearly contrary to manifest public interest.'" *United States v. HSBC Bank USA, N.A.*, 863 F.3d 125, 141 (2d Cir. 2017). Courts have primarily analyzed two factors to determine whether dismissal is contrary to public interest.

First, the Court should evaluate whether the government has advanced a non-conclusory "statement of reasons and underlying factual basis" as to why dismissal is in the public interest. *Ammidown*, 497 F.2d at 620; *see also United States v. Derr*, 726 F.2d 617, 619 (10th Cir. 1984). The court must be "satisfied that the reasons advanced for the proposed dismissal are substantial and the real grounds upon which the application is based." *United States v. Greater Blouse, Skirt*

& Neckwear Contractors Ass'n, Inc., 228 F. Supp. 483, 486 (S.D.N.Y. 1964); *see also United States v. Rosenberg*, 108 F. Supp. 2d 191, 206 (S.D.N.Y. 2000); *Ammidown*, 497 F.2d at 620–21 (same). The Court thus acts as a check on the government's purported basis for dismissal "to prevent abuse of the uncontrolled power of dismissal previously enjoyed by prosecutors." *Ammidown*, 497 F.2d at 620. This is consistent with Rule 48(a)'s requirement that leave of court is necessary for dismissal and ensures that the court does not "serve merely as a rubber stamp for the prosecutor's decision." *Id.* at 622; *see also United States v. Cowan,* 524 F.2d 504, 513 (5th Cir. 1975); *United States v. N.V. Nederlandsche Combinatie Voor Chemische Industrie*, 428 F. Supp. 114, 116 (S.D.N.Y. 1977) ("*Nederlandsche I*") ("Any suggestion that the district court simply 'rubber stamp' a Rule 48(a) motion ignores the Supreme Court's inclusion in the Rule of the requirement that indictments be dismissed 'by leave of court.'"); *United States v. Cockrell*, 353 F. Supp. 2d 762, 769, 776 (N.D. Tex. 2005) (denying Rule 48(a) motion because the government did not advance substantial reasons for dismissal and dismissal was in bad faith in part because prosecutor did not accurately represent the record); *United States v. Bettinger Corp.*, 54 F.R.D. 40, 41 (D. Mass. 1971) (denying Rule 48(a) motion and noting "a District Court in passing on a motion by the Government to dismiss is not a mere rubber stamp").

Second, the Court should evaluate whether the DOJ's motives in requesting dismissal are improper such that granting its motion would be contrary to the public interest. *See Rinaldi*, 434 U.S. at 30 (issue is "whether the Government's later efforts to terminate the prosecution were [] tainted with impropriety"). Examples of such taint include where "the prosecutor appears motivated by bribery, animus towards the victim, or a desire to attend a social event rather than trial." *In re Richards*, 213 F.3d 773, 787 (3d Cir. 2000); *Rice v. Rivera*, 617 F.3d 802, 811 (4th Cir. 2010); *Cowan*, 524 F.2d at 514 ("[W]e can hardly say that the motion was a sham or a deception."); *see also HSBC*, 863 F.3d 141 (discussing cases). Additionally, courts have observed that concerns about a prosecutor's improper motives in dismissing a Rule 48(a) motion are heightened when a grand jury has issued an indictment. *See, e.g.*, *Nederlandsche II*, 75 F.R.D. at 475; *Cockrell*, 353 F. Supp. 2d at 769; *Bettinger Corp.*, 54 F.R.D. at 41.

As another court in this district explained in denying a Rule 48(a) motion to dismiss, "the court is vested with the responsibility of protecting the interests of the public on whose behalf the criminal action is brought," especially when there is an indictment. *Nederlandsche I*, 428 F. Supp. at 116. There, the government did not claim there was insufficient evidence to convict and noted a private agreement in which one defendant would plead guilty to three counts and the government would move to dismiss as to another defendant. *Id.* at 117. The court concluded that dismissal was not in the public interest because it would implicate the Court in an agreement where some defendants enter guilty pleas in return for dismissals as to others. *Id.*

Other courts have also denied Rule 48(a) motions when it would implicate the Court in an improper agreement. For example, in *United States v. Freedberg*, the court denied a Rule 48(a) motion because it would involve the court in enforcing an improper plea bargain. 724 F. Supp. 851, 853 (D. Utah 1989). The court rejected the government's argument that refusal to dismiss would usurp the Executive power and said that granting dismissal "would constitute violation of principles of separation of powers because of interference with *judicial* discretion." *Id.* at 856 (emphasis in original).

Here, this Court should not be part of an agreement that conditions dismissal on Adams's agreement to advance the administration's unrelated policy objectives. Rule 48(a) requires leave of court for dismissal so that courts may independently evaluate the prosecutor's basis and motivation for dismissal. The DOJ's unprecedented intervention in this case to replace prosecutors that refused to carry out its dismissal directive, and its request for dismissal so that Adams can carry out the administration's immigration efforts, reflect a *quid pro quo*. If this Court finds such a *quid pro quo*, it should deny leave to dismiss.

Furthermore, it not only appears that the DOJ seeks to dismiss the case as part of an improper *quid pro quo*, it also apparently seeks to dismiss without prejudice to hold the risk of future prosecution over Adams if he does not continue to comply with the administration's directives. The DOJ has maintained that dismissal is necessary so Adams can assist with the administration's immigration objectives. Dkt. 122 ¶ 6; Ex. 7 at 1, 2; Ex. 10 at 6. It also has

suggested its prosecution of Adams depends on whether he continues to hold political power. Ex. 7 at 1 (dismissal must be subject to a review of Adams's case following the November 2025 mayoral election). And President Trump's border czar indicated that the administration will hold Adams accountable if he does not assist with immigration efforts. Ex. 5. Although the DOJ cites Adams's assistance with its immigration efforts today, dismissal without prejudice would allow the DOJ to hold the threat of future prosecution over Adams in exchange for compliance with any future directives. If the Court finds that this is the case, it should not dismiss without prejudice. But neither should the Court dismiss with prejudice because that would involve the Court in the improper *quid pro quo*, if that is what the Court finds. *See Nederlandsche I*, 428 F. Supp. at 117 (refusing to be an indirect party to a *quid pro quo* agreement between the government and defendant).

B. The Court can and should conduct further inquiry and take additional procedural steps as necessary.

The Court can and should conduct further inquiry into the DOJ's motion by developing a factual record. *Amici* suggest that the Court consider conducting a thorough evidentiary hearing that may include (1) productions of documents from the parties and other entities and (2) sworn testimony by witnesses to material events in the matter. That will assist the Court in making findings of fact and conclusions of law in connection with resolving the DOJ's motion. The Court may consider appointing a special master or directing the Court's amicus, Mr. Clement, to assist in the fact-finding process. *See, e.g.*, *In re Estelle*, 516 F.2d 480, 482-83 (5th Cir. 1975) (affirming the district court's appointment of an amicus curiae "[i]n order to investigate fully the facts alleged in the prisoners' complaints, to participate in such civil action with the full rights of a party thereto, and to advise [the] court at all stages of the proceedings as to any action deemed appropriate by it."); *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995) (affirming district court's appointment of an amicus curiae to "investigate fully the facts alleged in the complaint, . . . participate in the case with the full rights of parties, and . . . advise the Court on the public interest(s) at issue.");

Wharton v. Vaughn, 2020 WL 733107, at *5–6 (E.D. Pa. Feb. 12, 2020) (appointing an amicus curiae to appear at hearings and to present evidence); *see also Florida v. Georgia*, 585 U.S. 803, 806, 819 (2018) (special master appointed to make factual findings in part due to the complexity of the case and "the need to secure equitable solutions"); *Rispler v. Sol Spitz Co. Ret. Tr.*, 2011 WL 43239, at *2 (E.D.N.Y. Jan. 6, 2011) (appointing special master to investigate matter); *Brit. Int'l Ins. Co. v. Seguros La Republica, S.A.*, 2002 WL 987199, at *1 (S.D.N.Y. May 14, 2002) (noting authority to appoint special master to ascertain facts on conflict of interest).

Further, if the Court denies the Rule 48(a) motion, there are various potential avenues for proceeding with the matter. The Court may leave the grand jury's indictment pending to allow the DOJ to proceed now or following the election. Or, understanding that the Court must proceed with caution, it could appoint a special prosecutor given the extreme facts of this case.

In *Morrison v. Olson*, 487 U.S. 654 (1988), the Supreme Court "disagree[d] with the Court of Appeals' conclusion that there is an inherent incongruity about a court having the power to appoint prosecutorial officers." *Id.* at 676. "Indeed, in light of judicial experience with prosecutors in criminal cases, it could be said that courts are especially well qualified to appoint prosecutors." *Id.* at 676 n.13. The Court noted that "courts may appoint private attorneys to act as prosecutor for judicial contempt judgments"; that courts may appoint United States commissioners with prosecutorial powers; that courts may appoint federal marshals, who are executive officers; that courts may appoint interim United States Attorneys who, *inter alia*, prosecute criminal cases; and that "Congress itself has vested the power to make these interim appointments in the district courts," citing 28 U.S.C. § 546(d). 487 U.S. at 676–77.

Nor is the power of appointment dependent on statutory authority. In the context of contempt proceedings, the Supreme Court explained that "it is long settled that courts possess ***inherent authority*** to initiate contempt proceedings for disobedience to their orders, authority which necessarily encompasses the ability ***to appoint a private attorney to prosecute the contempt***." *Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 793 (1987) (emphasis added); *see also*, *e.g.*, *United States v. Donziger*, 38 F.4th 290, 304 (2d Cir. 2022) (upholding

appointment of a special prosecutor). The courts also "have inherent authority to appoint a special counsel to represent a position abandoned by the United States on appeal," *United States v. Arpaio*, 887 F.3d 979, 982 (9th Cir. 2018), much as the United States has abandoned the prosecution in this case. The Court should similarly have inherent authority to protect the work of the grand jury that returned the indictment the DOJ now seeks to dismiss, especially because the "grand jury is an arm of the court." *Levine v. United States*, 362 U.S. 610, 617 (1960).

Amici are not aware of any binding authority for the proposition that the Court's inherent authority to appoint a special prosecutor is limited to the contempt context. Although the Seventh Circuit reversed a district court's appointment of a special prosecutor in *In re United States*, 345 F.3d 450 (7th Cir. 2003), that case is not binding and its reasoning does not apply here in any event. There, the court explained that "[p]resumably an assistant U.S. attorney who accepts a bribe, wants to go on vacation rather than conduct a trial, etc., is acting alone rather than at the direction or with the approval of the Justice Department, and a different U.S. attorney would continue with the prosecution." *Id.* at 454. This case presents the opposite situation: the DOJ intervened to dismiss the charges against Adams after prosecutors maintained the strength of the case. There is no one to "continue with the prosecution" unless the Court appoints someone. The situation in *In re United States* was nothing like the unprecedented situation this Court now faces. Thus, appointment of a special prosecutor would be appropriate here.

V. CONCLUSION

For the foregoing reasons, *amici* urge the Court to conduct further factual inquiry, ultimately denying the motion for leave and appointing a special prosecutor if the Court finds that an improper *quid pro quo* underlies the motion to dismiss the indictment against Mayor Adams.

Respectfully submitted,

KEKER, VAN NEST & PETERS LLP

Dated: February 28, 2025

By: */s/ Robert A. Van Nest*

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CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.1(C)

The undersigned hereby certifies that the foregoing brief complies with the word-count limitations because the brief contains 4,724 words according to the word count of the word-processing system used to prepare the brief, excluding the parts of the brief exempted by Local Civil Rule 7.1(c).

Dated: February 28, 2025

/s/ Robert A. Van Nest
Robert A. Van Nest

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2025, I electronically filed the foregoing with the clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Robert A. Van Nest
Robert A. Van Nest

EXHIBIT 2

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

The morning after the mass resignation of prosecutors sparked a crisis inside the Trump Justice Department, acting Deputy Attorney General Emil Bove led a meeting with the Justice Department's public integrity section.

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

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CNN —

The morning after the mass resignation of prosecutors sparked a crisis inside the Trump Justice Department, acting Deputy Attorney General Emil Bove led a meeting with the Justice Department's public integrity section. His message: They had to choose one career lawyer to file a dismissal of the corruption charges against

New York City Mayor Eric Adams, according to three people briefed on the meeting.

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

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

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

Over the past 36 hours, seven prosecutors in New York and Washington – including the Trump-installed acting US attorney in the Southern District of New York and the top career prosecutors overseeing public corruption cases – have resigned rather than carry out the order to

dismiss the corruption case against Adams, a Democrat. The prosecutors have decried Bove's Monday order to drop the charges – which cited in part Adams' role as mayor helping the Trump administration combat illegal immigration – as a bargain amounting to a "quid pro quo."

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

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

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

Interviews with more than a dozen officials in New York and Washington show how the case against Adams – and the refusal to accede to the demand to drop it – has become a flashpoint in a Trump

Justice Department that's led by Attorney General Pam Bondi, who represented Trump at his Senate impeachment trial, and Todd Blanche and Bove, who both defended Trump in his criminal cases.

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

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

"The decision to dismiss the indictment of Eric Adams is yet another indication that this DOJ will return to its core function of prosecuting dangerous criminals, not pursuing politically motivated witch hunts," Justice Department chief of staff Chad Mizelle said in a Friday afternoon memo.

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

To the bar and back

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

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

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

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

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

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

Then they returned to the bar.

'Only if the indictment were dismissed'

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

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

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

About one week later, Bove contacted Adams attorney Alex Spiro to set up a meeting. He told him the Justice Department was familiar with the legal arguments and the weaknesses of the case were obvious, one person familiar with the matter said. Bove added they were considering

dismissing the charges and wanted to hear from them about how the prosecution was impacting Adams' ability to do his job and for specific examples of the alleged weaponization of the Justice Department, people familiar with the matter said.

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

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

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

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

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

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

Spiro accused Williams of ethical misconduct and violating rules governing what prosecutors can say about cases. He raised it with the trial judge, Dale Ho, who concluded that Williams didn't violate the rules.

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

'The ever-present partner that DHS needs'

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

Adams' attorneys asked for an outright dismissal of the case – emphasizing the impact the trial would have on Adams' ability to lead the city and his "longtime desire to confront the migrant crisis head-on." The letter even noted that if Adams' was

removed from office, his replacement would be “a frequent outspoken critic of Mayor Adams’s desire to protect New Yorkers by combating the migrant crisis.”

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

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

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

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

The day after being directed to drop the charges, Sassoon told Bove on the phone and Bondi in writing that she would not dismiss the case. She

called an “all hands” meeting of her office on Wednesday, but that was abruptly canceled.

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

‘You lost sight of the oath’

Last year, Bove and Blanche represented Trump in multiple criminal cases. Now Trump’s criminal defense attorneys are his go-to at the Justice Department.

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

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

In a letter accepting Sassoon’s resignation, Bove defended the decision to drop the case against

Adams, arguing Sassoon did not have the right to ignore the policies of the president and the attorney general.

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

EXHIBIT 3

U.S. Department of Justice

United States Attorney
Southern District of New York

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

February 12, 2025

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

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

Dear Attorney General Bondi:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. I Cannot in Good Faith Request the Contemplated Dismissal

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

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

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

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

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

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

Very truly yours,

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

EXHIBIT 4

NYC mayor and Trump border czar meet as feds turn eyes toward sanctuary cities like New York

Border czar Tom Homan met with New York City Mayor Eric Adams on Thursday in a sign of how the Trump administration has its eyes on the country's biggest city to carry out its immigration enforcement plans.

By Eric Levenson, Gloria Pazmino, Tierney Sneed

9 min. read · View original

CNN —

New York City Mayor Eric Adams said Thursday he will use his executive powers to allow federal immigration authorities back into the city's sprawling Rikers Island jail complex, marking a substantial shift in the city's sanctuary policies that prevent it from enforcing immigration law.

"We are now working on implementing an executive order that will reestablish the ability for

ICE agents to operate on Rikers Island — as was the case for 20 years," Adams said in a statement Thursday afternoon.

The announcement, sure to ignite a political backlash among members of the City Council and political rivals, comes hours after Adams' meeting with border czar Tom Homan.

On Friday, Adams said he wants more cooperation between the city and federal agencies on immigration issues, claiming members of the city government he called "far-left" are trying to stop him.

A 2014 sanctuary law removed ICE from the jail complex, and ICE's office was officially closed in 2015. About a decade after the ban, Adams said the executive order will specify that federal officers on jail grounds limit their cooperation to investigations that focus on criminal and gang activity. The mayor also said he would direct the correctional intelligence bureau to cooperate with ICE.

"Let's be clear – I'm not standing in the way. I'm collaborating against so many others who don't want to collaborate," the mayor said during an appearance on "Fox and Friends."

The mayor's executive order could face a legal challenge from the City Council, which has been

critical of the mayor's stance. Speaker Adrienne Adams and Councilmembers Alexa Avilés and Sandy Nurse said Thursday they will determine the council's formal response based on the executive order.

"The mayor's announcement of the intention to issue an executive order that allows the Trump administration access to Rikers is concerning, but we must see language of any purported executive order to evaluate its legality," they said in a joint statement.

The Trump Administration's focus on the Big Apple is clear from multiple legal moves over the last few days. The Justice Department on Monday ordered federal prosecutors to drop corruption charges against Adams so he can better help their immigration crackdown and on Wednesday announced a lawsuit against New York state officials over so-called sanctuary policies that limit the state's cooperation with federal immigration enforcement.

The directive has led to a series of high-profile resignations in the Justice Department. Adams is also under intense scrutiny from lawmakers and political opponents who say the dismissal could make Adams beholden to the Trump administration. The order says the charges should

be dismissed “without prejudice,” meaning they could be refiled at a later date.

Further, FEMA clawed back more than $80 million intended to help house migrants in NYC – a move that city financial watchdog Brad Lander described as a “highway robbery” of money allocated by Congress more than two years ago.

The Homan and Adams meeting on immigration enforcement Thursday came as the mayor faces key questions about how closely he works with the Trump administration ahead of a Democratic primary election in June. It also signaled how the Trump administration has its eyes on the country’s biggest city to carry out its immigration enforcement plans.

Adams vowed to increase cooperation between local law enforcement and federal immigration agencies. “There’s some cases where he’s going to have to go around the laws in this city,” Adams told CNN affiliate WCBS, referring to Homan. “He’s gonna have to utilize his power. He has the power, as the border czar and ICE, to institute civil enforcement. I can’t do that, and we were honest about that.”

Adams, who is facing pressure from the Trump administration to help enact its immigration agenda, said they discussed ways to embed more New York Police Department detectives into

federal task forces targeting “violent gangs and criminal activity.” Earlier this month, the Nassau County Police Department instituted a similar program in which local detectives were embedded with ICE.

“Keeping the 8.3 million New Yorkers who call our city home safe is — and will always remain — our administration’s North Star,” Adams said.

Embedding police into federal task forces “is in direct violation of both our city’s laws and the mayor’s moral obligation to protect New Yorkers,” said Make the Road New York, one of the largest migrant advocacy organizations in the state.

Adams willing to work with administration

Elected as a Democrat in 2021, Adams entered office as the self-proclaimed “Biden of Brooklyn,” but he began to sharply criticize the former president’s immigration policies amid an influx of new migrants that strained local resources and cost the city billions of dollars. Adams said the burden of the migrant crisis could “destroy” New York, and last year he called for drastic changes to the city’s sanctuary policies.

He has cozied up to Trump in more recent months, and first met with Homan in December to discuss coming immigration policies.

“Tom Homan was angry at the mayor because the mayor had promised him when they met in December to do certain things, and he said, ‘the mayor has done none of that,’” said Councilmember Robert Holden, a Democrat who often aligns with Republicans, after the Council’s Common Sense Caucus met with Homan Thursday.

As a sanctuary city jurisdiction, New York City has laws on its books preventing the New York City Police Department from cooperating in the enforcement of immigration law except in specific circumstances and some violent crimes.

Proponents of sanctuary city policies have long argued the policies ultimately make cities safer for everyone, including migrant communities who are often vulnerable to crime and fear speaking to law enforcement.

Adams has made it clear he believes the city’s sanctuary laws go too far and has said he is open to increasing cooperation with federal law enforcement. That cooperation would require a change in legislation and support in the City Council.

Kayla Mamelak, spokesperson for Adams, said Wednesday the city is hoping to “increase collaboration across law enforcement agencies”

specifically to target violent gang activity in the city.

“Mayor Adams has also been clear that he wants to work with the new federal administration, not war with them,” Mamelak said in a statement. “We will continue to explore all lawful processes to remove violent migrants from our city.”

Allowing access to Rikers Island is one key way he says he’ll work with the Trump administration.

“Getting back in Rikers Island is a game changer,” said Homan, sitting side-by-side with Adams in the Fox studio.

Meanwhile, the Department of Justice moved to drop the corruption charges that had been hanging over Adams’ head for months. In a two-page memo Monday, Deputy Attorney General Emil Bove instructed Danielle Sassoon, the acting US attorney for the Southern District of New York, to dismiss the charges, saying the case has “unduly restricted Mayor Adams’ ability to devote full attention and resources to … illegal immigration and violent crime.”

On Tuesday, the mayor praised the DOJ’s decision to drop the corruption case against him, saying he never broke the law or traded power for personal benefit.

"I believe that the AG has made it clear that she's going after weaponization of the Justice Department, and I encourage — and as they say, I'm Eric Adams and I approve of that message," Adams told CNN affiliate WNBC Thursday.

Sassoon resigned from her position in a letter to the attorney general, according to a person familiar with the matter.

When asked by CNN affiliate WCBS whether he feels an obligation to cooperate with Trump's team because of what happened in his criminal case, Adams said cooperating with the President is part of his job as mayor of New York City.

"Think about this for a moment. Was I cooperative with the previous administration? I called myself the Biden of Brooklyn, I mean, who are we kidding here? I'm the mayor of the largest city in America. How irresponsible will it be for me not to speak to the President of the United States and his administration? I was clear, I'm not here to war with the president, I'm here to work with the president," Adams said.

On Friday, Adams told Fox there was no "quid pro quo" to get the Department of Justice to drop the charges in exchange for his cooperation on immigration enforcement, but he argued that fighting the legal case was a distraction from his ability to focus on law enforcement.

"If I can't coordinate that, that's a public safety issue, and we should put public safety first," he said.

He also told WCBS he is discussing other areas of cooperation with Trump's team but wants to "make sure they pass the legal smell test" before announcing them publicly.

DOJ sues over state's Green Light Law

The DOJ lawsuit specifically targets the Green Light Law, also known as the Driver's License Access and Privacy Act, which was passed into law in 2019. The law allows some undocumented migrants to obtain driver's licenses and prevents immigration enforcement agencies from accessing the state's motor vehicle information database.

More than 15 states and Washington, DC, allow undocumented people to obtain driver's licenses,

according to United We Dream, a nonprofit immigration advocacy group.

Attorney General Pam Bondi said Wednesday the Trump administration has filed the suit against Gov. Kathy Hochul, state Attorney General Letitia James and other state officials.

“This is a new DOJ, and we are taking steps to protect Americans, American citizens and Angel Moms,” Bondi said at a news conference Wednesday in Washington, DC, referring to the mothers of people who are killed by undocumented immigrants.

“If you don’t comply with federal law, we will hold you accountable,” Bondi said. “We did it to Illinois, strike one. Strike two is New York, and if you are a state not complying with federal law, you’re next.”

The 16-page complaint filed in the Northern District of New York says the Green Light Law obstructs federal immigration enforcement by restricting the sharing of records with federal immigration agencies; the government argues that is a violation of the Supremacy Clause in the US Constitution, which says federal law takes precedence over state laws and constitutions.

In filing the suit, the Department of Justice is seeking a temporary restraining order and permanent injunction to prevent New York officials

from enforcing the law. Additionally, the department is asking the court to declare the law unconstitutional.

“By intent and design, the Green Light Law is a frontal assault on the federal immigration laws, and the federal authorities that administer them,” the complaint reads. “More than that, the Law has had dangerous consequences—precisely because it has worked as intended.”

In December, Kenneth Genalo, then the head of the New York City ICE field office and now the acting deputy director of ICE, told CNN the Green Light law had restricted its ability to run license plates.

“During our investigations, during surveillance, if we come across individuals that we’re targeting that someone’s in a vehicle, we are unable to ascertain who the vehicle belongs to, because they removed our ability to get that information from New York DMV,” he said.

State officials pushed back on the suit and defended the constitutionality of the law.

In a statement, Hochul noted the Green Light Law has stood up to previous legal challenges and said the law does in fact allow officers to access information, as long as they have a warrant.

"Here are the facts: our current laws allow federal immigration officials to access any DMV database with a judicial warrant," Hochul said in a statement. "That's a common-sense approach that most New Yorkers support. But there's no way I'm letting federal agents, or Elon Musk's shadowy DOGE operation, get unfettered access to the personal data of any New Yorker in the DMV system like 16-year-old kids learning to drive and other vulnerable people."

James said she planned to fight the suit in a statement Wednesday evening.

"Our state laws, including the Green Light law, protect the rights of all New Yorkers and keep our communities safe," she said. "I am prepared to defend our laws, just as I always have."

Hochul had been set to meet with Trump on Thursday but postponed the meeting hours after Bondi announced the lawsuit.

This story has been updated with additional information.

CNN's Kara Scannell, Mark Morales, Lex Harvey, Shimon Prokupecz and Andy Rose contributed to this report.

EXHIBIT 5

JUSTICE DEPARTMENT

Trump's border czar tells NYC mayor he'll be 'up his butt' if he breaks vow to help ICE

Tom Homan and Eric Adams appeared in a TV interview a day after multiple federal prosecutors resigned in protest over an order to drop corruption charges against the mayor.

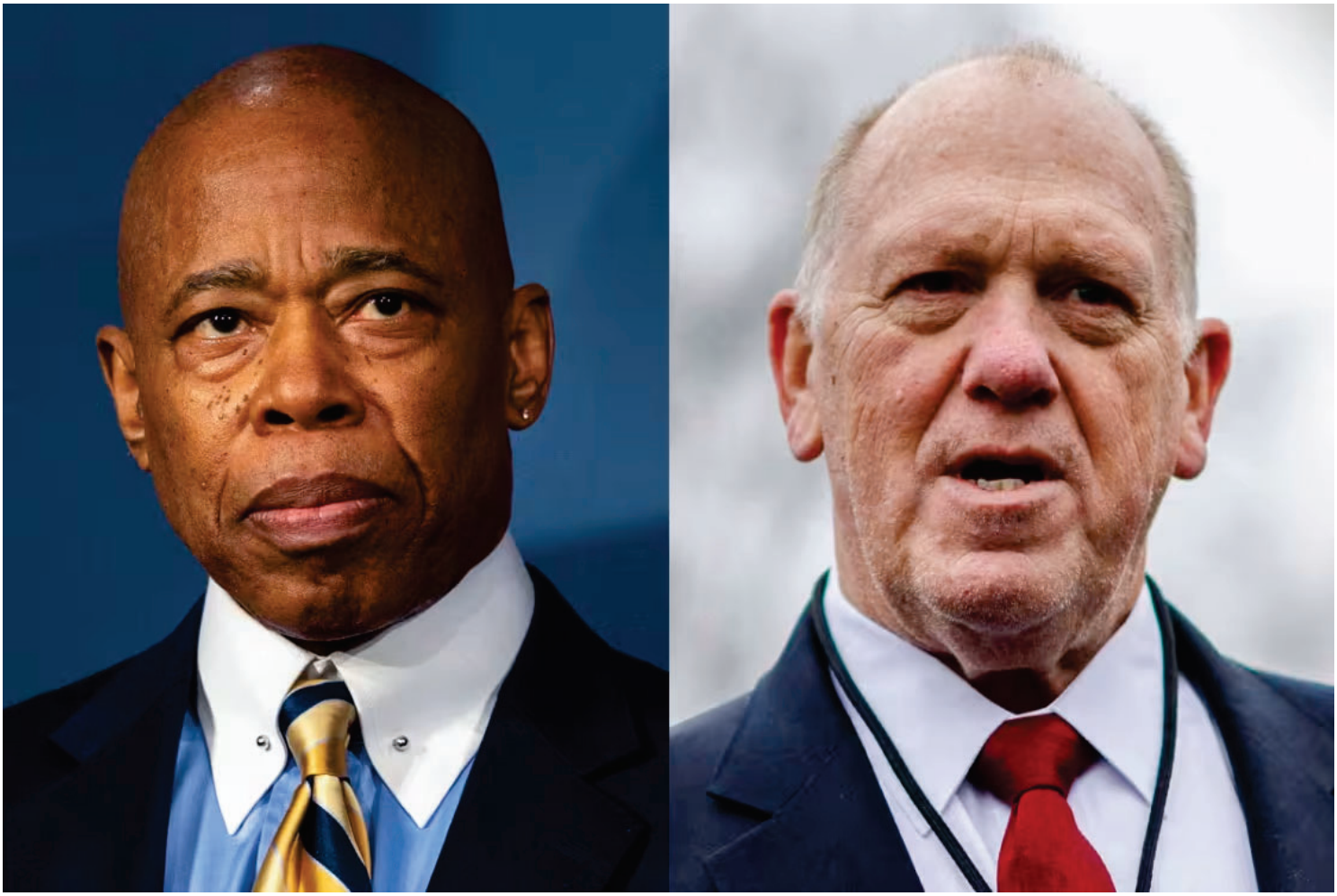
Feb. 14, 2025, 8:42 AM PST

By Rich Schapiro and Tom Winter

On the same day the Justice Department was hit with a wave of resignations over an order to drop corruption charges against Eric Adams, the New York City mayor met with President Donald Trump's border czar in a closed-door meeting.

The mayor, who is under intense pressure from the Trump administration as his criminal case hangs in the balance, agreed in the meeting Thursday to allow federal immigration officials to operate at the city's Rikers Island jail.

"I came to New York City and I wasn't going to leave with nothing," Tom Homan, Trump's border czar, said Friday morning in a joint interview with Adams on "Fox and Friends."



— New York City Mayor Eric Adams; White House border czar Tom Homan Getty Images

Adams sat side by side with Homan, the man Trump installed to crack down on migrants, during the Fox interview after the Justice Department was thrown into turmoil with the sudden departure of six top federal prosecutors and officials – including the acting U.S. attorney for the Southern District of New York, Danielle R. Sassoon.

The resignations came after acting Deputy Attorney General Emil Bove, who was Trump's criminal defense attorney, ordered Sassoon to dismiss the charges, arguing in part that they were interfering in Adams' ability to help the administration tackle illegal immigration.

Sassoon said in a letter to Attorney General Pam Bondi that she couldn't in good conscience ask a judge to drop the case given the strength of the evidence, and that she was extremely troubled by what was discussed at a Jan. 31 meeting with Adams' lawyers.

“Adams’s attorneys repeatedly urged what amounted to a quid pro quo, indicating that Adams would be in a position to assist with Department’s enforcement priorities only if the indictment were dismissed,” wrote Sassoon, a conservative who clerked for the late Supreme Court Justice Antonin Scalia.

Sassoon added: "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."

Adams' lawyers have said the claim that a quid pro quo was brought up is a "total lie."

The order to drop the charges against Adams was a highly unusual move that legal experts said would make the mayor beholden to the Trump administration.

Adams, a former New York police captain elected mayor in 2021, was indicted last year. He is accused of taking $100,000 worth of free plane tickets and luxury hotel stays from wealthy Turkish nationals in an almost decadelong corruption scheme.

Adams has pleaded not guilty. He has insisted that he is innocent and argued that the charges are politically motivated.

Calls for him to resign intensified after news of the Justice Department resignations broke Thursday, with New York's lieutenant governor saying he believed it was time for the mayor to go.

“New York City deserves a Mayor accountable to the people, not beholden to the President,” Lt. Gov. Antonio Delgado said in a brief statement on social media. “Mayor Adams should step down.”

New York Gov. Kathy Hochul, who has the power to remove Adams from his post, said in an interview with MSNBC's Rachel Maddow that she was still weighing the decision.

“The allegations are extremely concerning and serious, but I cannot as the governor of this state have a knee-jerk, politically motivated reaction like a lot of other people are saying right now,” Hochul said.

In the Friday morning interview on "Fox and Friends," Adams sounded a defiant tone, saying he was going to stay in his job and run for re-election.

Near the end of the interview, Homan used colorful language to describe what he would do if Adams failed to follow through on his promise to let immigration agents operate at Rikers Island.

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

Rich Schapiro

Rich Schapiro is a reporter for the NBC News Investigative Unit.

Tom Winter

Tom Winter is a New York-based correspondent covering crime, courts, terrorism and financial fraud on the East Coast for the NBC News Investigative Unit.

Chloe Atkins and Fallon Gallagher contributed.

EXHIBIT 6

Trump border czar and NYC mayor interview with 'Fox & Friends' on immigration commitments

By CEDAR ATTANASIO

Updated 1:18 PM PST, February 14, 2025

NEW YORK (AP) — Reestablishing an immigration office at New York's notorious Rikers Island jail is just the first step in a more complex agreement President Donald Trump's administration has reached with Democratic Mayor Eric Adams, the new U.S. border czar said Friday in their first joint public appearance.

Tom Homan and Adams appeared side-by-side on "Fox & Friends" a day after the two announced that Adams had agreed to sign an executive order reestablishing an office for U.S. Immigration and Customs Enforcement at the jail. One purpose of the office will be to share intelligence on gangs, they said.

The agreement is already being heavily criticized by New York City Council leaders, after prosecutors resigned in protest against a directive from Trump's Department of Justice to dismiss corruption charges against Adams so the mayor could assist with the Republican president's immigration agenda.

The enhanced cooperation between Adams and the Trump administration detailed in Friday's interview has accelerated criticism that the mayor has become beholden to the president in exchange for saving him from criminal prosecution.

At the same time, Adams is facing a renewed wave of calls to resign from office, with critics arguing that he has become inextricably linked with the president's agenda to the point where he cannot independently run his own city. In a statement Friday afternoon, Adams sought to dispel those concerns.

"I want to be crystal clear with New Yorkers: I never offered — nor did anyone offer on my behalf — any trade of my authority as your mayor for an end to my case. Never," Adams said. "I am solely beholden to the 8.3 million New Yorkers that I represent and I will always put this city first."

Homan said the agreement with Adams on Rikers, which has been under court orders to resolve longstanding problems with security, use of force and more, was just one piece of a bigger collaboration.

"We're working on some other things that we don't really want to talk about in open areas because the city council will be putting roadblocks upon us," Homan said. "But the mayor and me have committed to several other things that will make the city safer."

At one point, the border czar also issued a clear warning to the mayor if he decided not to comply with the president's agenda in the future.

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

New York City Council leaders said in a statement Thursday that city law prohibits an ICE office at Rikers Island. They said they are ready to scrutinize the executive order when it is released, adding that the "announcement only deepens the concern that the mayor is prioritizing the interests of the Trump Administration over those of New Yorkers."

The vast majority of the 6,000 people at Rikers Island are pre-trial defendants, according to a 2023 comptroller report. It is unclear how an executive the order from Adams could help ICE create a dragnet for immigrants it is targeting, without offering them access to people without criminal records, such as those who are released on bail or whose charges have been dismissed.

Adams and Homan said they agree on flagging criminals for deportation.

Adams deflected questions about the federal prosecutors who have resigned in protest after the Department of Justice directed their office to dismiss corruption charges against Adams. One prosecutor accused the Justice Department of accepting a "quid pro quo" — dropping the case to ensure Adams' help with Trump's immigration enforcement policies.

"If you don't help them, they could refile the charges," host Steve Doocy said to Adams, appearing to form a question.

"No," Adams shot back, adding "I don't get into the legalese. I have an attorney to do that, and I pay a lot for that."

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Associated Press writer Anthony Izaguirre in Albany, New York, contributed to this report.

EXHIBIT 7

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 8

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 9

US prosecutor agrees to seek dismissal of Adams charges under pressure, sources say

By **Sarah N. Lynch**

February 14, 2025 2:31 PM PST · Updated 13 days ago

New York City Mayor Eric Adams attends an event in New York City, U.S., February 13, 2025. REUTERS/David 'Dee' Delgado/File Photo Purchase Licensing Rights

Summary Companies

- Acting deputy attorney general gave 1-hour deadline for prosecutors to decide who will seek to dismiss Adams case
- Attorneys in meeting contemplated resigning en masse
- Veteran prosecutor Ed Sullivan volunteered to dismiss charges

WASHINGTON, Feb 14 (Reuters) - A U.S. federal prosecutor agreed on Friday to file a motion to dismiss criminal corruption charges against New York City Mayor Eric Adams to spare other career staff from potentially being fired for refusing to do so, sources briefed on the matter told Reuters.

Acting Deputy Attorney General Emil Bove told the department's career public integrity prosecutors in a meeting on Friday that they had an hour to decide among themselves who would file the motion, the sources said.

The volunteer was Ed Sullivan, a veteran career prosecutor, who agreed to alleviate pressure on his colleagues in the department's public integrity section, two sources said. U.S. Attorney General Pam Bondi told Fox News on Friday afternoon that it was her "understanding it is being dismissed today."

"This is not a capitulation-this is a coercion," one of the people briefed on the meeting later told Reuters. "That person, in my mind, is a hero."

Sullivan's decision came after the attorneys in the meeting contemplated resigning en masse, rather than filing the motion to dismiss, another source briefed on the matter told Reuters. There are approximately 30 attorneys in the Public Integrity Section.

Six senior Justice Department officials, including Manhattan's top federal prosecutor and the acting head of the Public Integrity Section John Keller, resigned on Thursday rather than comply with Bove's order to dismiss the case.

The departures reflect a growing resistance from career Justice Department officials to efforts by President Donald Trump to overhaul the agency to end what he calls its weaponization against political opponents.

Critics say Trump's changes threaten to subject criminal prosecutions to political whims.

Manhattan's U.S. Attorney Danielle Sassoon, who was temporarily leading the office, was the first to resign on Thursday, after Bove earlier in the week ordered her to drop the corruption charges against Adams so that he could help the Trump administration carry out its crackdown on illegal immigration.

Adams, a Democrat, has previously argued he was targeted by former President Joe Biden's administration for criticizing its immigration policy.

Sassoon resisted, telling Bove that the law did not support his demands for a dismissal, and she resigned.

Bove then ordered top public integrity officials in Washington to dismiss the case. They too refused.

Thursday's resignations sparked comparisons from legal experts to the "Saturday Night Massacre" in 1973, when senior Justice Department officials resigned after refusing President Richard Nixon's order to fire the special counsel investigating the 1972 break-in by Republican operatives at the Democratic headquarters at the Watergate complex in Washington.

On Friday, Hagan Scotten, one of the New York-based prosecutors on the case, also tendered his resignation, telling Bove there was no valid reason to justify dismissing the charges and that he would never comply with the order to do so.

Scotten did not respond to a request for comment.

Chad Mizelle, chief of staff to the attorney general, said the decision to dismiss Adams' indictment "is yet another indication that this DOJ will return to its core function of prosecuting dangerous criminals, not pursuing politically motivated witch hunts."

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

Reporting by Sarah N. Lynch in Washington; additional reporting by Luc Cohen in New York; Editing by Alistair Bell and David Gregorio

Sarah N. Lynch
Thomson Reuters

EXHIBIT 10

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)