

No. 20A-____

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP

v.

**CYRUS R. VANCE, JR., IN HIS OFFICIAL CAPACITY AS DISTRICT
ATTORNEY OF THE COUNTY OF NEW YORK, ET AL.,**

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

**APPLICATION FOR ISSUANCE OF A COPY OF THE OPINION AND
CERTIFIED COPY OF THE JUDGMENT FORTHWITH**

To the Chief Justice of the United States:

Pursuant to Supreme Court Rules 45.2 and 45.3, respondent Cyrus R. Vance, Jr. respectfully requests an order directing the entry of the judgment and the transmission of a copy of the opinion of the Court and a certified copy of the judgment to the clerk of the court of appeals forthwith. Petitioner has informed us that he consents to the relief sought in this application.

Absent such an order, transmission of the opinion and judgment to the court of appeals would not take place for at least 25 days from the date the opinion was

issued. *See* S. Ct. R. 45.2, 45.3. Expedited resolution of any remaining claims on remand is vital to ensure that the state grand jury has access to all of the evidence to which it is entitled in a timely fashion—thereby minimizing any risk that criminal conduct will go unpunished as a result of expiring statutes of limitations or lost evidence. It is therefore appropriate that this Court issue its judgment and transmit it to the court of appeals forthwith.

1. This case concerns an ongoing state grand jury investigation involving numerous individuals and entities and in which time is of the essence. On August 29, 2019, the New York County District Attorney’s Office (Office) served a grand jury subpoena on Mazars seeking a variety of financial records pertaining to petitioner and various related entities (the Mazars Subpoena). Petitioner filed an action in federal court to enjoin enforcement of the subpoena, and the district court and court of appeals rejected his claims.

2. On July 9, 2020, the Court affirmed the decision of the United States Court of Appeals for the Second Circuit and remanded the action for further proceedings. The Court held that “the President is neither absolutely immune from state criminal subpoenas seeking his private papers nor entitled to a heightened standard of need,” but further held that because the court of appeals “has directed that the case be returned to the District Court, where the President may raise further arguments as appropriate,” the case must be remanded to the court of appeals for further proceedings consistent with the Court’s opinion. Slip op. 21-22.

3. The same day, the Clerk of the Court informed the Second Circuit that the Court had announced its opinion and that the judgment or mandate of this Court will not issue for at least 25 days pursuant to Rule 45. On July 10, 2020, the Second Circuit issued its mandate affirming the denial of petitioner’s request for a preliminary injunction, vacating the district court’s judgment dismissing the complaint on grounds of *Younger* abstention, and remanding “to the district court for further proceedings consistent with this Court’s opinion.” The district court has entered the Second Circuit’s mandate on its docket and, on July 10, 2020, issued an order requiring the parties to inform it by July 15, 2020, “whether further proceedings will be necessary in the light of the dispositions by the Courts above,” and to “outline potential areas for further argument.” The parties have filed a joint letter outlining their respective positions. The district court also scheduled a telephone conference for July 16, 2020, “to discuss the parties’ positions on further proceedings, and a proposed schedule for further briefing, if necessary[.]”

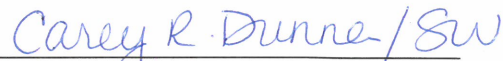
4. Expeditious proceedings before the district court to promptly resolve this case are essential to prevent frustration of the grand jury’s ongoing investigation. “[P]rotracted interruption of grand jury proceedings,” this Court has observed, can produce “delay [that may be] fatal to the enforcement of the criminal law.” *United States v. Calandra*, 414 U.S. 338, 350 (1974). That observation fully applies here, especially considering the extraordinary delays in the grand jury’s access to important evidence for its investigation. And, critically, given the age of many of the transactions at issue in the grand jury’s investigation, issues could arise in the near

future concerning the applicable statutes of limitations. Each day that compliance with the Mazars Subpoena is delayed increases the likelihood that the grand jury will not receive the documents it sought ten months ago in a timely fashion—potentially giving petitioner, as a practical matter, the absolute temporary immunity that this Court rejected. Delay could also confer on other individuals under investigation the practical equivalent of immunity from prosecution. And delay could result in obstacles to pursuing investigative leads or an ensuing trial (if the grand jury returns indictments) because of the fading of memories and the possible loss or disappearance of documents. Slip op. 19.

5. While we believe that the courts below have properly initiated proceedings following this Court's issuance of its opinion, it is appropriate for this Court to issue its judgment forthwith. In *United States v. Nixon*, 418 U.S. 683, 716 (1974), which also involved a sitting President who resisted a subpoena based on claims of constitutional privilege, this Court noted that the case before it "came before the Court during the pendency of a criminal prosecution, and on representations that time is of the essence," determined that "the mandate shall issue forthwith." Given that this matter came before the Court during the pendency of a grand jury investigation, and in light of petitioner's consent to the relief sought by this application, we respectfully request that the Court transmit a copy of its opinion and a certified copy of the judgment to the clerk of the court of appeals forthwith.

July 15, 2020

Respectfully submitted,

Handwritten signature of Carey R. Dunne in blue ink, including the initials "SW" at the end.

Carey R. Dunne, *General Counsel*
New York County District Attorney's Office
Counsel of Record for Respondent Vance