



Tax & Financial Records Case

Manhattan DA-Mazars Case Key Excerpts from 2019 District Court Opinion

Prepared by Elise Bean
Levin Center at Wayne Law

On Aug. 29, 2019, the Manhattan DA issued a grand jury subpoena to President Trump's longstanding accounting firm, Mazars USA, requesting copies of Trump-related tax returns and other financial records. On Sept. 19, 2019, President Trump filed suit in the SDNY federal court to quash the grand jury subpoena to his accounting firm. On Oct. 7, 2019, SDNY District Judge Marrero dismissed the case on two alternate grounds and upheld the grand jury subpoena. *Trump v. Vance*, 395 F. Supp. 3d 283 (S.D.N.Y. 2019). Here are key excerpts from his 75-page opinion, each excerpt of which consists of a direct quotation taken from the text of the opinion, with no changes in punctuation but with footnotes omitted.

Nature of presidential immunity claim

The President asserts an extraordinary claim in the dispute now before this Court. He contends that, in his view of the President's duties ... the person who serves as President, while in office, enjoys absolute immunity from criminal process of any kind.

As the Court reads it, presidential immunity would stretch to cover every phase of criminal proceedings, including investigations, grand jury proceedings and subpoenas, indictment, prosecution, arrest, trial, conviction, and incarceration. That constitutional protection presumably would encompass any conduct, at any time, in any forum, whether federal or state, and whether President acted alone or in concert with other individuals.

Immunity would embrace other persons, businesses, associates, relatives

Moreover, on this theory, the President's special dispensation from the criminal law's purview and judicial inquiry would embrace not only the behavior and activities of the President himself, but also extend derivatively so as to potentially immunize the misconduct of any other person, business affiliate, associate, or relative who may have

collaborated with the President in committing purportedly unlawful acts and whose offenses ordinarily would warrant criminal investigation and prosecution of all involved.

Overreach of executive power

This Court cannot endorse such a categorical and limitless assertion of presidential immunity from judicial process as being countenanced by the nation's constitutional plan, especially in the light of the fundamental concerns over excessive arrogation of power that animated the Constitution's delicate structure and its calibrated balance of authority among the three branches of the national government, as well as between the federal and state authorities. Hence, the expansive notion of constitutional immunity invoked here to shield the President from judicial process would constitute an overreach of executive power.

Existing case law limits on presidential immunity

In numerous rulings, the courts have circumscribed claims of presidential immunity in multiple ways. Specifically, they have held that such protection from judicial process does not extend to civil suits regarding private conduct that occurred before the President assumed office, to responding to subpoenas regarding the conduct of third-persons, and to providing testimony in court proceedings relating to private disputes involving third persons. The notion of federal supremacy and presidential immunity from judicial process that the President here invokes, unqualified and boundless in its reach as described above, cuts across the grain of these constitutional precedents.

Claim to be above the law

Bared to its core, the proposition the President advances reduces to the very notion that the Founders rejected at the inception of the Republic, and that the Supreme Court has since unequivocally repudiated: that a constitutional domain exists in this country in which not only the President, but derivatively, relatives and persons and business entities associated with him in potentially unlawful private activities, are in fact above the law.

Repugnant doctrine; two alternate grounds for dismissal

Because this Court finds aspects of such a doctrine repugnant to the nation's governmental structure and constitutional values, and for the reasons further stated below, it ABSTAINS from adjudicating this dispute and DISMISSES the President's suit. In the alternative, in the event on appeal abstention were found unwarranted under the circumstances presented here, the Court DENIES the President's motion for injunctive relief.

State proceedings and *Younger* abstention

[N]otwithstanding federal courts' "virtually unflagging obligation ... to exercise the jurisdiction given them," ... *Younger* requires federal courts to decline jurisdiction when a plaintiff seeks to enjoin one of the following three kinds of state proceedings: (1) "ongoing state criminal prosecutions" The "*Middlesex* conditions" are "(1) [whether] there is a pending state proceeding, (2) that implicates an important state interest, and (3) the state proceeding affords the federal plaintiff an adequate opportunity for judicial

review of his or her federal constitutional claims.” ... [T]he Court concludes that it must abstain under *Younger*.

“[U]nder our federal system, it goes without saying that preventing and dealing with crime is much more the business of the States than it is of the Federal Government. Because the regulation of crime is pre-eminently a matter for the States, we have identified a strong judicial policy against federal interference with state criminal proceedings.” *Manypenny*, 451 U.S. at 243[.]

State prosecutor may issue subpoena to third party

[T]he question before the Court narrows to whether the District Attorney may issue a grand jury subpoena to a third person or entity requiring production of personal and business records of the President and other persons and entities? The Court’s answer to that question is yes.

No irreparable harm from grand jury disclosure

[T]he Court finds that disclosure to a grand jury is different from disclosure to other persons or entities like those identified in the cases cited by the President. And because a grand jury is under a legal obligation to the confidentiality of its records, the Court finds that no irreparable harm will ensue from disclosure to it of the President’s records sought here.

Presidential immunity is matter of first impression

[T]he President recognizes that the precise constitutional question this action presents – the core boundaries of the President’s immunity from criminal process – has not been presented squarely in any judicial forum, and thus has never been definitively resolved.

DOJ memos not dispositive

The heavy reliance the President places on the DOJ Memos is misplaced for several reasons. First, though they contain an exhaustive and learned consideration of the constitutional questions presented here, the DOJ Memos do not constitute authoritative judicial interpretation of the Constitution concerning those issues. In fact, as the DOJ Memos themselves also concede, the precise presidential immunity questions this litigation raises have never been squarely presented or fully addressed by the Supreme Court.

Case law does not support absolute presidential immunity

[I]nsofar as the Supreme Court has examined some of the relevant presidential privileges and immunities issues as applied in other contexts, the case law does not support the President’s and the DOJ Memos’ absolute immunity argument to its full extremity and ramifications.

DOJ memos do not address state criminal process

[T]he DOJ Memos address solely the amenability of the President to *federal* criminal process. Hence, because state law enforcement proceedings were not directly at issue in the matters that prompted the memos, as they are here, the DOJ Memos do not address

the unique concerns implicated by a blanket assertion of presidential immunity from state criminal law enforcement and judicial proceedings. That gap ... would include due recognition of the principles of federalism and comity, and the proper balance between the legitimate interests of federal and state authorities in the administration of justice, as discussed above in the section addressing *Younger* abstention.

DOJ memos are flawed

[T]he [DOJ] Memos' analyses are flawed by ambiguities (if not outright conflicts)[.]

No catastrophic intrusion on President's time

[R]esponding to a subpoena relating to the conduct of a third party, as is the case here, would likely not create the catastrophic intrusions on the President's personal time and energy, or impair his ability to discharge official functions, or threaten the "dramatic destabilization" of the nation's government that the DOJ Memos and the President depict.

County prosecutor can subpoena third party for materials that may implicate the President

The Court finds that the structure of the Constitution, the historical record, and the relevant case law support its conclusion that, except in circumstances involving military, diplomatic, or national security issues, a county prosecutor acts within his or her authority – at the very least – when issuing a subpoena to a third party even though that subpoena relates to purportedly unlawful conduct or transactions involving third parties that may also implicate the sitting President. No other conclusion squares with the fundamental notion, embodied in those sources, that the President is not above the law.

Subpoena can be directed to the President

The Supreme Court has twice recognized that "[i]t is settled law that the separation-of-powers doctrine does not bar every exercise of jurisdiction over the President of the United States." *Clinton*, 520 U.S. at 705 (quoting *Fitzgerald*, 457 U.S. at 753-54).

[W]hile in office, a subpoena duces tecum could be directed to the President." *Id.* at 703-04; *accord Nixon*, 418 U.S. at 706 ("[N]either the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances."); *see also Nixon v. Sirica*, 487 F.2d 700, 709-10 (D.C. Cir. 1973 ("The clear implication is that the President's special interests may warrant a careful judicial screening of subpoenas after the President interposes an objection, but that some subpoenas will nevertheless be properly sustained by judicial orders of compliance." (en banc) (per curiam).

Subpoena can be directed to a third party

If a subpoena may be directed to the President, it follows that a subpoena potentially implicating private conduct, records, or transactions of third persons and the President may lawfully be directed to a third-party.

No immunity for private conduct

[T]he [Supreme] Court concluded that “we have never suggested that the President, or any other official, has an immunity that extends beyond the scope of any action taken in an official capacity.” *Clinton*, 520 U.S. at 694.

Relevant considerations

Among the relevant considerations are: whether the events at issue involve conduct taken by the President in a private or official capacity; whether the conduct at issue involved acts of the President, or of third parties, or both; whether the conduct of the President occurred while the President was in office, or before his tenure; whether the acts in dispute related to functions of the President’s office; whether a subpoena for production of records was issued against the President directly or to a third person; whether the judicial process at issue involves federal or state judicial process; whether the proceedings pertain to a civil or criminal offense; whether the enforcement of the particular criminal process concerned would impose burdens and interferences on the President’s ability to execute his constitutional duties and assigned functions; and whether the effect of the President’s asserting immunity under the circumstances would be to place the President, or other persons, above the law.

Balancing of interests

The analytic framework the Supreme Court counsels courts to employ requires a balancing of interests. The assessment would consider the interest of the President in protecting his office from undue burdens and interferences that could impair his ability to perform his official duties, and the interests of law enforcement officers and the judicial in protecting and promoting the fair, full, and effective administration of justice.

Case-by-case approach

The relevance of these multiple considerations ... underscores the incompatibility of an unqualified, absolute doctrine, and, rather than a blanket application; points to a case-by-case approach in which a demonstration of sufficiently compelling conditions to justify presidential exemption is made by the courts.

President’s interests far outweighed by law enforcement interests here

The interests the President asserts in maintaining the confidentiality of certain personal financial and tax records that largely relate to a time before he assumed office, and that may involve unlawful conduct by third persons and possibly the President, is far outweighed by the interests of state law enforcement officers and the federal courts in ensuring the full, fair, and effective administration of justice.

President Trump appealed the decision of the district court to the Second Circuit Court of Appeals.