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November 8, 2021

VIA EMAIL

Hon. Letitia Ann James
New York State Attorney General
Office of the Attorney General
The Capitol
Albany, NY 12224-0341
Letitia.James@ag.ny.gov

Re: Request for Criminal Investigation of Albany County Sheriff Craig D. Apple for Unlawful Disclosure of Grand Jury Information in Violation of N.Y. Penal Law § 215.70

Dear Attorney General James:

I represent former Governor Andrew M. Cuomo and write to request that, pursuant to N.Y. Exec. L. § 75, an investigation be immediately commenced into the unlawful disclosure to the *New York Post* of grand jury information relating to Governor Cuomo and the strong evidence that Albany County Sheriff Craig D. Apple was the source of that unlawful disclosure.

I further request that your Office, which is required to investigate complaints of criminal activity by law enforcement officers under N.Y. Exec. L. § 75, appoint an independent prosecutor to conduct this investigation given your apparent conflict of interest, as evidenced by:

- (1) Your relationship with Sheriff Apple, including a recent public appearance with him on October 5, 2021 and his January 22, 2019 meeting with you, after which he claimed, “She’s awesome and I’m convinced will be the best one yet[;]”¹
- (2) Your official announcement that you would be running for governor, which you made *the very next day after* Sheriff Apple’s extraordinarily unusual action in filing a

¹ Craig Apple (@CraigDApplesr), TWITTER (Oct. 6, 2021 9:01 a.m.), <https://twitter.com/CraigDApplesr/status/1445736237269200897> (“Glad to team up with our Attorney General @TishJames who fought hard against big Pharma. . . .”); Craig Apple (@CraigDApplesr), TWITTER (Jan. 22, 2019 6:08 p.m.), <https://twitter.com/CraigDApplesr/status/1087849393259192321> (“Got to meet our new Attorney General today. She’s awesome and I’m convinced will be the best one yet!”).

criminal charge against Governor Cuomo without any consultation with the District Attorney's Office;²

- (3) Sheriff Apple's public statements at his October 29, 2021 press conference (the day you officially announced your run for governor) in which he expressed his gratitude to your Office in connection to his investigation, which he said he conducted "separate and apart" from that of the District Attorney's Office;³
- (4) Your reliance on your August 3, 2021 *Report of Investigation Into Allegations of Sexual Harassment by Governor Andrew M. Cuomo* (the "Report") in support of your campaign for governor;⁴ and
- (5) Your Report instigating the criminal investigation by Sheriff Apple and his leak of grand jury information to the *New York Post* in connection with that investigation.

Alternatively, we request that you seek a referral from Governor Kathleen Hochul pursuant to N.Y. Exec. L. § 63 to appoint a truly independent prosecutor to conduct this investigation of unlawful grand jury disclosures in violation of N.Y. Penal L. § 215.70.

1. Unlawful Grand Jury Disclosure by a Law Enforcement Official is a Felony

New York Law is unequivocal that "[g]rand jury proceedings are secret" and any "matter attending a grand jury proceeding" shall generally not be disclosed, including "all papers and proceedings relating to [a] subpoena," which "shall be kept secret and not disclosed to the public by any public officer," or any other individual specified in N.Y. Penal Law § 215.70. Crim.

² See Katie Glueck, *Letitia James Declares Her Candidacy for N.Y. Governor*, N.Y. TIMES (Oct. 29, 2021), <https://www.nytimes.com/2021/10/29/nyregion/letitia-james-governor.html>; Jonathan Stempel, *Former New York Governor Cuomo Charged With Misdemeanor Sex Offense*, REUTERS (Oct. 29, 2021), <https://www.reuters.com/world/us/misdemeanor-complaint-related-sex-crime-filed-against-ex-ny-governor-cuomo-court-2021-10-28/> ("Like the rest of the public, we were surprised to learn today that a criminal complaint was filed in Albany City Court by the Albany County Sheriff's Office against Andrew Cuomo," Soares stated.").

³ See Sara Rizzo, *Sheriff: Cuomo Documents Leaked, Criminal Complaint Was Not a Political Move*, NEWS10 (Oct. 29, 2021), <https://www.news10.com/news/watch-live-sheriff-apple-holds-press-conference-on-cuomo-criminal-complaint/>.

⁴ Katie Glueck, *Letitia James Declares Her Candidacy for N.Y. Governor*, N.Y. TIMES (Oct. 29, 2021), <https://www.nytimes.com/2021/10/29/nyregion/letitia-james-governor.html> ("She appeared to make several allusions to Mr. Cuomo. 'I've held accountable those who mistreat and harass women in the workplace, no matter how powerful the offenders,' she said at one point.").

Proc. L. §§ 190.25(4)(a), 190.50(7) (emphasis added). As the New York State Court of Appeals has explained:

We have previously noted that ‘secrecy has been an integral feature of Grand Jury proceedings since well before the founding of our Nation’. . . The reasons for this venerable and important policy include preserving the reputations of those being investigated by and appearing before a Grand Jury, safeguarding the independence of the Grand Jury . . . and encouraging free disclosure of information by witnesses. . . .

People v. Fetcho, 91 N.Y. 2d 765, 769 (N.Y. 1998) (citation omitted).

Given the critical importance of grand jury secrecy to the criminal justice process, any “public servant having official duties in or about a grand jury . . . proceeding, or a public officer” is **guilty of a felony** for “**unlawful grand jury disclosure**” when “**he intentionally discloses to another the nature or substance of any grand jury testimony, or any decision, result or other matter attending a grand jury proceeding which is required by law to be kept secret. . . .**” N.Y. Penal L. § 215.70 (emphasis added); *see also James v. Donovan*, 14 N.Y.S.3d 435, 441 (N.Y. App. Div. 2d Dep’t 2015) (“So strong are the principles of grand jury secrecy and the policies underlying it that unauthorized disclosure of grand jury evidence is a felony in New York.”) (citing N.Y. Penal L. § 215.70).

2. Evidence that Sheriff Apple Unlawfully Disclosed Grand Jury Information and the Need for an Immediate Investigation

On August 7, 2021, Sheriff Apple held an unprecedented press conference, for no legitimate purpose, at which he announced that Brittany Commisso had filed a complaint against Governor Cuomo with the Albany County Sheriff. During that prejudicial press conference, Sheriff Apple acknowledged that the investigation of Ms. Commisso’s complaint was in the “very infant stages.”⁵ Sheriff Apple made clear that he had made up his mind:

- “I had a female victim come forward, which had to be the hardest thing she’s ever done in her life, and make an allegation of criminal conduct against the governor;”⁶

⁵ Dave Mistich, *The Albany County Sheriff Is Investigating A Criminal Complaint Against Gov. Cuomo*, NPR (Aug. 7, 2021), <https://www.npr.org/2021/08/07/1025772844/the-albany-county-sheriff-is-investigating-a-criminal-complaint-against-gov-cuom>.

⁶ Victoria Bekiempis, *Sheriff Hails Courage of Woman Accusing Andrew Cuomo of Sexual Misconduct*, THE GUARDIAN (Aug. 7, 2021), <https://www.theguardian.com/us-news/2021/aug/07/andrew-cuomo-criminal-complaint-albany-sheriff>.

- “[T]he last thing we want to do is ... re- victimize these victims;”⁷
- “[A]t this point I’m very comfortable...saying [she] is in fact a victim.”⁸

Sheriff Apple’s comments on August 7 essentially pronounced the guilt of Governor Cuomo before he had done *any* investigation, and demonstrated that he intended to improperly prejudice the Governor by speaking to the press. As you know, Governor Cuomo denies the allegations, and is entitled to both the presumption of innocence and a fair and impartial investigation. By publicly stating his conclusion before having conducted any investigation, Sheriff Apple deprived Governor Cuomo of both.

On August 30, 2021, the *New York Post* published a story by reporter Bernadette Hogan stating that, *according to Sheriff Craig Apple*, Brittany Commisso “spent ‘several hours’ being interviewed” in connection with her allegations and that “[l]aw-enforcement officials have also issued ‘several subpoenas’ related to her allegations.”⁹ Given the procedural posture of the investigation, the only kind of subpoenas that could have been issued at that stage were grand jury subpoenas, which must be kept secret by law. Sheriff Apple’s disclosure to the *New York Post* of the issuance of grand jury subpoenas related to Ms. Commisso’s allegations was a blatant violation of grand jury secrecy.

Just two days after Ms. Hogan’s August 30, 2021 article, on September 1, 2021, Ms. Hogan published an “exclusive” article reporting that subpoenas had been issued in connection with the District Attorney Office’s investigation.¹⁰ The article cited to a “source briefed on the matter” and specified that: (1) the subpoenas sought surveillance videos, phone records, and keycard swipes; and (2) the subpoenas were served on the Executive Mansion and the state Capitol. Again, given the procedural posture of the investigation, the only kind of subpoenas that could have been issued

⁷ Paul Nelson, *Sheriff Says Probe by Cuomo Accuser to Begin in Earnest Next Week*, TIMES UNION (Aug. 7, 2021), <https://www.timesunion.com/news/article/Albany-sheriff-says-probe-by-Cuomo-accuser-to-16372050.php>.

⁸ *Id.*

⁹ See Bernadette Hogan & Bruce Golding, *Subpoenas Issued as Cuomo Mansion ‘Grope’ Accuser Meets with Investigators: Sheriff*, N.Y. POST (Aug. 30, 2021), <https://nypost.com/2021/08/30/subpoenas-issued-as-cuomo-grope-accuser-meets-with-investigators/> (noting that Sheriff Apple stated that investigators met with Ms. Commisso on Monday and *that subpoenas were being issued in connection with her allegations*).

¹⁰ See Bernadette Hogan & Bruce Golding, *Surveillance Videos, Other Evidence Subpoenaed in Andrew Cuomo ‘Grope’ Probe*, N.Y. POST (Sep. 1, 2021) <https://nypost.com/2021/09/01/videos-other-evidence-subpoenaed-in-andrew-cuomo-grope-probe/>.

at that time were grand jury subpoenas. This second blatant breach of grand jury secrecy was also unlawful.

It is likely that Sheriff Apple was the “source” for this September 1 article providing more information about the grand jury subpoenas for several reasons. First, Sheriff Apple has already demonstrated his willingness and inclination to speak to the press about this investigation—to the detriment of Governor Cuomo and his right to a fair process—by the number of interviews Sheriff Apple has given and the two press conferences he has held.¹¹ Second, Sheriff Apple had already unlawfully disclosed the issuance of grand jury subpoenas to the same reporter, Bernadette Hogan, just two days earlier. Third, Sheriff Apple has admitted to having regular communications with Bernadette Hogan and the press about this investigation. Specifically, in his October 29, 2021 press conference, Sheriff Apple stated: “I’d get calls from media on a daily basis. Every Monday I’d get a text from *Bernadette*, you know, ‘where are we?’”¹²

Fourth, in a 2011 taped recording of a meeting with investigators discussing police work and the law, Sheriff Apple stated that police officers know there are black areas, white areas, “and a big pool of gray,” and that: “I’ve been living in the gray for 22 (expletive) years. I know exactly how to manipulate the law and I’ve gotten pretty good at doing it. Is it right, wrong or indifferent? I don’t (expletive) care.”¹³ That disturbing statement by Sheriff Apple reflects a willingness to disregard the law for his own purposes and to the detriment of individual rights.

Given these unlawful grand jury disclosures, and the evidence of Sheriff Apple’s role in such disclosures, a prosecutor must investigate whether Sheriff Apple violated New York law by disclosing confidential grand jury information.

¹¹ See, e.g., Sara Rizzo, *Sheriff: Cuomo Documents Leaked, Criminal Complaint Was Not a Political Move*, NEWS10 (Oct. 29, 2021), <https://www.news10.com/news/watch-live-sheriff-apple-holds-press-conference-on-cuomo-criminal-complaint/>; Denis Slattery, *Albany sheriff defends handling of charges against former New York Gov. Andrew Cuomo*, YAHOO! NEWS (Oct. 29, 2021), <https://news.yahoo.com/albany-sheriff-defends-handling-charges-193700235.html> (referencing Sheriff Apple’s appearance on “Talk 1300” radio); Paul Nelson, *Sheriff Says Probe by Cuomo Accuser to Begin in Earnest Next Week*, TIMES UNION (Aug. 7, 2021), <https://www.timesunion.com/news/article/Albany-sheriff-says-probe-by-Cuomo-accuser-to-16372050.php>.

¹² Sara Rizzo, *Sheriff: Cuomo Documents Leaked, Criminal Complaint Was Not a Political Move*, NEWS10 (Oct. 29, 2021), <https://www.news10.com/news/watch-live-sheriff-apple-holds-press-conference-on-cuomo-criminal-complaint/> (emphasis added).

¹³ *Undersheriff Tape Complicates Choice*, TIMES UNION (June 14, 2011), <https://www.timesunion.com/local/article/Undersheriff-tape-complicates-choice-1423795.php>.

3. N.Y. Exec. L. § 75: Law Enforcement Investigative Office Charged with Investigating Complaints of Criminal Conduct by County Sheriffs

New York Exec. L. § 75 created a “law enforcement misconduct investigative office” within the New York State Attorney General’s Office, and prescribed that the “deputy attorney general *shall* have the following duties responsibilities...*receive and investigate complaints from any source . . . concerning allegations of . . . criminal activity*” by any local police department or Sheriff’s office. N.Y. Exec. Law § 75(a) (emphasis added). To be clear, this letter constitutes a “complaint” concerning Sheriff Apple’s “criminal activity” by unlawfully disclosing grand jury information to the *New York Post* on or about August 30, 2021, and likely again on or about September 1, 2021. These criminal acts must be investigated, as required by § 75.

For the reasons set forth above regarding your apparent conflict of interest, we request that an independent prosecutor be appointed to conduct this investigation into the unlawful grand jury disclosures in violation of N.Y. Penal L. § 215.70. Alternatively, we request that you seek a referral from Governor Hochul, pursuant to N.Y. Exec. L. § 63, to appoint an independent prosecutor to conduct the investigation.

Sincerely,

Rita M. Glavin

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