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June 7, 2022

VIA EMAIL

Kevin P. Bruen
New York State Police Superintendent
State Police Headquarters, Harriman Campus
1220 Washington Avenue, Building 22
Alban , New York 12226

Alvin L. Bragg
New York County District Attorney
One Hogan Place
New York, New York 10013

Re: Request for Criminal Investigation of Grand Jury Secrecy Breaches

Dear Superintendent Bruen and Mr. Bragg:

I represent former Governor Andrew M. Cuomo (“Governor Cuomo”) and write to request a criminal investigation into the apparent unlawful grand jury disclosures to the press that occurred in August and September 2021 relating to the investigation conducted by Albany County Sheriff Craig Apple and the Albany County District Attorney’s Office into allegations by Brittany Commisso—which Governor Cuomo denies and the evidence supports his denial—that Governor Cuomo unlawfully groped her breast. Intentional, unauthorized disclosure of grand jury information by a public official is a felony in New York. N.Y. Penal Law (“PL”) § 215.70.

As I am sure you are aware, the Albany County District Attorney’s Office requested to dismiss the criminal complaint based on Ms. Commisso’s allegations that Sheriff Apple filed against Governor Cuomo on October 28, 2021 after reviewing the evidence and determining her claim could not be proven given the obvious credibility issues and lack of proof.¹ Sheriff Apple filed his complaint without consulting either the District Attorney or Ms. Commisso. Notably, Sheriff Apple requested an arrest warrant for Governor Cuomo from the judge to whom he presented the criminal complaint, which the judge quite properly rejected. These facts speak volumes about Sheriff Apple’s lack of professionalism and improper motives when it came to this investigation.

¹ *Statement From DA David Soares*, ALBANY COUNTY DISTRICT ATTORNEY (Jan. 4, 2022), https://www.albanycountyda.com/media/news/22-01-04/Statement_from_DA_David_Soares.aspx (“[W]e are declining to prosecute this matter and requesting the charges filed by the Albany County Sheriff be dismissed”); *see also* Luis Ferré-Sadurní, *Groping Charge Against Cuomo Is Dismissed*, N.Y. TIMES (Jan. 7, 2022), <https://www.nytimes.com/2022/01/07/nyregion/andrew-cuomo-groping-charge-dismissed.html> (“A judge dismissed a criminal complaint on Friday against Andrew M. Cuomo”).

There is compelling evidence that Albany County Sheriff Craig Apple and/or someone else within the Albany County Sheriff's Office unlawfully disclosed grand jury information to the *New York Post* in late August and early September 2021 in violation of PL § 215.70 (providing that intentional disclosure by a public officer of "any" matter attending a grand jury proceeding is a felony). The *New York Post* reported that subpoenas had been issued as part of the investigation into Brittany Commisso's allegations and the nature of those subpoenas. Those subpoenas were *grand jury* subpoenas that the Sheriff's Office knew about and had discussed with the Albany County District Attorney's Office at the time of the *New York Post*'s articles on this issue.²

We brought these apparent unlawful disclosures to the attention of the Albany County District Attorney's Office in letters dated August 31 and September 2, 2021 (attached hereto as Exs. 1 and 2). Moreover, in an October 30, 2021 letter to Sheriff Apple (attached hereto as Ex. 3), I requested that Sheriff Apple preserve all records relating to his and his Office's communications with the press, as well as all records relating to his investigation of the former Governor concerning Ms. Commisso's claims.

We also referred these apparent unlawful disclosures to the Attorney General's Law Enforcement Misconduct Investigative Office (LEMIO), but the LEMIO informed us that its Office does not have jurisdiction to criminally prosecute this matter. While we understand that the LEMIO has an open matter on the issue of potential misconduct by the Sheriff's Office relating to the grand jury disclosures, we have heard nothing from the LEMIO in months.

The serious nature of this grand jury breach warrants criminal investigation for many reasons: it is a felony; the need for specific and general deterrence of public officers who leak grand jury information to the press; and to protect the privacy rights of subjects in any grand jury investigation. To ignore this breach and not criminally investigate this conduct sends the wrong message that law enforcement officials are above the law when it comes breaching grand jury secrecy.

Given that it is the Albany County District Attorney's Office that issued the grand jury subpoenas that were leaked to the press (the Sheriff cannot issue grand jury subpoenas), the Albany County District Attorney's Office *is a material witness and therefore would be conflicted out of any potential prosecution of this matter*. Thus, we write to you. At the time of the unlawful grand jury disclosures, the Albany County District Attorney was working jointly with the Albany County Sheriff's Office in this investigation. Indeed, in an August 31, 2021 email to the Albany County Sheriff's Office, the Albany County District Attorney's Office referenced (a) materials received pursuant to a grand jury subpoena and (b) other grand jury subpoenas to be issued. Shortly after I brought the grand jury leaks to the attention of the Albany County District Attorney's Office, I understand that the District Attorney's Office ceased working with Sheriff

² The only kind of subpoenas that could have been issued at that stage of the investigation were grand jury subpoenas. Email correspondence between the District Attorney's Office and Sheriff's Office, discussed below, confirm that the subpoenas were grand jury subpoenas.

Apple's Office in the investigation. Moreover, because the *New York Post* is located in Manhattan,³ there is presumably jurisdiction in New York County.

1. Unlawful Disclosure of Grand Jury Information is a Felony

New York Criminal Procedural Law (“CPL”) provides 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 New York Penal Law § 215.70. CPL §§ 190.25(4)(a), 190.50(7) (emphasis added). As the New York 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) (citations omitted).

Because of the critical importance of grand jury secrecy to the criminal justice process, pursuant to N.Y. Penal Law § 215.70, 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[.]” PL § 215.70 (emphasis added); see also *James v. Donovan*, 130 A.D.3d 1032, 1037, 14 N.Y.S.3d 435 (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 PL § 215.70)).

2. Evidence that Sheriff Apple and/or Someone in His Office Unlawfully Disclosed Grand Jury Information

On August 7, 2021, Sheriff Apple held an unprecedented press conference, for no legitimate law enforcement purpose, at which he announced that Brittany Commisso had filed a complaint against Governor Cuomo with the Albany County Sheriff for allegedly groping her in November 2020. During that extraordinarily prejudicial press conference, Sheriff Apple

³ The *New York Post* is a unit of News Corporation with an office located at 1211 Avenue of the Americas, New York, New York 10036. See “About New York Post,” N.Y. POST (last visited June 6, 2022), <https://nypost.com/about-new-york-post/>.

acknowledged that the investigation of Ms. Commisso's complaint was in the "very infant stages."⁴ Sheriff Apple made clear, however, 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;"⁵
- "[T]he last thing we want to do is . . . re-victimize these victims;"⁶
- "[A]t this point, I'm very comfortable . . . saying she is in fact a victim."⁷

Sheriff Apple's comments on August 7 essentially pronounced the guilt of Governor Cuomo before he had done *any* substantial investigation and demonstrated Sheriff Apple's intent to improperly prejudice the Governor by speaking to the press. Governor Cuomo has always denied Ms. Commisso's allegations (and the evidence supports his denial), and the Governor was entitled to both the presumption of innocence and a fair and impartial investigation. By publicly stating his conclusion before having conducted a full investigation, Sheriff Apple deprived Governor Cuomo of the presumption of innocence and a fair and impartial investigation.

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 "[l]aw-enforcement officials have also issued 'several' subpoenas related to her allegations, *Apple said*."⁸ 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 apparent disclosure to the *New York*

⁴ 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>.

⁵ 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>.

⁶ 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>.

⁷ *Id.*

⁸ 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/> (emphasis added) (reporting that Sheriff Apple stated that investigators met with Ms. Commisso on Monday and *that subpoenas were being issued in connection with her allegations*).

Post of the issuance of grand jury subpoenas relating to Ms. Commisso's allegations was a blatant violation of grand jury secrecy. Indeed, in an August 31, 2021 email to Sheriff's Office Investigator Amy Kowalski at 12:57 p.m. relating to Ms. Commisso's allegations,⁹ the Albany District Attorney's Office referenced grand jury subpoenas that had obviously been the subject of discussions between the Sheriff's Office and the District Attorney's Office. Further, notes produced in discovery from the District Attorney's Office reflect that Investigator Kowalski met with Ms. Commisso on August 30 for a lengthy interview.

Just two days after Ms. Hogan's August 30, 2021 article citing to Sheriff Apple as a source, on September 1, 2021, the *New York Post* published an "exclusive" article by Ms. Hogan reporting additional detailed information about subpoenas issued in connection with the District Attorney Office's investigation of Ms. Commisso's allegations.¹⁰ The article was titled: "Surveillance Videos, Other Evidence Subpoenaed in Andrew Cuomo 'Grope' Probe." 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.¹¹ Again, given the procedural posture of the investigation, the only kind of subpoenas that could have been issued at that time were grand jury subpoenas. Further, we know that grand jury subpoenas were being used in the investigation because the August 31, 2021 email from the District Attorney's Office to Investigator Kowalski, referenced above, confirmed this fact. This second blatant breach of grand jury secrecy was also unlawful.

We believe that Sheriff Apple, or someone close to him in the Sheriff's Office was the likely "source" for this September 1 article for several reasons. First, Sheriff Apple 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 gave and the two press conferences he held.¹² Second, Sheriff Apple had already disclosed the issuance

⁹ We obtained this email through discovery provided by the District Attorney's Office following the charge lodged by Sheriff Apple on October 28, 2021 that was later dismissed because of the obvious credibility and proof issues with Ms. Commisso's allegations. *See supra* note 1 and accompanying text.

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/>.

¹¹ *Id.*

¹² 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,

of grand jury subpoenas to the same reporter, Bernadette Hogan, just two days earlier. Indeed, the *New York Post* named Sheriff Apple as the source. Third, Sheriff Apple admitted to having regular communications with Ms. 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?’”¹³

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.”¹⁴ That disturbing statement by Sheriff Apple reflects a willingness to disregard the law for his own purposes and to the detriment of individual rights.

Fifth, Sheriff Apple—whose willingness to speak to news outlets (print, television and radio) is well-known—has never denied he disclosed to the press facts regarding the issuance and substance of grand jury subpoenas in the investigation. Despite news articles reporting on our specific contentions that Sheriff Apple was the source of the unlawful grand jury breach,¹⁵ as well as his receipt of a letter from us on this precise issue (Ex. 3), Sheriff Apple has never disavowed having had anything to do with the leaks to the *New York Post* about the grand jury subpoenas. That is telling.

Finally, following our letters to the Albany County District Attorney complaining about the grand jury leaks, we understand that the Albany County District Attorney’s Office ceased working with Sheriff Apple’s Office in the investigation. This likely explains why Sheriff Apple used search warrants to obtain records: the District Attorney’s Office would no longer share grand jury information with the Sheriff’s Office and Sheriff Apple did not have authority to issue grand jury subpoenas.

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>.

¹³ 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).

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

¹⁵ See, e.g., Sara Rizzo, *Cuomo’s Attorney Calls on AG to Investigate Albany County Sheriff*, NEWS10 (Nov. 8, 2021), <https://www.news10.com/news/ny-news/cuomos-attorney-calls-on-ag-to-investigate-albany-county-sheriff/>; Isabel Vincent & Bernadette Hogan, *Andrew Cuomo Demands Sheriff Craig Apple ‘Preserve All Records’ of Probe*, N.Y. POST (Oct. 30, 2021), <https://nypost.com/2021/10/30/andrew-cuomo-demands-sheriff-craig-apple-preserve-all-records-in-groping-investigation/>.

Superintendent Kevin P. Bruen and District Attorney Alvin L. Bragg

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Thus, for the foregoing reasons, I respectfully request a criminal investigation into the apparent unlawful grand jury disclosures to the press that occurred in August and September 2021.

Respectfully submitted,



Rita M. Glavin

cc: Meg Reiss, Chief Assistant District Attorney, 