DALE HO ASKS FOR SIGNED CONSENT FROM ERIC ADAMS; ALEX SPIRO AND BILL BURCK DON'T PROVIDE IT

In his first order following Emil Bove's submission of his request to dismiss the Eric Adams prosecution, Judge Dale Ho notes the same thing I was among the only people to mention: Bove claimed that Adams had consented to dismissal without prejudice in writing, but he did not include that consent with the filing.

> ORDER as to Eric Adams: **The motion to dismiss states that "Defendant Eric Adams has consented in writing to this motion," see ECF No. 122 at 1, but no such document has been provided to the Court. Defendant is therefore ORDERED to file his "consent[] in writing" on the docket by 5:00 pm ET today.** The parties are further ORDERED to appear before the Court for a conference on February 19, 2025, at 2:00 pm in Courtroom 318 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, NY. The parties shall be prepared to address, inter alia, the reasons for the Government's motion, **the scope and effect of Mayor Adams's "consent[] in writing,"** ECF No. 122 at 1, and the procedure for resolution of the motion. SO ORDERED. (Status Conference set for 2/19/2025 at 02:00 PM in Courtroom 318, 40 Centre Street, New York, NY 10007 before Judge Dale E. Ho) (Signed by Judge Dale E. Ho on 2/18/2025) (See ORDER as set forth) (lnl) (Entered: 02/18/2025) [my emphasis]

Here's what I wrote over the weekend:

> [T]here are obvious documents we'd all like to see that, if these other documents are formally aired in this case, I expect Judge Ho to request, starting with the notes someone from SDNY took at a January 31 hearing. Bove also described written submissions from prosecutors and Adams' team in his response and a February 3 memo from SDNY that, he describes, denied a quid pro quo. He also claims Sassoon, "acknowledged previously in writing" that there was no quid pro quo, which may be that February 3 memo. And there are all the letters that are public but not formally before him.
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> Again, Judge Ho may demand all that if and when he begins to look closely.
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> But there's another document that is missing, conspicuously so.
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> Bove's Nolle Prossequi motion describes that Adams has consented to dismissal, but *he does not include it*.
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> > Through counsel, Defendant Eric Adams has consented in writing to this motion and agreed that he is not a "prevailing party" for purposes of the Hyde Amendment. See P.L. 105- 119, § 617, 111 Stat. 2440, 2519; 18 U.S.C. § 3006A note.
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> This is, quite frankly, either insane or rank incompetence. There is no way any judge, former ACLU voting rights lead or not, would accept a dismissal without prejudice without seeing that documented.

Sometime after Judge Ho issued that order, Alex Spiro (the attorney Eric Adams shares with Elon Musk) and Bill Burck (who serves as Trump Organization's outside ethics advisor),

submitted a filing claiming that they know nothing about a quid pro quo. The last thing they did, they claim, was to submit the January 3 letter Emil Bove asked for in writing.

> Acting Deputy Attorney General Bove invited us to a meeting at which he asked us to address how the case might be affecting Mayor Adams's ability to do his job and whether there was evidence of politicization. At that meeting, which occurred on January 31, 2025, we explained that the indictment and upcoming trial were impeding Mayor Adams in myriad ways, including as to enforcement of federal immigration laws, and that Damian Williams's post-SDNY conduct raised serious concerns about his motives in authorizing the prosecution. Ms. Sassoon and her colleagues were present and actively participated in the meeting. We had a polite and professional debate under questioning from Mr. Bove. At the conclusion of the meeting, Mr. Bove asked us and the SDNY lawyers to memorialize our respective positions in writing, which we did in a letter we submitted to the Department on February 3, 2025, a copy of which is attached as Exhibit A.
>
> **We heard nothing further until February 10, 2025**, when we learned from the press that the Department had decided to dismiss the case. We had no heads up or prior notice. We never coordinated with the Department or anyone else. [my emphasis]

The thing is, the February 3 letter — the last that Spiro and Burck heard, they say — mentions nothing about dismissal without prejudice. This is the only mention of dismissal.

> An honest balancing of these concerns against the unsupported prosecution

> theories in this case militates strongly in favor of dismissal.

So now they're on the hook for submitting *some other document*, signed before Friday, that consents to having this indictment hang over Adams' head while he does all the things he claims he wants to do for NYC.

Update: Ho's order itself says the motion to dismiss is not itself conclusive.

> The government's determination to abandon a prosecution is "entitled to great weight" and to a "presumption [of] good faith[,] . . . but it is not conclusive upon the Court; otherwise there would be no purpose to Rule 48(a), which requires leave of Court to enter the dismissal." United States v. Greater Blouse, Skirt & Neckwear Contractors Ass'n, 228 F. Supp. 483, 486 (S.D.N.Y. 1964) (Weinfeld, J.). Thus, "[w]hile there can be no doubt that the government has broad discretion in deciding which cases to prosecute and how to prosecute those cases, once the government has involved the judiciary by obtaining an indictment or a conviction, its discretion is tempered by the courts' independent obligations." Blaszczak, 56 F.4th at 259 (Sullivan, J., dissenting).
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> Rule 48(a)'s requirement of judicial leave . . . contemplates exposure of the reasons for dismissal." United States v. Ammidown, 497 F.2d 615, 620 (D.C. Cir. 1973). "Since the court must exercise sound judicial discretion in considering a request for dismissal, it must have sufficient factual information supporting the recommendation." 3B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 802 (4th ed. 2013). In granting a motion under Rule 48(a), the Court "should be

> satisfied that the reasons advanced for the proposed dismissal are substantial." Ammidown, 497 F.2d at 620.

Update: Spiro and Burck have now sent the consent letter, dated February 14, with a cover letter, dated today.

The document creation time for the latter,

File name:	gov.uscourts.nysd.628916.131.0_1.pdf
File size:	197 KB
Title:	-
Author:	Phillip Jobe
Subject:	-
Keywords:	-
Created:	2/18/25, 2:55:40 PM
Modified:	2/18/25, 3:20:05 PM
Application:	Microsoft® Word for Microsoft 365
PDF producer:	Microsoft® Word for Microsoft 365; modified us...
PDF version:	1.7
Page count:	1
Page size:	8.50 × 11.00 in (portrait)

Precedes the letter created on Friday.

Title:	-
Author:	Rachel Frank
Subject:	-
Keywords:	-
Created:	2/18/25, 2:57:06 PM
Modified:	2/18/25, 3:20:05 PM
Application:	Microsoft® Word for Microsoft 365

If they had sent it by email on Friday, as the lawyers claim, they would have a PDF copy from then.

Update: A few more details about the consent issue. Bove's February 10 memo instructed Sassoon to get that signed consent — and that it be signed *by the defendant*, not his lawyer.

> 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).

That's a no-brainer. The existing consent is simply not sufficient: SDNY would need proof that the lawyers advised Adams on the significance of the without prejudice dismissal and that he, not they, consented.

But then Sassoon's letter makes it clear that Bove negotiated this at some unidentified time before she sent the letter on February 13.

> 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.

It's unclear when that could have happened, if Spiro and Bove didn't speak between February 3 and February 10.