No. 23A745

In the Supreme Court of the United States

DONALD J. TRUMP,

Applicant,

v.

UNITED STATES OF AMERICA,

Respondent.

On an Application for a Stay of the Mandate To Be Issued by the United States Court of Appeals for the District of Columbia Circuit

Brief of *Amicus Curiae* Jeremy Bates

In Opposition to Application for Stay

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Washington's Birthday 2024

Interests of *Amicus*

An attorney and counselor-at-law, Bates has litigated for twenty years. *E.g.*, *Bates* v. *Trump*, No. 21-1389, *mtn. for lv. to file pet. for reh'g distrib*. (Jan. 17, 2024). *Amicus* has an interest in asking this Court not to abet misconduct.[1]

Summary of Argument

Equity declines to aid iniquity. Equity refuses to assist parties who come to court with unclean hands. This maxim counsels courts to ration equitable remedies and to grant them only to applicants who have acted conscientiously, in good faith. Otherwise, courts risk abetting malfeasance and compounding wrongs.

Citizen Trump seeks a stay—a remedy in equity. But guilt is not the test. Equity asks instead whether one who seeks relief has acted unjustly, fraudulently, or deceitfully as to the matter in suit: on this application, the separation of powers.

Trump argues now that a stay would preserve the presidency. But when Trump held that high Office of Trust, he did not observe the separation of powers. Rather than preserve the Article III courts, Trump interfered in proceedings. Rather than protect the Article I branch, Trump incited an insurrection against it.

Even so, Trump wants the Court to defend the separation that he breached. Those breaches have cost the United States unity, reputation, treasure, and blood.

Rarely has equity ever seen a party whose hands are so unclean.

The Court should deny the stay.

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[1] No counsel for a party authored any part of this brief. No counsel, no party, and no person other than *amicus* made any monetary contribution intended to fund the preparation or submission of this brief.

Argument

As an eighteenth-century barrister put it, "He that hath committed Iniquity, shall not have Equity." Richard Francis, *Maxims of Equity* 5 (3d ed. 1791). This maxim is the unclean-hands rule—a fundamental principle of equity jurisprudence. *Keystone Driller Co.* v. *Gen'l Excav. Co.*, 290 U.S. 240, 244 (1933). If a plaintiff has unclean hands, then a court of equity will hold that plaintiff "remediless." *Id*.

Equitable remedies include stays of lower-court decisions. *Danco Labs., LLC* v. *Alliance for Hippocratic Med.*, No. 22A901, 598 U.S. __, __, slip op. at 3 (April 21, 2023) (Alito, J., dissenting); *see also Hill* v. *McDonogh*, 547 U.S. 573, 584 (2006) ("[A] stay of execution is an equitable remedy."). If "[t]ested by the… rules which relate to chancery proceedings, the power of the appellate court to render its jurisdiction efficacious… is unquestionable." *In re McKenzie*, 180 U.S. 536, 551 (1901); *see also* former Equity Rule 74 ("Injunction Pending Appeal").

To be sure, a stay is not an injunction within the meaning of an immigration statute. *Nken* v. *Holder*, 556 U.S. 418, 434 (2009). But as the *Nken* Court observed, "[a] stay pending appeal certainly has some functional overlap with an injunction, particularly a preliminary one." *Id*. at 428. And as Justice Alito noted, courts and statutes refer to stays as injunctions. *Id*. at 442–43 (Alito, J., dissenting).

Here, the parties agree that the Court may consider "the equities." (Appl. 35; Resp. 8.) In so doing, the Court should look to equity's traditional standards.

I. The unclean-hands rule bars relief in equity for one who acted inequitably as to the matter in litigation.

"It is a principle in chancery that he who asks relief must have acted in good faith. The equitable powers of this Court can never be exerted in behalf of one who has acted fraudulently, or who by deceit or [ ] unfair means has gained an advantage." *Bein* v. *Heath*, 47 U.S. 228, 247 (1848).[2]

As Learned Hand, in dissent, wrote,

> The [unclean-hands rule] is confessedly derived from the unwillingness of a court, originally and still nominally one of conscience, to give its peculiar relief to a suitor who in the very controversy has so conducted himself as to shock the moral sensibilities of the judge. It has nothing to do with the rights or liabilities of the parties; indeed... the court may even raise it *sua sponte*.

Art Metal Works, Inc. v. *Abraham & Straus, Inc.*, 70 F.2d 641, 646 (2d Cir. 1934) (Hand, J., dissenting).

The unclean-hands principle prevents a party from using a court of equity to compound his own misconduct or "to derive an advantage from [his] own wrong." *Kitchen* v. *Rayburn*, 86 U.S. 254, 263 (1873). To be used in that way would make a court the "abetter of iniquity." *Bein*, 47 U.S. at 247. So the maxim operates to "protect the court from becoming a party to the transgressor's misconduct." *In re Napster, Inc. Copyright Litig.*, 191 F. Supp. 2d 1087, 1111 (N.D. Cal. 2002).

That said, the transgressor's misconduct must relate to the matter in suit:

> [C]ourts of equity... apply the maxim requiring clean hands only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation.

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[2] Equity is "the law of reason, exercised by the chancellor or judge, giving remedy in cases to which the courts of law are not competent." Webster's Dictionary (1828).

> They do not close their doors because of plaintiff's misconduct... that has no relation to anything involved in the suit, but only for such violations of conscience as... affect the equitable relations between the parties in respect of something brought before the court for adjudication.

Keystone, 290 U.S. at 245.[3]

Trump now brings before this Court the separation of powers. He says, "The threat of future criminal prosecution by a politically opposed Administration will 'cloud[ ] the President's ability "to deal fearlessly and impartially with" the duties of his office.'" (Appl. 2, quoting *Nixon* v. *Fitzgerald*, 457 U.S. 731, 752 (1982).) A trial would undermine presidential authority (Appl. 11), he says, and would "inflict[ ] one of the gravest wounds to the separation of powers in our Nation's history" (*id.* 3).

II. As to the separation of powers, Trump acted inequitably.

The unclean-hands maxim, however, bars any relief in equity for one who has engaged in conduct that is "unconscionable or inequitable." *Manufacturers' Fin. Co.* v. *McKey*, 294 U.S. 442, 451 (1935). Courts ask not if a party broke a criminal law—an open issue here, as yet—but rather whether the party violated the "dictates of natural justice." *Deweese* v. *Reinhard*, 165 U.S. 386, 390 (1897). "Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards… is sufficient cause for the invocation of the maxim by the chancellor." *Precision Instr. Mfg. Co.* v. *Automotive Maint. Mach. Co.*, 324 U.S. 806, 815 (1945).

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[3] "Chancellors in early equity courts issued injunctions as remedies in criminal cases." Cortney Lollar, *Invoking Criminal Equity's Roots*, 107 Virginia L. Rev. 495, 504 (2021) (citing David Raack, *A History of Injunctions in England Before 1700*, 61 Ind. L.J. 539, 560 n.131 (1986); Edwin Mack, *The Revival of Criminal Equity*, 16 Harv. L. Rev. 389, 392 (1903)).

And if a case concerns the public interest, then the maxim has greater force. In such cases, the unclean-hands principle "not only prevents a wrongdoer from enjoying the fruits of his transgression, but averts an injury to the public." *Id*.

Here, Trump engaged in misconduct transgressing the separation of powers.

Trump selfishly used the appointment and pardon powers to block judicial proceedings. *See*, *e.g.*, *In re App't of Audrey Strauss as U.S. Attorney*, No. M10-458 (S.D.N.Y. Dec. 22, 2020); Peter Baker, *In Commuting Stone's Sentence, Trump Goes Where Nixon Would Not*, N.Y. Times (July 11, 2020).

It is "more likely than not" that President Trump obstructed an electoral certification and conspired to defraud the United States by submitting a complaint to a federal court. *Eastman* v. *Thompson*, 2022 WL 894256, *22, *24 (C.D. Cal. Mar. 28, 2022), *cert. denied*, No. 22-1138, __ U.S. __ (Oct. 2, 2023).

One cannot imagine a deeper "wound[]" to the separation of powers (Appl. 3) than the January 6 attack on Congress—an insurrection that, as courts have held, Trump engaged in. *See Trump* v. *Anderson*, No. 23-719, *argued* (Feb. 8, 2024).

Conclusion

The Court should deny the stay.

Respectfully submitted,

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