TESTIMONY OF SHANLON WU
THE SELECT SUBCOMMITTEE ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT
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Good morning members of the subcommittee, and thank you to Chairman Jordan and Ranking Member Plaskett for the invitation to be here today. My name is Shanlon Wu and, as the child of immigrants who sought freedom in this great country, it is my honor to be here today to testify before the United States Congress about my views and experience as it relates to your sub-committee's work on the Weaponization of the Federal Government. My views here are purely my own and do not reflect the views of my law firm – McGlinchey Stafford.

My parents, Professors Cheng Tsu Wu and Julia Tien Hsian Wu, both came to the United States as graduate students during the Chinese Communist Revolution. Both of their families were on the wrong side of that conflict – my paternal grandfather was a General in the Nationalist Army and was imprisoned for many years as a political prisoner for his role in fighting against the Chinese Communists. My mother came from a banking family, which was not a popular profession after the Revolution. They did not know each other in China so, luckily for me, they came here to study where they met and had me. Because they were cut off from all their families in China, it was just the three of us while I was growing up; nonetheless, they instilled in me their strong love of family, community service, and education – they were both Ph.Ds and college professors My father served as New York City Human Rights Commissioner under two New York Mayors. It was that sense of service that led me to law school and then to the United States Department of Justice where I served as an Assistant United States Attorney and, during the last two years of the Clinton administration, had the privilege of serving as counsel to Attorney General Janet Reno, the longest serving Attorney General in the 20th century.

It is through the lens of this background and service that I offer my views to this subcommittee about the criminal conviction of former President Trump, the effect, if any, of the United States Supreme Court's decision on Presidential immunity, and the grave threats to democracy posed by former President Trump should he again become President of the United States.

The prosecution and conviction of the former president in the case brought by Manhattan District Attorney Alvin Bragg was a model of a proper prosecution and trial untainted by any political agenda. Of course, Mr. Trump and his legal team are free to raise a multitude of arguments challenging the case on appeal, but in my professional view none of those challenges have legs. Claims that the case used a "novel" legal theory are without merit. The defendant was novel, not the charges. The charge of falsification of business records has been used thousands of times in New York state, and the evidence in the case overwhelmingly pointed to the defendant's guilt. Similarly, claims that the presiding judge – Judge Merchan – should have been recused because of his $15 contribution to now President Biden's campaign in 2020 and/or the work of his daughter are without merit given that the New York Ethics panel advised that no recusal was necessary. Brad Smith, a defense expert on Federal Election Campaign law was appropriately precluded from testifying as to the law because it would have

usurped the court's exclusive duty to instruct the jury. Mr. Smith could not testify as a fact witness because he had no personal knowledge of the facts in the case. He was permitted to testify generally about the Federal Election Commission's duties and definitions in that area of law, but defendant Trump chose not to call Smith.

Judge Merchan made numerous decisions in the case reflecting his protection of Defendant Trump's right to a fair trial. For example, he limited the scope of testimony by director and actor Stormy Daniels about her sexual encounter with the defendant to ensure that the potential prejudice of the testimony would not outweigh its probative value. For the same reasons, he also limited the use of the notorious "Access Hollywood" video in which the former president bragged about grabbing women by the genitals without their consent and otherwise engaging in sexual conduct such as kissing them without their consent. And, in perhaps the starkest display of a lack of bias towards the defendant, Judge Merchan did not jail the former president for repeated violations of the so-called gag order, even as the court tolerated near daily insults directed at the court and the prosecutor.

The decision by the Supreme Court on Presidential Immunity in Trump v. United States should not cause the conviction of defendant Trump to be overturned. First, the conviction is based upon conduct that took place before the defendant became president, rendering the application of any immunity inapplicable. Second, the opinion's prohibition of the use of "official acts" for prosecution evidence would not apply here. The defense may argue that certain actions, such as tweets from an official account or communication with White House aides like Hope Hicks, were official acts and therefore should not have been admitted. However, these arguments lack merit because the Supreme Court opinion would not exclude from evidence publicly known knowledge such as tweets, and communicating to any White House aides about the plan and steps to pay Ms. Daniels for her silence cannot be converted into "official acts" merely because they occurred inside the White House.

However, the Supreme Court's immunity decision is another step in a dangerous descent towards authoritarianism that former President Trump and his supporters are promoting. Flouting a founding principle of our legal system that "no one is above the law," the high court's decision does exactly the opposite and places the president above the law. In fact, there was no need for this Court to even take this case, as the courts below had fully laid out their reasoning for rejecting Trump's arguments seeking immunity. In nearly 250 years of history, there has never been a need to decide this issue and there was none now. Therefore, the idea that the decision was necessitated by fear of future baseless prosecutions directed against presidents should have been dead on arrival. Instead, the precedent now established by the Court allows the president to engage in unfettered criminal behavior while protected by immunity as long as they are committing their crime through the use of their office. For example, the famous hypothetical posed by D.C. Circuit Judge Florence Pan at oral argument about whether a president could order Navy S.E.A.L. team Six to assassinate a political rival has now been answered by the high court. The answer is "Yes," since the power of Commander-in-Chief is a core duty of the president. Justice Amy Coney Barrett's concurrence also noted the over-breadth of the majority ruling when she noted that excluding evidence of official acts

would “hamstring the prosecution” in a case involving bribery by a president (an enumerated impeachable offense under Art. II section 4).

Perhaps the best illustration for this subcommittee of the effect of the high court’s recklessly broad ruling is the fact that under this new law the very topic of this subcommittee’s inquiry is moot. There can be no “weaponization” of the federal government by the Executive Branch because whatever crimes, excesses or acts undertaken at the direction of the president are immune from criminal prosecution. In short, according to the Supreme Court, “weaponization” of the government is now lawful.

But this decision by the conservative majority on the Supreme Court is simply one part of the dismantling of the guardrails in our system intended to protect against dictatorships. Numerous statements and actions by former President Trump show his plans for shifting our country towards a Christian Nationalist government populated by political appointees who will enact the will of a strongman-style ruler. An excellent listing of these threats is set forth by the online forum Just Security at its American Autocracy Threat Tracker https://www.justsecurity.org/92714/american-autocracy-threat-tracker/#post-92714-_txpwt1a30h7w. But I will focus on just one key part of this threat: the plan by former President Trump and his supporters to deplete the number of career employees and replace them with political appointees. In particular, I will speak from my experience from working for the U.S. Justice Department and having seen first-hand the enormous importance of having the institutional knowledge and wisdom of career employees.

Thie plan to decimate the numbers of federal employees has been set forth in Project 2025 and specifically includes the Justice Department. For example, Project 2025 states:

> The next conservative Administration must make every effort to obtain the resources to support a vast expansion of the number of [political] appointees in every office and component across the department – especially in the Civil Rights Division, the FBI and the EOIR.”
> (2025 Presidential Transition Project at page 569).

This plan was actually partially implemented during Trump’s administration under the so-called “Schedule F” – an executive order authorizing the firing of tens of thousands of federal employees. He has indicated that he plans to re-issue this order if re-elected.

It is a grave danger to replace career employees with political ones. When I served as counsel to the Attorney General, I saw first-hand the enormous resources of institutional knowledge provided by career employees. It was not just the legendary ones like David Margolis or Jack Keeney, but the many others who brought their expertise and steady guidance to the leadership offices at the Department. In almost any sticky issue that I discussed with the Attorney General, she could be counted on to want the input of career employees because she understood that not only does the integrity of a public institution depend on steadiness, but the public confidence depends on that steadiness as well. A Justice Department that tries to

change its enforcement rules, policies and focuses with every change in administration cannot fulfill its place as the nation's law firm. Rather, if former President Trump and his supporters fulfill their wish, then the Department would simply become the President's law firm, serving only the President's desires.

My parents came to this country and, despite being separated from their parents, siblings and family, they stayed. They stayed because they loved this country and the freedom it sought – and continues to seek - to grant all of its people. That freedom is endangered now by the growing shadow of autocracy and its enablers who seek only to further their personal power, not the power of all Americans.

Thank you for inviting me to speak, and I welcome any questions.