

# 20-3977-cv(L)

20-3978-cv(CON)

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United States Court of Appeals  
*for the*  
Second Circuit

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E. JEAN CARROLL,

*Plaintiff-Appellee,*

– v. –

DONALD J. TRUMP, in his personal capacity,

*Defendant-Appellant,*

UNITED STATES OF AMERICA,

*Movant-Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**BRIEF FOR AMICI CURIAE THE RAPE, ABUSE & INCEST  
NATIONAL NETWORK (RAINN); TIME’S UP FOUNDATION; LEGAL  
MOMENTUM, THE WOMEN’S LEGAL DEFENSE AND EDUCATION  
FUND; THE NATIONAL ALLIANCE TO END SEXUAL VIOLENCE;  
THE NATIONAL CENTER FOR VICTIMS OF CRIME (NCVC); THE  
NEW YORK CITY ALLIANCE AGAINST SEXUAL ASSAULT; and  
SAFE HORIZON IN SUPPORT OF PLAINTIFF-APPELLEE**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, counsel for the undersigned certifies as follows:

**The Rape, Abuse & Incest National Network (RAINN)** certifies that it does not have a parent corporation, and that no publicly held company has a 10% or greater ownership interest in it.

**Legal Momentum, the Women's Legal Defense and Education Fund** certifies that it does not have a parent corporation, and that no publicly held company has a 10% or greater ownership interest in it.

**National Alliance to End Sexual Violence** certifies that it does not have a parent corporation, and that no publicly held company has a 10% or greater ownership interest in it.

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Dated: April 23, 2021  
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## STATEMENT OF AMICI CURIAE

The Rape, Abuse & Incest National Network (RAINN) and additional *amici curiae* respectfully submit this amicus brief in support of Plaintiff-Appellee E. Jean Carrol.<sup>1</sup> The *amici curiae* represent a wide variety of sexual violence and victim advocacy organizations with collective decades of experience studying sexual violence and working with survivors. They have a strong interest in the outcome of this case and believe their expertise in this field may be of assistance to the Court. The complete statements of *amici curiae* are provided in Appendix A.

### INTRODUCTION AND SUMMARY OF THE ARGUMENT

At the heart of this case is the right of survivors of sexual assault to access the justice system, to have their day in court, and to be made whole. The outcome of this case will shape the legal rights of survivors for decades to come.

In the ongoing struggle for survivors to have their experiences taken seriously and have their rights protected, it is impossible to ignore the uneven playing field where this battle takes place. When powerful offenders

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<sup>1</sup> All parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or part. Apart from *amici curiae*, no person or organization, including the parties or parties' counsel, contributed money intended to fund the preparation and submission of this brief.



are afforded a public forum, and are allowed to manipulate public opinion by shaming, degrading, lying, and attacking their victims' credibility, all victims suffer. The voices of alleged serial abusers are often amplified and widely disseminated in the public square. Survivors of sexual assault, however, have to muster the courage to speak out and struggle to be heard over the cacophony of voices demeaning, discrediting, and vilifying them.

This case starkly exemplifies this dynamic. By the time E. Jean Carroll came forward, her alleged assailant had the megaphone of the Presidency in his hands. His own Justice Department jumped into the fray, staking out a position that would protect Trump from responsibility for actions and comments that could not have less to do with the office he held, while denying a survivor any way to win back her reputation. This one sexual assault survivor must now confront not only defendant Trump, but also the might of the entire Department of Justice of the most powerful country in the world.

Accepting the arguments advanced by defendant Trump and DOJ would gut Carroll's chance at having her day in court. It would give license to all federal officials to slander and defame their victims with impunity. Such a decision would have a chilling effect on survivors of sexual violence

throughout the country and would exacerbate the challenges survivors already face in holding their attackers accountable.

By upholding the lower court's decision, this Court can ensure survivors have an equal right to justice, that they can access their day in court, and that they can be made whole. Such a decision will send a message to survivors everywhere that encourages them to come forward, to demand accountability, and to secure justice.

## ARGUMENT

In an excerpt from E. Jean Carroll's account of her alleged assault by Donald Trump sometime in 1995 or 1996, she recalls:

The moment the dressing-room door is closed, he lunges at me, pushes me against the wall, hitting my head quite badly, and puts his mouth against my lips. I am so shocked I shove him back and start laughing again. He seizes both my arms and pushes me up against the wall a second time, and, as I become aware of how large he is, he holds me against the wall with his shoulder and jams his hand under my coat dress and pulls down my tights. I am astonished by what I'm about to write: I keep laughing. The next moment, still wearing correct business attire, shirt, tie, suit jacket, overcoat, he opens the overcoat, unzips his pants, and, forcing his fingers around my private area, thrusts his penis halfway — or completely, I'm not certain — inside me. It turns into a colossal struggle. I am wearing a pair of sturdy black patent-leather four-inch Barneys high heels, which puts my height around six-one, and I try to stomp his foot. I try to push him off with my one free hand — for some reason, I keep holding my purse with the other — and I finally get a knee up high

enough to push him out and off and I turn, open the door, and run out of the dressing room.<sup>2</sup>

The issues of statutory interpretation and common law raised by this appeal are subject to extensive briefing by the parties—but at the heart of this case is a woman who told the world of a rape, committed forcefully and without her consent, by a man who targeted her, led her to a private dressing room, and overcame her with his size and strength. The victim confided in two close friends at the time, but delayed coming forward publicly for decades. Such delayed disclosure is a common feature of sexual assaults. She did not report to police—another common phenomenon in sexual assault cases. When she finally told her truth publicly, Trump attacked her credibility using text book tactics for offenders of sex crimes, which in this case were magnified in both their volume and their impact due to the defendant’s status at the time as President of the United States.

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<sup>2</sup> E. Jean Carroll, *Hideous Men*, The Cut, (Jun. 21, 2019), <https://www.thecut.com/2019/06/donald-trump-assault-e-jean-carroll-other-hideous-men.html>.

## I. VICTIMS OF SEXUAL ASSAULT OFTEN DELAY DISCLOSING OR NEVER REPORT TO POLICE

### A. Sexual Assault is Under-Reported and Rarely Prosecuted if Reported

In the United States, someone is sexually assaulted every 68 seconds.<sup>3</sup> Contrary to popular belief, most sexual assaults are not committed by a stranger. The vast majority—70% of all rapes—are committed by someone the victim knows, including friends, spouses, first dates, and relatives.<sup>4</sup> Yet victims often face disbelief or criticism in cases where they knew their perpetrator.<sup>5</sup>

Despite its prevalence, sexual violence is underreported to law enforcement: only about one out of four sexual assaults is ever reported to the police.<sup>6</sup> “Research demonstrates that victims, facing the intimidating

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<sup>3</sup> Rachel E. Morgan & Barbara A. Oudekerk, *Criminal Victimization, 2018*, NCJ 253043, The Bureau of Justice Statistics of the U.S. Department of Justice (Sept. 2019) <https://www.bjs.gov/content/pub/pdf/cv18.pdf> (calculated using the average number of sexual assaults from 2014-2018).

<sup>4</sup> *Acquaintance Rape*, NYC Alliance Against Sexual Assault, <https://tinyurl.com/wm4zhn8j> (last visited Apr. 21, 2021).

<sup>5</sup> Kerri L. Pickel & Rachel H. Gentry, *Mock Jurors' Expectations Regarding The Psychological Harm Experienced by Rape Victims as a Function of Rape Prototypicality*, 23 PSYCH. CRIM. & L. 254, 271 (2017) (study concluding that mock jurors are less likely to convict a defendant accused of acquaintance rape than one accused of stranger rape).

<sup>6</sup> See *The Criminal Justice System: Statistics, Rape, Abuse & Incest Nat'l Network*,

process of speaking to law enforcement, may delay or entirely avoid filing a complaint.”<sup>7</sup> “Victims fearing disbelief,<sup>8</sup> or that the seriousness of their assault may be minimized,<sup>9</sup> instead often disclos[e] to a trusted individual first.”<sup>10</sup> “The expectation that rape victims must report to authorities promptly or be disbelieved is unrealistic and inconsistent with research regarding the impact of rape on a victim . . . many victims are afraid, unsure of whom to tell, fearful of retaliation from the rapist, and wary of exposing themselves to a system that they do not trust and that may further invade

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<https://www.rainn.org/statistics/criminal-justice-system> (last visited Apr. 21, 2021).

<sup>7</sup> See Debra Patterson et al., *Understanding Rape Survivors’ Decisions Not to Seek Help from Formal Social Systems*, 34 HEALTH & SOC. WORK 127 (2009),

[http://responsesystemspanel.whs.mil/public/docs/meetings/20131107/Background\\_Materials/Rebecca\\_Campbell/Understanding\\_Rape\\_Survivors\\_Dec\\_Not\\_Seek\\_Help\\_Frml\\_Social\\_Sys\\_2009.pdf](http://responsesystemspanel.whs.mil/public/docs/meetings/20131107/Background_Materials/Rebecca_Campbell/Understanding_Rape_Survivors_Dec_Not_Seek_Help_Frml_Social_Sys_2009.pdf); see, Michael Planty et al., *Female Victims of Sexual Violence, 1994-2010*, NCJ 240655, The Bureau of Justice Statistics of the U.S. Department of Justice (Mar., 2013), <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>. Of the sexual violence crimes not reported to police between 2005-2010, 13% of victims cited fear that the police would not do anything to help as the reason they did not report.

<sup>8</sup> See *id.*

<sup>9</sup> See Courtney Ahrens, *Being Silenced: The Impact of Negative Social Reactions on the Disclosure of Rape*, 38 A.M. J. OF CMTY. PSYCH. 263 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1705531/> (citing Rebecca Campbell, *The Community Response To Rape: Victims’ Experiences With The Legal, Medical, And Mental Health Systems*, 26 A.M. J. OF CMTY. PSYCH. 355 (1998)).

<sup>10</sup> Brief for RAINN as Amicus Curiae, *Commonwealth of Pa. v. Cosby*, No. 3932-16, 3314 EDA 2018 (Sup. Ct. E.D. Penn. July 25, 2019), at 23.

their privacy and cause additional trauma.”<sup>11</sup> Trump himself promoted these misconceptions when he mocked Christine Blasey Ford’s disclosure on Twitter, claiming that if the assault were “as bad as she sa[id]” she would have immediately filed a police report.<sup>12</sup>

Another common misconception that Trump and others accused of rape have exploited is the myth that many sexual assault claims are false.<sup>13</sup> One study found that 47.7% of male students aged 18-24 years and 33.6% of females agreed that a significant proportion of police reported rapes were false.<sup>14</sup> Even law enforcement officers “[believe] that only 36% of rapes

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<sup>11</sup> Carol E. Tracy et al., *Rape and Sexual Assault in the Legal System*, Women’s Law Project, 5-6 (2013), [https://evawintl.org/wp-content/uploads/03\\_Rape\\_SexAsslt\\_LegalSystem\\_WLP\\_AEQuitas\\_20120605.pdf](https://evawintl.org/wp-content/uploads/03_Rape_SexAsslt_LegalSystem_WLP_AEQuitas_20120605.pdf).

<sup>12</sup> Kathryn Casteel, *What We Know About Victims of Sexual Assault in America*, FiveThirtyEight (Jan. 2, 2018) <https://projects.fivethirtyeight.com/sexual-assault-victims/> (citing Donald Trump (@realDonaldTrump), Twitter (Sep. 21, 2018)).

<sup>13</sup> See Emma Sleath & Ray Bull, *A Brief Report on Rape Myth Acceptance: Differences Between Police Officers, Law Students, and Psychology Students in the United Kingdom*, 30 VIOLENCE & VICTIMS 136 (2015), <https://curve.coventry.ac.uk/open/file/69eflfe6-0e15-4066-b7e6-5d14a8ce4935/1/brief%20report.pdf>.

<sup>14</sup> *Id.*

reflected ‘true’ rapes[.]”<sup>15</sup> But that is prejudice, not reality. Research shows that, in fact, only 2% to 8% of sexual assault reports are false.<sup>16</sup>

Survivors’ concerns with reporting their sexual assaults are well-founded. All too often, the very professionals who are tasked with the duty to deter and investigate instances of sexual violence turn a blind eye. For example, in 2018, the New York City Department of Investigation issued a report that found that the NYPD’s Special Victims Division regularly declined to investigate reported instances of acquaintance rape.<sup>17</sup> The report also found that the “neglect and understaffing of NYPD’s Special Victims Division” reflected a deeply troubling cultural acceptance of the idea that acquaintance rape survivors are less deserving of society’s collective

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<sup>15</sup> See Rachel M. Venema, *Police Officers’ Rape Myth Acceptance: Examining the Role of Officer Characteristics, Estimates of False Reporting, and Social Desirability Bias*, 33 VIOLENCE & VICTIMS 176 (2018).

<sup>16</sup> See Liz Kelly et al., *A Gap or a Chasm? Attrition in Reported Rape Cases*, Home Office Research, Development and Statistics Directorate (2005), <https://webarchive.nationalarchives.gov.uk/20110218141141/http://rds.homeoffice.gov.uk/rds/pdfs/05/hors293.pdf>; David Lisak et al., *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16 VIOLENCE AGAINST WOMEN 1318 (Dec. 16, 2010), <https://cdn.atixa.org/website-media/atixa.org/wpcontent/uploads/2016/03/12193336/Lisak-False-Allegations-16-VAW-1318-2010.pdf>.

<sup>17</sup> N.Y.C. Dep’t of Investigation, Press Release and Report, *An Investigation of NYPD’s Special Victims Division—Adult Sex Crimes* 1 (March 27, 2018), [https://www1.nyc.gov/assets/doi/reports/pdf/2018/Mar/SVDReport\\_32718.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2018/Mar/SVDReport_32718.pdf)

support, trust, and sympathy. As recently as January 2017, a NYPD captain publicly stated that acquaintance rape is “not a trend that we’re too worried about.”<sup>18</sup> Ultimately, less than 1% of sexual assaults are ever prosecuted and less than 0.5% of rapists are ever incarcerated.<sup>19</sup>

### **B. Survivors Fear Retaliation and Backlash if They Do Report**

*“Martin warned Carroll, in sum and substance: ‘Tell no one. Forget it! He has two hundred lawyers. He’ll bury you.’”<sup>20</sup>*

*“Carroll was also afraid of being dragged through the mud if she reported the rape. She was convinced that nobody would believe her if she came forward.”<sup>21</sup>*

Disclosure is even more difficult for survivors when their perpetrator is someone they know. Non-stranger rapists are often a part of their victims’ lives—someone in their professional network, social circle, or family. Survivors in these cases must overcome an additional challenge: facing their assailants after the rape. This dynamic raises a myriad of concerns for the survivor, including: fear of being blamed, fear of their families finding out

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<sup>18</sup> *Id.* at 29.

<sup>19</sup> RAINN, *The Criminal Justice System: Statistics, Rape, Abuse & Incest Nat’l Network*, <https://www.rainn.org/statistics/criminal-justice-system> (last accessed Apr. 22, 2021) (citing reports issued by the Department of Justice and Federal Bureau of Investigation).

<sup>20</sup> Carroll Compl. ¶ 48.

<sup>21</sup> *Id.* at ¶ 50.



(particularly if the perpetrator is a family member), fear of shaming if friends or the general public learn about their victimization, and fear of losing their job or suffering other professional harm. According to the Department of Justice, 20% of victims indicated fear of retaliation as their reason for not reporting.<sup>22</sup>

For all these reasons, Carroll did not want to go to the police.<sup>23</sup> “[S]he knew that while a woman who accused *any* man of rape was rarely believed, a woman who accused a rich, famous, violent man of rape would probably lose everything. She therefore reasonably concluded that if she accused Donald Trump of rape he would bury her in threats and lawsuits, and she would probably lose her reputation, not to mention everything she had worked for and achieved.”<sup>24</sup>

Carroll was right to be afraid: She was fired from her editorial position with ELLE magazine after Trump called her a liar for accusing him of rape.<sup>25</sup>

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<sup>22</sup> Michael Planty et al., *Female Victims of Sexual Violence, 1994-2010*, NCJ 240655, The Bureau of Justice Statistics of the U.S. Department of Justice (Mar. 2013), <https://www.bjs.gov/content/pub/pdf/fvsv9410.pdf>.

<sup>23</sup> Carroll Compl. ¶ 45.

<sup>24</sup> Carroll Compl. ¶ 5.

<sup>25</sup> Hannah Gold, *E. Jean Carroll Says Elle Fired Her Following Trump Rape Accusation*, The Cut (Feb. 19, 2020), <https://www.thecut.com/2020/02/trump-accuser-e-jean-carroll-says-she-was-fired-from-elle.html>.

## **II. WHEN SURVIVORS DO DISCLOSE, THEY FACE BACKLASH FROM THEIR PERPETRATOR AND THE PUBLIC**

Unfortunately, Carroll's experience with attacks and retaliation is not unique.

### **A. Perpetrators Attack the Credibility of Their Victims to Avoid Responsibility**

"Lawyers for Bill Cosby called his chief accuser a pathological liar who wanted a big payday[.]"<sup>26</sup> In a *Nightline* interview, Harvey Weinstein's lawyer, Donna Rotunno, blamed his accusers, telling the ABC news program, that in "circumstances where women don't want to take certain responsibilities for their actions, we infantilize ourselves."<sup>27</sup>

An attacker positioning himself as the victim and smearing the reputations of the survivors who have come forward is a common tactic and one of the many reasons that survivors are afraid to speak publicly about their experiences. That is what defendant Trump did in response to Carroll's allegations that he raped her:

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<sup>26</sup> *Bill Cosby's Lawyers Attack Accusers and 'Silly Evidence' in Closing Argument*, The Guardian (Apr. 24, 2018), <https://www.theguardian.com/world/2018/apr/24/bill-cosby-trial-latest-closing-arguments-sexual-assault-allegations>.

<sup>27</sup> Shannon Carlin, *Harvey Weinstein's Lawyer Questions His Accusers, Rape Accusations Ahead of Trial*, Refinery29 (last updated Dec. 8, 2019, 1:20 PM), <https://www.refinery29.com/en-us/2019/12/8987319/harvey-weinstein-lawyer-victim-blaming-nightline-abc-times-up-response>.

“Regarding the ‘story’ by E. Jean Carroll... I’ve never met this person in my life... If anyone has information that the Democratic Party is working with Ms. Carroll or New York Magazine, please notify us as soon as possible. The world should know what’s really going on. It’s a disgrace and people should pay dearly for such false accusations.”<sup>28</sup>

“I’ll say it with great respect: Number one, she’s not my type. Number two, it never happened. It never happened, OK?”<sup>29</sup>

He claims he never met her. He accuses her of fabricating the story for personal gain. He demeans her personal appearance. Then, he positions himself as the victim by alleging that Carroll’s revelations were part of a conspiracy by the Democratic Party.

These tactics are not unique to Trump. Perpetrators accused of sexual violence have long sought to silence their victims through a strategy known as DARVO, which stands for “Deny, Attack, and Reverse Victim and Offender roles.”<sup>30</sup> Coined by Dr. Jennifer Freyd, the term DARVO “refers to

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<sup>28</sup> Laura Litvan (@LauraLitvan), Twitter (June 21, 2019, 5:17 PM), <https://twitter.com/LauraLitvan/status/1142179819075121154> (“NEW: President Trump Responds to sexual assault allegations by E. Jean Carroll, saying ‘I’ve never met this person in my life’.”).

<sup>29</sup> Jordan Fabian & Saagar Enjeti, *EXCLUSIVE: Trump Vehemently Denies E. Jean Carroll Allegation, Says ‘She’s Not My Type’*, The Hill (June 24, 2019), <https://thehill.com/homenews/administration/450116-trump-vehemently-denies-e-jean-carroll-allegation-shes-not-my-type>.

<sup>30</sup> See Sarah J. Harsey et al., *Perpetrator Responses to Victim Confrontation: DARVO and Victim Self-Blame*, 26 JOURNAL OF AGGRESSION, MALTREATMENT & TRAUMA 644 (2017), <https://doi.org/10.1080/10926771.2017.1320777>.

a reaction perpetrators of wrong doing, particularly sexual offenders, may display in response to being held accountable for their behavior.”<sup>31</sup>

These tactics are often devastatingly effective. The use of DARVO instills confusion in victims, discourages them from speaking about their abuse, and increases their feelings of self-blame.<sup>32</sup> A 2020 study also showed that participants exposed to DARVO “perceived the victim to be less believable, more responsible for the violence, and more abusive” and judged the perpetrator “as less abusive and less responsible.”<sup>33</sup>

### **B. High-Profile Abusers Use Social Media to Continue to Victimize Survivors and Bully Them into Silence**

Social media platforms, like Twitter and Facebook, have given high-profile abusers increased control and influence over public opinion and the narrative around sexual assault.

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<sup>31</sup> Jennifer J. Freyd, *What is DARVO?*, University of Oregon, <https://dynamic.uoregon.edu/jjf/defineDARVO.html> (last visited Apr. 21, 2021).

<sup>32</sup> See Harsey, *supra* note 30, at 658; Jennifer J. Freyd, *Violations of Power, Adaptive Blindness, and Betrayal Trauma Theory*, 7 FEMINISM & PYSCH. 23 (1997).

<sup>33</sup> Sarah Harsey & Jennifer J. Freyd, *Deny, Attack, and Reverse Victim and Offender (DARVO): What Is the Influence on Perceived Perpetrator and Victim Credibility?*, 29 JOURNAL OF AGGRESSION, MALTREATMENT & TRAUMA 897, 897 (2020), <https://doi.org/10.1080/10926771.2020.1774695>.

One study that examined public discussions of sexual assault cases on Twitter found that victim-blaming tweets were substantially more likely to receive more than 10 retweets compared to victim-supporting tweets—29.4% compared to 3.1%.<sup>34</sup> Victim-supporting tweets were also more likely to not be retweeted at all compared to victim-blaming tweets.<sup>35</sup>

Even before the advent of social media, at the time of Trump’s alleged assault of Carroll in the 1990s, perpetrators of acquaintance rape were rarely charged; in those cases that were charged, the defense made a much greater effort “to defame a victim’s character” than in stranger-rape cases.<sup>36</sup> These victims were also met with the most skepticism from the public.<sup>37</sup>

This hostility towards victims of acquaintance rape in the 1990s can clearly be seen in the 1994 National Institute of Justice report, *The Criminal Justice and Community Response to Rape*, which found that these offenses were reported at rates well below the actual occurrence of the crimes.<sup>38</sup> The

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<sup>34</sup> Megan Stubbs-Richardson et al., *Tweeting Rape Culture: Examining Portrayals of Victim Blaming in Discussions of Sexual Assault Cases on Twitter*, 28 FEMINISM & PSYCH. 103, 103 (2018), available at <https://journals.sagepub.com/doi/abs/10.1177/0959353517715874?journalCode=fapa>.

<sup>35</sup> *Id.*

<sup>36</sup> Joel Epstein, Esq. & Stacia Langenbahn, *The Criminal Justice and Community Response to Rape*, National Institute of Justice, 64 (1994) <https://www.ojp.gov/pdffiles1/Digitization/148064NCJRS.pdf>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

report also found that victims of acquaintance rape were more afraid of reprisal by the offenders than victims of stranger rape, and more than two-thirds feared they would be blamed for inviting the rape.<sup>39</sup>

Against this background, it is no surprise that Carroll chose at the time to disclose her assault to only two close confidants.

### **C. Government Officials Accused of Sexual Assault Should Not Be Able to Attack Their Victims with Impunity**

Trump's ability to retaliate against Carroll and his other accusers grew when he became President. "The President of the United States possesses an extraordinary power to speak to his fellow citizens."<sup>40</sup> That is because, as the District Court explained: "No one gives [the President] permission to speak. No one can require him to say, or not to say, anything at all. No one has the authority to cut him off. And the statements he makes, as well as the topics he discusses, are entirely of his own choosing."<sup>41</sup>

That power was displayed to full effect in this case, first when Trump allegedly defamed Carroll in the international press, and then again when he demanded the U.S. Department of Justice intervene in this case so he could

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<sup>39</sup> *Id.* at 18.

<sup>40</sup> D. Ct. Op. at 42 (quoting *Trump v. Hawaii*, 138 S. Ct. 2392, 2417-18 (2018)).

<sup>41</sup> *Id.* at 45.

harness the full power of the federal government to help silence his accuser.<sup>42</sup> As the District Court recognized, the Department of Justice’s argument in this case is that “this is really a lawsuit against the United States.”<sup>43</sup>

If this Court adopts the Department of Justice’s argument, that would immunize not just Trump, but also all other federal officials from any accountability in cases like this. This would mean that “Members of Congress, and perhaps all federal officials who speak to the press with any regularity, effectively are immune from defamation claims for comments made within the District of Columbia, no matter how personal or private in nature.”<sup>44</sup>

That would have a devastating effect beyond this case. Trump is not the only government official to be accused of sexual assault. Every week, it seems, the headlines reveal to us yet another authority figure who sexually assaults, and then tries to silence, victims. Since Trump’s election in 2016, at least 138 elected or appointed government officials have been publicly

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<sup>42</sup> See Katie Benner & Charlie Savage, *White House Asked Justice Dept. to Take Over Defamation Suit Against Trump, Barr Says*, N.Y. Times (Sept. 9, 2020), <https://www.nytimes.com/2020/09/09/us/politics/trump-e-jean-carroll-lawsuit.html>.

<sup>43</sup> D. Ct. Op. at 2.

<sup>44</sup> *Id.* at 50; *see also id.* at 52.

reported for sexual assault or harassment. One quarter of those government officials kept their jobs even when reported.<sup>45</sup> Trump himself was elected President after at least 24 women had accused him of sexual misconduct and assault.<sup>46</sup>

This Court should not send the message to Carroll, other survivors, or the public at large that Carroll's courage in coming forward now should be similarly silenced and discouraged or that federal officials are immune from judicial accountability.

### **III. CARROLL, AND ALL SURVIVORS, DESERVE THEIR DAY IN COURT**

This Court's decision will have a measurable impact on survivors' ability to repair the harm that was done to them. The courage of one survivor accessing the justice system to hold her assailant accountable has a ripple effect on other survivors, empowering them to speak up.

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<sup>45</sup> Jamillah Bowman Williams, *#MeToo and Public Officials: A Post-Election Snapshot of Allegations and Consequences*, Georgetown Law, 2-3 (Nov. 9, 2018), <https://www.law.georgetown.edu/wp-content/uploads/2018/11/MeToo-and-Public-Officials.pdf>.

<sup>46</sup> Amber Jamieson et al., *A Timeline of Donald Trump's Alleged Sexual Misconduct: Who, When and What*, The Guardian (Oct. 27, 2016), <https://www.theguardian.com/us-news/2016/oct/13/list-of-donald-trump-sexual-misconduct-allegations>.



#MeToo directly inspired Carroll to come forward when “[s]he saw how women had at last changed the public conversation by saying ‘Me Too’ and by demanding accountability.”<sup>47</sup>

This ripple effect is supported by more than just anecdotal evidence. From 2015-2020, the number of people helped each year by amicus RAINN’s victim service programs more than doubled, from 154,285 to 323,122.

It is well documented that “hotlines for sexual assault victims[] [experience] call volume spikes whenever high-profile assaults make headlines.”<sup>48</sup> During Justice Kavanaugh’s confirmation hearing, for example, RAINN experienced a demonstrable increase in the number of calls to the National Sexual Assault Hotline from survivors of sexual violence with experiences similar to what Dr. Ford described in her testimony.<sup>49</sup> Similarly, after the abuse allegations against Hollywood

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<sup>47</sup> Carroll Compl. ¶ 70.

<sup>48</sup> Nigel Chiwaya, *New Data on #MeToo’s First Year Shows ‘Undeniable’ Impact*, NBC News (Oct. 11, 2018, 1:54 PM), <https://www.nbcnews.com/news/us-news/new-data-metoo-s-first-year-shows-undeniable-impactn918821>.

<sup>49</sup> Alia E. Dastagir, *E. Jean Carroll Accuses Trump of Rape and Calls Spike to National Sexual Assault Hotline*, USA Today (June 25, 2019, 2:27 PM), <https://www.usatoday.com/story/news/nation/2019/06/25/e-jean-carroll-accusing-trump-rape-leads-spike-hotline-calls/1559036001/?fbclid=IwAR02xEaxz8aSz830UdUUN2PCysfQ8FxGhIkTh-FheadA1zSrDYuXBTWfW4>.

producer Harvey Weinstein were publicized, the EEOC reported:

“Harassment complaints rose despite overall complaints dropping.”<sup>50</sup>

This case has had the same effect: In the weekend following the publication of an excerpt of Carroll’s memoir in *New York* magazine, RAINN’s hotline saw a 53% increase in calls.<sup>51</sup>

This data shows that when survivors speak out against high-profile individuals, such public disclosures empower others with similar experiences to come forward as well. In some cases, these additional disclosures relate to the high-profile individual in question—because one survivor standing up sends a message to other victims that they are not alone and gives them courage to come forward with their own stories.<sup>52</sup> In other instances, survivors feel empowered by these stories to unmask assailants in cases that will never make it into the headlines. As RAINN President Scott Berkowitz explained: “A disproportionate number of people who call after a story like this breaks are calling about something that happened to them some time ago. So I think seeing someone talk about their experience — it

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<sup>50</sup> Chiwaya, *supra* note 48.

<sup>51</sup> Dastagir, *supra* note 49.

<sup>52</sup> Chiwaya, *supra* note 48.

dredges up memories that are always there, but that people try and not focus on so they can live their day-to-day lives.”<sup>53</sup>

The data shows that changes in the law can also have a marked impact on the ability of survivors to come forward, tell their truth, and seek accountability in the courts. For example, in the first year after New York passed the Child Victims Act (legislation that extended the statute of limitations for people who experienced sexual assault as children), nearly 4,000 new survivor cases were filed.<sup>54</sup> Similar legislation in New Jersey resulted in 46 new cases filed in just the first minute the law went into effect.<sup>55</sup>

A decision by this Court affirming the District Court’s decision would have a similar impact, empowering victims to come forward and name their assailant, even if he now holds a powerful federal office. If, however, this Court were to rule that defendant Trump can defame Carroll with impunity,

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<sup>53</sup> Dastagir, *supra* note 49.

<sup>54</sup> Saba Ali, *3,797 and Counting: Child Victims Act Suits in NY Add Up, With More Expected*, Poughkeepsie Journal (Aug. 11, 2020, 6:00 AM), <https://www.poughkeepsiejournal.com/story/news/local/2020/08/11/ny-child-victims-act-suits-deadline-extended/5525387002/>.

<sup>55</sup> Blake Nelson, *N.J. Courts Face Surge of Lawsuits as New Sex Abuse Law Takes Effect*, NJ.com (Dec. 1, 2019), <https://www.nj.com/news/2019/12/nj-courts-face-possible-surge-of-lawsuits-as-new-sex-abuse-law-takes-effect.html>.

it will have a chilling effect on survivors speaking out against their perpetrators and limit their access to justice.

Our justice system is designed to give victims a process to address the harm done to them and an opportunity to be made whole. Overturning the District Court's ruling in this case would forever bar Carroll from having her day in court, and prevent Trump from ever being held accountable for his lies about her. Going forward, it would also immunize other abusers in positions of authority from being held responsible for their attempts to discredit, defame, and shame their victims.

### **CONCLUSION**

For the foregoing reasons, the amici respectfully request that the Court affirm the lower court's decision and deny Trump's and the Department of Justice's appeal.

Dated: April 23, 2021  
New York, New York

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## CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B), the word limit of Local Rule 32.1(a)(4) (A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f): this document contains 4,355 words.

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Dated: April 23, 2021  
New York, New York

**APPENDIX A**

**STATEMENTS OF INTEREST OF AMICI CURIAE**

**The Rape, Abuse & Incest National Network (RAINN), by Erin Earp, Legislative Policy Counsel.** RAINN respectfully submits this *amicus* brief in support of the Brief for Plaintiff-Appellee E. Jean Carroll. RAINN is the nation's largest anti-sexual violence organization, whose purpose is to provide services to victims of sexual violence and advocate for improvements to the criminal justice system's response to sexual violence. RAINN founded and operates the National Sexual Assault Hotline, and in its over 25 years of operation has helped more than three million survivors of sexual assault and their loved ones. RAINN is a leader in public education on sexual violence, provides consulting services to various industries on best practices for prevention and response to sexual assault/harassment, and advocates on the state and federal levels to improve legislation on sexual violence.

**Legal Momentum, the Women's Legal Defense and Education Fund.** Legal Momentum is the nation's longest serving civil rights organization dedicated to advancing the rights of women and girls. For over 50 years, Legal Momentum has worked to achieve gender equality through

impact litigation, policy advocacy, and education. Through its National Judicial Education Program (NJEP) Legal Momentum has a particular focus on educating the judiciary about sexual violence. NJEP's widely used resources include Judges Tell; What I Wish I Had Known Before I Presided in an Adult Victim Sexual Assault Case.

**The National Alliance to End Sexual Violence.** The National Alliance to End Sexual Violence is the voice in Washington for the 56 state and territorial sexual assault coalitions and over 1500 local sexual assault programs working in their communities to support survivors and end sexual violence. The programs in our network see the widespread and devastating impacts of sexual violence on survivors every day, and we advocate on behalf of those survivors.

**The National Center for Victims of Crime (NCVC).** NCVC is a nonprofit organization, is a leading resource and advocacy organization for victims of crime. The mission of NCVC is to forge a national commitment to help victims rebuild their lives. Dedicated to serving individuals, families, and communities, NCVC, among other efforts, advocates for laws and public policies that secure rights and protections for crime victims. To that



end, NCVC has filed amicus curiae briefs in cases across the country to advance the rights and interests of crime victims. As an advocate for victims' rights, NCVC has a profound interest in this case.

**The New York City Alliance Against Sexual Assault.** The mission of the New York City Alliance Against Sexual Assault is to prevent sexual violence and reduce the harm it causes through education, advocacy and research. The Alliance was founded in 2000 by rape crisis centers in New York City in order to advocate for the needs of survivors and the programs that serve them. Through public education, cutting-edge programming, advocacy for survivors and the pursuit of legal and policy changes, the Alliance continues to expand as a hub for resources and information about sexual violence. We are proud to sign on to this brief in an effort to support survivors in their path to healing.

**Safe Horizon, Inc.** Safe Horizon is the nation's largest non-profit victim services organization, operating a network of programs across New York City communities and systems and responding to 250,000 New Yorkers each year who are impacted by violence and abuse. We work with survivors of all forms of violence, including racism, to foster resiliency and

healing. Our mission is to provide support, prevent violence and promote justice for victims of crim and abuse, their families and communities. We enthusiastically sign onto this brief to support and uplift survivors in New York and across the country.

**TIME’S UP Foundation.** TIME’s UP Foundation is a national nonprofit organization dedicated to supporting survivors of sexual assault, harassment and abuse, and working to create safe, fair and dignified workplaces for all, especially women, people of color, LGBTQIA workers and those with disabilities. We stand for survivor justice, supporting survivors who speak out and working for accountability to combat sexual assault, harassment and abuse. This includes combatting efforts to silence or intimidate survivors who speak out, which is why we enthusiastically sign on to this brief.