

STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK

JANE DOE,

Plaintiff,

-against-

Index No. 161704/2026

CORNELL UNIVERSITY, INC., CHI PHI CHAPTER
HOUSE ASSOCIATION, CHI PHI FRATERNITY, INC.,
CHI PHI EDUCATIONAL TRUST, ALPHA BETA HOUSE
CORPORATION OF DELTA DELTA DELTA, DELTA
DELTA DELTA SORORITY, ZAREEN ENTERPRISE LLC
d/b/a MOONIES BAR & NIGHTCLUB, MATTHEW
INGALLS, JOHNATHAN NEWELL, WINSTON LEE,
GILLIO LOPES, DIEGO SARABIA, SCOTT NORRIS,
SCOTT KRETZSCHMAR, JOHN DOE (FACULTY),
JOHN DOE (ALUMNI), JOHN DOES (EXECUTIVE
BOARD), and ORAZIO PETITO,

Defendants.

**MEMORANDUM OF LAW
IN SUPPORT OF DEFENDANT DIEGO SARABIA'S
ORDER TO SHOW CAUSE**

James C. Knox, Esq.,
Alishah Bhimani, Esq.
HACKER MURPHY LLP
*Attorneys for Defendant
Diego Sarabia*
22 Corporate Woods Blvd, Suite 404
Albany, New York 12211
(518) 274-5820
jknox@hackermurphy.com
abhimani@hackermurphy.com

PRELIMINARY STATEMENT

Defendant Diego Sarabia respectfully submits this memorandum of law in support of his Order to Show Cause seeking narrowly tailored restrictions on extrajudicial statements by the parties and their counsel, together with interim relief pending the return date.

This action concerns allegations of sexual assault and related claims arising from events Plaintiff alleges occurred during the night of October 19, 2024, and the morning of October 20, 2024, while she was an undergraduate student at Cornell University. Plaintiff seeks damages from corporate, institutional, and individual Defendants and has demanded a jury trial.

Since this action began, Plaintiff's counsel has repeatedly addressed the merits through widely disseminated media statements. The accompanying attorney affirmation identifies some of the many public statements by Plaintiff's attorney concerning Plaintiff's alleged incapacity to consent, an alleged cover-up by Cornell University and others, the credibility and motives of Defendants, the asserted destruction of evidence, the purported significance of evidence referenced in the Complaint, and the possibility that additional persons participated in the alleged assault. These statements present disputed allegations and interpretations of evidence to the public before discovery and trial.

The resulting danger is not abstract. The Court has already found that information appearing in filed documents was used by online observers to threaten and dox a nonparty's family after an incorrect address was associated with a Defendant. In its October 9, 2026 Decision and Order, the Court characterized the conduct as dangerous internet vigilantism and warned that malicious threats and possible physical harm were approaching a point at which they could impede the legal process. Further, the risk of improper influence upon the prospective juror pool in this

case is undeniable given the media's desire for commentary which Plaintiff's counsel has been working daily to satisfy.

The requested Order does not restrain the press, close the courtroom, or prevent access to judicial records that remain public. It regulates only participating parties, their attorneys, and their legal representatives; employs a substantial-likelihood-of-material-prejudice standard; identifies specific categories of sensitive information; and preserves communications necessary to litigate, investigate, report unlawful conduct, and comply with legal or institutional obligations.

That focused relief is warranted. Courts may regulate litigants and counsel to protect judicial proceedings, but restrictions affecting speech must be precise and no broader than necessary. The proposed Order satisfies both principles.

STATEMENT OF FACTS

Plaintiff commenced this action against Cornell University, fraternity and sorority entities, a nightclub, and numerous individuals, including Defendant Diego Sarabia. The case remains in its early stages, and certain parties have not yet even appeared in this action.

As set forth in the accompanying supporting affirmation, Plaintiff's counsel has undertaken numerous television and media appearances concerning the action. Among other things, counsel has publicly asserted that Plaintiff was incapable of consent, that Defendant Cornell University and the Defendant fraternity engaged in a cover-up, that Defendants deleted or disposed of evidence, that particular material constitutes decisive proof of wrongdoing and liability, and that unidentified additional persons may have participated in the alleged assault. The statements also address the character, credibility, reputation, and motives of multiple Defendants.

The accompanying affirmation further explains that Plaintiff's publicity campaign was apparently coordinated with media representatives before the action was even filed, and it remains

ongoing. Defendant seeks relief now because additional public advocacy concerning disputed facts, expected testimony, and potential evidence risks compounding the prejudice, before the parties have completed discovery or the Court has adjudicated the merits.

The proposed Order would prohibit public communications that the speaker knows or reasonably should know will be publicly disseminated and that present a substantial likelihood of materially prejudicing this action. It would also restrict the dissemination of nonpublic personal identifying information, unfiled discovery material, certain statements about parties and witnesses, prejudicial descriptions of nonpublic evidence, and communications encouraging threats, harassment, intimidation, doxing, or improper extrajudicial contact.

The proposal contains express exceptions for statements made in open court or properly filed papers; communications necessary to investigate, prosecute, defend, or resolve the action; disclosures required by law or other specified obligations; limited responses to prejudicial publicity; and good-faith reports of threats or unlawful conduct. The restrictions would remain in effect only through trial or further order of the Court.

LEGAL STANDARD

CPLR 2214(d) permits a court, in a proper case, to grant an order to show cause in place of a notice of motion and to prescribe the time and manner of service.

CPLR 6313(a) authorizes temporary relief before a hearing when the movant shows that immediate and irreparable injury, loss, or damage will result unless the adverse party is restrained. When temporary relief is granted, the hearing on the application for a preliminary injunction must be set for the earliest possible time.

New York courts of record possess inherent authority to regulate and control the conduct of litigants and counsel appearing before them. See Gabrelian v. Gabrelian, 108 A.D.2d 445, 454

(1985). Because inherent authority carries a risk of arbitrary use, it must be exercised with restraint and in response to the circumstances of the particular case. See id.

A restriction on speech must be framed in the narrowest terms that will accomplish the permissible and specifically identified objective. See Adams v. Tersillo, 245 A.D.2d 446, 447 (2d Dept. 1997). A prior restraint carries a heavy presumption against constitutional validity, and the party seeking it bears a correspondingly heavy burden of justification. Karantinidis v Karantinidis, 186 A.D.3d 1502, 1504 (2d Dept. 2020). The order therefore must be tailored as precisely as possible to the case's demonstrated needs. See id.

Attorney speech presents distinct concerns when counsel's public statements threaten the integrity of an adjudicative proceeding. A restriction directed to participating attorneys is appropriately limited when it applies only to public speech presenting a substantial likelihood of material prejudice, operates without regard to viewpoint, and postpones the restricted commentary only while the proceeding remains pending. See Gentile v. State Bar of Nev., 501 U.S. 1030, 1075 (1991).

ARGUMENT

A. The Court Has Authority to Protect This Proceeding from Prejudicial Outside Influence.

The Court's inherent authority extends to controlling the conduct of both litigants and counsel appearing before it. See Gabrelian, at 454. That authority may be exercised to protect the orderly, fair, and efficient resolution of litigation, provided the Court acts with restraint and tailors its intervention to the circumstances presented. See id.

The circumstances here warrant intervention. Plaintiff has demanded a jury trial. Yet before discovery and adjudication, Plaintiff's counsel has publicly advanced disputed conclusions concerning consent, culpability, witness credibility, destruction of evidence, institutional

misconduct, and the alleged participation of additional unidentified persons. Those subjects go to the heart of the claims and defenses that a jury may ultimately be asked to decide.

Due process requires an impartial jury free from outside influence, and trial courts may take affirmative measures to prevent prejudicial publicity from compromising that right. See Neb. Press Ass'n v. Stuart, 427 U.S. 539, 554 (1976). Lawyers' statements carry particular weight because the public may perceive counsel as having special access to discovery, client communications, and other case information. See United States v. Cutler, 58 F.3d 825, 836-838 (1995).

The risk has already manifested in threats and doxing arising from information associated with this action. The Court's sealing and redaction directives addressed the immediate exposure of purported addresses, but the supporting affirmation describes continuing public statements concerning disputed facts and potential evidence. A focused order, governing litigation participants, is therefore necessary to preserve the adjudicative process while the action proceeds.

B. The Proposed Restrictions on Attorneys Track the Constitutionally Permissible Material-Prejudice Standard.

The proposed Order does not impose a blanket prohibition on attorney speech. It restricts only statements that counsel knows or reasonably should know will be publicly disseminated and that present a substantial likelihood of materially prejudicing the adjudication.

That is a recognized and limited standard for regulating attorneys participating in particular litigation. A restriction confined to attorney speech substantially likely to have a materially prejudicial effect advances the substantial interest in protecting adjudicative proceedings while leaving counsel free to speak on matters falling outside that defined risk. See Gentile at 1075-76.

The proposed Order also preserves neutral procedural information and communications necessary to litigate the case. It permits statements made in court or in properly filed papers,

necessary litigation communications, disclosures required by law or court order, limited responses to prejudicial publicity, and reports of threats or unlawful conduct.

Those exceptions matter. An order barring counsel from discussing any matter related to a case is constitutionally impermissible when unsupported by findings of a serious threat, when less restrictive measures have not been considered, or when the order reaches innocuous information. See National Broadcasting Co. v. Cooperman, 116 A.D.2d 287, 293 (2d Dept. 1986). Likewise, a blanket restriction covering anything that has or may have something to do with a case is not narrowly tailored. See United States v. Salameh, 992 F.2d 445, 447 (2d Cir. 1993).

The proposed Order avoids those defects. It does not bar every discussion of the action. It targets materially prejudicial public advocacy, nonpublic discovery, personal identifying information, prejudicial descriptions of expected testimony and evidence, and communications encouraging harassment or intimidation. Its exceptions preserve legitimate case-related communications, and its duration is limited to trial or further order.

C. The Relief Is Directed to Specific, Demonstrated Risks Rather Than General Criticism or Disparagement.

New York appellate authority rejects broad orders prohibiting a party from making derogatory statements to any person when the identified harm can be prevented through a narrower restriction. Adams v. Tersillo, 245 A.D.2d 446, 447 (2d Dept. 1997). A prohibition against discussing, demeaning, or disparaging another party before all third parties is similarly overbroad when the demonstrated injury concerns communications to a specific audience. See Karantinidis v Karantinidis, 186 A.D.3d 1502, 1504 (2d Dept. 2020).

Here, the proposed Order does not impose such a generalized nondisparagement requirement. It does not prohibit criticism merely because it is unfavorable. Instead, it applies a material-prejudice threshold and identifies concrete categories tied to the dangers presented here:

private identifying information, nonpublic discovery, prejudicial assertions concerning witnesses and expected testimony, prejudicial disclosure of nonpublic evidence, and communications facilitating threats, harassment, intimidation, doxing, or improper contact.

Nor does the proposed Order rely solely on the professional-conduct rules to bind the parties themselves. An attorney-conduct rule does not, by its own force, authorize a gag order against a represented party. See Doe v. Zeder, 5 Misc. 3d 574, 579 (Onondaga Cty. Sup. Ct. 2004). The requested restrictions on parties instead rest on the Court's inherent authority to regulate litigants appearing before it and are confined to conduct threatening the fairness and safety of this proceeding. See Gabrelian, at 454.

The distinction is important, as here the Court is not being asked to suppress a party's viewpoint or prevent access to public proceedings. It is instead being asked to prevent litigation participants from using public communications to disseminate nonpublic information, influence prospective jurors concerning disputed merits, or facilitate threats and extrajudicial pressure while the case is pending.

D. Less Restrictive Measures Do Not Adequately Address the Present and Continuing Harm.

Before imposing a restriction on case-related speech, a court should consider whether less restrictive alternatives can adequately protect the proceeding. See National Broadcasting Co., at 293. Potential alternatives may include searching voir dire, jury instructions, postponement, sequestration, or a change of venue. See id.

Those trial-stage measures do not fully address the present circumstances. This action is in its infancy, some parties have not appeared, and the publicity is ongoing. The harm includes not only possible juror prejudice, but also the public dissemination of nonpublic personal information and the danger of threats, doxing, intimidation, and extrajudicial contact. Voir dire and jury

instructions cannot retract information already distributed online or prevent current harassment before a jury is selected.

The Court has already employed a narrower remedial measure by sealing specified documents and directing the filing of redacted versions. That relief addressed documents filed with the Court, but it does not govern subsequent extrajudicial statements by litigation participants. The proposed Order complements that limited protection by regulating only specified public communications and preserving legitimate litigation activity.

E. Interim Relief Is Necessary Pending the Return Date.

CPLR § 6313(a) permits temporary restraint before a hearing when immediate and irreparable injury will otherwise result. The existing pattern of repeated media appearances, the early posture of the action, and the absence of any apparent end to the publicity establish a present risk of additional statements before the application can be heard.

The Court has already found that publicity surrounding filed information led to dangerous internet vigilantism and created a risk that malicious threats and possible physical harm could impede the legal process. Once private information is further disseminated, harassment is encouraged, or prospective jurors are exposed to counsel's characterizations of disputed evidence, later corrective measures may not eliminate the resulting harm.

The interim relief sought is correspondingly limited. It would apply only pending the hearing and determination of this application and only to the restrictions expressly imposed by the Court when signing the Order to Show Cause. That temporary protection preserves the status quo and prevents the identified risks from escalating before all parties can be heard.

CONCLUSION

For the foregoing reasons, Defendant Diego Sarabia respectfully requests that the Court sign the proposed Order to Show Cause, impose the requested interim restrictions pending the return date, and, after hearing the parties, enter an Order:

- (1) Directing the parties, their attorneys, and their legal representatives to refrain from public communications that they know or reasonably should know present a substantial likelihood of materially prejudicing this action;
- (2) Prohibiting the public dissemination of the specified personal identifying information, nonpublic discovery, prejudicial statements concerning parties, witnesses, expected testimony or nonpublic evidence, and communications facilitating threats, harassment, intimidation, doxing, or improper extrajudicial contact;
- (3) Preserving the exceptions stated in the proposed Order for court proceedings, filed papers, necessary litigation communications, legally required disclosures, appropriately limited responses to prejudicial publicity, and good-faith reports of threats or unlawful conduct; and
- (4) Granting such other and further relief as the Court deems just and proper.

Dated: October 9, 2026
Albany, New York

By: _____

Alishah Bhimani
Attorneys for Defendant Diego Sarabia
Office & P.O. Address
22 Corporate Woods Boulevard, Suite 404
Albany, NY 12211
Telephone: 518-274-5820

By: _____

James C. Knox
Attorneys for Defendant Diego Sarabia
Office & P.O. Address
22 Corporate Woods Boulevard, Suite 404
Albany, NY 12211
Telephone: 518-274-5820