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October 14, 2026

Via NYSCEF

Hon. Phaedra F. Perry-Bond, J.S.C.
Supreme Court, New York County
IAS Part 35
60 Centre Street, Courtroom 252
New York, New York 10007

Re: Jane Doe v. Cornell University, Inc., et al.
Supreme Court | New York County | Index No. 161704/2026

Dear Judge Perry-Bond:

Pursuant to the court's email of October 12, 2026, Plaintiff submits the following letter in opposition to the signing of the proposed order to show cause, and its TRO request, filed by Defendant Diego Sarabia (NYSCEF 48, 49, 50). The proposed order to show cause is completely misguided and must be denied.

Statement of Facts

This is a claim made for the rape of Jane Doe that occurred in the Chi Phi House at Cornell University on October 19-20, 2024. I will not discuss the facts of the case as they have been widely reported in the media. On September 16, 2026, we filed a lawsuit against several individuals and entities for claims related to the subject assault.

This case was first reported in The Cornell Daily Sun on September 18, 2026.¹ The case was also first published in New York Post, a major market newspaper, on September 18, 2026.² My name was not mentioned in either publication, nor was I interviewed by either outlet before the stories were published. At the time the lawsuit was first reported in the media, *I was overseas*. Following the reporting about the case in the New York Post, media interest has been extraordinary, and it continues to be because the case involves a matter of significant international interest: sexual abuse of women on college campuses.

¹ <https://www.cornellsun.com/article/2026/09/tccsuykuvb4z>

² <https://nypost.com/2026/09/18/us-news/cornell-frat-bros-gang-rape-student-texting-free-p-y-during-sick-assault-shocking-lawsuit/>

I have been previously involved in other high profile litigations including claims against Harvey Weinstein and Sean Combs among other matters. I am a lawyer who is known in New York legal circles as an experienced, well-credentialed and ethical trial attorney. As a result, I have had the opportunity to handle significant cases. However, I am by no means a “media lawyer” as is being argued.

I fully acknowledge that the media response far exceeded what I had expected as well as the ramifications to my client, myself and both our families. However, my response to media inquiries has been reactive; reacting to leaks and developments in areas other than the civil lawsuit in which I am acting as an attorney.

Movant has argued that I have engaged in a meticulously planned “media blitz” that was in the works long before the filing of this case. *This is not true.* All my media responses have been *reactive* to questions posed about the criminal investigation and in response to evidentiary leaks perpetrated by the defendants to media outlets. There was no pre-planning for media prior to the filing of the case. In fact, all the media inquiries have been personally addressed by myself or my staff. We do not have a public relations company involved. This is simply a falsehood that the movant is presenting as fact.

Throughout the past two weeks, I have received numerous requests from the media for the Title IX records, including the exhibits, conclusions and testimony. I certainly do have these records in my possession as Ms. Doe’s attorney. Similarly, other than Cornell, the only parties that would have possession of the Title IX records would be Defendants *and their attorneys*. When media outlets have requested the Title IX documents, I have uniformly told them that I *would not* be able give the records to them because *we agreed that they would be kept confidential* at the time of the Title IX hearings. Certainly, much of what is contained in these records is favorable to my client. However, we made a confidentiality agreement, and we intend to honor it.

I am happy to provide the Court, for an *in camera review*, copies of multiple emails and texts where these records were sought from me and I rejected the request. Based on what I know about who had copies of the records and who it was released to, it is very clear to me that representatives of the Defendants have leaked the Title IX records to the media to push a narrative in favor of their clients to a certain media outlet with direct ties to one of the attorneys handling the related criminal matter.

I will state exactly what I have provided for media outlets:

1. The Second Page of the Group Chat included in the complaint;
2. Copies of various threats received by Ms. Doe and me;
3. Copies of the Police Reports regarding the swatting incidents at Ms. Doe’s family home.

It is very clear to me that all the Title IX evidence and testimony that has been released to the media *has been released by attorneys representing the Defendants*. I can state with certainty that the Title IX leaks *have not come from any representative of the Plaintiff*. They have been leaked by the Defense to the media outlets of their choosing to attempt to create a perception that the rapes and assaults were somehow consensual. Based on their conduct in releasing materials that were supposed to be confidential, to do exactly what they are accusing me of, is certainly the definition of ironic.

Following the publicity of this case, extensive inquiry was directed at the actions of the local district attorney and the actions of the Cornell Police in investigating the criminal case. This was extensively reported on and resulted in Governor Hochul appointing a special prosecutor based on the obvious failures of local law enforcement that came to light.

Based on my involvement with the Sean Combs litigation, I am very familiar with how defense firms appoint a shadow member of the defense team to push its agenda in the national media. The same tactics are being utilized in this matter. Following the positive result of having a Special Prosecutor appointed, Defendants counsel began making public statements in the media about the case.

Attorney Jeremy Saland appeared in the media numerous times and made statements about evidence regarding witness statements, negative hair follicle drug testing done almost 90 days after the assaults and also repeatedly highlighting the findings of the Title IX Board.³ I will not burden the Court with summarizing all of Mr. Saland's appearances. But suffice to say, he publicly disseminated pertinent facts of the case, confidential Title IX findings and medical testing results as well as advocating heavily for his client.

Perhaps the most repugnant statement that Mr. Saland gave was when he stated that Ms. Doe's claims were nothing more than a "money grab."⁴ Mr. Saland's comments were not well received in the media. Nor were they well received by Ms. Doe.

Nevertheless, shortly after this wrong-footed rebuttal of the case, selective parts of the Title IX records began to be released. Following this, other Defense attorneys entered the fray and began discussing the case. Andrew Miltenberg appeared on CBS News and NewsNation (Cuomo & Pavlich) and extensively discussed the leaked texts and argued the facts of the case and questioned the credibility of Ms. Doe.

³ <https://www.youtube.com/watch?v=CRAMTzGuCi0>; <https://www.cbsnews.com/newyork/news/cornell-university-rape-allegation-chi-phi-snapchat-conversation/>; <https://www.nbcnews.com/news/us-news/investigative-records-give-insight-accused-cornell-student-responded-a-rcna600987>; <https://www.facebook.com/NewsNationNow/videos/cornell-7-sexual-assault-case-reopened-accused-mans-attorney-speaks-out/1389106529975871/>; <https://www.cnn.com/2026/09/29/us/video/cnn-sitroom-pamela-brown-jeremy-saland-jane-doe-cornell-seven-client-sexual-assault-university-fraternity>; <https://www.youtube.com/watch?v=WHXMNh87f30>; <https://www.nytimes.com/2026/10/03/nyregion/cornell-men-university-discipline.html>; <https://www.cornellsun.com/article/2026/10/records-reveal-cornell-s-punishments-for-seven-chi-phi-defendants>

⁴ <https://nypost.com/2026/09/28/us-news/accused-cornell-frat-bros-lawyer-dismisses-heinous-rape-claims-as-money-grab/>

Thereafter another Defense lawyer, Tara Davis appeared on the Megyn Kelly Show and discussed “bombshell” revelations about Ms. Doe’s “changing account” and the existence of “false narratives.”

Throughout this period, TMZ has reported and regurgitated the texts to undermine Ms. Doe’s story. This has been a continuous process and has been a regular part of their reporting paired with regular interviews with attorney Mark Geragos. Mr. Geragos has also appeared numerous times on NewsNation to opine on all the “issues” with Ms. Doe’s case.

Mr. Geragos’s entry into the media fray with the goal of undermining a survivor’s claim is one that I have seen before. When I was initially interviewed on the Cuomo Show in December 2024, regarding three cases that I had filed against Sean Combs, Mr. Geragos appeared as the “counterpoint” and assumed the mantle of apologist for Mr. Combs.⁵ Unbeknownst to me at the time, his daughter, Teny Geragos, the current criminal attorney for Defendant Winston Lee in this matter, was the then-attorney for Mr. Combs.

Following this appearance and thereafter, I closely followed the Combs case to monitor the interplay between Mr. Geragos and the media and his influential role in the defense strategy and public messaging despite not being an official member of the trial team. This culminated in prosecutors objecting to his role as a “spokesman” for the defense.⁶ He was ultimately admonished by the judge overseeing the case for his role as the “unofficial” member of the defense team.^{7&8}

Being fully aware of the connection with Mr. Geragos and his daughter in this case, I have been keeping a close eye on whether he would take on a repeat role of the one he took during the Combs litigation as the public messaging point person for the defense. In due course, Mr. Geragos has already made repeated appearances on TMZ continually attacking Ms. Doe’s credibility in the media. Unsurprisingly, leaks of the prior confidential proceedings in this case have emanated through TMZ, in which Mr. Geragos has close ties. One can put the pieces together and understand what might be afoot. The role of Mr. Geragos and others has been to increase the temperature surrounding this case not lower it.

As new limited details about the case were released, bigots online rushed to the defense of the alleged perpetrators and attacked Jane Doe and other survivors of sexual assault.⁹ This has largely resulted from the selective reporting of materials related to the defense leak of Title IX documents. This resulted in a stampede of people trying to identify Ms. Doe and out her online.

⁵ <https://www.newsnationnow.com/cuomo-show/three-men-suing-sean-diddy-combs-rape/>

⁶ <https://www.hollywoodreporter.com/news/general-news/sean-diddy-combs-mark-geragos-prosecutors-letter-1236208857/>

⁷ <https://www.nbcnews.com/news/us-news/attorney-mark-geragos-calls-sean-diddy-combs-prosecutors-six-pack-whit-rcna205355>

⁸ <https://www.foxnews.com/entertainment/celebrity-lawyer-mark-geragos-steals-diddy-trial-spotlight-runs-trouble-judge>

⁹ <https://globalextrémism.org/post/cornell-assault-case/>

Other women have been misidentified as Ms. Doe. These individuals know that they are beyond the power of this Court and are acting in an irresponsible and cruel manner.

We acknowledge misidentifying a person as Mr. Ingalls. When we were appraised of this, we immediately contacted the Court to correct this mistake, owned our error and apologized. We did not realize at the time that Mr. Ingalls was from Dubai and his legal first name was Umar.¹⁰ We acted in good faith because the individual identified fit the search criteria that we had.

I have made several appearances attempting to calm the situation down and to bring the temperature down without avail. The threats continued and escalated so that Ms. Doe received several violent threats and a phone call threatening to kill her family. This culminated in a swatting incident at her family home where her father, brother and friends had weapons drawn on them by police who were doing their job.¹¹ The threats to Ms. Doe continued and the following day threats were made on my wife's life and I was required to hire armed security to guard my home.

I said very clearly when interviewed that "enough was enough" and took a tone which was geared to effectively calm the situation down. I also noted that certain minor and irresponsible members of the media were sowing hate and reaping what they sowed. This resulted in an outpouring of support from many for what Ms. Doe was being subjected to and calmed things down. I believe that this was good use of the media by me to bring attention to what was going on and to try to stop it¹². It certainly worked because the threats ended shortly thereafter.

I have been a member of this Court for over 30 years, and I know what limits there are on speech related to trial publicity. I have repeatedly appeared in the media to state that this is not a political case and that the rancor was too much¹³. Most of what my interviews focused on are the threats that Ms. Doe and I have received, responses to attacks regarding the Defense's leaked text messages, abusive statements from minor podcasters, among other leaked evidence.

The real motivation for movants attempts to effectively muzzle me is twofold. Due to my vast experience in handling abuse cases, the extensive studies I have read and many conversations that I have had with experts in trauma, regarding the impact of trauma on survivors, I am able to rebut their efforts to undermine Ms. Doe's credibility by utilizing their own documents that they have leaked.

Except for a few obscure or defense related media outlets, this has resulted in a positive discourse by people to learn more about the impact of trauma and the idea that responses to rape are not always as one would expect in the immediate aftermath. This has led to greater education on this subject and experts in the field have weighed in to explain this. I believe that this has

¹⁰ <https://nypost.com/2026/10/10/us-news/sodomized-cornell-frat-bro-is-anti-us-son-of-dubai-islamic-studies-prof/>

¹¹ <https://en.wikipedia.org/wiki/Swatting>

¹² <https://www.cnn.com/2026/10/07/us/cornell-lawsuit-student-protests-hnk>

¹³ <https://www.youtube.com/watch?v=Fx-FAyChGQ0>

been for the good. Movant does not care for this because it undermines the use of leaked materials to create a false narrative¹⁴.

The second reason for this application is that they want to control the narrative and continue to leak confidential information to “friendly” media outlets and push their version of the events through surrogates. Clearly, this is what was done in the Combs case, and I believe this is what is happening here.

However, this is too important a case to permit the defendants to run rough shod with a surrogate pushing their agenda while Ms. Doe must in effect “take it”. That would be manifestly unfair and unjust. My media appearances have been focused on righting the ship in the face of intense attacks on Ms. Doe orchestrated by the defense and others, her credibility and the dangers that coming public have brought upon her and her family. I have done this without leaking any confidential documents.

Preventing me from speaking on her behalf effectively stifles Jane Doe and plays directly in the hands of the Defendants who do not want a level playing field in the public eye. Aside from the unfairness of the relief sought, the application is in direct violation of the First Amendment. Certainly, courts are permitted to issue gag orders in appropriate circumstances, but as described herein the instant application flouts all restrictions and there is no foundation for the relief sought.

Summary of Legal Arguments

This order to show cause should not be signed as an inadequate showing has been demonstrated for the extraordinary relief sought. As demonstrated in this letter, a prior restraint on speech requires a finding that there is a clear and present danger to the administration of justice. Even then, if alternative remedies can be utilized to mitigate the prejudice and protect the right to a fair trial, then the restraint is uncalled for.

Furthermore, even if a prior restraint on speech is appropriate, same must be as targeted as possible so only the bare minimum of speech is restricted. Similarly, any order must not be vague, as otherwise parties would need to overly restrict their speech to make sure they are complying. Finally, the ability to respond to bad press must be protected under all circumstances, otherwise the court’s protections would themselves be causing damage to those that abide. This letter demonstrates that for all of the indicated reasons, there should be no restrictions imposed herein.

The Clerk’s Rejection & the Amended Filing

This proposed order to show cause was originally filed on October 9, 2026, but was rejected by the ex-parte clerk since the TRO request was non-existent. Originally, defendant merely asked that the court place “interim restrictions”, which was not a request for anything in specific. Paukman v. Uvaydov, 2024 NY Slip Op 51689(U) (Sup. Ct., Kings County 2024) (“the Court

¹⁴ While I am loathe to waste this Court’s time discussing Megyn Kelly and her statements that Ms. Doe was ugly and in effect “looking to be raped”. I believe my response to this trope was helpful to all survivors who are victimized in such a mean-spirited way. <https://www.ms.now/opinion/megyn-kelly-cornell-jane-doe-hypocrite>; <https://www.thedailybeast.com/megyn-kelly-torched-by-alleged-cornell-rape-victims-lawyer-after-sick-attack>.

finds that his order to show cause fails the most basic requirement of motion practice, that it specify "the relief demanded and the grounds therefor"). In their amended filing yesterday, defendant now asks that the court issue a TRO granting all of the requests for relief made in the order to show cause. This was a material change.

Legal Standard of Prior Restraints of Speech

The First Department in Ash v Board of Mgrs. of the 155 Condominium, 44 AD3d 324 (1st Dept. 2007) noted that:

any imposition of prior restraint, whatever the form, bears a "heavy presumption against its constitutional validity" ... and a party seeking to obtain such a restraint bears a correspondingly heavy burden of demonstrating justification for its imposition ... It is also incumbent upon a trial court to insure that each of the parties receives a fair trial and, to that end, possesses both the power and responsibility to safeguard their rights ... The trial court, in so doing, must bear in mind the fact that prior restraints upon the rights of free speech and publication "may only be overcome upon a showing of a 'clear and present danger' of a serious threat to the administration of justice".

The case of Karantinidis v. Karantinidis, 186 A.D.3d 1502, 131 N.Y.S.3d 363 (2nd Dept. 2020) includes an on-point rendition of the legal principles at issue:

The defendant correctly contends that the portion of the order granting that branch of the plaintiff's motion which was for an order directing the defendant not to discuss, demean, or disparage the plaintiff to any third parties, including but not limited to the plaintiff's patients, was an unconstitutional prior restraint on speech. A prior restraint on speech is a law, regulation or judicial order that suppresses speech on the basis of the speech's content and in advance of its actual expression ... Any imposition of prior restraint, whatever the form, bears a "heavy presumption against its constitutional validity, and a party seeking to obtain such a restraint bears a correspondingly heavy burden of demonstrating justification for its imposition" ... An injunctive order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order ... The order must be tailored as precisely as possible to the exact needs of the case.

No Showing of Any Clear and Present Danger

The speech that is curtailed must also be shown to represent “a clear and present danger of a serious substantive evil”. Kassenoff v. Kassenoff, 213 A.D.3d 822, 183 N.Y.S.3d 533 (2nd Dept. 2023) (“a party must demonstrate that the speech sought to be restrained is “likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest’ ... An order imposing a prior restraint on speech “must be tailored as precisely as possible to the exact needs of the case””); United States v. Cutler, 58 F.3d 825 (2d Cir. 1995) (“speech that fell within a proscribed category had to be reasonably likely to interfere with a fair trial or otherwise prejudice the due administration of justice”). Lowinger v. Lowinger, 264 A.D.2d 763, 695 N.Y.S.2d 127 (2nd Dept. 1999) (“Orders restraining extrajudicial comments by the parties or their attorneys are not generally permitted unless there is a reasonable likelihood of the existence of serious threat to the right to a fair trial”).

I have spoken to the press. But my communications were limited to discussing what is publicly available through the complaint, and fair comment on what is already publicly available. There is no showing that my statements are beyond what I would be able to say at trial. Accordingly, there is no possible showing that I have caused any unfair influence on potential jurors. As such, there is no showing that any actual danger of misconduct is clearly expected, which was movant’s burden to demonstrate.

No Showing that Alternative Remedies Cannot Prevent Suspected Issues

Even where prior restraints on free speech are otherwise indicated, they should still not be made where alternative remedies can prevent the suspected abuse. For instance, in Cleveland v Perry, 175 AD3d 1017 (2nd Dept. 2019) it was found that even where “such statements present a ‘reasonable likelihood’ of a serious threat to [defendants’] right to a fair trial””, there still should not have been any restrictions on what the attorneys could say where “there is no evidence in the record “that less restrictive alternatives would not be just as effective in assuring the defendant[s] a fair trial””. The court in Cleveland found that “Inasmuch as alternative remedies such as a “searching voir dire” and “emphatic jury instructions” ... would be sufficient to mitigate the prejudice to defendants and protect their right to a fair trial”. Here, no such showing is made.

Along these lines, Nat’l Broad. Co. v. Cooperman, 116 A.D.2d 287, 501 N.Y.S.2d 405 (2nd Dept. 1986) describes in detail that even if statements were “reasonably likely to pose a serious threat to the defendants’ 6th Amendment right to a fair trial”, a restraint on speech would still not be permissible if “there is no indication in the record that less restrictive alternatives to the prior restraint on counsel’s extrajudicial statements would not have been just as effective in preserving the police officers’ right to a fair trial. Sequestration of the jury, postponement of the trial to allow public attention to subside, a change of venue, a comprehensive and searching voir dire of potential jurors and the use of emphatic instructions to the jurors regarding their sworn duty to decide the case only on the evidence presented at trial, are all less restrictive alternatives to a prior restraint upon the free speech of the attorneys and other participants in the case”. As such, the court summed up its holding that “a trial court may not impose prior restraints upon attorneys and other participants in a trial without the requisite showing of a necessity for such restraint and a

determination that less restrictive alternatives would not be just as effective in assuring the defendant a fair trial”. Id.

Instead, in defendant’s Memorandum of Law, defendant lodges an unsupported argument that “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”. This response to the alternative remedies argument primarily regards the doxing issue, which has primarily impacted Ms. Doe, and the fact that currently the case is in the news. While defendant mentions that a trial is far away, this cuts the other way, diminishing the potential impact. Overall, there is no explanation offered for why careful jury selection and specified instructions will not prevent the harm defendant seems to fear.

**Defendant Merely Proposes a General Legal Standard as a Prohibition,
Rendering the Requested Prohibitions Vague and Overly Broad**

The proposed order to show cause should not be signed as the relief sought is so vague that it would have a chilling effect on all related speech to make sure one does not transgress the ambiguous order.

Defendant asks that extrajudicial statements not be made to the media if they have “a substantial likelihood of materially prejudicing the adjudicative process in this action”. This is a mere regurgitation of a legal standard, and leaves it to the attorneys to guess as what may or may not violate that standard. For instance, the court in People v. Buttafuoco, 158 Misc. 2d 174, 599 N.Y.S.2d 419 (Cnty. Ct. 1993) *started* with such a standard, but then went into detail to demonstrate what precisely was included in such requirement. Without such delineations, the order would bar more than necessary, which is legally inappropriate.

Additionally, an order may be overbroad when it prevents parties from discussing the case with witnesses or hinders investigation. Doe v. Eliyas, 241 A.D.3d 1271, 242 N.Y.S.3d 286 (2nd Dept. 2025) (“the Supreme Court’s temporary restraining order was overbroad, such that it prevented the defendants from discussing the instant action with third-party witnesses or disclosing the plaintiffs’ names for investigative purposes”); See N.Y. Times Co. v. Rothwax, 143 A.D.2d 592, 533 N.Y.S.2d 73 (1st Dept. 1988) (“The sua sponte gag order ... suffers from the further constitutional infirmity of being overbroad, for “assuming that the respondent had properly concluded that prior restraint upon the extrajudicial statements of attorneys was necessary, the prior restraint should have been limited solely to information or statements which might be likely to impugn the fairness and integrity of the trial”).

Here, the only specifics included in defendant’s proposal are found two demands later, when proposing a prohibition of “**publicly disclosing, republishing, or disseminating the following information ...**”, after which five categories are mentioned; each is flawed. Before getting to those specifics, the first glaring problem with this formulation is that there is no indication of whether even court filings themselves can mention this information, as court filings are public, this formulation seems to bar the parties in terms of what they can even say to the court.

a. Any residential address or other nonpublic personal identifying information concerning any party, witness, alleged victim, or nonparty;

This request would appear to bar an attorney from mentioning the name of any nonparty, even in court filings. There is no indication given anywhere for why nonparties require some sort of protection. All we have seen from defendant's offer is that parties (or persons believed to be parties) have been subject to internet scorn, not nonparties. The demand is entirely overbroad, making no distinctions or qualifications whatsoever. However, I take no issue if addresses of the parties are redacted in Court filings.

b. Materials produced in discovery that have not been filed in a publicly accessible court record;

This formulation does not make it clear whether the materials can be filed in the first place. It just says that if they have been, then they can be disseminated. In any event, the request is overly broad since it bars all materials that have not been filed. There is no reason given why all discovery must be kept secret. Surely, it should depend on the content of the specific document. This demand makes no distinction and is therefore facially overbroad. In any event, Defendants have been the ones leaking documents, not the Plaintiff.

c. Statements concerning the expected testimony, character, credibility, reputation, or personal history of any party or witness, where such statements create a substantial likelihood of materially prejudicing the adjudication of this action;

This demand again regurgitates a legal standard of "substantial likelihood of materially prejudicing the adjudication", while failing to indicate what sort of statements would violate that standard. The demand further gives no indication of what these "character etc." types of statements would refer to. Everything is left utterly vague.

d. The contents or purported contents of any nonpublic statement, communication, examination, test, investigative material, or physical evidence that may be offered in this action, where disclosure creates a substantial likelihood of materially prejudicing the adjudication of this action;

This demand again fails to indicate whether such materials can be filed with the court, and whether the act of filing now makes such documents public. This demand also regurgitates a legal standard of "substantial likelihood of materially prejudicing the adjudication", while failing to indicate what sort of materials would violate that standard.

e. Any statement inviting, encouraging, or facilitating threats, harassment, intimidation, doxing, or extrajudicial contact directed toward any party, witness, counsel, juror, prospective juror, or nonparty;

This formulation prohibits "facilitating", but it in no way qualifies what that term includes. While "inviting" and "encouraging" are active terms that can be defined, "facilitating" is a general

term with many facets, and can even include an unwanted and unintended consequence of proper conduct. This demand is therefore not only vague, but entirely overbroad.

Given the substantial problems with defendants' formulation of prohibitions in their proposed order to show cause, a TRO that grants what defendant wants is highly problematic. There are too many loose ends in defendant's chosen formulation, the terms are overbroad, and there is no showing why any of this (aside from potential doxing materials) is needed in order to prevent abuse. Therefore, the requested prior restraint on free speech is uncalled for, especially as interim relief, given the plethora of problems with the formulations at issue that are readily noticeable even without a full briefing in opposition.

I am quite confused by this application as the person who has been subjected to death threats, harassment, intimidation (to withdraw her case or her family would be killed), doxing, death threats and swatting has been Ms. Doe. Not any of the defendants. I believe that much this has been caused by the leaks and ensuing credibility attacks done by the defendants and their surrogates. It was reasonable and a positive dialogue was going on until the counter arguments were offered up due to the leaks.

The Imbalance A TRO Would Create

A TRO here would heavily hinder plaintiff's counsel, even as defendants' surrogates would be able to say whatever they wanted. As materials from the Title IX hearing have improperly slowly trickled out, it is apparent that parties have been resourceful in having others 'find' information and disseminate it.

To put a bar on the attorneys in this case, however, will leave the parties unable to counter whatever soundbites are taken out of context from proceedings that were already supposed to be confidential from surrogates. This would leave the Defendants with the upper hand, while tying the hands of those that have a moral responsibility to act properly – even without the issuance of a specific court order. Jane Doe No. 1 v. Zeder, 5 Misc. 3d 574 (Sup. Ct., Onondaga County 2004) (“It is worth pointing out that defendant Keating has made liberal and aggressive use of the press in advancement of his position in this action. In this regard, the court is mindful that DR 7-107 (a) permits a lawyer to make a statement that a reasonable lawyer would believe is required to protect a client from the substantial prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client”).

In fact, New York Rules of Professional Conduct, §3.6(d) specifically allows lawyers to respond to adverse publicity: “A lawyer may make a limited statement reasonably necessary to protect a client from substantial prejudice caused by recent adverse publicity not initiated by the lawyer or client” Id. Defendant's proposed order to show cause serves to undercut this provision, which would unfairly punish those that follow the rule of law, while emboldening those that are not subject to the court's jurisdiction. The rules specifically allow such replies to prevent this unfair imbalance, and this right should not be taken away. This is what I have done with respect to the leaks. Perhaps too well since movant is now seeking to silence me. Obviously, they want their arguments presented without an alternate being offered.

Certainly, these ‘proxy representation’ and ‘surrogacy’ issues are becoming more apparent by the day, which reflects how a full record and briefing are necessary here. Indeed, where both sides are making public disclosures, a restraint on free speech is even less appropriate. Barker v Victorious Life Christian Church, 72 Misc 3d 898 (Sup Ct, Albany County 2021) (“Although the defendants have asserted, in conclusory fashion, that potential news/social media coverage might taint the jury pool, they have not made a factual showing that the possibility of such coverage presents a “clear and present danger” to the administration of justice. It is worth pointing out that defendant Brignola ... has made use of the press to advance his own view of this action ... In other words, the plaintiff is not alone in making the type of statements to the press about which the defendants now complain”).

Prematurity

Finally, it must be pointed out that this application is premature. This case is still brand new, not all defendants have appeared, only one has answered, and I believe no defendants are even in default yet. Other parties may have their own take on these issues and should not be restricted before they have even had a chance to comment. Furthermore, other defendants may want to make their own motion. It would be imprudent to have one motion active, with its own schedule, while other similar motions have yet to be made. This problem would be compounded if there are potentially multiple TRO’s that would end up being in place. All of these issues are brought to the fore by the early filing of this application, rendering same premature.

Conclusion

Given the many issues discussed herein, the proposed order to show cause should not be signed, and certainly no TRO should be granted without a full briefing on the complex legal and factual issues that defendant’s overbroad, vague, legally unsupported, and legally unnecessary formulations proposals evince.

Respectfully submitted,



Thomas P. Giuffra

cc: All defendants via email:

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