

At Part 35 of the Supreme Court of
the State of New York County of New York,
held at the Courthouse located at 60 Centre
Street, New York, NY 10007 on the _____
day of October, 2026

PRESENT: HONORABLE PHAEDRA F. PERRY-BOND, J.S.C.

STATE OF NEW YORK
SUPREME COURT COUNTY OF NEW YORK

MS #2

JANE DOE,

ORDER TO SHOW CAUSE
Compel

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.

Upon reading and filing the annexed Affirmation of James C. Knox, Esq. and Alishah E. Bhimani, Esq. of the law firm of HACKER MURPHY, LLP, attorneys for Defendant DIEGO SARABIA, dated October 13, 2026, together with the exhibits annexed thereto, the accompanying Memorandum of Law, and all prior pleadings and proceedings had herein, and sufficient cause appearing therefor, it is hereby:

Let
~~ORDERED, that~~ ALL PARTIES show cause before the Honorable Phaedra F. Perry-Bond, J.S.C., at IAS Part 35, Room 252, of the Supreme Court of the State of New York,

County of New York, located at 60 Centre Street, New York, New York, on the ____ day of October 2026, at ____ am/pm, or as soon thereafter as counsel may be heard, why an Order should not be entered granting the following relief:

1. **Restraining extrajudicial statements.** Directing all parties, their respective attorneys, and other legal representatives to refrain from making extrajudicial statements concerning this action that they know, or reasonably should know, will be disseminated by means of public communication and that have a substantial likelihood of materially prejudicing the adjudicative process in this action;

2. **Restraining indirect or authorized public statements.** Directing all parties, their respective attorneys, and other legal representatives not to make, authorize, encourage, or cause any public or media statement concerning this action to be made that would violate the restrictions set forth herein if made by an attorney participating in this action;

3. **Restricting disclosure of specified information.** Prohibiting all parties, their respective attorneys, and other legal representatives from publicly disclosing, republishing, or disseminating the following information, subject to the exceptions set forth below:

- a. Any residential address or other nonpublic personal identifying information concerning any party, witness, alleged victim, or nonparty;
- b. Materials produced in discovery that have not been filed in a publicly accessible court record;
- 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;
- 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; and

- 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;

4. **Exceptions to the requested restrictions.** Providing that the foregoing restrictions shall not prohibit:

- a. Statements made in open court or in papers properly filed with the Court;
- b. Communications reasonably necessary to investigate, prosecute, defend, or resolve this action;
- c. Communications required by law, court order, insurance obligations, or applicable institutional reporting requirements;
- d. Statements permitted under Rule 3.6(c) of the New York Rules of Professional Conduct, provided that such statements otherwise comply with Rule 3.6(a);
- e. A narrowly limited statement permitted under Rule 3.6(d) of the New York Rules of Professional Conduct and reasonably necessary to mitigate substantial prejudicial effects caused by recent publicity not initiated by the responding attorney or client; and
- f. Good-faith reports of threats, harassment, intimidation, or unlawful conduct to law-enforcement authorities or the Court;

5. **Duration of restrictions.** Directing that the restrictions imposed by the resulting Order remain in effect until the completion of trial or further order of the Court; and it is further

ORDERED, that, pending the hearing and determination of this application by the Court, all parties, their respective attorneys, and other legal representatives shall abide by the restrictions set forth above; and it is further

ORDERED, that service of a copy of this Order to Show Cause, together with the papers upon which it is based, upon those parties who have appeared in this action shall be made by electronic mail or facsimile, and that service upon any defendant who has not appeared shall be made by certified mail, return receipt requested, addressed to such defendant at his or her last

J.S.C.

known address, in each case on or before the ____ day of October 2026, and such service shall be deemed good and sufficient service; and it is further

ORDERED, that answering papers, if any, shall be served and filed on or before the ____ day of ____, 2026, and reply papers, if any, shall be served and filed on or before the ____ day of ____, 2026, in accordance with the directions of the Court.

~~Dated:~~

**ORAL ARGUMENT
DIRECTED**

ENTER:

J.S.C.

Honorable Phaedra F. Perry-Bond, J.S.C.

*Decline to Sign -
See annexed statement
of reasons*

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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JANE DOE,	INDEX NO. <u>161704/2026</u>
Plaintiff,	MOTION DATE <u>N/A</u>
	MOTION SEQ. NO. <u>002</u>

- V -

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, MATTHEW INGALLS, JOHNATHAN NEWELL,
WINSTON LEE, GILLIO LOPES, DIEGO SARABIA, SCOTT
NORRIS, SCOTT KRETZSCHMAR, JOHN DOE, JOHN
DOE, JOHN DOES, ORAZIO PETITO,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 48, 49, 50, 66, 67, 68
were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, and after considering the parties' letter submissions, the Court declines to sign defendant Diego Sarabia's ("Sarabia") proposed order to show cause seeking, amongst other things, an order enjoining all parties and their attorneys from making certain extrajudicial statements, including to the media, and prohibiting the disclosure, republishing, or dissemination of certain statements or documents exchanged in this case. Normally, the Court does not give a detailed explanation of its decision to decline to sign an order to show cause, but because of the weighty issues involved and the dynamic circumstances of this case, the Court finds it appropriate.

Absent a rigorous factual showing of necessity for a restraint on an individual's ability to speak freely, the imposition of a gag order upon attorneys and other participants in a trial is

constitutionally impermissible (*see New York Times Co. v Rothwax*, 143 AD2d 592, 592 [1st Dept 1988]). Orders such as the one sought here “are not generally permitted,” especially in civil proceedings (*see generally Lowinger v Lowinger*, 264 AD2d 763, 763 [2d Dept 1999]; *see also Barker v Victorious Life Christian Church*, 72 Misc.3d 898, 901-902 [Sup. Ct., Albany County 2021]).

When considering the drastic remedy of whether to subordinate certain First Amendment Rights to interests that arise in the trial setting, the Court weighs three questions: (1) whether the restriction is justified by a serious risk of prejudice to an ongoing judicial proceeding; (2) whether there are less restrictive means that could address the risk of prejudice; and (3) whether the restriction is narrowly tailored to address the potential prejudice (*see Trump v Merchan*, 227 AD3d 518, 519-520 [1st Dept 2024] citing *United States v Trump*, 88 F.4th 990, 1007 [DC Cir. 2023]).

The initial supporting papers on the proposed order to show cause do not meet the rigorous requirements to even entertain a briefing schedule on the relief sought. Expressing opinions on the case or reporting on how the litigation has impacted clients cannot alone serve as a factual basis for limiting an individual’s First Amendment rights. While the Court agrees that Mr. Giuffra should not make statements that certain parties spoliated evidence, especially where, as here, no discovery has yet to take place, those isolated statements, without more, are insufficient to show the serious risk of prejudice required by precedent and the United States Constitution. Indeed, there is nothing stopping defendants from demonstrating through the course of litigation that those statements are false, and in civil litigation there are numerous examples of curative jury instructions to ensure a jury does not consider impermissible or unfounded statements made during trial or in the course of pre-trial proceedings. A review of the statements of which Mr. Sarabia complains shows that the majority of statements would be understood by an ordinary listener to

express nothing more than Mr. Giuffra's opinions. That is insufficient to justify the drastic relief proposed in the order to show cause. Thus, on its face, the proposed order to show cause fails to show a 'serious risk of prejudice to an ongoing judicial proceeding.'

Moreover, as noted by counsel for Cornell University, Inc. ("Cornell") the requested prohibitions on disclosure of specified information are incredibly broad and would infringe on certain intuitional defendants' ability to comply with mandatory reporting requirements (*see, e.g. N.S. v Frankenhoff*, 215 AD3d 592, 593 [1st Dept 2023] [restraint on disclosure was overly broad thus warranting vacatur]). Mr. Sarabia's proposed restrictions thus are not the "least restrictive means" to address the prejudice and certainly are not narrowly tailored. Thus, the proposed order to show cause fails on all three inquiries adopted by the First Department in *Trump v. Merchan*, 227 A.D.3d 518 (1st Dept 2024). Accordingly, the Court declines to sign Mr. Sarabia's proposed order to show cause.

Not to mention, the parties' attorneys, being bound by the rules of professional conduct, should not need a gag order to properly litigate this case. The Court has concerns that Mr. Sarabia's proposed order to show cause is a "side show" meant to muddy the waters and distract from the merits of the claims and defenses involved in this case. The Court declines, at this juncture, to get involved in constantly adjudicating who can say what and how they can say it. Otherwise, this case will become less about the relevant claims and defenses and will become bogged down in litigation about whether attorneys have crossed the line when talking to the media.

To that end, the Court strongly encourages the parties, in the spirit of professionalism and collegiality, to work with each other to submit a proposed framework for future Court filings and statements. The Court believes that given the notoriety of doxing related to this case, it would serve all parties' interests to work together to ensure their clients and others may be safeguarded,

to the extent possible, from being inundated with threats or harassment from malicious outside actors. The Court highlights Cornell's suggesting that the parties "discuss the language of an appropriate order either stipulated by the parties or resolved by the Court" so that moving forward, there exists an established framework in place to ensure there is not another incident akin to the incident of an uninvolved Marine's family being doxxed, threatened, and harassed.

Finally, this court notes the law firm of Hacker Murphy, LLP uploaded correspondence (NYSCEF Doc. 67) attaching as an exhibit an e-mail authored by a non-party. The letter, styled as a 'reply' was unauthorized as the Court did not permit any reply regarding briefing on the requested temporary restraining order. But the Court finds most offensive the decision to include with the letter an exhibit consisting of correspondence from an attorney who has not filed a notice of appearance in this case essentially threatening another attorney who is involved in this case. A non-party has no standing to submit argument or correspondence in this action without prior leave of Court, and that rule cannot be circumvented by including arguments or correspondence authored by the non-party as an exhibit. The offending exhibit, consisting of correspondence from a non-party, filed without leave of court, offers no competent or relevant evidence regarding the application and appears to have been filed for no other reason than to attract salacious tabloid reporting. The Court will not tolerate its docket being used to generate media controversy, and this Court does not tolerate attorneys, especially attorneys who are not even involved in this case, engaging in mudslinging. This Court and the profession demand higher standards.

Therefore, exhibit "A" to Hacker Murphy LLP's letter dated October 15, 2026 will be stricken¹ from the record and counsel are warned that if that behavior continues, the Court will not hesitate to issue sanctions against the offending party. Lastly, counsel for Plaintiff is reminded that

¹ The County Clerk has informed the Court that he cannot "delete" the filing from NYSCEF. Therefore, the document will be sealed to all parties and the public so that no one can access it as part of the record.

pursuant to this Court's decision and order dated October 9, 2026, a redacted version of the complaint, request for judicial intervention, and amended request for judicial intervention must be filed on the docket.

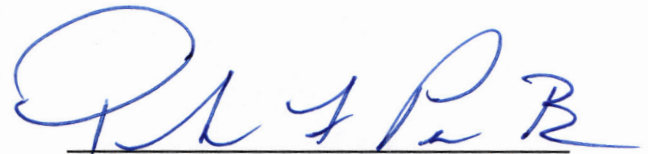
Accordingly, it is hereby,

ORDERED and ADJUDGED that the Court declines to sign defendant Diego Sarabia's proposed order to show cause; and it is further

ORDERED that on or before October 20, 2026, counsel for plaintiff shall file redacted versions of the complaint, request for judicial intervention, and amended request for judicial intervention, as directed in this Court's Decision and Order dated October 9, 2026 (*see* NYSCEF Docs. 43-44); and it is further

ORDERED that upon notice of entry of this Decision and Order and the accompanying sealing order, the County Clerk shall immediately seal and/or delete NYSCEF Doc. 68 from the docket.

10/16/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

☒

OTHER

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REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: