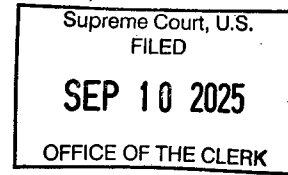


No. 25-648



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In The  
**Supreme Court of the United States**

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**CRYSTAL STRANGER,**

*Petitioner,*

v.

**CLEER LLC, FKA Greenback Business  
Services LLC,  
DBA Clear Tax,**

*Respondents.*

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**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE  
UNITED STATES COURT OF APPEALS FOR  
THE SECOND CIRCUIT**

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**PETITION FOR A WRIT OF CERTIORARI**

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Crystal Stranger  
30 N Gould St. Ste 3088  
Sheridan, WY 82801  
(310) 739-7699  
crystalstranger@gmail.com  
Petitioner, Pro Se

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## **QUESTION PRESENTED**

Whether due process permits contempt sanctions to be imposed under a Temporary Restraining Order that was never reviewed on appeal, where the court of appeals dismissed the appeal as moot and refused to vacate the order despite ongoing legal consequences.

## **PARTIES TO THE PROCEEDING**

### **Petitioner:**

- **Crystal Stranger**, Defendant-Counter-Claimant-Appellant below.

### **Respondents:**

- **Cleer LLC**, formerly known as Greenback Business Services LLC, doing business as Cleer Tax — Plaintiff-Counter-Defendant-Appellee below.

### **Other Parties:**

- **Optic Tax Inc.**, named Defendant below, was dismissed from the case for lack of personal jurisdiction and is not a party to this petition.

## LIST OF PROCEEDINGS

1. **United States District Court for the District of Connecticut**  
Case No. 3:24-cv-01496-MPS  
*Cleer LLC v. Stranger et al.*
  - Temporary Restraining Order entered October 22, 2024
  - Order denying clarification entered March 3, 2025
  - Preliminary Injunction entered June 17, 2025
  - Order denying reconsideration entered July 3, 2025
  - Contempt Order entered July 17, 2025
2. **United States Court of Appeals for the Second Circuit**  
Case Nos. 25-530, 25-663, 25-1575  
*Stranger v. Cleer LLC*
  - Appeal from TRO dismissed as moot July 14, 2025 (No. 25-530)
  - Appeal from Preliminary Injunction pending (No. 25-1575)
  - Order denying stay entered August 28, 2025
3. **Supreme Court of the United States**  
No. 25A212
  - Application(s) for Stay pending (Justice Sotomayor, in chambers)

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioner, Crystal Stranger, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, which dismissed as moot her timely appeal from a Temporary Restraining Order that later formed the basis for contempt sanctions.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit dismissing Petitioner's appeal from the Temporary Restraining Order as moot. The order was entered July 14, 2025, and the mandate issued August 28, 2025. It appears at *Appendix A*.

The order of the United States Court of Appeals for the Second Circuit denying panel rehearing and rehearing en banc appears at *Appendix B*.

The Temporary Restraining Order entered by the United States District Court, which was never reviewed on appeal but served as the sole basis for contempt. It appears at *Appendix C*.

The order of the United States District Court denying Petitioner's motion to clarify or modify the TRO, reaffirming its continued enforceability, appears at *Appendix D*.

The order of the United States District Court dismissing Optic Tax Inc. for lack of personal jurisdiction, while simultaneously asserting that the injunction bound Optic Tax, appears at *Appendix E*.

The ruling of the United States District Court for the District of Connecticut finding Petitioner in contempt and imposing sanctions based solely on the previously issued TRO appears at *Appendix F*.

All opinions and orders below are unpublished. None contain substantive analysis of the constitutional implications raised, and none have precedential effect, despite resulting in sanctions and ongoing legal consequences.

## JURISDICTION

The United States Court of Appeals for the Second Circuit entered its order dismissing Petitioner's appeal as moot on July 14, 2025. The same panel denied Petitioner's timely motion for panel rehearing, and the full court denied rehearing en banc, by order entered on August 21, 2025. This petition is timely under Supreme Court Rule 13.3.

The Second Circuit's August 28, 2025 mandate (Dkt. 63.1) makes that dismissal final. In it, the court expressly held that it lacked power to grant relief as to the expired TRO and lacked jurisdiction over the companion appeal. With the mandate issued, there is no remaining avenue for review in the lower courts. This secures this Court's jurisdiction under 28 U.S.C. § 1254(1), which authorizes review by writ of certiorari of "[c]ases in the courts of appeals" by a party seeking review of a final judgment or decree. Although the court of appeals dismissed Petitioner's appeal as moot, that decision had the practical effect of denying review of a sanctioning order that continues to impose legal consequences, and is therefore final for purposes of this Court's review.<sup>1</sup>

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<sup>1</sup> See *Camreta v. Greene*, 563 U.S. 692, 707–08 (2011) (review appropriate where collateral consequences persist even after the challenged order expires); cf. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 480 (1975) (recognizing that judgments may be 'final' for certiorari purposes when constitutional claims would otherwise escape review); and cf. *United States v. Hollywood Motor Car Co.*, 458 U.S. 263 (1982) (emphasizing that interlocutory rulings generally are not immediately reviewable, underscoring the need for appellate jurisdiction where, as here, collateral consequences make the order effectively final).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### **U.S. Constitution, Amendment V**

*No person shall ... be deprived of life, liberty, or property, without due process of law...*

The Due Process Clause of the Fifth Amendment guarantees individuals the right to fair procedures and meaningful judicial review before being deprived of liberty or property through the imposition of civil contempt sanctions.

### **U.S. Constitution, Amendment I**

*Congress shall make no law ... abridging the freedom of speech...*

The First Amendment prohibits vague and overbroad judicial orders that chill protected speech without clear boundaries or constitutional safeguards.

### **Federal Rule of Civil Procedure 65(d)(1)**

Contents and Scope of Every Injunction and Restraining Order.

*Every order granting an injunction and every restraining order must:*

- (A) state the reasons why it issued;*
- (B) state its terms specifically; and*
- (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.*

Rule 65(d) ensures that individuals subject to restraining orders or injunctions have clear notice of the conduct prohibited. Orders that fail to meet this standard cannot serve as the basis for contempt without violating due process.

## INTRODUCTION

Petitioner brings this case not only to challenge a grave constitutional error, but to highlight the quiet erosion of the very freedoms this nation was founded upon.

While preparing this writ, Petitioner opened a box of family keepsakes and found a World War II medal. Cold bronze, heavy in her hand. On its back were etched Roosevelt's Four Freedoms: "freedom from fear and want," and "freedom of speech and religion." It was not just a relic. It was a message passed through bloodlines, a vow that future generations would live under the freedoms their families died to defend.

But today, those same freedoms have been quietly stripped away by the very institutions sworn to protect them. Petitioner was silenced by a vague and overbroad order, sanctioned without clear notice, and denied the right to appeal. The courts imposed punishment, then closed the doors to challenge it. The Constitution forbids this. So do the principles forged in wartime sacrifice.

This case asks whether liberty can be erased by silence. Whether speech can be chilled, property taken, and due process denied, while appellate courts look away. The Founders did not enshrine *due process of law* and *freedom of speech* as ceremonial language. They meant them to shield the individual from precisely this kind of unchecked judicial power. Petitioner now asks this Court to reaffirm that protection, and to ensure that the freedoms engraved on that medal, *freedom from fear*, *freedom of speech*, are not lost to history, but defended as law.

## STATEMENT OF THE CASE

Petitioner Crystal Stranger seeks review of a constitutional error that left her sanctioned under an order never subject to appellate review. The case presents a recurring and important question: whether courts may impose sanctions under orders shielded from review. That question implicates core due process and First Amendment protections. Petitioner seeks not vindication of private interests, but assurance that punishment cannot rest on unreviewable orders.

The district court issued a TRO on October 22, 2024, set to expire at the January 29, 2025 preliminary injunction hearing. No ruling followed. On March 3, 2025 the court denied Petitioner's request for clarification, leaving the TRO in effect indefinitely. In practice, it governed until June 17, 2025,<sup>2</sup> when the court finally entered a materially narrower Preliminary Injunction ("PI"). The TRO imposed indefinite, open-ended restraints on speech and contact with undefined individuals; the PI, by contrast, limited restrictions to a defined class of former clients for one year.

Cleer moved for contempt on January 17, 2025, citing three marketing emails attributed to Optic Tax Inc., a party later dismissed for lack of personal jurisdiction. The court did not rule until

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<sup>2</sup> TROs are rarely intended to last more than a few weeks. See *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439–40 (1974) (noting that TROs are "limited in duration" and intended only as short-term measures until a hearing can be held). The TRO here persisted for eight months, far longer than many preliminary injunctions, amplifying its legal consequences.

July 17, 2025, three days after the Second Circuit dismissed Petitioner's TRO appeal as moot. It then imposed sanctions under that same TRO, without an evidentiary hearing, simply presuming Petitioner's responsibility for the emails.<sup>3</sup>

No appellate court was permitted to address the TRO's legality or enforceability. This denial of review is not a mere procedural irregularity, it strikes at the core of constitutional safeguards. The Four Freedoms etched on Petitioner's family medal echo today, as she seeks redress for chilled speech, denied due process, and the creeping normalization of judicial discretion untethered from first principles. The Constitution forbids punishment under unreviewable orders, yet that is precisely what occurred here, and occurs regularly under the expansive timelines with which TROs are often enforced in practice.

Without this Court's intervention, litigants may be sanctioned under expired, ambiguous orders with no opportunity for review. This undermines the rule of law and erodes freedoms prior generations fought to defend. Petitioner does not raise this case for the Court's blessing, but to secure justice for all: the assurance that punishment cannot rest on orders shielded from review.

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<sup>3</sup> This Court has held that civil contempt must be supported by clear and convincing evidence. See *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019). Without an evidentiary hearing or factual findings distinguishing individual from corporate conduct, the district court's contempt ruling raises serious due process concerns.

## REASONS FOR GRANTING THE WRIT

### I. The Circuits Are Divided on Whether Sanctions May Rest on Orders Deemed Moot

The Second Circuit's ruling squarely conflicts with decisions of the Fifth and Ninth Circuits, which hold that even expired or superseded orders remain reviewable if they carry continuing legal consequences, especially when enforced through contempt.

**The Fifth Circuit.** In *Doe v. Duncanville Independent School District*, 994 F.2d 160 (5th Cir. 1993), the court rejected mootness where a contempt sanction was predicated on an expired injunction. The court explained that expiration did not erase the need for appellate review, because sanctions imposed under the order kept the controversy alive.<sup>4</sup>

**The Ninth Circuit.** In *In re Establishment Inspection of Hern Iron Works*, 881 F.2d 722 (9th Cir. 1989), the Ninth Circuit likewise held that an OSHA inspection order, though no longer operative, remained reviewable because it had "continuing legal consequences." *Id.* at 724. The court warned that allowing expired orders to escape review while still imposing obligations "would permit courts to insulate questionable rulings from scrutiny."

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<sup>4</sup> In *Doe v. Duncanville Independent School District*, 994 F.2d 160 (5th Cir. 1993), a school district was held in contempt for violating an injunction that had expired. The court rejected mootness, holding that "[t]he expiration of the injunction did not moot the issues involved in the contempt appeal." *Id.* at 166. Because the expired order was the basis for sanctions, appellate review remained essential.



**The Second Circuit.** In direct contrast, the Second Circuit deemed the TRO appeal moot, then enforced the TRO through contempt.<sup>5</sup> That sequence insulated the TRO from review altogether: it was unappealable when entered, deemed moot when appealed, and then enforced through contempt after dismissal.

The conflict is doctrinal, not factual.<sup>6</sup> Respondents may argue that the Fifth and Ninth Circuit cases involved expired or superseded orders rather than TROs. But that distinction is immaterial. The principle animating those decisions is that when sanctions or continuing obligations rest on an order, appellate review cannot be mooted by subsequent developments. The Second Circuit rejected that principle, holding moot an appeal from the very order later used to punish Petitioner.

Nor does the later preliminary injunction eliminate the controversy. The contempt sanctions rested solely on the TRO; the PI neither cured its defects nor supplied the basis for punishment. Supersession cannot moot sanctions that have already been imposed.

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<sup>5</sup> Although labeled a TRO, the order here remained operative for months and carried ongoing legal obligations, functionally indistinguishable from the injunctions in *Duncanville* and *Hern*. See Statement of the Case, *supra*, at 1.

<sup>6</sup> See, e.g., *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (explaining that appellate review remains appropriate where “collateral consequences” persist); *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953) (“voluntary cessation” of challenged conduct does not moot a case if legal consequences remain). These principles confirm that the relevant inquiry is not whether an order has technically expired, but whether sanctions or ongoing consequences keep the controversy alive.

This divergence is outcome-determinative. Under Fifth or Ninth Circuit law, the TRO would have remained reviewable precisely because it formed the basis of contempt. In the Second Circuit, however, it was deemed unreviewable yet still enforced.<sup>7</sup> That sharp doctrinal conflict threatens uniformity in federal law, invites forum-shopping, and undermines due process. Only this Court can resolve it.

## **II. The Question Presented Is Exceptionally Important and Recurring**

The issue here is whether courts may impose contempt sanctions under temporary restraining orders that have been dismissed as moot on appeal, thereby depriving litigants of any opportunity for review. This problem is not confined to this case. TROs are among the most common emergency remedies in federal litigation, and they often contain broad, vague restrictions that remain operative for weeks or months before any preliminary injunction hearing can occur.

This Court has long recognized that questions of recurring importance warrant certiorari even absent a circuit split. Supreme Court Rule 10 emphasizes that review is appropriate when a federal question is of “exceptional importance” or when lower courts have insulated constitutional issues from meaningful review. Prior restraint

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<sup>7</sup> The problem is particularly acute with TROs, which this Court has emphasized are “limited in duration” and “intended only as short-term measures.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439–40 (1974). Allowing such orders to persist for months and then escape review undermines both Rule 65(d)’s clarity requirements and basic fairness.

jurisprudence reflects the same concern: because restraints on speech carry immediate constitutional costs, delay or denial of review compounds the harm. See *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). Likewise, due process requires meaningful opportunity to challenge orders before they can be enforced through contempt. See *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76 (1988).

Applied here, the importance is manifest. The district court's TRO remained in place for nearly eight months, used vague terms such as "prospective customers" and "sales," and was enforced through contempt after the Second Circuit dismissed the appeal as moot. That sequence—prolonged TRO, dismissal, then contempt—creates a structural loophole that deprives litigants of any appellate forum. Unless this Court intervenes, future parties will face the same trap: sanctioned under ambiguous orders that no appellate court will ever review.

The consequences extend far beyond this case. If appellate courts may dismiss TRO appeals as moot while district courts continue to enforce those orders through contempt, litigants in different jurisdictions will face radically different protections for due process and free speech. That invites forum shopping, incentivizes procedural gamesmanship, and undermines the uniformity of federal practice. This is not a one-off error but a recurring systemic vulnerability that only this Court can address.

### **III. This Case Is an Ideal Vehicle for Resolving the Question Presented**

The question presented is cleanly framed in this case: whether due process permits contempt sanctions to be imposed under a temporary restraining order that was dismissed as moot on appeal, leaving no opportunity for review.

**First, the facts are undisputed.** The court entered a TRO on October 22, 2024, denied clarification March 3, 2025, and issued a narrower preliminary injunction on June 17, 2025. The Second Circuit dismissed the TRO appeal as moot on July 14, 2025. Three days later on July 17, 2025, the district court imposed contempt sanctions based solely on that TRO.<sup>8</sup> These dates are uncontested.

**Second, the issue was properly preserved.** Petitioner timely appealed the TRO (Case No. 25-530), requested clarification, and sought rehearing when the appeal was dismissed. At every stage, the constitutional concerns were pressed and passed upon. There is no vehicle problem of waiver or forfeiture.

**Third, the question presented was outcome-determinative.** The only basis for the contempt order was the TRO. Had the TRO been subject to appellate review, its vagueness, overbreadth, and lack of notice would have been

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<sup>8</sup> Respondents may note that Petitioner sought relief below under Rule 60(b). But collateral efforts to set aside a contempt order cannot substitute for appellate review of the underlying injunction. See *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76 (1988) (holding that contempt sanctions imposed under an invalid order require appellate review to safeguard due process).

squarely before the Second Circuit. The dismissal of the appeal as moot foreclosed that review and directly led to the sanctions at issue.

**Fourth, there are no alternative holdings or factual complications.** The contempt ruling rests exclusively on the TRO, not on the later preliminary injunction. The Second Circuit's refusal to review or vacate the TRO left Petitioner sanctioned under an unexamined order.

**Finally, this case is not “messy” but unusually clear.** Respondents may argue that the presence of overlapping orders (TRO, preliminary injunction, contempt) makes this case complex. To the contrary, the sequence underscores the problem in its starkest form: the TRO was unappealable when entered, dismissed as moot when appealed, and then enforced through contempt after dismissal. That is the entire controversy.

In short, this case presents precisely the kind of straightforward procedural posture that makes for an excellent vehicle. The legal issue was preserved, dispositive, and free of factual or procedural entanglements. Only this Court can resolve whether litigants may be sanctioned under unreviewable orders, a question this record tees up perfectly.

#### **IV. Due Process Errors Warrant This Court's Review**

##### **A. The Second Circuit's Mootness Dismissal Violates Due Process.**

Petitioner was held in civil contempt and sanctioned under a TRO that the Second Circuit dismissed as moot, foreclosing all appellate review.

The order could not be appealed when entered, was dismissed as moot when appealed, and yet was enforced through contempt after dismissal. This sequence created a due process trap: punishment imposed under an order insulated from review at every stage. See *U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 76 (1988).

The TRO itself violated Rule 65(d), which requires injunctions to “state their terms specifically” and “describe in reasonable detail... the act or acts restrained.” Instead, it used undefined terms such as “prospective customers,” “sales,” and “solicitations,” leaving Petitioner without clear notice of what conduct was prohibited. Clarification was denied, yet the court later imposed contempt sanctions based on its own interpretation of this vague language. Enforcing an ambiguous order without fair notice contravenes due process.<sup>9</sup>

### **B. Jurisdictional Defects Compound the Due Process Deficiencies**

The due process deficiencies were compounded by jurisdictional defects. The district court later dismissed Optic Tax Inc., the corporate entity originally named, for lack of personal jurisdiction. In its dismissal ruling, the court stated that the injunction still binds any party “all persons in active concert or participation with, through, or under” Petitioner, yet never explained how that conclusion

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<sup>9</sup> See *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (per curiam) (“Since an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed.”); *Fed. R. Civ. P. 65(d)(1)(B)-(C)*.

could apply to a party it lacked jurisdiction to bind.<sup>10</sup> This form of backdoor enforcement, sanctioning one party for another's speech, without findings or jurisdiction, offends both due process and the structural limits of judicial power.

Despite the lack of personal jurisdiction over the corporate entity, the contempt order sanctioned Petitioner personally for three marketing emails sent by Optic Tax. Petitioner promptly moved under Rule 60(b) to set aside and vacate the contempt ruling<sup>11</sup>, emphasizing these jurisdictional and due process defects, yet the court has not acted on that motion and has instead permitted Plaintiff to pursue its request for sanctions fees. Sanctioning one individual for another's speech, under a vague and overbroad order, offends both due process and the structural limits of judicial power.<sup>12</sup>

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<sup>10</sup> The district court explicitly found that it lacked personal jurisdiction over Optic Tax and rejected Cleer's alter ego theory. The same order emphasized that the injunction bound Optic Tax, despite having just dismissed it from the case. See App. E (ECF No. 236) at 11. Nonetheless, the court sanctioned Petitioner based on marketing emails allegedly sent by that very entity, without holding any evidentiary hearing to determine authorship or control. See App. C (ECF N. 229).

<sup>11</sup> Petitioner has moved under Rule 60(b) to set aside and vacate the contempt order, citing the TRO's ambiguity, lack of evidentiary hearing, conflation of Petitioner with Optic Tax Inc. (later dismissed for lack of personal jurisdiction), and resulting First Amendment and due process violations. See ECF No. 261.

<sup>12</sup> See *Additive Controls & Measurement Sys., Inc. v. Flowdata, Inc.*, 96 F.3d 1390, 1395 (Fed. Cir. 1996) ("A court must have personal jurisdiction over a party to enjoin it."); cf. *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 326 (1999) (noting the importance of personal jurisdiction as a limit on equitable remedies).

### **C. Timing Issues Further Created Due Process Defects**

The notice problem was compounded by timing. On January 30, 2025, more than three months after entry of the TRO and nearly two weeks after the contempt motion, the court ordered that Petitioner be provided a copy of the TRO, implicitly acknowledging uncertainty about whether she had ever received it. Yet the court later sanctioned her for alleged violations predating that order. Petitioner timely appealed the TRO's defects, but the Second Circuit dismissed the appeal as moot once a narrower Preliminary Injunction issued. Three days later, however, the district court imposed contempt sanctions based solely on the TRO. The result was a procedural cul-de-sac: punishment under an order already deemed unreviewable.

This timing reveals a structural vulnerability: courts may insulate prior restraints from review by mootting appeals with later orders, yet still enforce the earlier restraints through contempt.<sup>13</sup> Labeling the order "temporary" did not change its effect: it was enforced as binding law for nearly eight months and then used as the sole basis for sanctions.

Allowing contempt sanctions to stand while insulating the underlying TRO from appellate review erodes confidence in judicial process. Certiorari is warranted to ensure that punishment cannot be imposed under expired, ambiguous, or jurisdictionally defective orders that escape review.

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<sup>13</sup> Cf. *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 180 (1968).



pending, the court deprived Petitioner of her right to contest ownership on the merits.

3. **Avoidance of Sanctions Review.** When Plaintiff filed a duplicative second TRO motion containing misstatements and without any evidentiary base, Petitioner moved for Rule 11 sanctions. The district court denied the motion “without prejudice” solely because a preliminary injunction had issued, never addressing the misconduct allegations.
4. **Disproportionate Seizure of Property.** The court ordered turnover of Petitioner’s personal laptop for expedited discovery, but no forensics have been conducted by the opposing party. When Petitioner sought return of the device or security to account for its value, the court denied relief, and ordered it could remain in opposing counsel’s custody indefinitely without protective protocols. This open-ended deprivation of personal property, without safeguards or proportional limits, contravenes Rule 26(b)’s requirement that discovery be balanced against privacy and fairness.
5. **Ex Parte Communication.** At an August 27, 2025 status conference, the magistrate disclosed that Plaintiff’s counsel had sent an ex parte email to chambers regarding mediation. The message was not docketed or shared until Petitioner herself moved to preserve it. See ECF No. 273. Even if limited in subject, undisclosed communications with the court outside the adversarial process raise fairness concerns and

contribute to the appearance of asymmetry in the proceedings.

Taken together, these departures reveal not isolated error but a structural imbalance that deprived Petitioner of fair process at every stage. This pattern reinforces why certiorari is warranted.

#### **V. Mootness Created a Procedural Mechanism for Evading First Amendment Strict Scrutiny**

The Second Circuit's dismissal also silenced Petitioner's underlying constitutional challenges to the TRO. That order functioned as a classic prior restraint, prohibiting broad categories of speech, including communications with prospective clients and undefined "sales" activity. Petitioner's appeal (Case No. 25-530) directly challenged the TRO's unconstitutional breadth, vagueness, and chilling effect. By dismissing that appeal as moot, the Second Circuit foreclosed any opportunity for constitutional review.

##### **A. The TRO Was a Classic Prior Restraint, Presumptively Invalid**

The TRO operated as a prior restraint, prohibiting future speech without adjudication of its legality or harm. Prior restraints on speech are the most disfavored form of restriction under the First Amendment. They are presumptively unconstitutional and may only be upheld if they meet strict scrutiny. See *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976); *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558–59 (1975).

The TRO restrained Petitioner's ability to communicate with undefined "prospective

customers,” engage in “sales,” or even issue “communications,” all without a finding of unlawful conduct or imminent harm. The restrictions applied prospectively and broadly, chilling lawful and constitutionally protected speech, with no time limit, and lacking any safe harbor for lawful communications unless the Plaintiff “approved” them. Petitioner’s appeal (Case No. 25-530) directly raised this issue, but the Second Circuit’s mootness ruling foreclosed any opportunity to challenge the restraint on constitutional grounds. Dismissing an appeal that squarely raised a First Amendment challenge to a judicial prior restraint, without any review of the order’s legality, strikes at the heart of constitutional accountability.

### **B. The TRO Was Content-Based and Speaker-Based, Triggering Strict Scrutiny**

The TRO restricted speech based on who was speaking (Petitioner), to whom it was addressed (prospective clients), and what it was about (tax services or business). Restrictions that target specific speakers, audiences, or content are presumptively unconstitutional and subject to the highest level of judicial scrutiny. See *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011).

Here the TRO prohibited Petitioner from communicating with “prospective clients,” and barred all “sales” and “solicitations”, regardless of whether the speech was truthful, commercial, or lawful. These terms target specific categories of speech and speaker identity, not conduct per se. They functionally barred Petitioner from engaging in routine professional

dialogue with the public or the media. The Second Circuit's failure to review this content-based and speaker-specific restriction, due solely to mootness, allowed a constitutionally suspect order to go unexamined. That departure from settled First Amendment principles warrants certiorari.

### **C. Certiorari Is Needed to Prevent Further Erosion of First Amendment Review**

This Court has long held that prior restraints must receive immediate and rigorous review, and that courts must not use procedure to evade substantive constitutional scrutiny. The Second Circuit's mootness ruling here prevents any court from ever examining the speech-restrictive, vague, and punitive nature of the TRO. This is not a technical flaw, it is a constitutional failure.

Certiorari is thus warranted to ensure that First Amendment protections are not nullified by judicial inaction, procedural gamesmanship, or artful litigation strategy.

### **VI. The Refusal to Vacate Conflicts with *Munsingwear***

Even if this Court accepts the Second Circuit's determination that the appeal from the TRO was moot, the court of appeals erred by refusing to vacate the TRO under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950). The central purpose of the *Munsingwear* doctrine is to prevent a party from being bound by a lower court judgment that becomes unreviewable due to intervening mootness. When a litigant is denied appellate review through no fault of their own, vacatur is the appropriate remedy to

preserve fairness and the integrity of the judicial process.

That principle applies squarely here. Petitioner timely appealed the TRO.<sup>15</sup> The Second Circuit dismissed the appeal on the mistaken assumption that a subsequent preliminary injunction had rendered the TRO obsolete. But just days later, the district court issued a contempt ruling based solely on the TRO, imposing sanctions and a finding of willful violation. Because the appeal was already dismissed, Petitioner had no opportunity to challenge the TRO's validity on the merits, even though it remained legally operative for enforcement.

Petitioner explicitly requested *Munsingwear* vacatur in the alternative, citing the ongoing legal consequences of the TRO. Yet the Second Circuit denied that request without explanation. This refusal leaves Petitioner subject to the sanctions of a judicial order that no appellate court reviewed, and that the issuing court refused to clarify.

This result is inconsistent with *Munsingwear* and the Second Circuit's own precedent. In *Long Island Lighting Co. v. Cuomo*, 992 F.2d 326, 327 (2d Cir. 1993), the court emphasized that its "usual practice when a case becomes moot on appeal is to vacate the judgment below and remand with directions to dismiss." That is precisely the

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<sup>15</sup> This is not a case where the appeal was dismissed for lack of jurisdiction due to the TRO's interlocutory nature. Petitioner's appeal was timely and properly before the court, but was dismissed as moot due to the mistaken assumption that the TRO had been superseded. The subsequent contempt ruling showed that the TRO remained legally operative — a fact the court of appeals never considered on the merits.

circumstance here. The TRO continues to affect Petitioner's legal position, both in terms of monetary sanctions and the basis for additional contempt motions.

This Court should grant certiorari or remand to the lower court with an order to reaffirm that *Munsingwear* vacatur is not discretionary where the challenged order carries ongoing legal consequences but has been rendered unreviewable. Sanctions should not rest on an order that no appellate court has reviewed and that fails to meet Rule 65(d)'s clarity requirements. Without vacatur, the denial of review itself operates as punishment.

## **VII. Unpublished, Unexplained Orders Compound the Constitutional Harm**

The due process violation in this case is not only substantive, but systemic. The Temporary Restraining Order, the civil contempt ruling enforcing it, and the Second Circuit's dismissal of the appeal were all issued as unpublished orders. None carry precedential weight. None provide public guidance on when a TRO enforced through contempt may be reviewed.<sup>16</sup> None contain any substantive discussion of the First Amendment, Rule 65(d), or due process.

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<sup>16</sup> See *Vasquez v. Hillery*, 474 U.S. 254, 265 (1986) (emphasizing that "[t]he point of precedent is to ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion"). When constitutional questions are resolved through unpublished and even worse, unreasoned orders, the development of federal law lacks the transparency and guidance this Court has stressed is essential.

Even more troubling, the Second Circuit's denial of panel rehearing and rehearing en banc was also issued without any explanation.<sup>17</sup> The panel provided only a conclusory sentence in dismissing the appeal as moot, and declined to address Petitioner's detailed arguments for why review was still necessary. In declining rehearing, the court offered no analysis, no engagement with circuit splits, and no recognition of the broader constitutional implications. This silence occurred despite the clear significance of the issues raised: punishment under a potentially unlawful order, the foreclosing of First Amendment review, and the invocation of sanctions without clear standards.

This judicial opacity obscures the stakes for future litigants. It allows courts to impose sanctions without review, then cloak both the reasoning and the consequences behind procedural language. The result is not only an unreviewable sanction, but an

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<sup>17</sup> In a separate but related appeal, the Second Circuit granted a partial stay of the Preliminary Injunction on August 12, 2025 (No. 25-1575, Doc. 36), only to reverse itself and dissolve the stay less than 48 hours later, on August 13, 2025 (Doc. 38), again with no change in facts or filings and no explanation. This unexplained reversal significantly affected Petitioner's legal exposure and demonstrates the broader lack of transparency in appellate decision-making across proceedings arising from the same underlying case.

untraceable one.<sup>18</sup> A judgment with real-world effects, yet no accountable legal explanation.<sup>19</sup>

While unpublished opinions serve an administrative function in many routine cases, they are ill-suited for constitutional questions involving contempt and prior restraints. When the judiciary speaks without explanation, especially in cases involving liberty, speech, and fairness, it frustrates accountability and undermines public confidence in the rule of law. Where constitutional rights are chilled, and penalties imposed, the public is entitled to know why.

Certiorari is warranted not just to correct the outcome below, but to reaffirm that transparency is essential when courts exercise the power to punish.

### **VIII. Certiorari Is Warranted to Prevent Recurring Harm and Promote Judicial Efficiency**

This is not a one-time procedural error. The district court has left open the possibility of additional contempt motions based on the same TRO language. At the time of this petition, a second contempt motion remains pending (D. Ct. ECF No.

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<sup>18</sup> Cf. *United States v. Edge Broad. Co.*, 509 U.S. 418, 425 n.3 (1993) (noting the Court's reluctance to allow constitutional adjudication to rest on unexplained or nonprecedential dispositions). This Court has long recognized that constitutional adjudication requires reasoned explanation accessible to the public.

<sup>19</sup> The contradiction is especially stark given that the same court ruling (App. E) both dismissed Optic Tax for lack of jurisdiction and claimed the injunction bound it. This raises further due process concerns regarding the scope and enforceability of orders against parties over whom no jurisdiction exists.



135). Because the appellate court refused to review the TRO or vacate it, Petitioner may be forced to initiate multiple future appeals, each arising from the same unreviewed and ambiguous order.

This kind of piecemeal litigation serves no one. It wastes judicial resources, burdens the parties, and delays resolution. Future contempt rulings would compound the constitutional error, layering sanctions atop an unreviewed order.

Reinstating the TRO appeal, or granting certiorari now, would resolve the legal question at the heart of these enforcement efforts. It would prevent an indefinite series of appeals, preserve judicial economy, and ensure that constitutional safeguards, especially those protecting speech, fairness, and clarity, cannot be evaded through procedural manipulation.

## CONCLUSION

Without this Court's intervention, the protections that Americans have fought and died for, including Petitioner's own family, will continue to erode under the guise of procedural formality. The Four Freedoms are not ceremonial relics; they are promises. It is this Court's duty to ensure they do not become casualties of unchecked judicial discretion. For the foregoing reasons, the petition for a writ of certiorari should be granted. This Court's review is needed to keep those freedoms not only engraved in bronze, but alive in law.

Respectfully submitted,



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Crystal Stranger  
Pro Se Litigant  
30 N Gould St. Ste 3088  
Sheridan, WY 82801  
(310)739-7699