

STATE OF NEW YORK  
COURT OF APPEALS

DONALD J. TRUMP, DONALD TRUMP, JR.,  
ERIC TRUMP, ALLEN WEISSELBERG,  
JEFFREY MCCONNEY, THE DONALD J.  
TRUMP REVOCABLE TRUST, THE TRUMP  
ORGANIZATION, INC., TRUMP  
ORGANIZATION LLC, DJT HOLDINGS  
LLC, DJT HOLDINGS MANAGING  
MEMBER, TRUMP ENDEAVOR 12 LLC,  
401 NORTH WABASH VENTURE LLC,  
TRUMP OLD POST OFFICE LLC, 40 WALL  
STREET LLC, and SEVEN SPRINGS LLC,

Petitioners,

For a Judgment Under Article 78 of the CPLR

-against-

THE HONORABLE ARTHUR F. ENGORON,  
J.S.C., and PEOPLE OF THE STATE OF NEW  
YORK by LETITIA JAMES, ATTORNEY  
GENERAL OF THE STATE OF NEW YORK,

Respondents.

**NOTICE OF APPEAL**

Case No: 2023-05859

**PLEASE TAKE NOTICE THAT** Petitioners President Donald J. Trump, Donald Trump, Jr., Eric Trump, Allen Weisselberg, Jeffrey McConney, The Donald J. Trump Revocable Trust, The Trump Organization, Inc., The Trump Organization LLC, DJT Holdings LLC, DJT Holdings Managing Member, Trump Endeavor 12 LLC, 401 North Wabash Venture LLC, Trump Old Post Office LLC, 40 Wall Street LLC, and Seven Springs LLC (collectively, “Petitioner-Appellants”), through their undersigned attorneys, hereby appeal to the Court of Appeals of the State of New York from the Decision and Order of the Appellate Division, First Department, dated December 14, 2023 (NYSCEF Doc. No. 27), and duly entered in the above-

captioned action by the Clerk of the Appellate Division, First Department on December 14, 2023, which dismissed Petitioner-Appellants' petition pursuant to CPLR Article 78 in its entirety.

This appeal is taken from each and every part of the Decision and Order insofar as Petitioner-Appellants are aggrieved.

Dated: New York, New York  
December 15, 2023  
Respectfully submitted,

  
\_\_\_\_\_  
**HABBA MADAIO &  
ASSOCIATES, LLP**

Alina Habba  
Michael Madaio  
112 West 34th Street, 17th & 18th Floors  
New York, New York 10120  
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*Counsel for President Donald J. Trump, Allen  
Weisselberg, Jeffrey McConney,  
The Donald J. Trump Revocable Trust,  
The Trump Organization, Inc., Trump  
Organization LLC, DJT Holdings LLC,  
DJT Holdings Managing Member LLC,  
Trump Endeavor 12 LLC, 401 North  
Wabash Venture LLC, Trump Old Post  
Office LLC, 40 Wall Street LLC and  
Seven Springs LLC*

Dated: New York, New York  
December 15, 2023  
Respectfully submitted,

  
\_\_\_\_\_  
**ROBERT & ROBERT PLLC**

Clifford S. Robert  
Michael Farina  
526 RXR Plaza  
Uniondale, New York 11556  
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*Counsel for Donald Trump, Jr.,  
Eric Trump, The Donald J. Trump  
Revocable Trust, DJT Holdings LLC,  
DJT Holdings Managing Member  
LLC, Trump Endeavor 12 LLC, 401  
North Wabash Venture LLC, Trump  
Old Post Office LLC, 40 Wall Street  
LLC and Seven Springs LLC*

-and-

**CONTINENTAL PLLC**

Christopher M. Kise (of the bar of the State of  
Florida) by permission of this Court  
101 North Monroe Street, Suite 750  
Tallahassee, Florida 32301  
Phone: (850) 332-3702  
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*Counsel for Donald Trump, Jr., Eric Trump,  
The Donald J. Trump Revocable Trust, DJT  
Holdings LLC, DJT Holdings Managing  
Member, Trump Endeavor 12 LLC, 401 North  
Wabash Venture LLC, Trump Old Post Office  
LLC, 40 Wall Street LLC, and Seven Springs  
LLC*

**To: All Parties Via NYSCEF**



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETTITIA JAMES  
ATTORNEY GENERAL

BARBARA D. UNDERWOOD  
SOLICITOR GENERAL  
DIVISION OF APPEALS & OPINIONS

December 14, 2023

Clifford S. Robert  
526 Rxr Plaza  
Uniondale, NY 11556

Re: *Matter of Trump v. Hon. Arthur F. Engoron*, No. 2023-05859

Dear Counselor:

Please take notice that the enclosed is a true and correct copy of the Decision and Order entered on December 14, 2023, by the Office of the Clerk of the Appellate Division, First Department in *Matter of Trump v. Hon. Arthur F. Engoron*, No. 2023-05859.

Please be advised that service of a cover letter together with an order or judgment constitutes service of that order or judgment with notice of entry. *Norstar Bank of Upstate N.Y. v. Office Control Sys., Inc.*, 78 N.Y.2d 1110 (1991).

Sincerely,

Dennis Fan  
Assistant Solicitor General  
212-416-8921

Encl.

cc: Michael Siudzinski  
Office of Court Administration  
25 Beaver St., Fl. 10  
New York, NY 10004

**Appellate Division, First Judicial Department**

Kapnick, J.P., Moulton, Scarpulla, O'Neill Levy, JJ.

1443 In the Matter of DONALD J. TRUMP et al.,  
Petitioners,

Index No. 452564/22  
Case No. 2023-05859

-against-

HON. ARTHUR F. ENGORON, etc., et al.,  
Respondents.

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Habba Madaio & Associates, New York (Alina Habba of counsel) and Robert & Robert, PLLC, Uniondale (Clifford S. Robert and Michael Farina of counsel), for petitioners.

David Nocenti, Office of Court Administration, New York (Michael J. Siudzinski of counsel), for Hon. Arthur F. Engoron, respondent.

Letitia James, Attorney General, New York (Dennis Fan of counsel), for Letitia James, respondent.

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Petition pursuant to CPLR article 78 to annul and vacate four orders of Supreme Court, New York County (Arthur F. Engoron, J.), entered, respectively, October 3, 2023 (the First Gag Order)<sup>1</sup>, November 3, 2023 (the Supplemental Limited Gag Order)<sup>2</sup>, October 20, 2023 (the First Contempt Order), and October 26, 2023 (the Second Contempt Order), which, inter alia, prohibited petitioners and their counsel from speaking publicly about members of Justice Engoron's staff, and imposed fines against

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<sup>1</sup> "Consider this statement a gag order forbidding all parties from posting, emailing, or speaking publicly about any members of my staff" (Transcript of October 3, 2023 at 271, lines 1-3).

<sup>2</sup> "I hereby order that all counsel are prohibited from making any public statements, in or out of court, that refer to any confidential communications, in any form between my staff and me" (Supplemental Limited Gag Order, November 3, 2023 at 3).

petitioner Donald J. Trump for violating the First Gag Order on two occasions, unanimously dismissed, without costs, as seeking review of orders not reviewable under article 78.<sup>3</sup>

CPLR 7803(2) is a codification of the common-law writ of prohibition, which is available to restrain an unwarranted assumption of jurisdiction and to prevent a court from exceeding its powers (*see e.g. LaRocca v Lane*, 37 NY2d 575, 578-579 [1975], *cert denied* 424 US 968 [1976]; *Matter of Johnson v Sackett*, 109 AD3d 427, 428-429 [1st Dept 2013], *lv denied* 22 NY3d 857 [2013]). In their second, third and fourth causes of action, petitioners seek a writ of prohibition to vacate and annul the Gag Orders and the Contempt Orders.

Initially, we note that the Supplemental Limited Gag Order only prohibits statements made by counsel, not by petitioners. Inasmuch as the Supplemental Limited Gag Order does not apply to petitioners, they lack standing to challenge it (*see e.g. Lucker v Bayside Cemetery*, 114 AD3d 162, 169 [1st Dept 2013], *lv denied* 24 NY3d 901 [2014] [to establish standing, a party must show “injury in fact, that is, an actual stake in the matter to be adjudicated”]).

As to petitioners’ demand for a writ of prohibition with respect to the First Gag Order and the Contempt Orders, the Court of Appeals has found that the “extraordinary remedy” of a writ of prohibition lies only where a “clear legal right” to such relief exists (*Matter of Rush v Mordue*, 68 NY2d 348, 352 [1986]). Permitting liberal use of this remedy would effectively achieve premature appellate review and undermine the

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<sup>3</sup> The First Gag Order and Supplemental Limited Gag Order will be referred to collectively as the Gag Orders; the First Contempt Order and the Second Contempt Order will be referred to collectively as the Contempt Orders.

statutory and constitutional regime governing the appellate process (*id.* at 353).

Invoking this extraordinary remedy is only appropriate if there exists a substantial claim of an absence of jurisdiction or an act in excess of jurisdiction (*Matter of Nicholson v State Commn. on Judicial Conduct*, 50 NY2d 597, 605-606 [1980]).

In determining whether to exercise the court’s discretion and grant a writ of prohibition, several factors are to be considered, including “the gravity of the harm which would be caused by an excess of power” and “whether the excess of power can be adequately corrected on appeal or by other ordinary proceedings at law or in equity” (*LaRocca v Lane*, 37 NY2d at 579). Here, the gravity of potential harm is small, given that the Gag Order is narrow, limited to prohibiting solely statements regarding the court’s staff (*cf. United States v Trump*, \_\_\_F4th \_\_\_, 2023 WL 8517991, 2023 US App LEXIS 32778 [DC Cir Dec. 8, 2023] [upholding a broader gag order than the one at issue here]). Further, while the Gag Order and Contempt Orders were not issued pursuant to formal motion practice, they are reviewable through the ordinary appellate process (*see* CPLR 5701[a][3]; *Matter of Northern Manhattan Equities, LLC v Civil Ct. of the City of N.Y.*, 191 AD3d 536, 537 [1st Dept 2021] [“petitioner[s] could seek appellate review by moving to vacate or modify the order and then, if necessary, appealing from the denial of that motion to the Appellate [Division]”). For these reasons, a writ of prohibition is not the proper vehicle for challenging the Gag Order and Contempt Orders.

As to the first cause of action, CPLR 7801(2) clarifies that article 78 review is not permitted in a civil or criminal action where it can be reviewed by other means, “unless it is an order summarily punishing a contempt committed in the presence of the court” (CPLR 7801[2]). The Contempt Orders here were not issued “summarily,” nor was the

contempt “committed in the presence of the court.” To the extent there may have been appealable issues with respect to any of the procedures the court implemented in imposing the financial sanctions, the proper method of review would be to move to vacate the Contempt Orders, and then to take an appeal from the denial of those motions.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: December 14, 2023

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is written in a cursive, flowing style.

Susanna Molina Rojas  
Clerk of the Court

STATE OF NEW YORK            )  
COUNTY OF NEW YORK        ) SS

Willie Addison, Being duly sworn, deposes and says that deponent is not party to the action, and is over 18 years of age.

That on 12/15/2023 deponent caused to be served 1 copy(s) of the within

**Notice of Appeal with Notice of Entry and Order**

upon the attorneys at the address below, and by the following method:

**By Hand**

Kevin Wallace, Esq.  
Colleen Faherty, Esq.  
People of the State of New York  
By: Letitia James  
Attorney General of the State of  
New York  
28 Liberty Street  
New York, New York 10005  
212-416-6376  
Kevin.Wallace@ag.ny.gov  
Colleen.Faherty@ag.ny.gov

**By Hand**

Michael Siudzinski  
Office of Court Administration  
25 Beaver St., Fl. 10  
New York, NY 10004



**Sworn to me this**

Friday, December 15, 2023

KEVIN AYALA  
Notary Public, State of New York  
No. 01AY6207038  
Qualified in New York County  
Commission Expires 7/13/2025

**Case Name:** Trump v. Hon. Arthur F. Engoron (2)

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