UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

JULIAN MARCUS RAVEN,
Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, et al.,
Defendants.

Civil Action No. 25-cv-1624 AMN/DJS

PLAINTIFF'S RESPONSE TO DENIAL OF TRO AND COURT ORDER TO SHOW CAUSE

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Exhibit	Description	Date
Exhibit A	Letter of Notice to New York State Department of Environmental Conservation and Office of the Attorney General	Nov. 19, 2025
Exhibit B	Email Notice to DEC and Attorney General (captioned “Notice: Ultra vires/Void ab initio RAVEN v NYSDEC Index: 2025-1215”)	Nov. 19, 2025
Exhibit C	Proof of Service – Certified and First-Class Mail Receipts to DEC and Office of the Attorney General	

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PRELIMINARY STATEMENT

This honorable Court and its honorable Judge both ordered and afforded Plaintiff in his application for TRO, 12 days from November 24th, 2025 to December 5th, 2025 to Show Cause and cure any deficiency under a warning of possible dismissal. Plaintiff appreciates the Honorable Judge for abiding by the constitutionally ‘baked in’ due process that binds this ongoing legal dilemma to the U.S. Constitution.

This example of judicial adherence to the inveterate constitutional principles of due process and the granting of the same to the exercise of Plaintiff's due process rights is another example of the supreme excellency and immutable justice of American civil rights and judicial excellence in its practice thereof.

This liberty infused period of time granted by the court in its order, given by appropriate notice, gives opportunity to Plaintiff to respond, argue, modify, correct and further seek the fair and honest judicial administration of America's just laws in his claims of constitutional violations and ongoing irreparable injury.

MAY THE COURT TAKE SPECIFIC NOTICE OF THIS FOLLOWING STATEMENT

In jarring contrast to this court's honorable actions, Plaintiff respectfully states that he has **never been afforded a single opportunity before the DEC's March 6, 2017 ORDER ON CONSENT and subsequent actions and orders**—as required by the United States Constitution, New York Environmental Conservation Law, or the DEC's own regulations—to receive lawful notice and to appeal and be heard prior to and regarding the classification of his property as a "Significant Threat" site or his alleged designation as a potentially responsible party or responsible party.

The court states Plaintiff describes plaintiff's claim as regarding "insufficient process," but the truth is at no time was Plaintiff served with **certified written notice**, nor granted the **mandated period to challenge or appeal any final agency action**, including the statutorily required opportunity to contest DEC's determinations before they were publicly imposed. Fundamental due process requires notice and a meaningful opportunity to be heard before the government may finalize classification of property and party, stigmatize property, impair rights, or impose legal consequences.

This is Plaintiff's experience happening right now before this court. Would this honorable court conclude that the above analogy would be considered constitutionally compliant conduct by the court?

Plaintiff respectfully asks the Court to recognize that no arm of government is exempt from constitutional due process or from compliance with its own duly enacted statutes and regulations. In this case we are dealing with the Executive branch of the government of New York State.

Plaintiff respectfully asks the court,

1. Is the DEC and the Attorney General, being part of the executive branch of the government of New York State, exempt from Due Process?
2. How come this honorable court must give notice and time to respond to its order to Plaintiff and the DEC does not have to comply?

The substantial facts in this case, are not vapid claims by Plaintiff but clearly documented in the DEC's own record, provoking not a single rebuttal of facts by the Attorney General in the state case, thus conceding Plaintiff's claims, and provoking the desperate and dishonorable invention of false facts to attempt to defeat and distort the DEC's own record in its written response and in open court.

Plaintiff beseeches this honorable court to examine the record without prejudice, it requires no interpretation.

BACKGROUND SKETCH

The DEC has a noble and necessary mission, created to protect the health of American citizens in New York and to protect the environment. Reckless disregard for the environment by callous and greed-driven businesses and their owners have often put New Yorkers and the environment at risk — enter the DEC. The Legislature armed the

DEC with vast powers sufficient to suspend and deprive property owners of their fundamental property rights, guaranteed by the 4th, 5th, and 14th Amendments to the United States Constitution. Plaintiff is fully supportive of this mission.

Plaintiff approached the DEC in 2014 prior to the purchase of the blighted front row property in Elmira, New York, that was stuck in legal limbo due its inconclusive classification status and lingering fears about potential hazardous waste. As an artist and contractor plaintiff presented a transformational vision to the DEC and Project Manager Matt Dunham, (who was initially enthusiastic and open to cooperation,) of community revitalization of the property while working alongside the DEC assisting with their ongoing need for more testing to make a final determination of the property's classification. This was a potentially inspirational and great story of artist/city and state cooperation in the desperately needed and depressed city of Elmira. The DEC, for unknown reasons squandered this golden opportunity and did an about turn…

The DEC ***never*** concluded their own MACTEC 2013 report's recommendations necessary to a final classification. Three years later DEC project attorney Defendant Loew issued the March 6th, 2017 **Order on Consent** out of the blue, *no 15 days notice by certified mail*, *no opportunity to contest and appeal,* **no due process,** not "insufficient process!" The order arrived, confusing my property with, and applying that property's classification to the former Perfecto DryCleaners in Greece, New York, 130 miles away. My property was never a dry cleaners named "PERFECTO", never a "class 2 Significant threat", never 0.59 acres in size, never located in Greece, New York. But my property and the Perfecto site did have the same project attorney, Defendant Dudley Loew.

And from then on, the DEC has illegitimately acted upon this fatal administrative error, agency malpractice and gross negligence, while arbitrarily enforcing their vast powers over my life and property. Rather than humbly admit their error they have doubled down year after year eventually distorting the record, now in apparent collusion with Defendant Buttino, in their collaborative attempt to undo their capricious and catastrophic act of due process deprivation.

If the merits of Plaintiff's well-documented, fact-based claims do not rise to the possibility of success on the merits as to violations of the due process of law when there has been absolutely no due process of law, then no citizen can reasonably rely upon the Constitution's promise of procedural fairness to protect property, reputation, or liberty from arbitrary executive action.

CLARIFICATION OF THE NATURE OF RELIEF SOUGHT AND SOVEREIGN IMMUNITY

Plaintiff respectfully clarifies that this action is not, and has never been, a suit for monetary damages against the State of New York or the Department of Environmental Conservation. Plaintiff does not seek retrospective compensation or relief sounding in tort. The relief sought is **purely prospective and equitable in nature**, directed at ongoing constitutional violations that persist to the present day.

The Complaint expressly seeks declaratory and injunctive relief to prohibit continuation of unconstitutional state action, to compel compliance with due process of law, and to prevent further public dissemination of stigmatizing classifications imposed without notice or hearing. These are quintessential claims authorized by **Ex parte Young, 209**

U.S. 123 (1908), which permits suits against state officials in their official capacities to restrain **ongoing violations of federal law**, notwithstanding sovereign immunity.

To the extent the Court's prior order addressed Eleventh Amendment immunity in the context of claims for "money damages," Plaintiff respectfully submits that such relief is not pleaded and not sought in this action. Sovereign immunity does not bar prospective injunctive relief where, as here, Plaintiff alleges continuing violations of federal constitutional rights. See **Verizon Maryland, Inc. v. Public Service Comm'n of Maryland, 535 U.S. 635, 645 (2002)** ("The doctrine of Ex parte Young permits such actions for prospective declaratory and injunctive relief.").

This case therefore falls squarely within the recognized constitutional exception to sovereign immunity. It is not an attempt to impose retroactive liability on the public fisc, but a narrow, forward-looking effort to halt ongoing unconstitutional conduct and to restore the procedural protections guaranteed by the Fourteenth Amendment.

Accordingly, Eleventh Amendment immunity does not deprive this Court of jurisdiction over Plaintiff's claims.

CLARIFICATION OF ONGOING HARM AND IRREPARABLE INJURY

Plaintiff's claims are not based on a completed, historical event. The injury alleged is **continuing and ongoing**, and it exists in the present moment.

To this day, the New York State Department of Environmental Conservation continues to publicly maintain and disseminate the classification of Plaintiff's property as a "Significant Threat" site without any final lawful determination, without certified notice,

and without providing Plaintiff any opportunity to be heard. The continuing publication of this stigmatizing designation is not merely reputational; it is market-disabling, tenant-destroying, and property-impairing. It prevents normal use, financing, insurance, leasing, and sale, and it exposes Plaintiff to continuing threat of coercive state intrusion.

Plaintiff remains under two Orders on Consent from 2017 and September 5, 2025 that maintain the exercise of statutory authority over plaintiff's life and property. These orders came with 30 day warnings of non compliance (today is November 27,2025), that if not exercised within that time, grants the DEC unfettered statutory authority to proceed with commandeering and seizing plaintiff's property, destroying and seizing plaintiff's concrete slab and seizing over 100 cubic yards of plaintiff's soil that has been illegitimately classified.

These harms are not speculative. They are immediate, real, and incapable of being adequately remedied by monetary damages. Courts have long recognized that **ongoing constitutional violations constitute irreparable harm as a matter of law**. See *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Plaintiff has also alleged, and supported through DEC-generated documents, that no final agency adjudication exists that could lawfully support the ongoing public stigmatization or enforcement posture taken against his property. The harm therefore does not arise from a resolved administrative decision, but from a continuing vacuum of lawful process. That absence of process is itself the constitutional injury.

Where government conduct continues daily, depriving an individual of property rights, reputation, and procedural constitutional guarantees, the injury is by its nature

irreparable. Plaintiff therefore satisfies the requirement of demonstrating a likelihood of irreparable harm, not as a theoretical proposition, but as a matter of ongoing lived fact.

CLARIFICATION OF LIKELIHOOD OF SUCCESS ON THE MERITS

Plaintiff respectfully submits that his likelihood of success on the merits is not based on speculation or conjecture, but on the documentary record generated by Defendants themselves.

Unlike cases that rely solely on witness credibility or disputed factual narratives, Plaintiff's claims rest primarily on **DEC-created documents**, FOIL productions, internal correspondence, and the **absence of legally required determinations** that must exist if Defendants' position were lawful. These materials demonstrate that:

• no final adjudicatory determination classifying Plaintiff's property as a "Significant Threat" site has been produced or identified;
• no certified notice of such a determination has ever been served; and
• no opportunity to contest or appeal such a determination has ever been afforded.

The absence of essential documents is not speculative. It is affirmatively confirmed by Defendants' own productions and by the structure of the DEC's regulatory framework, which requires such documents to exist if lawful action had occurred. Where an agency cannot produce the very instruments that give its actions legal force, the constitutional challenge does not rest on theory, but on objective documentary failure.

Plaintiff's likelihood of success is therefore grounded in **objective, contemporaneous government records and conspicuous gaps in the administrative record**, rather than subjective interpretation. At this stage, that evidentiary reality satisfies the standard of likelihood of success on the merits. Even under the demanding standard governing extraordinary preliminary injunctive relief, Plaintiff satisfies each of the Winter factors.

BALANCE OF EQUITIES AND PUBLIC INTEREST

The balance of equities strongly favors Plaintiff. Plaintiff seeks only to halt conduct that is allegedly unconstitutional and unsupported by any final lawful determination, while Defendants seek to continue enforcement and public dissemination of a designation that has never been subjected to notice, hearing, or adjudication.

Granting temporary equitable relief would not impair Defendants' legitimate regulatory authority. It would merely preserve the status quo by restraining enforcement and public stigmatization **until the Court can determine, on a full record, whether Defendants' conduct is lawful**. Defendants lose nothing by being required to comply with constitutional due process. Plaintiff, by contrast, suffers daily, compounding harm absent relief.

The public interest is likewise served by ensuring that state agencies act within the bounds of constitutional and statutory authority. The public has no legitimate interest in the enforcement or publication of agency actions that are unsupported by final determinations, concealed administrative records, or the denial of basic procedural protections. Public confidence in environmental regulation is strengthened, not weakened, when agencies are required to comply with due process of law.

Temporary equitable relief therefore serves not only Plaintiff's interests, but the integrity of lawful governance itself.

EVIDENTIARY BASIS OF PLAINTIFF'S CLAIMS

Plaintiff's claims are grounded in documentary evidence generated by the DEC itself and the absence of documents that should exist if Defendants' narrative were accurate. The record consists primarily of DEC-created correspondence, Official Reports, database entries, and FOIL productions, which affirmatively demonstrate fatal inconsistencies, lack of required findings, and the absence of any final, lawful determination.

Equally significant is the documented void in the administrative record and judicial record, including missing determinations and non-existent approvals that DEC's position presupposes. This absence is not speculative; it is corroborated by DEC's own productions and responses. That evidentiary gap is material, and it substantiates Plaintiff's claims by showing that the alleged agency actions lack a lawful documentary foundation.

PRO SE PLEADING STANDARD UNDER TWOMBLY/IQBAL (RECONCILED WITH SUPREME COURT AND SECOND CIRCUIT HOLDINGS)

Plaintiff proceeds pro se, and controlling precedent requires this Court to construe his pleadings with special solicitude. The Supreme Court has held that a pro se complaint **"may not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief"** and must be held **"to less stringent standards than formal pleadings drafted by lawyers."** *Haines v. Kerner*, 404 U.S. 519, 520–21 (1972). The Court must accept specific factual allegations as true and may not dismiss solely due to **"technical deficiencies in pleading."** *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Dismissal remains improper **"unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."** *Hughes v. Rowe*, 449 U.S. 5, 9–10 (1980).

While pleadings must now satisfy the plausibility standard articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Second Circuit has held that this standard must be applied in harmony with the obligation to liberally construe pro se pleadings. Courts are **"obligated to construe pro se pleadings liberally"** and to interpret them **"to raise the strongest arguments that they suggest,"** and must make reasonable allowances to avoid the **"inadvertent forfeiture of important rights."** *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474–75 (2d Cir. 2006). Thus, even under Twombly and Iqbal, a pro se complaint that pleads factual content allowing the court to draw a reasonable inference of constitutional violation must be permitted to proceed.

PENDING STATE COURT OSC DEMONSTRATES SUBSTANTIALITY OF PLAINTIFF'S CLAIMS

Plaintiff also notes that related claims remain actively pending in the **New York State Supreme Court**, where the Court has issued an **Order to Show Cause** and has scheduled a hearing for **January 6, 2026**. The issuance of an OSC in that forum reflects a judicial determination that Plaintiff's claims are not frivolous on their face and warrant structured judicial review and a response from the DEC. While Plaintiff does not contend that the state proceeding controls this Court's jurisdiction, the existence of a pending OSC underscores that Plaintiff's claims present substantial, justiciable issues that The New York Supreme Court has found worthy of formal consideration rather than summary dismissal.

REASONABLENESS OF NOTICE AND COMPOUNDING DEPRIVATION OF RIGHTS

Plaintiff recognizes that courts evaluate notice under a standard of reasonableness, not mechanical formality. In this case, Plaintiff provided notice that was objectively reasonable under the circumstances and sufficient to apprise Defendants of the nature and urgency of the claims. Within approximately twenty-four hours of providing written notice to counsel for the DEC and the Office of the Attorney General, Plaintiff proceeded to file in federal court only after receiving no response whatsoever from any of the three Assistant Attorneys General notified. The only recipient who acknowledged the communication was a member of the press.

What renders this matter constitutionally significant is not merely the timing of notice, but the context in which it occurred. Plaintiff's notice was given against a backdrop of

alleged record distortions in open court and the continued public dissemination of adverse classifications without procedural safeguards. Where government counsel are placed on notice of ongoing constitutional injury and remain silent, and where the underlying record has been materially disputed, the principle of “reasonable notice” cannot be used as a shield to insulate conduct that compounds the deprivation of rights. Under these circumstances, Plaintiff submits that the notice provided was more than sufficient to satisfy constitutional reasonableness and that the absence of any response from Defendants underscores the necessity of judicial intervention to prevent further harm.

PLAINTIFF’S CONSOLIDATED RESPONSE TO ORDER TO SHOW CAUSE

Plaintiff Julian Marcus Raven, appearing pro se, respectfully submits this Response to the Court’s November 25, 2025 Order to Show Cause why this action should not be dismissed.

INTRODUCTION

Plaintiff respectfully submits this Response to the Court’s Order to Show Cause to demonstrate that this action is properly before the Court and should proceed on the merits. This Court has subject-matter jurisdiction because Plaintiff alleges ongoing violations of federal constitutional rights and seeks prospective equitable relief under the doctrine of *Ex parte Young*. Plaintiff’s claims are timely because the challenged conduct is continuing and has been renewed through current public dissemination and

enforcement actions. Plaintiff does not seek monetary damages, but only prospective injunctive and declaratory relief. As set forth below, Plaintiff satisfies each factor governing preliminary injunctive relief, and to the extent any pleading deficiency exists, such defects can be cured by amendment and do not warrant dismissal at this stage.

I. THIS COURT HAS FEDERAL QUESTION JURISDICTION

This action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983 and the 1st, 4th, 5th and Fourteenth Amendments. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343.

Plaintiff does not seek retroactive monetary damages against the State or the DEC. Plaintiff seeks prospective declaratory and injunctive relief to halt ongoing constitutional violations, making this action proper under **Ex parte Young, 209 U.S. 123 (1908).**

II. SOVEREIGN IMMUNITY DOES NOT BAR THIS ACTION

Plaintiff does not seek damages from the State or DEC. Relief sought is prospective and equitable and is directed at ongoing unconstitutional conduct.

Claims against state officials in their individual capacities are also properly pled.

III. PLAINTIFF HAS ADEQUATELY PLED PERSONAL INVOLVEMENT

Plaintiff alleges specific personal acts by named individuals:

- **Dudley D. Loew** personally caused the misclassification of Plaintiff's property in 2017.
- **Kira Bruno** personally authorized public dissemination of the false "Class 2 Significant Threat" designation in 2025.
- **Nicholas C. Buttino** fabricated and asserted a non-existent "2009 classification" and falsely labeled Plaintiff a "responsible party."
- **Amanda Lefton** was named and titled on September 5, 2025 Order on Consent as commissioner and final sign-off authority over all DEC actions.
- **Kathy Hochul** was named on September 5, 2025 as superseding final responsible authority over Amanda Lefton and the DEC.

These allegations satisfy **Tangreti v. Bachmann, 983 F.3d 609 (2d Cir. 2020).**

To the extent the Court determines that certain high-level officials are not necessary parties under *Tangreti v. Bachmann*, Plaintiff does not seek to maintain parties for symbolic or punitive purposes. Plaintiff's claims are directed at those officials who are **currently responsible for the classification, maintenance, and public dissemination** of the challenged designation and who possess the authority to provide prospective equitable relief. Plaintiff therefore stands ready to amend or streamline the caption to focus official-capacity claims on those officials directly responsible for the ongoing conduct at issue, without waiving any substantive rights.

IV. PLAINTIFF ALLEGES ONGOING CONSTITUTIONAL HARM

This case involves continuing and present violations, not historical grievances, including:

- Continued public publication of a hazardous classification
- Continued reputational and economic injury
- Threat of coercive state entry, possession and seizure of personal property at any time the DEC decides to act
- Continued concealment of administrative records
- Continued Due Process violations

IV.A TIMELINESS AND CONTINUING VIOLATION DOCTRINE

Plaintiff's claims are timely. Although the DEC's conduct originated in 2017, the constitutional injury alleged is **not a completed historical event**, but an **ongoing and continuing violation** that persists to the present day. Every year since then there have been ongoing deliberations under statutory threat, there has been multiple coerced entries, drillings, sampling, ongoing testing, delays, dangling reports, then negative media coverage since 2018, all with a legally insufficient basis. Defendants' continued public dissemination of the "Significant Threat" classification in **2025**, their issuance of current enforcement instruments, and their ongoing refusal to provide notice or process constitute **new and continuing acts** that independently trigger accrual. Where a plaintiff seeks **prospective equitable relief for ongoing constitutional violations**, the statute of limitations is measured from the most recent injurious act, not the origin of the

underlying practice. Accordingly, Plaintiff's claims are timely because they challenge present and continuing violations, not solely past conduct.

Claims seeking prospective injunctive relief for ongoing constitutional violations are timely where the challenged conduct is continuing and renewed within the limitations period. *See* **Harris v. City of New York**, 186 F.3d 243, 248–50 (2d Cir. 1999) (continuing violation doctrine applies where unconstitutional acts are ongoing); **McFadden v. New York**, 914 F.3d 107, 118 (2d Cir. 2019) (accrual occurs when the plaintiff knows or has reason to know of the ongoing injury); *see also***Green v. Brennan**, 578 U.S. 547, 555 (2016) (accrual tied to the existence of the unlawful conduct, not merely its origin).

V. PLAINTIFF CURED PROCEDURAL NOTICE DEFICIENCIES

Plaintiff acknowledges that his initial Emergency Motion did not fully detail notice efforts.

Plaintiff now affirms compliance with all Local Rules and Federal Rules of Civil Procedure going forward.

VI. SPECIFIC TIMELINE OF ADVANCE NOTICE AND SERVICE EFFORTS

A. Email Notice — November 19, 2025 (9:00 A.M.)(Exhibits A,B,C)

At approximately 9:00 a.m. on November 19, 2025, Plaintiff sent formal written notice by email to:

- Assistant Attorney General **Nicholas Buttino**

- Assistant Attorney General **Susan Lee Taylor**
- Assistant Attorney General **Danaher**
- Attorney General **James** @ NYSAG@ag.ny.gov
- Reporter **Jeff Murray** (Star-Gazette)

The email was captioned:

“NOTICE: Ultra Vires / Void Ab Initio – RAVEN v. NYSDEC, Index No. 2025-1215.”

Plaintiff had an active, ongoing email record with Mr. Buttino both as counsel for the DEC and as potential defendant and Assistant Attorney General Danaher as appropriate agent of service for the Attorney General, and service of documents had routinely occurred by email.

Plaintiff has received no response.

B. In-Person Federal Filing — November 20, 2025

On November 20, 2025, Plaintiff traveled to Binghamton and filed his federal complaint in person. Plaintiff remained at the courthouse much of the day and did not return to Elmira until approximately 5:30 p.m., after postal services had closed.

C. Friday November 21, 2025 - Plaintiff, having realized that the Feb 18th date issued by the court did not appear to cover or answer Plaintiff’s motion for TRO, causing him to spend the day drafting follow up motions for an expedited TRO and pre-hearing discovery.

D. Attempted Mailing — Saturday, November 22, 2025

On November 22, 2025, Plaintiff, while still buried in his briefs, attempted to access postal services shortly after noon. The post office was closed.

D. First-Class Mail — Monday, November 24, 2025

On November 24, 2025, Plaintiff appeared at the Elmira Post Office and mailed notice letter by first class mail and supporting materials/motions by certified and first-class mail to:

- New York State DEC
- New York State Office of the Attorney General
- New York State Regional Office of the Attorney General in Binghamton, New YORK

VI A. GOOD-FAITH EFFORTS TO RESOLVE PRIOR TO EMERGENCY RELIEF (LOCAL RULE 7.1(E))

Prior to seeking emergency federal relief, Plaintiff made reasonable, good-faith efforts to address this dispute through available channels. Plaintiff pursued relief in State Court, filed repeated motions for injunctive relief, sought judicial clarification, notified Defendants and their counsel of his claims, and provided advance written notice of his intent to seek federal review. These efforts reflect a genuine attempt to resolve or narrow the dispute before invoking emergency federal jurisdiction, consistent with the purpose and requirements of Local Rule 7.1(e).

VII. PLAINTIFF'S FEDERAL FILING WAS PROMPTED BY LOSS OR PARALYSIS OF STATE REMEDIES AND ONGOING HARM

Plaintiff's request for federal relief was not speculative or strategic forum shopping. It followed concrete developments in state court.

On **November 14, 2025**, Plaintiff appeared in Chemung County Supreme Court on a TRO application. During that hearing, AAG **Nicholas Buttino** asserted a factual claim:

- never previously raised,
- contradicted DEC's records, and
- unsupported by evidence.

The statement was permitted to remain on the record without documentary support.

Plaintiff filed renewed TRO motions and sought recusal of the presiding judge and transfer out of Chemung County, based on acknowledged in court proclaimed extra-judicial knowledge and personal familiarity with Plaintiff.

Plaintiff also contacted **Administrative Justice Faughnan of the 6th Circuit** requesting transfer of venue outside Elmira.

With state remedies effectively denied, or remaining unanswered, Plaintiff turned to this Court in good faith.

Plaintiff's federal emergency filing was made based upon genuine, continuing harm.

Plaintiff further states that if a TRO is still deemed procedurally inappropriate, he seeks leave to pursue a Preliminary Injunction under Rule 65.

VII.A WHY STANDARD MOTION PROCEDURE IS INSUFFICIENT (LOCAL RULES 7.1(E) AND 65.1)

Plaintiff's pre-filing efforts constituted **reasonable, good-faith attempts to resolve or mitigate the underlying dispute prior to seeking emergency federal relief**, consistent with the purpose and requirements of **Local Rule 7.1(e)**. This matter could not safely proceed under a standard noticed motion schedule because the alleged harm is **time-sensitive and self-executing**. The DEC's enforcement instruments impose short compliance windows and authorize coercive action without further judicial review, while the public dissemination of the stigmatizing classification continues daily. Under these circumstances, ordinary motion practice would have permitted **seizure, destruction, and irreversible reputational and property harm** to occur before the Court could rule. Emergency relief was therefore necessary to preserve the status quo and prevent irreparable injury, consistent with **Local Rules 7.1(e) and 65.1**.

VIII. Prior Injunctive Relief Against DEC Confirms That the Relief Sought Here Is Legitimate Against DEC and the Same Counsel

Relief against DEC is not extreme or unprecedented.

In ***Adirondack Wild: Friends of the Forest Preserve v. New York State Department of Environmental Conservation***, **Justice Richard Platkin of the New York State**

Supreme Court, Albany County, issued a **Temporary Restraining Order and injunctive relief against DEC**, restraining the agency's conduct pending judicial review.

That ruling reflects a judicial determination by a court of competent jurisdiction that:

• DEC's actions can cause **irreparable harm**, and

• **injunctive relief is an appropriate and lawful mechanism** to restrain DEC when credible allegations of unlawful or ultra vires conduct exist.

In that matter, DEC was represented by **the same Assistant Attorneys General — Nicholas Buttino and Susan Lee Taylor —** who appear in Plaintiff's state case and Defendant Buttino in this case.

That court nevertheless determined that injunctive relief was warranted.

Plaintiff does not cite Justice Platkin's ruling as binding precedent upon this Court, but rather as **persuasive authority** demonstrating that injunctive relief against DEC is a recognized, appropriate, and judicially sanctioned remedy.

Plaintiff's requested relief therefore falls squarely within the mainstream of judicial remedies already applied to the DEC, and should not be viewed as "extraordinary," but rather as **measured, constitutional relief** consistent with prior judicial practice.

The requested injunctive relief imposes no unfair prejudice upon Defendants, as it does not strip lawful authority, but merely pauses contested conduct to preserve the status quo while the Court determines the merits in a measured and constitutional manner.

IX ALTERNATIVE RELIEF SOUGHT IF TRO IS DEEMED IMPROPER

Plaintiff recognizes that standards for TRO relief in federal court are exacting. Accordingly, Plaintiff expressly states:

If the Court determines that a Temporary Restraining Order is still not procedurally appropriate at this stage, Plaintiff respectfully motions the court for a **Preliminary Injunction** under Federal Rule of Civil Procedure 65.(See attached motion)

This request is made in good faith and in recognition of this Court's discretion, especially where other courts — including the New York Supreme Court in Albany — have issued injunctive relief against this same agency and attorneys under comparable circumstances.

X. LEAVE TO AMEND SHOULD BE GRANTED

Should the Court identify any lingering pleading deficiencies, Plaintiff respectfully requests leave to amend under Rule 15, which directs that such leave be freely granted when justice requires.

CONCLUSION

Imagine if this court confused a convicted felon's record with that of merely an unproven suspect in a completely separate case hundreds of miles away, and convicted the innocent man based on the conviction of the felon, then deprived the innocent man of due process and sentenced him to 8 years house arrest, loss of fundamental constitutional rights, coerced entry and seizure of his property, threatened looming $650,000.00 fines, ongoing threatened seizure of his property and ongoing stigmatization of his reputation in the media through the courts own press releases. This analogy shocks the conscience and so it should.

Would this injustice not require some form of an "extraordinary remedy?"

For the foregoing reasons, Plaintiff has shown that this action presents substantial federal questions, properly invokes this Court's jurisdiction, and seeks only **prospective, equitable relief** to halt ongoing constitutional violations. The record demonstrates that the challenged conduct is not a completed historical event, but a **continuing and present deprivation of due process**, supported not by speculation, but by Defendants' own documents and acknowledged gaps in the administrative record.

Plaintiff has responded directly to each concern raised by the Court. He has demonstrated ongoing irreparable harm, a strong likelihood of success on the merits, the absence of sovereign immunity barriers under *Ex parte Young*, and the personal involvement of responsible officials. He has further shown that reasonable advance notice was provided, that good-faith efforts were made to resolve the dispute prior to emergency filing, and that ordinary motion procedures are inadequate given the time-sensitive and coercive enforcement posture reflected in Defendants' own instruments.

Critically, Plaintiff does not seek monetary damages from the State of New York, the DEC, or any official sued in an official capacity. **To the extent any stray language in the Complaint could be read as seeking monetary damages from the State or DEC, Plaintiff expressly disclaims and withdraws any such relief.** Plaintiff seeks only prospective injunctive and declaratory relief to preserve the status quo pending judicial review of the merits.

At a minimum, Plaintiff has more than satisfied the burden required to avoid dismissal at this stage. Dismissal would improperly elevate form over substance, ignore the liberal standards governing pro se pleadings, and insulate unresolved constitutional questions from judicial review.

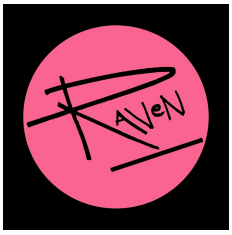
Plaintiff therefore respectfully requests that the Court discharge the Order to Show Cause, permit this action to proceed, and grant such further equitable relief as this Court deems just and proper.

Respectfully submitted,

Julian Raven

Pro Se Plaintiff

EXHIBIT A



Julian Raven
714 Baldwin Street, Elmira, NY

Attorney General Letitia James

Assistant Attorneys General, Nicolas Buttino and Susan Lee Taylor
Office of the Attorney General
The Capitol
Albany, New York 12224

November 19, 2025

Re: The Attorney General's Duty Not to Defend Unlawful or Indefensible State Action

Attorney General James:

I write to place your Office on formal notice that the continued defense of the New York State Department of Environmental Conservation's unlawful and ultra vires actions in *Raven v. NYS DEC*, Index No. 2025-1215, contradicts the core mission, statutory obligations, and ethical responsibilities of the Attorney General of the State of New York. The law is clear: your Office is not obliged — and indeed is prohibited — from defending official conduct that rests on void authority, violates constitutional guarantees, or perpetuates illegality.

I. Your Office's mission is to protect the law, the Constitution, and the public interest — not to insulate an agency from accountability

Your publicly stated mission is:

> *"To protect the legal rights of all New Yorkers, uphold the rule of law, and ensure that state agencies comply with their legal and constitutional obligations."*

That mission does **not** authorize the Attorney General to defend conduct that lacks lawful basis, misrepresents facts, abuses statutory authority, or impairs constitutional rights. The Attorney General is not a departmental "hired counsel" whose task is to salvage an agency's unlawful determinations. You occupy a constitutional office with independent obligations to the *law itself*, not to any particular state agency.

Mr. Buttino's false statements in both his response filing and in open court are axiomatic examples of the ancient principle that " a little leaven ferments the whole lump."

II. New York law rejects the notion that the Attorney General must defend the indefensible

Executive Law § 63(1) directs you to "prosecute and defend" actions in which the State is "interested," but that authority does not—and cannot—override constitutional limits or ethical duties. The New York Court of Appeals, through a century of jurisprudence, has repeatedly affirmed that unconstitutional or ultra vires government action is **void**, and any defense of such action is necessarily without lawful foundation.

Your own Office's authority is constrained by:

- **The New York Constitution**, which prohibits the enforcement or defense of void, ultra vires, or rights-violating agency actions.
- **Executive Law § 71**, which requires intervention when constitutionality is challenged — not blind defense of agency misconduct.
- **The Attorney General's independent common-law powers**, confirmed in Bennett Liebman's NYU *Legislation & Public Policy* article, making clear the AG is *not* subordinate to agencies and *not* required to adopt legally indefensible positions.

When the legal basis for an agency action is void ab initio — as is the case here — the AG has no statutory duty to defend it, and every ethical and constitutional reason not to.

III. There is no public interest in perpetuating unlawful agency action

Controlling authority from federal and state courts affirms:

> **"There is no public interest in the perpetuation of unlawful agency action."**
> — *League of Women Voters v. Newby*, D.C. Cir.

Your role obligates you to protect the public interest, not DEC's institutional interest. Once DEC's actions violate statutory authority, exceed jurisdiction, or rest on

unconstitutional premises, the Attorney General is bound to step back — not dig in. Continued defense of such actions places your Office in active opposition to the public interest and to the constitutional guarantees you are sworn to uphold.

IV. The Attorney General's ethical obligations bar the defense of false, ultra vires, or frivolous positions

Under:

- **Rule 3.1** (no assertion without non-frivolous basis),
- **Rule 8.4** (prohibiting misrepresentation, deceit, and conduct prejudicial to justice), and
- **the Attorney General's unique independent duty** to protect the integrity of the law,

defending an agency action that:

1. rests on facially invalid authority,
2. is contradicted by statutory and scientific evidence, or
3. is supported by misrepresentations made in court,

is not permissible advocacy — it is a breach of professional and constitutional duty.

Your Office cannot ethically advance arguments that cannot be reconciled with established law, factual record, or your mission as New York's chief law officer.

V. When state officials act without lawful authority, they are stripped of their official protection

For more than a century, the Supreme Court has held:

> **When a state officer enforces an unconstitutional law, he is stripped of his official character and may be enjoined.**
> — *Ex parte Young*, 209 U.S. 123

This principle applies equally to the Attorney General:

- When the AG defends or facilitates enforcement of unlawful state action,
- the Office is not protected by sovereign immunity,
- and becomes a proper defendant for declaratory and injunctive relief.

Your Office is not immune from accountability when it participates in, perpetuates, or legitimizes ultra vires agency action.

VI Request

I urge you to immediately reevaluate your Office's posture in this matter. The law does not require you to defend what cannot lawfully be defended. Your mission, your ethical obligations, and the controlling precedents of New York and federal constitutional law compel a different course.

You are invited — and indeed obligated — to defend the rule of law, not DEC's unlawful conduct.

Respectfully,

Julian M. Raven
Petitioner, *Raven v. NYS DEC*
Index No. 2025-1215

julianmarcusraven@gmail.com

Gmail Julian Raven <julianmarcusraven@gmail.com>

Notice: Ultra vires/Void ab initio RAVEN v NYSDEC Index: 2025-1215

1 message

Julian Raven <julianmarcusraven@gmail.com> Wed, Nov 19, 2025 at 8:59 AM
To: susan.taylor@ag.ny.gov, "Buttino, Nicholas" <nicholas.buttino@ag.ny.gov>, michael.danaher@ag.ny.gov, NYSAG@ag.ny.gov
Bcc: "Murray, Jeff" <jdmurray@gannett.com>, "Murray, Jeff" <jdmurray@usatodayco.com>

Dear Attorney General For the State of New York,

Please find the attached letter of notice mailed today by regular mail.

Sincerely,

Julian Raven
RAVEN v NYSDEC Index: 2025-1215

Attorney General Letitia James-2.pdf
198K

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EXHIBIT C

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PURCHASE DETAILS

Product	Qty	Unit Price	Price
Mailer 10.5 x 16	2	$1.89	$3.78
First-Class Mail® Large Envelope Albany, NY 12233 Weight: 0 lb 4.20 oz Estimated Delivery Date Mon 12/01/2025	1		$2.72
Certified Mail® Tracking #: 9589 0710 5270 3419 3404 43			$5.30
Total			$8.02
First-Class Mail® Large Envelope Binghamton, NY 13901 Weight: 0 lb 4.20 oz Estimated Delivery Date Sat 11/29/2025	1		$2.72
Certified Mail® Tracking #: 9589 0710 5270 3419 3404 74			$5.30
Total			$8.02
PurpleHeartMedal	2	$0.78	$1.56

Grand Total: $21.38

Debit Card Remit $21.38
Card Name: VISA
Account #: XXXXXXXXXXXX9376
Approval #: 629735
Transaction #: 584
Receipt #: 026567
Debit Card Purchase: $21.38
AID: A0000000980840 Contactless
AL: US DEBIT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

JULIAN RAVEN,
Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, et al.,
Defendants.

Civil Action No. 25-cv-1624 ANM/DJS

DECLARATION OF JULIAN RAVEN

I, Julian Raven, declare under penalty of perjury as follows:

1. I am the Plaintiff in this action. I make this declaration based upon my personal knowledge.
2. I own and reside at the real property located at **714 Baldwin Street, Elmira, New York** ("the Property").
3. I have never received certified written notice from the New York State Department of Environmental Conservation ("DEC") advising me that my property had been classified as a "Significant Threat" site, giving me 15 days to appeal.
4. I have never been served with any final agency determination, order, or adjudication regarding my property.
5. Despite the absence of notice or lawful process, the DEC continues to publicly disseminate classifications describing my property as a hazardous or significant threat site.
6. This public designation has caused immediate and ongoing harm, including loss of prospective tenants, impairment of financing, damage to reputation, and interference with normal use of the property.

7. I submitted formal FOIL requests to the DEC seeking records concerning the classification process. In response, the DEC produced limited materials, withheld 148 of 161 internal communications, and acknowledged that no final determinations had been issued.
8. On November 19, 2025, I notified counsel for the DEC and the New York State Office of the Attorney General by email of my intent to seek ongoing relief for their actions. No response was provided.
9. I made reasonable efforts to provide notice of this action by first-class mail immediately thereafter.
10. The harm I am experiencing is ongoing, real, and worsens each day the challenged designation remains publicly disseminated.
11. I seek preliminary injunctive relief solely to prevent further irreparable harm while this Court considers the merits of my claims.
12. A true and verified copy of this brief along with attachments has been served on defendants and counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Julian Raven
Executed this 27th day of November, 2025,
At 714 Baldwin St., Elmira, New York, 14901
julianmarcusraven@gmail.com

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

JULIAN MARCUS RAVEN,
Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, et al.,
Defendants.

Civil Action No. 25-cv-1624 AMN/DJS

PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Julian Marcus Raven, appearing pro se, respectfully moves this Court pursuant to Federal Rule of Civil Procedure 65 for entry of a **Preliminary Injunction** restraining Defendants from continuing unconstitutional and ultra vires conduct pending adjudication on the merits of this action.

I. Relief Requested

Plaintiff seeks narrow, targeted, prospective relief:

1. An order **enjoining Defendants from publishing, enforcing, or disseminating** any "Class 2" or "Significant Threat" classification of Plaintiff's property pending final resolution of this case;
2. An order requiring Defendants to **temporarily withdraw or suspend** Plaintiff's property from publicly accessible databases or publications reflecting such classification, pending adjudication;

3. An order requiring Defendants to **preserve and produce** internal records, communications, and emails relating to the classification decision, including withheld internal communications, pending resolution of this matter.
4. An order enjoining Defendants from altering, deleting, modifying, destroying, overwriting, concealing, or otherwise compromising any records, emails, memoranda, database entries, electronic communications, or physical documents relating in any way to the classification, designation, investigation, internal deliberations, public dissemination, or enforcement posture regarding Plaintiff's property, and requiring that such materials be preserved in their current form pending final adjudication of this matter.

This relief is prospective, equitable, and intended solely to preserve the status quo while the Court determines the merits.

II. Legal Standard

A preliminary injunction is appropriate where the movant demonstrates:

1. A likelihood of success on the merits;
2. Irreparable harm in the absence of relief;
3. That the balance of equities tips in the movant's favor; and
4. That the injunction serves the public interest.

Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008).

Where constitutional rights are being violated, irreparable harm is presumed. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Prospective injunctive relief against state officials for ongoing violations of federal law is proper under *Ex parte Young*, 209 U.S. 123 (1908).

III. Likelihood of Success on the Merits

Plaintiff's likelihood of success is grounded in the **DEC's own documents and admitted gaps in the administrative record**, not conjecture or speculation.

Defendants have publicly designated Plaintiff's property as a "Significant Threat" site while:

- having committed a fatal administrative error, constituting arbitrary and capricious negligence and agency malpractice confusing Plaintiff's property with the former Perfecto Drycleaners in Greece, New York, 130 miles away that was a legitimate significant threat "class 2" site;
- producing no final adjudicatory determination supporting that designation;
- admitting through FOIL responses that no final determinations were issued; and
- withholding a substantial portion of internal communications regarding the classification process.

Under New York Environmental Conservation Law § 27-1313(3)(a) and (4), lawful final determinations are prerequisites to issuance of enforceable orders. The absence of those determinations — as reflected in Defendants' own records — establishes a strong likelihood of success on Plaintiff's due process and ultra vires claims.

IV. Irreparable Harm

Plaintiff continues to suffer **ongoing and present harm** each day that the challenged classification remains publicly disseminated.

The designation:

- stigmatizes the property and its owner,
- destroys marketability and tenancy,
- interferes with financing, insurance, and lawful use,
- and exposes Plaintiff to threatened coercive enforcement without lawful process.

Ongoing constitutional deprivations constitute irreparable harm as a matter of law. *Elrod v. Burns*, 427 U.S. at 373.

These harms cannot be cured by monetary damages and are compounded daily.

V. Balance of Equities

The balance of equities strongly favors Plaintiff.

The requested injunction does not strip Defendants of lawful authority. It merely **pauses contested conduct** while the Court determines whether such conduct is lawful.

Defendants suffer no cognizable harm from being required to comply with constitutional and statutory obligations. Plaintiff, by contrast, suffers immediate and continuing injury absent relief.

VI. Public Interest

The public has a strong interest in:

- constitutional governance,
- accurate and lawful public records,
- fair administrative process, and
- the prevention of arbitrary or ultra vires governmental action.

Granting preliminary relief reinforces, rather than undermines, confidence in environmental regulation by ensuring it operates within lawful bounds.

VII. Sovereign Immunity Does Not Bar Relief

Plaintiff does not seek monetary damages. This motion seeks only **prospective injunctive and declaratory relief** against ongoing violations of federal law.

Such relief is expressly permitted under *Ex parte Young*, 209 U.S. 123 (1908), and *Verizon Maryland, Inc. v. PSC*, 535 U.S. 635 (2002).

VIII. Conclusion

For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion for Preliminary Injunction and enter the requested relief to preserve the status quo and prevent further irreparable harm pending final determination of this action.

Respectfully submitted,

Julian Marcus Raven
Pro Se Plaintiff
714 Baldwin Street
Elmira, New York 14901
julianmarcusraven@gmail.com

November 27, 2025

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF NEW YORK

JULIAN MARCUS RAVEN,
Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, et al.,
Defendants.

Civil Action No. 25-cv-1624 AMN/DJS

[PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION

Upon consideration of Plaintiff's Motion for Preliminary Injunction, the pleadings on file, and the applicable law, and for good cause shown, it is hereby:

ORDERED that Defendants, and their officers, agents, employees, and all persons acting in concert with them, are **ENJOINED AND RESTRAINED** from publicly disseminating, publishing, enforcing, or otherwise acting upon any "Class 2" or "Significant Threat" designation of Plaintiff's property pending final adjudication of this matter; and it is further

ORDERED that Defendants shall **temporarily suspend** any public-facing publication or database listing that reflects such designation pending final resolution of this action; and it is further

ORDERED that Defendants are further **ENJOINED AND RESTRAINED** from altering, deleting, modifying, destroying, overwriting, concealing, or otherwise compromising any records, memoranda, emails, electronic data, communications, database entries, or physical documents relating in any manner to the classification, designation,

investigation, internal deliberations, publication, or enforcement posture concerning Plaintiff's property; and it is further

ORDERED that Defendants shall **preserve all documents, communications, electronic messages, emails, and records** relating to the classification, designation, internal deliberations, and enforcement posture concerning Plaintiff's property, pending further Order of this Court; and it is further

ORDERED that this Order shall take effect immediately upon entry.

SO ORDERED.

Dated: _____
Albany, New York

Hon. Anne M. Nardacci
United States District Judge