

**CV/E-207  
GUN VIOLENCE EMERGENCY PROTECTIVE ORDER**

1. RESTRAINED PERSON (Insert name): Andrew Richard Casarez  
 Address: 8888 Myhren Way  
Orangevale, Ca 95662

Sex:  M  F  Nonbinary Ht: 6' 4" Wt.: 230 Hair color: Brown  
 Eye color: Green Race: White Age: 27 Date of birth: 01-09-1993

2. TO THE RESTRAINED PERSON (Also see Important Warnings and Information on Page 2): YOU MUST NOT own, possess, purchase, receive, or attempt to purchase or receive any firearms, ammunition, or magazines (any ammunition feeding devices). If you have any firearms, ammunition, or magazines, you MUST IMMEDIATELY SURRENDER THEM IN A SAFE MANNER TO LAW ENFORCEMENT ON REQUEST. If no request has been made, you must surrender any firearms, ammunition, or magazines in a safe manner to your local law enforcement agency or sell them to or store them with a licensed gun dealer within 24 hours of being served with this order. You must file a receipt proving surrender, sale, or storage with the Court listed below within 48 hours, or if the court is closed, then on the next business day after the firearms, ammunition, or magazines are surrendered or sold. FAILURE TO TIMELY FILE THIS RECEIPT IS A VIOLATION OF THIS ORDER.

3. THIS ORDER WILL EXPIRE ON: 07-31-2020 TIME: 0830  
 INSERT DATE OF 21<sup>ST</sup> CALENDAR DAY (DO NOT COUNT DAY THE ORDER IS GRANTED)

4. Reasonable grounds for the issuance of this Order exist, and a Gun Violence Emergency Protective Order (1) is necessary because the Restrained Person poses an immediate danger of causing personal injury to himself or herself or to another by having custody or control, owning, purchasing, possessing, or receiving any firearms, ammunition, or magazines; and (2) less restrictive alternatives were ineffective or have been determined to be inadequate or inappropriate under the circumstances.

5. To the Restrained Person: This order will last until the expiration date and time noted above. You are required to surrender all firearms, ammunition, and magazines that you own or possess in accordance with section 18120 of the Penal Code and you may not have in your custody or control, own, purchase, possess, or receive, or attempt to purchase or receive, any firearm, ammunition, or magazine while this order is in effect. However a more permanent gun violence restraining order may be obtained from the court. You may seek the advice of an attorney as to any matter connected with the order. The attorney should be consulted promptly so that the attorney may assist you in any matter connected with the order.

6. NOTICE OF HEARING: The court will hold a hearing at the time and place below to determine if a longer term Gun Violence Restraining Order should be issued. (Hearing date must be a Friday within 21 calendar days)

HEARING DATE: 07-31-2020 TIME: 8:30 a.m. DEPT.: 47 COURT ADDRESS: 720 9<sup>TH</sup> STREET, SAC, CA 95814

Judicial officer (name): Judge Roman granted this Order on (date): 07-13-2020 at (time): 1042

**APPLICATION**

7. Officer has a reasonable cause to believe that the grounds set forth in item 4, above, exist (state supporting facts and dates; specify weapons—number, type and location):

Please see attached.

8.  Firearms were  observed  reported  searched for  seized.  
 Ammunition (including magazines) was  observed  reported  searched for  seized.

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

By: Sergeant Grgich #43  
 (PRINT NAME OF LAW ENFORCEMENT OFFICER)

SGT. GRGICH #43  
 (SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: Sacramento County Sheriff's office Telephone No.: 916-874-5115 Badge No.: 43

**PROOF OF SERVICE**

9. Person served (name): ANDREW RICHARD CASAREZ

10. I personally delivered copies of this Order to the person served as follows: Date: 7-15-20 Time: 0710

Address: 8888 MYHREN WAY, ORANGEVALE CA 95662

11. At the time of service, I was at least 18 years of age. I am a California law enforcement officer. My name, and law enforcement agency address are: SERGEANT GRGICH #43

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

Date: 7-15-20 LAW ENFORCEMENT  
 (TYPE OR PRINT NAME OF SERVER)

SGT. GRGICH #43  
 (SIGNATURE OF SERVER)

**Gun Violence Emergency Protective Order (CLETS-EGV)**

ORIGINAL to court, ONE copy to restrained person, ONE copy to issuing agency

LAW ENFORCEMENT CASE NUMBER:  
**20-224874**

COURT USE ONLY

**FILED/ENDORSED**

**JUL 13 2020**

By: T. Crowther  
 Deputy Clerk

Superior Court of California,  
 County of Sacramento  
 Gordon D. Schaber County  
 Courthouse  
 720 9<sup>th</sup> Street  
 Sacramento, CA 95814

Case Number:  
34-2020-70007786

**GUN VIOLENCE EMERGENCY PROTECTIVE ORDER  
WARNINGS AND INFORMATION**

**TO THE RESTRAINED PERSON:** You are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm, ammunition, or a magazine. (Pen. Code, § 18125 et seq.) A violation of this order is a misdemeanor punishable by a \$1,000 fine or imprisonment for six months or both. (Pen. Code, §§ 19, 18205.)

Within 24 hours of receipt of this order, you must turn in all firearms, ammunition, and magazines to a law enforcement agency or sell them to or store them with a licensed firearms dealer until the expiration of this order. (Pen. Code, § 18125 et seq.) A receipt proving surrender, sale, or storage must be filed with the court within 48 hours of receipt of this order, or on the next court business day if the 48 hour period ends on a day when the court is closed. You must also file the receipt with the law enforcement agency that served you with this order. You may use form GV-800, *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored*.

This Gun Violence Emergency Protective Order is effective when made. It will last until the date and time in item 3 on the front. The court will hold a hearing within in 21 days to determine if a longer term order should be issued. This Order serves as your notice of the date and time of the hearing. You and/or your legal counsel are required to appear. A law enforcement officer or agency or a family member may also seek a more permanent restraining order from the court.

If you violate this order, you will also be prohibited from having in your custody or control, owning, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm, ammunition, or magazine for an additional five-year period, to begin on the expiration of the more permanent gun violence restraining order. (Pen. Code, § 18205.)

This protective order must be enforced by all law enforcement officers in the State of California who are aware of it or shown a copy of it. The terms and conditions of this order remain enforceable regardless of the acts or any agreement of the parties; it may be changed only by order of the court.

**A LA PERSONA RESTRINGIDA:** tiene prohibido poseer, poseer, comprar, recibir o intentar comprar o recibir un arma de fuego, municiones o una revista. (Pen. Code, § 18125 et seq.) Una violación de esta orden es un delito menor punible con una multa de \$ 1,000 o encarcelamiento por seis meses o ambos. (Pen. Code, §§ 19, 18205.)

Dentro de las 24 horas posteriores a la recepción de esta orden, debe entregar todas las armas de fuego, municiones y revistas a una agencia de cumplimiento de la ley, o venderlas o almacenarlas con un distribuidor de armas de fuego autorizado hasta la expiración de esta orden. (Pen. Code, § 18125 et seq.) Un recibo que acredite la entrega, venta o almacenamiento debe presentarse ante el tribunal dentro de las 48 horas posteriores a la recepción de esta orden, o el siguiente día hábil si el periodo de 48 horas termina día en que el tribunal está cerrado. También debe presentar el recibo ante la agencia de cumplimiento de la ley que le entregó esta orden. Puede usar el formulario GV-800, *Prueba de armas de fuego, municiones y revistas entregadas, vendidas o almacenadas*.

Esta Orden de protección de emergencia contra la violencia con armas de fuego es efectiva cuando se realiza. Durará hasta la fecha y hora en el artículo 3 en el frente. El tribunal celebrará una audiencia dentro de los 21 días para determinar si se debe emitir una orden a más largo plazo. Esta orden sirve como su aviso de la fecha y hora de la audiencia. Usted y / o su asesor legal están obligados a comparecer. Un oficial o agencia de cumplimiento de la ley o un miembro de la familia también pueden solicitar una orden de restricción más permanente del tribunal.

Si viola esta orden, también se le prohibirá tener bajo su custodia o control, poseer, comprar, poseer o recibir, o intentar comprar o recibir, un arma de fuego, municiones o una revista por un periodo adicional de cinco años. para comenzar con la expiración de la orden de restricción de violencia con armas de fuego más permanente. (Pen. Code, § 18205.)

Esta orden de protección debe ser ejecutada por todos los funcionarios encargados de hacer cumplir la ley en el Estado de California que la conozcan o le muestren una copia. Los términos y condiciones de esta orden siguen siendo ejecutables independientemente de los actos o cualquier acuerdo de las partes; Puede ser cambiado solo por orden de la corte.

**To law enforcement:** The Gun Violence Emergency Protective Order must be served on the restrained person by the officer if the restrained person can reasonably be located. Ask the restrained person if he or she has any firearms, ammunition, or magazines in his or her possession or under his or her custody or control. A copy must be filed with the court within 48 hours after issuance. You and/or your legal counsel are required to appear at the hearing noted in Item 6 on the front page of this document. Also, the officer must have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

The provisions in the Temporary Gun Violence Emergency Protective Order do not affect those of any other protective or restraining order in effect, including a criminal protective order. The provisions in another existing protective order remain in effect.

PLAINTIFF/PETITIONER: Sergeant Grgich	CASE NUMBER:
DEFENDANT/RESPONDENT: Andrew Richard Casarez	20-224874

## DECLARATION

(This form must be attached to another form or court paper before it can be filed in court.)

On July 8th, 2020, the Sacramento County Sheriff's Office received information that a subject identified as Andrew Richard Casarez had been identified as a well known online white supremacist known as "Vic Mackey." The information gathered from the information release was confirmed by multiple posts that Casarez made online, for example his father was a retired Firefighter, he made another post that he was 6' 4" tall, these are just some of the examples found online. Additionally, looking into open source media it was found that Casarez was the leader of an online group known as the "Bowl Patrol."

The "Bowl Patrol" is an online group that endorses violence against minorities, they take their name from known domestic terrorist Dylan Roof who is known for killing 9 people at a prayer meeting in South Carolina. Roof is known in the white supremacist movement for having a "bowl cut" haircut. Images were recovered from the open source images found ideals for a violence against minorities and called for murder and rape of Law Enforcement and people of Jewish descent. Also found were comments by Casarez where he stated he reloads his own ammunition and was attempting to obtain an "80% AR" referring to an 80 percent built AR-15 which would be unregistered and illegal in the state of California.

Based on my training and experience now that Casarez has been outed as a white supremacist and he has lost his anonymity there is a likelihood that he could become a "lone wolf" attacker to prove his status to the cause.

A search of the Automated Firearms System revealed the following firearms registered to ~~NUNEZ~~ and are believed to be located at his residence:  
CASAREZ

- 9MM "CZ"-USA Semi-Automatic pistol, serial #B810950

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

Date: 07-13-2020

Sergeant Grgich #43

(TYPE OR PRINT NAME)

SGT. GRGICH #43

(SIGNATURE OF DECLARANT)

- Attorney for     Plaintiff     Petitioner     Defendant  
 Respondent     Other (Specify):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Alan Donato, SBN 264755</b> <b>Donato Legal Group, 1383 Garden Highway #100</b> <b>Sacramento, CA 95833</b> TELEPHONE NO: (916) 716-7177 FAX NO. (Optional): E-MAIL ADDRESS (Optional): Alan@Donato.Legal ATTORNEY FOR (Name): Andrew Richard Casarez		FOR COURT USE ONLY <div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>FILED/ENDORSED</b>   <b>JUL 29 2020</b> </div> By: <u>R. San Miguel</u> Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 Ninth Street MAILING ADDRESS: 720 Ninth Street CITY AND ZIP CODE: Sacramento, CA 95814 BRANCH NAME: Gordon D. Schaber Courthouse		
CASE NAME: <b>Sacramento County Sheriff's Office v. Andrew Richard Casarez</b>		
<b>SUBSTITUTION OF ATTORNEY—CIVIL</b> <b>(Without Court Order)</b>		CASE NUMBER: <b>34-2020-70007786</b>

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): **Alan J. Donato** makes the following substitution:

1. Former legal representative  Party represented self  Attorney (name):  
 2. New legal representative  Party is representing self  Attorney  
 a. Name: **Alan J. Donato** b. State Bar No. (if applicable): **264755**  
 c. Address (number, street, city, ZIP, and law firm name, if applicable):  
**Donato Legal Group, 1383 Garden Highway #100**  
**Sacramento, CA 95833**  
 d. Telephone No. (include area code): **(916) 716-7177**  
 3. The party making this substitution is a  plaintiff  defendant  petitioner  respondent  other (specify):

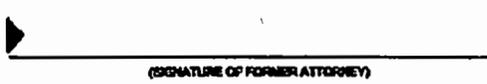
**\*NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Personal Representative
- Guardian ad litem
- Conservator
- Probate fiduciary
- Unincorporated association
- Trustee
- Corporation

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. **SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.**

**NOTICE TO PARTIES WITHOUT ATTORNEYS**  
 A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

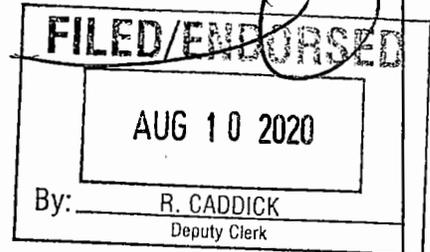
4. I consent to this substitution.  
 Date: 7/27/20  
Andrew Richard Casarez (TYPE OR PRINT NAME)  (SIGNATURE OF PARTY)

5.  I consent to this substitution.  
 Date: \_\_\_\_\_  
 \_\_\_\_\_ (TYPE OR PRINT NAME)  (SIGNATURE OF FORMER ATTORNEY)

6.  I consent to this substitution.  
 Date: 7/27/2020  
Alan J. Donato (TYPE OR PRINT NAME)  (SIGNATURE OF NEW ATTORNEY)

1 ALAN J. DONATO, SBN 264755  
2 Donato Legal Group  
3 1383 Garden Highway, Suite 100  
4 Sacramento, CA 95833  
5 Phone: 916.716.7177  
6 Fax: 916.303.1561

7 Attorney for ANDREW CASAREZ



8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

10 SACRAMENTO COUNTY

11 SHERIFF'S OFFICE

12 Petitioner,

13 v.

14 ANDREW CASAREZ.

15 Respondent.

Case No.: 34-2020-70007786

OPPOSITION TO PETITION FOR GUN  
VIOLENCE RESTRAINING ORDER  
(PENAL CODE §§ 18100, *et seq.*)

Date: August 13, 2020

Time: 9:00am

Dept.: 41

16  
17 **INTRODUCTION**  
18

19 On July 13, 2020, Mr. Casarez's lawfully registered handgun was seized by Sacramento  
20 County Sheriff's Department ("SSD") after the issuance of a Temporary Emergency Gun  
21 Violence Restraining Order ("GVRO"). Mr. Andrew Casarez now responds in opposition to the  
22 GVRO. The Court must deny the GVRO for the following reasons: (1) Petitioner failed to meet  
23 its burden of proof under the "red flag" statutes (Pen. Code § 18100 *et seq.*) in violation of Mr.  
24 Casarez's constitutional due process rights; (2) Respondent's seizure of Mr. Casarez's lawfully  
25 registered handgun abridges his First Amendment rights because it chills his expression through  
26 intimidation.; and (3) Petitioner has unclean hands in that the SSD fueled a media spectacle and  
27 now wants to use that as a basis to unlawfully strip Mr. Casarez of his constitutional rights.  
28



1           **I.       PETITIONER FAILED TO MEET ITS STATUTORY BURDEN OF PROOF**  
2           **UNDER THE RED FLAG STATUTES IN VIOLATION OF MR. CASAREZ'S**  
3           **CONSTITUTIONAL DUE PROCESS RIGHTS**

4           For context, California's first iteration of a "red flag" law was passed in 2014 in reaction  
5 to a shooting on the UC Santa Barbara campus that killed 6.<sup>1</sup> These laws created a civil process  
6 by which the courts could seize guns from someone who posed a danger of gun violence to  
7 themselves or others, but who did not qualify for any then-existing restraining orders and had not  
8 yet committed a crime (either of which could have permitted seizure of guns). The "red flag"  
9 laws are codified in Penal Code § 18100 et seq.

10           Under the current "red flag" laws, there are three potential ways to seek a GVRO: (1) an  
11 emergency temporary GVRO; (2) an ex-parte GVRO; or (3) a petition for a GVRO. The three  
12 methods to obtain a GVRO are differentiated by who may make the request, what proof is  
13 required, and whether the respondent's guns may be seized prior to the GVRO hearing. But  
14 regardless of which method is pursued, a hearing must be conducted pursuant to Pen. Code §  
15 18175. Relevant to this case is the emergency GVRO, governed by Pen. Code § 18125 *et seq.*

16           A temporary emergency GVRO may be requested only by law enforcement (Pen. Code  
17 §§ 18125, 18130), and the officer requesting a temporary emergency GVRO prior to a hearing  
18 must provide the court with evidence establishing "reasonable cause" to believe both of the  
19 following prongs:

- 20           (1) The subject of the petition poses an immediate and danger of causing personal  
21 injury to himself, herself, or another by having in his or her custody or  
22 control, owning, possessing, or receiving a firearm or ammunition.  
23           (2) A temporary emergency gun violence restraining order is necessary to prevent  
24 personal bodily injury to the subject of the petition or another because less  
25 restrictive alternatives either have been tried and found to be ineffective, or  
26 have been determined to be inadequate or inappropriate for the circumstances  
27 of the subject of the petition. (Penal Code § 18125(a)(1-2).)

28 <sup>1</sup> Melody Gutierrez, "California Starts Slowly Seizing Unstable People's Guns, But That Could Change." *San Francisco Chronicle*. (May 11, 2018).

1           “Reasonable cause has been generally defined to be such a state of facts as would lead a  
2 man of ordinary care and prudence to believe and conscientiously entertain an honest and strong  
3 suspicion that the person is guilty of a crime... [reasonable] cause has also been defined as  
4 having more evidence for than against; supported by evidence which inclines the mind to  
5 believe, but leaves some room for doubt.” (*People v. Ingle* (1960) 53 Cal.2d 407, 412–413,  
6 citations omitted.) If the court grants the temporary emergency GVRO, it must hold a hearing on  
7 the matter within 21 days. (Pen. Code § 18148.)

8           At the hearing, the Petitioner has the burden of proving, by clear and convincing evidence  
9 that both of the following are true:

- 10
- 11           (1) The Respondent poses a significant danger of causing personal injury to  
12           himself, herself, or another by having in his or her custody or control, owning,  
13           purchasing, possessing, or receiving a firearm or ammunition, and
  - 14           (2) A gun violence restraining order is necessary to prevent personal injury to the  
15           subject of the petition or another because less restrictive alternatives either have  
16           been tried and found to be ineffective, or are inadequate or inappropriate for the  
17           circumstances of the Respondent. (Pen. Code Section 18175(b).)

18           Clear and convincing evidence is a significantly higher burden of proof than reasonable  
19 cause and requires a high degree of probability that the asserted facts are true. (See CACI 201,  
20 *In re Angelia P.* (1981) 28 Cal.3d 908, 919). Clear and convincing evidence is required “‘where  
21 particularly important individual interests or rights are at stake,’ such as the termination of  
22 parental rights, involuntary commitment, and deportation.” (*Weiner v. Fleischman* (1991) 54  
23 Cal.3d 476, 487, quoting *Herman & MacLean v. Huddleston* (1983) 459 U.S. 375, 389-390.)

24           In deciding whether to grant the GVRO the court must consider numerous factors,  
25 including but not limited to:

- 26           (1) threats or instances of violence,
- 27           (2) violation of existing restraining orders,
- 28           (3) criminal history; and
- (4) “any other evidence of an increased risk for violence,” such as substance  
          abuse, reckless gun use or display, or recent acquisition of new firearms,  
          felony arrests, or prior incidents of use of force. (See Pen. Code Sections  
          18175, 18155(b).)

1 If the court finds that Petitioner has met its burden of proof and grants the GVRO, then  
2 the Respondent must surrender all firearms or ammunition and is prohibited from owning,  
3 possessing, receiving, or purchasing any firearms or ammunition for one year. (Pen. Code  
4 Section 18120, 18175.) Knowing violation of a GVRO is a misdemeanor that carries a 5-year  
5 ban on firearms possession (Pen. Code Section 18205.)

6 Here, this Court should deny Petitioner's request for a GVRO because Petitioner violated  
7 Mr. Casarez's due process rights by failing to meet its burden of reasonable cause, and this Court  
8 did not hold a hearing on the matter within the statutory deadline of 21 days. Moreover,  
9 Petitioner continues to violate Mr. Casarez's rights by not providing notice of what evidence, if  
10 any, will be presented at the upcoming hearing. Currently, the evidence that is before this Court  
11 is insufficient to justify issuance of the GVRO in the first instance. Having failed to meet its  
12 burden of proof in requesting the GVRO, Petitioner will not be able to satisfy the higher burden  
13 of clear and convincing evidence as required in the upcoming hearing.

14  
15 **A. Mr. Casarez's Due Process Rights Were Violated Because a Hearing on the**  
16 **GVRO was not Held Within 21 Days of the Issuance of the GVRO**

17 Pursuant to Pen Code § 18148 when the court grants a GVRO, it must hold a hearing on  
18 the matter within 21 days. As a threshold matter, a hearing was not held within the statutory  
19 timeframe. Thus, Mr. Casarez was also deprived of his statutory right to a hearing in violation of  
20 his due process rights.

21  
22 **B. Mr. Casarez Does Not Pose an Immediate and Present Danger**

23 The Petitioner failed in its application for a temporary GVRO to prove that Mr. Casarez  
24 was an "immediate and present danger" of personal injury to himself or others. The affidavit  
25 fails completely to establish a connection between Mr. Casarez's alleged online glorification of  
26 past acts of violence and an "immediate and present danger" of bodily injury to himself or  
27 others. The lone allegation is the unsupported assertion that because Mr. Casarez's identity has  
28 been revealed, there is "a likelihood" that he "could" become violent. While this assertion is

1 based on the affiant's "training and experience," there is absolutely no information whatsoever  
2 about what exactly is the declarant's training and experience. Additionally, the declarant's  
3 unsupported conclusion that Mr. Casarez "could" become violent does not provide a rational  
4 basis from which one could conclude that he poses an immediate and present threat of personal  
5 injury.

6 If Mr. Casarez did make a threat of imminent of harm, the affidavit for the emergency  
7 GVRO does not mention it. The affidavit does not include any specific or actual threats made by  
8 Mr. Casarez. It does not provide any evidence that Mr. Casarez had expressed any plan to  
9 perpetuate any future act of violence, or that "Vic Mackey" had any contingency plans about  
10 what he would do if identified. In fact, unlike the Dylan Roof character that the declarant  
11 invokes, Mr. Casarez does not have a manifesto that makes any decrees to act as a lone wolf.

12 In contrast to this case, the tragedy which spurred California's "red flag" law is a prime  
13 example of a situation in which there was evidence of an "immediate and present danger." The  
14 night before he murdered 6 people, the shooter uploaded a video to YouTube, entitled "Elliot  
15 Rodger's Retribution." In the 7-minute video, the shooter said, "Tomorrow is the day of  
16 retribution. The day I will have my retribution against humanity. Against all of you." After  
17 whining about his sexual frustration and loneliness in college, the shooter threatened, "I do not  
18 know why you girls aren't attracted to me, but I will punish you all for it." (Ian Lovett and Adam  
19 Nagourney, "Video Rant, then Deadly Rampage in California Town." *New York Times*. May 24,  
20 2014.) This is a clear example of an "immediate" threat: the shooter not only promised  
21 "retribution" against specific people (women at his college), but he gave a clear and immediate  
22 timeline of "tomorrow." If similar threats of immediate violence exist in Mr. Casarez' case, such  
23 evidence is inexplicably missing from Sergeant Grgich's declaration supporting the temporary  
24 emergency GVRO.

25 Because Petitioner failed to prove by even reasonable cause that Mr. Casarez was an  
26 immediate and present threat, this Court should deny Petitioner's request for a GVRO.



1 ineffective, or are inappropriate. Petitioner has provided no evidence as to why a GVRO is the  
2 only available remedy, as the single-page affidavit makes no mention whatsoever of any “less  
3 restrictive alternative” to a GVRO. Petitioner has not articulated any less restrictive means that  
4 have been tried and failed and has not explained why less restrictive means would be inadequate  
5 or inappropriate for the circumstances. Without clear and convincing evidence that “less  
6 restrictive alternatives” are unavailable, Petitioner SSD has not met its burden under Penal Code  
7 Section 18175(b)(2), forcing this court to deny the GVRO.

8 **II. RESPONDENT INFRINGED UPON MR. CASAREZ’S CONSTITUTIONAL**  
9 **RIGHTS TO KEEP AND BEAR ARMS AND THEREBY ABRIDGED HIS**  
10 **RIGHTS TO FREEDOM OF SPEECH**

11 The Fourteenth Amendment promises that no State may deprive any person of life,  
12 liberty, or property without due process of law. Procedurally “due process” is a guarantee of  
13 fundamental fairness. (See, e.g., *In re: Winship* (1970) 397 U.S. 398). “An elementary and  
14 fundamental requirement of due process in any proceeding which is to be accorded finality is  
15 notice reasonably calculated, under all the circumstances, to apprise interested parties of the  
16 pendency of the action and afford them an opportunity to present their objections.” (*Mullane v.*  
17 *Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) Notice must also be sufficient to  
18 enable the interested party to determine what is being proposed and what actions she must take  
19 to prevent the deprivation of his interests. (*Goldberg v. Kelly* (1970) 397 U.S. 254, 267-268.)  
20 The “essence” of due process is “notice and an opportunity to respond.” (*Thornbrough v.*  
21 *Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 183, emphasis added.) The  
22 purpose of notice “is to apprise the affected individual of, and permit adequate preparation for,  
23 an impending hearing.” (*Id.* at 183-84, internal quotes omitted.)

24 Due to Petitioner failing to meet its burden and providing no notice whatsoever of the  
25 evidence to be presented against him, Mr. Casarez’s due process rights were violated by the  
26 issuance of a GVRO in this case. As a result, the violation of his First and Second Amendment  
27 rights flow from the initial constitutional taint.

1                   **A. Respondent Infringed Upon Mr. Casarez's Right to Keep and Bear Arms When**  
2                   **His Handgun was Seized Without Due Process**

3                   The Second Amendment is incorporated through the Fourteenth Amendment and is  
4 therefore enforceable against the states. In *Heller*, the Supreme Court of the United States  
5 affirmed the individual rights theory to keep and bear arms. (*District of Columbia v. Heller*  
6 (2008) 554 U.S. 570.) Indeed, the right to keep and bear arms is “fundamental to our scheme of  
7 ordered liberty” (*Duncan v. Louisiana* (1968) 391 U.S. 145, 149) and “deeply rooted in this  
8 Nation’s history and tradition” (*Washington v. Glucksberg* (1997) 521 U.S. 702, 721.) (Internal  
9 quotation marks omitted.) As it relates to Mr. Casarez’s handgun, the highest Court of the land  
10 has found that handguns are the “most popular weapons chosen by Americans for self-defense.”  
11 (*Heller*, 554 U.S. at 647.) Thus, a ban on a handgun must pass constitutional muster.

12                   In the case at bar, a GVRO that fails to meet the statutory burden of proof acts as a de-  
13 facto ban on Mr. Casarez’s right to keep and bear arms. It bears repeating, this hearing will be  
14 held outside of the statutory requirement of 21 days, which does not present Mr. Casarez with a  
15 meaningful opportunity to be heard. In terms of the notice requirement of the Due Process  
16 Clause, Mr. Casarez has not been informed of what evidence will be presented. To illustrate,  
17 Petitioner has failed to specify what exactly Mr. Casarez has said or posted online. Petitioner has  
18 claimed that Mr. Casarez is the leader of an online group that endorses violence against  
19 minorities, yet does not say how, when, or what was said or done to endorse this violence.  
20 Without knowing what statements or images to defend against, Mr. Casarez has no notice  
21 whatsoever of how to prepare for the upcoming GVRO hearing. Mr. Casarez and his counsel  
22 will learn of any evidence outside the four-corners of the affidavit at the same time as this Court,  
23 which is patently unfair. Allowing Petitioner to present surprise evidence, during the hearing  
24 itself, denies Mr. Casarez the opportunity for meaningful cross-examination, or to present  
25 relevant evidence in his defense. He has not even been afforded the right to confront witnesses  
26 against him in person, as the Court has ordered a telephonic appearance in this case. This is not  
27 due process. This is fear mongering, and fear of what *might* happen based on what someone  
28 believes is insufficient evidence to strip Mr. Casarez of his constitutional rights.

1                   **B. Respondent's Seizure of Mr. Casarez's Lawfully Registered Handgun Abridges**  
2                   **His Rights to Freedom of Speech Because it Chills His Expression Through**  
3                   **Intimidation**

4                   Petitioner's violation of Mr. Casarez's First and Second Amendments rights flow from  
5 the constitutional taint of Respondent's failure to satisfy the due process requirements of Pen.  
6 Code §18100 *et seq.* "If there is a bedrock principle underlying the First Amendment, it is that  
7 the government may not prohibit the expression of an idea simply because society finds the idea  
8 itself offensive or disagreeable." (*Texas v. Johnson* (1989) 491 U.S. 397, 414.) This is because,  
9 as Justice Cardozo infamously stated, freedom of thought and speech are "the matrix, the  
10 indispensable condition, of nearly every other form of freedom." (*Palko v. Connecticut* (1937)  
11 302 U.S. 319, 326-327, overruled on other grounds by *Benton v. Maryland* (1969) 395 U.S. 784.)  
12 Current First Amendment jurisprudence holds that "the mere abstract teaching . . . of the moral  
13 propriety or even moral necessity for a resort to force and violence, is not the same as preparing  
14 a group for violent action and steeling it to such action." (*Brandenburg v. Ohio* (1969) 395 U.S.  
15 444, 448, quoting *Noto v. United States* (1961) 367 U.S. 290, 297-298.)

16                   Justice Brandeis' concurring opinion in *Whitney v. California* (274 U.S. 357) is widely  
17 considered to be the exposition of the importance of the First Amendment's free speech  
18 guarantee and its utmost role in a functioning democracy. In agreeing with the Court majority on  
19 Fourteenth Amendment grounds, Justice Brandeis continued:

20                   "Those who won our independence... believed that freedom to think as you will  
21 and to speak as you think are means indispensable to the discovery and spread of  
22 political truth; that without free speech and assembly discussion would be futile;  
23 that with them, discussion affords ordinarily adequate protection against the  
24 dissemination of noxious doctrine; that the greatest menace to freedom is an inert  
25 people; that public discussion is a political duty; and that this should be a  
26 fundamental principle of the American government...Believing in the power of  
27 reason as applied through public discussion, they eschewed silence coerced by  
28 law -- the argument of force in its worst form...Fear of serious injury cannot  
alone justify suppression of free speech and assembly...To justify suppression of  
free speech there must be reasonable ground to fear that serious evil will result if  
free speech is practiced. There must be reasonable ground to believe that the  
danger apprehended is imminent. There must be reasonable ground to believe that  
the evil to be prevented is a serious one...But even advocacy of violation [of the  
law], however, reprehensible morally, is not a justification for denying free

1 speech where the advocacy falls sort of incitement and there is nothing to indicate  
2 that the advocacy *would be immediately acted on* (emphasis added).” (*Whitney v.*  
*California* (1927) 274 U.S. 357, 375-376, Justice Brandeis, concurring.)

3 In *Brandenburg v. Ohio*, the Supreme Court overturned the conviction of a Ku Klux Klan  
4 leader for advocating violence at a rally. (*Brandenburg*, 395 U.S. at 447.) The Court held that  
5 advocacy that encourages violence cannot be proscribed “except where such advocacy is directed  
6 to inciting imminent lawless activity and is likely to incite or produce such action.” (*Id.*)  
7 Interestingly, the Court reject the notion that violence was imminent even at a rally, affirming  
8 that a perceived risk of violence or imminent lawless is insufficient to “sweep within its  
9 condemnation speech which our Constitution has immunized from governmental control.” (*Id.*  
10 at 448.) To summarize, “Speech that demeans on the basis of race, ethnicity, gender, religion,  
11 age, disability, or any other similar ground is hateful; but the proudest boast of our free speech  
12 jurisprudence is that we protect the freedom to express “the thought that we hate.” (*Matal v.*  
13 *Tam* (2017) \_\_\_ U.S. \_\_\_ [137 S.Ct. 1744, 1764, 198 L.Ed.2d 366, 388], quoting *United*  
14 *States v. Schwimmer*, (1929) 279 U.S. 644.)

15 As articulated by Justice Elena Kagan, the freedom of speech doctrine holds it is  
16 impermissible for the government to attempt to chill communication based on its hostility to  
17 particular ideas or viewpoints.<sup>2</sup> Here, Petitioner attempts to chill Mr. Casarez’s freedom of  
18 speech by unlawfully seizing his handgun. Thus, this Court should deny Petitioner’s GVRO.

19 **III. PETITIONER CANNOT CREATE A MEDIA SPECTACLE AND THEN USE**  
20 **THAT ATTENTION AS A BASIS TO STRIP RESPONDENT OF**  
21 **CONSTITUTIONAL RIGHTS**

22 Injunctive relief is governed by principles of equity, and in accordance with the maxim  
23 that no one can take advantage of his or her own wrong, those who seek the aid of equity must  
24 come into court in good faith. *Samuelson v. Ingraham* (1969) 272 Cal.App.2d 804. Any  
25 unconscionable conduct that relates to the transaction may give rise to the defense of unclean  
26 hands and bar relief. *Id*; *Aguayo v. Amaro* (2013) 213 Cal.App.4 1102, 1110 [any conduct that  
27

28 <sup>2</sup> See Elena Kagan, Private Speech, Public Purpose: The Role of Governmental Motive in First Amendment  
Doctrine, 63 U. CHI. L. Rev. 413 (1996).

1 violates conscience, good faith or other equitable standards of conduct is sufficient to invoke the  
2 doctrine of unclean hands].

3         Petitioner has fueled the fire of the media in this case and now wants to use that national  
4 media attention as a basis for the Court to grant the GVRO. Petitioner has alleged that because  
5 Mr. Casarez's identity has been revealed, there is "a likelihood" that he "could" become violent,  
6 yet Petitioner has added to the media hype surrounding this case and now wants to use that  
7 publicity as a basis to strip Mr. Casarez of his constitutional rights. SSD spokesperson Lacey  
8 Nelson told reporters, "This search warrant is the first of its kind at least in the country. As far as  
9 how we obtained it and were able to serve it," Nelson said. "[Mr. Casarez] was posting enough  
10 racist rhetoric and propaganda on Facebook that it was concerning that his behaviors could  
11 become violent in retaliation." (Laura Haefelli "Alleged Leader Of Neo-Nazi Group Identified  
12 As Orangevale Resident Andrew Casarez" CBS 13, Sacramento. July 27, 2020). Ms. Nelson  
13 further incited public outcry by stating, "Instead of waiting for [Mr. Casarez] to go out and  
14 commit acts of violence, per se, they were able to ideally stop it before it started. But he did have  
15 a firearm in his possession." Sgt. Tess Deterding told reporters, "[Mr. Casarez] had a lengthy  
16 history of promoting violence online, targeting minority groups...the volume and specificity was  
17 concerning enough for detectives to take action...They felt that it was time to take action as  
18 opposed to sit back and wait and see what this individual was going to do in response to being  
19 outed as his moniker 'Vic Mackey.'" (KCRA staff. "Sacramento County officials ID man as  
20 white supremacist, seize gun." July 28, 2020. KCRA 3, Sacramento.)

21         Despite Sgt. Deterding's public comments, as previously discussed, no history of  
22 promoting violence has been specifically articulated or proven by Petitioner in this case.  
23 Contrary to the "volume and specificity" she refers to, Petitioner has not given any specificity as  
24 to what threats, statements, or actions (or the number and recency thereof) Mr. Casarez has  
25 perpetrated to warrant being stripped of his Constitutional rights. Petitioner paints a picture of  
26 this case to the public that is inconsistent with the evidence in this case, and in doing so has  
27 helped incite a national media spectacle. Petitioner has unclean hands and the Court should deny  
28 the GVRO on that basis as well.



EXHIBIT A

PLAINTIFF/PETITIONER: Sergeant Grgich	CASE NUMBER:
DEFENDANT/RESPONDENT: Andrew Richard Casarez	20-224874

**DECLARATION**

*(This form must be attached to another form or court paper before it can be filed in court.)*

On July 8th, 2020, the Sacramento County Sheriff's Office received information that a subject identified as Andrew Richard Casarez had been identified as a well known online white supremacist known as "Vic Mackey." The information gathered from the information release was confirmed by multiple posts that Casarez made online, for example his father was a retired Firefighter, he made another post that he was 6' 4" tall, these are just some of the examples found online. Additionally, looking into open source media it was found that Casarez was the leader of an online group known as the "Bowl Patrol."

The "Bowl Patrol" is an online group that endorses violence against minorities, they take their name from known domestic terrorist Dylan Roof who is known for killing 9 people at a prayer meeting in South Carolina. Roof is known in the white supremacist movement for having a "bowl cut" haircut. Images were recovered from the open source images found ideals for a violence against minorities and called for murder and rape of Law Enforcement and people of Jewish descent. Also found were comments by Casarez where he stated he reloads his own ammunition and was attempting to obtain an "80% AR" referring to an 80 percent built AR-15 which would be unregistered and illegal in the state of California.

Based on my training and experience now that Casarez has been outed as a white supremacist and he has lost his anonymity there is a likelihood that he could become a "lone wolf" attacker to prove his status to the cause.

A search of the Automated Firearms System revealed the following firearms registered to NUNEZ and are believed to be located at his residence:

- 9MM "CZ"-USA Semi-Automatic pistol, serial #B810950

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

Date: 07-13-2020

Sergeant Grgich #43  
(TYPE OR PRINT NAME)

*SGT GRGICH #43*  
(SIGNATURE OF DECLARANT)

- Attorney for   
 Plaintiff   
 Petitioner   
 Defendant  
 Respondent   
 Other (Specify):

**CONCLUSION**

For all the reasons stated above, as well as any evidence and argument that will be presented in open court, this court should deny the GVRO requested by the Petitioner, Sacramento County Sheriff's Department.

DATED: August 10, 2020

Signed,



ALAN J. DONATO  
Attorney for Andrew Casarez