No. 24-

IN THE

Supreme Court of the United States

B.S.,

Petitioner,

v.

D.S.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT, DIVISION ONE

PETITION FOR A WRIT OF CERTIORARI

DAVID ZARMI
Counsel of Record
ZARMI LAW
9194 W. Olympic Blvd.,
Ste. 191
Beverly Hills, CA 90212
(310) 841-6455
davidzarmi@gmail.com

Counsel for Petitioner

130335

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

A DVRO in California may be obtained by a showing of only a preponderance of the evidence--that is, only slightly greater than 50/50. This is the current state of the law even though the DVRO is recognized to strip respondents of constitutional rights. In addition, a wide variety of non-violent conduct falls under the Domestic Violence Prevention Act (DVPA), which ambiguously includes "conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party." *Parris J. v. Christopher U.*, 96 Cal. App. 5th 108, 119, citing Cal. Fam. Code § 6320(c). This wide breadth of conduct combined with a civil evidentiary standard are effectively used in tandem to deprive citizens of their constitutional rights and subjects restrained parties to conditions similar to criminal probation without due process safeguards guaranteed by the Constitution.

This Court recently rejected a similar argument in the Second Amendment context because of the unique history and context of firearms. In contrast, California's DVPA impacts not only Due Process concerns but First Amendment protections.

The questions presented are:

1. Does the preponderance of the evidence standard used for the issuance of a DVRO in California comply with the Fourteenth Amendment's guarantees of due process?

2. Does the vagueness of the language in California Family Code § 6320(c) instructing courts to issue DVROs for "conduct that, based on the totality of the

circumstances, destroys the mental or emotional calm of the other party" violate constitutional due process? And if it does not, may non-violent non-threatening speech be used to support a protective order that deprives its subject of constitutional rights?

PARTIES TO THE PROCEEDING

Petitioner B.S. was the respondent in the Marin County Superior Court and the California Court of Appeal. Respondent D.S. was the petitioner in those courts.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the California Superior Court for the County of Marin, the California Court of Appeal, and the California Supreme Court:

- *D.S. v. B.S.*, No. FL2200449 (Cal. Super. Ct.);
- *D.S. v. B.S.*, No. A16778 (Cal. Ct. App. 1st Dist. Div. 1), judgment issued Jan. 18, 2024;
- *D.S. v. B.S.*, No. S283965 (Cal.), petition for review denied Apr. 17, 2024.
- *D.S. v. B.S.,* No. A170663, (Cal. Ct. App. 1st Dist. Div. 1), order issued June 13, 2024;
- *D.S. v. B.S.,* No. S285617 (Cal.), petition for review denied July 30, 2024.

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

Table of Contents

TABLE OF APPENDICES

TABLE OF CITED AUTHORITIES

Page

CASES:

Page

STATUTES AND OTHER AUTHORITIES:

Page

Page

Page

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the California Court of Appeal First Appellate District, Division One.

OPINIONS BELOW

The California Court of Appeal's opinion is unpublished but can be found at 2024 Cal. App. Unpub. LEXIS 298 and is reproduced as Appendix A. The original order of the Marin County Superior Court from which respondent appealed is reproduced as Appendix B. The California Supreme Court denied review in an order reproduced in Appendix C.

JURISDICTION

The California Supreme Court declined to exercise its discretionary review on April 17, 2024. On July 12, 2024, Justice Kagan granted an extension to file petition for writ of certiorari until August 26, 2024. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution states, "Congress shall make no law . . . abridging the freedom of speech."

Section One of the Fourteenth Amendment to the United States Constitution states, "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

California Family Code § 3044 states, "Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence within the previous five years against the other party seeking custody of the child . . . there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child."

California Family Code § 6300 states, "An order may be issued under this part to restrain any person . . . if an affidavit or testimony and any additional information provided to the court . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse."

California Family Code § 6320(a) states, "The court may issue an ex parte order enjoining a party from . . . disturbing the peace of the other party." Subdivision (c) states, "As used in this subdivision (a), 'disturbing the peace of the other party' refers to conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party."

INTRODUCTION

Petitioner urges this Court to review a judgment of the California Court of Appeal that found a DVRO could properly issue against petitioner for "'acts of non-violence,' including 'behavior that disturbs someone's mental well-being" without any requirement of fear of physical harm. The Court of Appeal reversed the trial court's denial of the protection order request. In its reversal, the Court of Appeal ruled in accordance with the plain language of California Family Code § 6320 and in accordance with California case law interpreting the same.

However, application of § 6320 coupled with the preponderance of the evidence standard set forth in the same statutory scheme leads to a situation where those subject to protection orders (or threat of protection orders) suffer a loss of constitutional liberty greater than criminal probation--including speech protected by the First Amendment--without the protections constitutionally afforded to criminals.

Being subject to a protection order is similar to being on criminal probation. There is a loss of constitutional liberty, and it subjects one to increased suspicion and scrutiny during events like traffic stops and re-entry into the United States. It discolors background checks for renting apartments and applying for jobs.

Being subjected to a protection order also gets one's name in the CLETS database, the California database for criminals. There is also the fear of social stigma, which is often suffered in silence.

However, unlike criminal probation, no criminal conviction is required for one to be subjected to such a protection order in California. Indeed, a subject's desire to avoid such a consequence gives considerable negotiating leverage to a party willing to avail themselves of the wide latitude of "disturbing one's peace" in the DVPA.

This Court's input and review is especially necessary for another reason. Legislators in California are understandably unwilling to risk political capital to be seen as weakening laws to protect victims of domestic violence. Hundreds of thousands of Californians are actively or have been recently subject to protective

orders. Its prevalence in California has a chilling effect on parties going through a contentious divorce, especially as California Family Code § 3044 grants presumption of custody to the protected party.

The role of the judiciary is especially needed when cultural forces and political expedience stand together to corrode due process and allow an unconstitutional framework to endure.

STATEMENT OF THE CASE

A. The Underlying Proceedings

Husband B.S. and Wife D.S. married in 2000 and have four children, including two who are still minors. B.S. is an entrepreneur and writer. D.S. is a Yale-trained lawyer. D.S. filed for divorce in 2022 and sought and received sole physical custody of minor children. (App. 3.) B.S. filed a petition for joint-custody last year but withdrew the petition because of D.S.'s threats to "respond aggressively." (*Id.* at 4.) Before D.S. got notice of the withdrawal, she filed an opposition detailing abusive behavior. (*Id.*) D.S. next filed a DVRO request on the same grounds and citing fear of B.S. because she had opposed his petition. (*Id.* at 4-5.)

B.S. opposed the DVRO, stating that he had never hit D.S. in twenty-one years of marriage, had not threatened physical harm or harm to her reputation, and argued with evidentiary support that she had timed the DVRO for her financial benefit and to prevent him from gaining joint custody. (App. 5.) Notably, D.S. did not check the boxes asking for "stay away" or "no contact" orders which would

have been necessary for the DVRO to have any purpose outside of financial gain or negotiating leverage. (*See id.* at 22-23 (petition for rehearing corrected this record for the California Supreme Court).)

Following the DVRO hearing, the trial court described the case as "very bizarre." (App. 10.) The court noted that it was allowed to issue a DVRO even for "annoying behavior and behavior that disturbs someone's well-being" but then confused the standard by adding that a reasonable person would have to be in "apprehension of imminent serious bodily injury." (*Id.* at 10-11.) The trial court made numerous comments indicating that it did not find D.S. credible, especially as to how B.S.'s statements had affected her. (*Id.* at 11-13.) It denied the DVRO petition. (*Id.* at 10, 24-30.)

B. The Appellate Opinion

On appeal, the California Court of Appeal held that the trial court had applied the wrong legal standard when it correctly noted that annoying behavior and behavior that disturbs a person's well-being could support a DVRO, but then added the sentence about "apprehension of imminent serious bodily injury." (App. 15-16.) The Court of Appeal also found the error prejudicial. (*Id.* at 16.) The Court of Appeal reversed and issued an order allowing the trial court to grant another DVRO trial with a new judge under the existing facts and law. (*Id.* at 20-21.)

Petitioner filed a petition for review with the California Supreme Court asking that court to find the statutory scheme of the DVPA unconstitutional for the same reasons presented to this Court. That petition was

denied without reasoning or citation to authority on April 17, 2024. (App. 31.)

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari because California specifically, and the states generally, need guidance as to the application of constitutional due process vis-a-vis the First and Second Amendments as to protective orders. This case provides just such an opportunity.

A. This Petition Raises the Due Process Issues That Were Unavailable in *United States v. Rahimi*

The Court recently rejected a Second Amendment challenge to a statute criminalizing possession of a firearm for the subject of a protective order. *United States v. Rahimi*, 144 S. Ct. 1889, 1898 (2024). However, in doing so, this Court first recognized that because the petitioner had not raised claims of due process, the issue was not before the Court. *Id.* at 1903 n.2. *Rahimi* was a facial challenge. *Id.* at 1892. Further, the Court limited its holding to "a restraining order [which] contains a finding that an individual poses a credible to [] physical safety." *Id.* at 1896-97. As discussed below, neither of these limitations apply here. Petitioner most certainly raises due process grounds and petitioner challenges a statute that strips individuals of their constitutional rights for conduct, including speech, that only *subjectively* "destroys the mental or emotional calm of the other party." Cal. Fam. Code § 6320(c). Indeed, the challenged appellate ruling was based only on what that court described as "annoying behavior and behavior that disturbs someone's well-being" without nary a threat at all. (App. 10-11, 15-16.)

In contrast, *Rahimi* found merely that "[s]ince the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms." *Rahimi*, 144 S. Ct. at 1896. In that tradition, the Court "conclude[d] only this: An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Id.* at 1903.

The fact that the defendant in *Rahimi* was subject to a civil protection order was not the only element necessary to find him capable of presenting a risk to the physical safety of others. He was a drug dealer prone to gun violence who had physically threatened multiple people and engaged in at least five shootings. *Rahimi*, 144 S. Ct. at 1894-95.

Left unaddressed by this Court in *Rahimi* was generally what standard of proof is required for the underlying protection order that by itself strips the subjects of their constitutional rights. And more specifically whether a statute that provides a subjective standard of "destroying" someone's "mental or emotional calm" with no showing of violent or threatening behavior can be used to issue a protective order that strips the subject of his or her constitutional rights. Cal. Fam. Code § 6320(c).

The problem with California's DVPA is it defines domestic violence to ambiguously include non-violent and non-threatening speech simultaneously depriving the subject of his or her First and Second Amendment rights.

Of note were a number of amici curiae briefs filed in *Rahimi*, but specifically two that touched on the issues raised by petitioner: Amicus Brief of Alameda County Public Defenders and California Public Defenders Association ("Alameda County") and Amicus Brief of the Bronx Defenders Union and National Association of Criminal Defense Lawyers ("Bronx Defenders") for Respondent.

Alameda County wrote regarding the situation in California that the "problem with the government's position [in *Rahimi*] is that it conflates a finding of dangerousness with issuance of a domestic violence protective order . . . . Indeed, California provides a cautionary tale on the perils of adopting the government's position . . . . Domestic abuse is not just physical; it also encompasses breaches of the peace. For example, domestic violence could include someone annoyingly sending a barrage of text messages seeking to reunite with an ex-partner." Alameda County at 3-4. Further, "our definition of domestic violence is far broader [than that considered in *Rahimi*] and includes a broad range of non-violent behavior, including 'disturbing the peace.' [Fam. Code] § 6320. This means that an individual can be the subject of a DVRO without ever assaulting or battering an intimate partner. [¶] Restraining orders in California have proliferated far beyond the domestic violence context: judges routinely issue such orders to restrain neighbors, co-workers, students, and elder caregivers from contacting pro-tected parties." Alameda County at 18.

Failures in due process are not unique to California. Bronx Defenders wrote regarding New York that the authors:

> Have seen hundreds of orders of protection issued in criminal and family court every day over decades. From all our collective experience, we have witnessed that . . . judges issue orders of protection without any finding of dangerousness or violence and without affording the accused any due process. The central argument of the Government [in *Rahimi* was] that orders of protection are proxies for dangerousness. This premise is false, given the reality that these orders of protection are issued without any meaningful opportunity to contest the underlying allegations. The process for issuing an order of protection is superficial and swift, and the consequences to the target are immediate and brutal. Courts regularly issue full stay-away orders within seconds of appearances being entered on the record. The issuance of that order triggers significant consequences to the accused. They are barred from their homes, often without a viable alternative, leaving them homeless. Many lose their jobs.

Bronx Defenders at 2-3.

In the Fifth Circuit opinion ultimately reversed by this Court in *Rahimi*, Judge James C. Ho wrote a concurrence raising a number of salient points regarding the due process issues raised by protective orders (necessarily in the Second Amendment context). This Court specifically noted that the only reason it did not consider Judge Ho's concurrence was because that petitioner had not raised due process issues. *Rahimi*, 144 S. Ct. at 1903 n.2. As such,

this petitioner cites to Judge Ho as helpful to informing the Court of the issues involved.

B. The States Require Guidance As to Whether Using a Preponderance of the Evidence Standard to Deprive Subjects of Protective Orders of Their Constitutional Rights Comports with Due Process

First, petitioner has asked this Court to consider generally whether using a preponderance of the evidence standard to strip the subjects of protective orders of their constitutional rights comports with constitutional due process.

In California, a protective order may be obtained by a showing of only a preponderance of the evidence--that is, only slightly greater than 50/50. *Hatley v. Southard*, 94 Cal. App. 5th 579, 592 (2023); *In re Marriage of Davila*, 29 Cal. App. 5th 220, 226 (2018). And even then, protective orders may be based on hearsay and unreliable evidence that would never be allowed in even ordinary civil proceedings, much less criminal ones. *See, e.g.*, Cal. Civ. Proc. § 527.6(i); *San Diego Police Dep't v. Geoffrey S.*, 86 Cal.App.5th 550, 558, 564-65 (2022) (hearsay *descriptions* of Facebook posts); *Kaiser Found. Hosp. v. Wilson*, 201 Cal.App.4th 550, 552-54 (2011) (affirming issuance based on testimony of incidents even though it was unclear how "witnesses" obtained their knowledge); *Duronslet v. Kamps*, 203 Cal.App.4th 717, 728 (2012) (hearsay evidence admissible for civil harassment protective orders).

In California, as in most jurisdictions, a protective order strips individuals not only of their First Amendment

right to free association and Second Amendment right to possess firearms. *See* Cal. Fam. Code § 6218; Civ. Code §§ 527.6, 527.8, 527.85; Welfare & Inst. Code § 15657.03. However, in the case of the DVRO, as discussed further below, it does even more than that, also burdening the subject's free speech rights by making him or her liable for speech "that destroys the mental or emotional calm of the other party." *Parris J.*, 96 Cal. App. 5th at 119; Fam. Code § 6320(c). And per California case law, that standard is *subjective*. *Id.* ("the Legislature deliberately chose not to limit the DVPA's reach to conduct that would destroy the mental or emotional calm of a reasonable person"). The effect is to unconstitutionally chill the subject's free speech rights both in the prior restraint and post-order contexts. *See FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 254-55 (2012), quoting *Reno v. ACLU*, 521 U. S. 844, 871-872 (1997) ("[t]he vagueness of [a content-based regulation of speech] raises special First Amendment concerns because of its obvious chilling effect").[1]

A protective order can last for years and, unlike in criminal cases, there is no right to counsel for the indigent. Cal. Civ. Proc. §§ 527.6(j)(1) (five years), 527.8(k)(1) (three years); Welf. & Inst. § 15657.03(i) (permanent five-year renewal without further evidence); *see* Alameda County at 32, ("in civil restraining order proceedings . . . few respondents represented by counsel, as they are not entitled to a pro bono lawyer").

In divorces especially the stakes are very high. Money, homes, and children are at stake. A finding of non-violent

1. Although California is by no means alone in chilling First Amendment rights. *See* n.2, *infra*.

abuse through the issuance of a protection order under California Family Code § 3044 grants presumption of full legal and physical custody to the protected party. This then could be used to receive child support payments in the absence of joint custody.

A protection order can also be used to move a party immediately out of the family residence. A party that finds themselves to be subject to a restraining order can suddenly be deprived of their home and children, with a presumption of guilt and stigma that can be impossible to overcome during divorce proceedings. *See* Bronx Defenders at 3.

"Scholars and judges have expressed alarm that civil protective orders are too often misused as a tactical device in divorce proceedings--and issued without any actual threat of danger." *United States v. Rahimi*, 61 F.4th 443, 465 (5th Cir. 2023) (Ho, J, concurring.) "Many divorce lawyers routinely recommend pursuit of civil protection orders for clients in divorce proceedings . . . as a tactical leverage device." Jeannie Suk, Criminal Law Comes Home, 116 Yale L.J. 2, 62 n.257 (2006); Randy Frances Kandel, Squabbling in the Shadows: What the Law Can Learn from the Way Divorcing Couples Use Protective Orders as Bargaining Chips in Domestic Spats and Child Custody Mediation, 48 S.C. L. Rev. 441, 448 (1997) (civil protective orders are deployed as "an affirmative element of divorce strategy").

"[N]ot all parties to divorce are above using [protective orders] not for their intended purpose but solely to gain advantage in a dissolution." Scott A. Lerner, Sword or Shield? Combating Orders-of-Protection Abuse

in Divorce, 95 Ill. Bar J. 590, 591 (2007). Anyone who is "willing to commit perjury can spend months or even years . . . planning to file a domestic violence complaint at an opportune moment in order to gain the upper hand in a divorce proceeding." David N. Heleniak, The New Star Chamber: The New Jersey Family Court and the Prevention of Domestic Violence Act, 57 Rutgers L. Rev. 1009, 1014 (2005). So "[a] plaintiff willing to exaggerate past incidents or even commit perjury can have access to a responsive support group, a sympathetic court, and a litany of immediate relief." Peter Slocum, Biting the D.V. Bullet: Are Domestic-Violence Restraining Orders Trampling on Second Amendment Rights?, 40 Seton Hall L. Rev. 639, 662-63 (2010).

In no other context are the courts allowed to deprive an individual of such basic constitutional rights with only a preponderance of the evidence. This Court has found under different circumstances that using the preponderance of the evidence standard to deprive litigants of their constitutional rights is a violation of due process. Indeed, this Court created a new standard for just that purpose: clear and convincing evidence, requiring more than the preponderance standard but less than the beyond-a-reasonable-doubt standard. *Santosky v. Kramer*, 455 U.S. 745, 747 (1982) (deprivation of constitutionally protected parental rights); *Addington v. Texas*, 441 U.S. 418 (1979) (deprivation of liberty rights in civil commitment proceedings); *New York Times Co. v. Sullivan*, 376 U.S. 254, 285-86 (1964) (deprivation of First Amendment rights in libel suits brought by public officials).

This Court should take up this important issue to give guidance to the states and lower federal courts on

the proper standard of proof constitutionally required when depriving an individual of constitutional rights in the quasi-criminal protective order context.

C. The States Require Guidance As to Whether a Statute That Bans Conduct, Including Speech, That "Destroys the Mental or Emotional Calm of the Other Party" Comports with Due Process

Petitioner also asks this Court to give guidance to the states as to (1) whether the vagueness inherent in issuing a DVRO for "conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party" violates constitutional due process; and (2) indeed, if a state may strip an individual of his or her constitutional rights for such non-violent non-threatening behavior. Cal. Fam. Code § 6320(c).

This Court has long held that the Fifth Amendment and Fourteenth Amendments guarantee every citizen the right to due process. Stemming from this guarantee is the concept that vague statutes are void. *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926). A statute is void for vagueness if it fails to sufficiently define a criminal offense so that "ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Statutes must not involve "wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 20 (2010).

California Family Code § 6320(c) fits squarely into this Court's void-for-vagueness doctrine. Moreover, to the extent that the statute would otherwise pass muster, it seems clear even under *Rahimi* that where a protective order is not based on violent or threatening behavior/speech that a state would not be allowed to deprive the subject of even his or her Second Amendment, much less First Amendment, rights. *Rahimi*, 144 S. Ct. 1896, 1903.

At least sixteen other states have similar statutes that predicate such protective orders on speech even where there is no threat.[2]

Judge Ho added an additional concern that would reinforce the need for this Court to step into the breach. "[T]hese concerns are exacerbated by the fact that judges are too often ill-equipped to prevent abuse. Family court judges may face enormous pressure to grant civil protective orders--and no incentive to deny them." *Rahimi*, 61 F.4th at 465. Family court judges receive mandatory training in which they're warned about "the unfavorable publicity" that could result if they deny requests for civil protective orders. Slocum at 668.

For all the aforementioned reasons, this Court should also take the opportunity to provide guidance to the

2. *See, e.g.*, 9 Alaska Stat. § 18.66.990(3)(H); Haw. Rev. Stat. Ann. § 586-1; 750 Ill. Comp. Stat. 60/103(1), (3), (7)(ii); N.M. Stat. Ann. § 40-13-2(D)(2)(h); N.C. Gen. Stat. Ann. § 50B-1(a)(2); 8 R.I. Gen. Laws Ann. § 8-8.1-1(4)-(6); S.D. Codified Laws §§ 25-10-1(1), 22-19A-1(3), 22-19A-4; 10 Ala. Code. § 30-5-2(1)(f); Alaska Stat. § 18.66.990(3)(C); Ariz. Stat. 13-3601(A); Del. Code tit. 10 § 1041(1)(e); Ga. Code Ann. § 19-13-1(2); Mich. Comp. Laws Ann. § 600.2950(1)(a), (4); Nev. Rev. Stat. Ann. § 33.018(1)(e)(3); N.J. Stat. Ann. § 2C:25-19(a)(12); N.M. Stat. Ann. § 40-13-2(D)(2)(e).

states as to the validity of California's DVRO statute allowing courts to issue protective orders for non-violent non-threatening speech and whether such conduct could permit the states to deprive the subject of his or her constitutional rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID ZARMI
Counsel of Record
ZARMI LAW
9194 W. Olympic Blvd.,
Ste. 191
Beverly Hills, CA 90212
(310) 841-6455
davidzarmi@gmail.com

Counsel for Petitioner

August 26, 2024

APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A — OPINION OF THE STATE OF CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION ONE, FILED JANUARY 18, 2024

COURT OF APPEAL OF CALIFORNIA,
FIRST APPELLATE DISTRICT, DIVISION ONE

A167778
(Marin County Super. Ct. No. FL2200449)

IN RE THE MARRIAGE OF D.S. AND B.S.;

D.S.,

Appellant,

v.

B.S.,

Respondent.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS. CALIFORNIA RULES OF COURT, RULE 8.1115(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 8.1115(b). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 8.1115.

January 18, 2024, Opinion Filed

Appendix A

Appellant D.S. (mother), appearing in propria persona, appeals from a trial court order denying her request for a domestic violence restraining order (DVRO) against respondent B.S. (father), who also appears in propria persona, under the Domestic Violence Prevention Act (Act) (Fam. Code, § 6200 et seq.).[1] She claims the court "ignored the evidence and misapplied the law" in numerous respects and displayed bias and hostility toward her. She therefore seeks reversal of the order denying a DVRO, as well as later orders that were dependent on that order, and assignment of the matter to a different judge on remand.

We reverse the order denying the DVRO. Although the trial court could have rationally concluded that a DVRO was unnecessary, its ruling was based on the incorrect premise that father's conduct could not constitute abuse unless it put "a reasonable person in apprehension of imminent serious bodily injury."[2] We also conclude that it is "in the interests of justice" for a different judge hear the matter on remand. (Code Civ. Proc., § 170.1, subd. (c).) Finally, we decline to reverse later orders from which mother did not appeal, although those orders are subject to reversal or modification on remand.

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1. We granted mother's motion for the parties to be referred to by their initials only. All further statutory references are to the Family Code unless otherwise noted.

2. In light of this disposition, we deny father's motion to dismiss the appeal as frivolous. We also deny father's motion for sanctions, mother's motion for sanctions, mother's motion to strike father's sanctions motion, and mother's motion to have father declared a vexatious litigant.

Appendix A

I.

FACTUAL AND PROCEDURAL BACKGROUND

A. Proceedings Leading to the DVRO Request

Mother and father married in 2000. They have four children together, including two teenaged minors: a boy born in 2006 and a girl born in 2008. Father is an entrepreneur and writer, and mother is a Yale-trained lawyer who started practicing in 2020. The parties agree that mother's career causes her public exposure, including because of her participation in a prominent out-of-state case against a major company (the out-of-state litigation).

Mother filed a petition for legal separation in February 2022, and that April she amended the petition to seek a divorce. She sought joint legal custody and sole physical custody of the minor children. That August, after father did not respond to the petition, mother asked that a default be entered against him. In an accompanying attachment, mother explained why she should be awarded sole physical custody of the children, including that father had left them at home "for long periods of time without meals or supervision" and "was abusive toward [her] throughout [their] marriage."

The trial court granted mother's request for entry of default, and a judgment of dissolution was entered terminating the marriage as of September 14, 2022. Mother and father were awarded joint legal custody of

the minor children, and mother was awarded sole physical custody. Father had visitation every other weekend.

In mid-October 2022, father filed a request to change the custody order to give him joint physical custody. In an accompanying declaration (father's custody declaration), he inaccurately claimed that mother did not seek sole physical custody until she sought entry of default, and he claimed he did not have "adequate time to respond." A month later, father withdrew his request to change the custody order. He later claimed this was because mother threatened to "respond aggressively and seek to defame [him] if [he] did not concede custody."

A few days after father withdrew the custody-change request, mother, who apparently did not receive notice he had done so, filed a declaration opposing it (mother's custody declaration). She gave several reasons why father should not have physical custody of the minor children, including his abusive behavior toward her throughout the marriage. She provided numerous examples of such behavior, including threats to physically harm her, attempts to harm her career and otherwise financially control her, and instances of emotional abuse. She submitted supporting documentary evidence, including text messages and other written communications.

B. Proceedings on the DVRO Request

On December 14, 2022, mother filed the DVRO request at issue. She stated that as part of an "[o]n-going pattern lasting years," father caused her "emotional and physical"

harm. She primarily relied on incidents discussed in her custody declaration and again submitted documentary evidence. She now sought a DVRO because she was worried father would retaliate against her for outlining his abuse in her custody declaration, since "his prior threats to her [were related] to the prospect of her making public statements about his conduct."

Father opposed the DVRO request, stating that he did "not agree to the facts as stated by [mother]." As had mother, he submitted many written communications between the two. In an accompanying declaration, he averred, "In 21 years of marriage, I have never struck, hit, slapped, or engaged in any form of violence with [mother]." He also denied verbally abusing or harassing her, and he specifically denied threatening "physical violence" or "harm [to] her public or professional reputation." Father claimed that mother sought a DVRO in retaliation for his request to change the custody order, and he claimed she told him "her new ambition is to become a domestic violence advocate to besmirch [his] character."

Father further stated that he had almost no contact with mother since the divorce and she was the one harassing him, including by threatening to release recordings she made of conversations between them if he did not start paying child support. She had also threatened to call the police on occasions when it was unwarranted. Once, in July 2022, she had "barged in [to his] home" and said she would call the police if he did not buy groceries for the children. Another time, as mother admitted, she threatened to call

the police because father drove their daughter and her friends in a vehicle without car insurance.

The trial court issued a temporary DVRO pending a hearing, which occurred over three days in February and March 2023. Both parties were represented by counsel, except father appeared in propria persona the last day. Mother and father testified, and mother submitted additional evidence of their interactions.

Mother claimed that father first threatened her with physical violence in late December 2020 (the December 2020 incident).[3] According to her, the two were talking on the phone about their relationship, including father's belief she had cheated on him. Mother told him they should "have an open and honest conversation with the children" about the issue, at which point he responded that "if [she] dared to do that, he would bash [her] face in." In his testimony, father seemed to admit to saying this, although he claimed "it was a sarcastic remark made over the phone to deter her from coming home and telling all of [his] children, with their friends there, that she cheated on [him]."

Mother also claimed that a few weeks after this incident, while she was out with a friend, father called her and "started violently shouting and asking [her] to come home." Mother became "distraught, subsequently developed severe chest pains," and went to the emergency room. Several months later, in October 2021, father's

3. Our discussion of the incidents supporting mother's DVRO request is drawn from both the parties' filings and their testimony at the hearing.

conduct again distressed her enough that she went to the emergency room. On that occasion, father had attempted "to break [mother] psychologically by mocking the fact that [she] was raped as a teenager and actively trying to get [her] to remember the rape to inflict current emotional distress."

On October 31, 2021, mother "confronted [father] about his escalating aggression" and "told [him] that he was scaring [her]." According to mother, father responded that "he could have physically 'snapped' and killed [her]" for "humiliating him" if she had followed through on her December 2020 statement that she wanted to talk the children about their relationship. At the DVRO hearing, mother introduced a recording of this conversation. On the recording, father admitted to saying during the December 2020 incident that he would "bash [her] face in," and he said he would have physically "snapped" if she talked to the children at that time. When mother said, "You could kill me by . . . bashing my face in," father responded, "I could," but he continued by denying the "bash" statement constituted a threat to kill her.

Mother also described father's attempts to exercise economic control over her, including by threatening her professional reputation. She pointed to his custody declaration, claiming that in it he "implicated [her in] . . . work-related misconduct[,] . . . continu[ing] a prior pattern of specific threats to falsely frame [her] with misconduct to destroy [her] new legal career and get [her] disbarred." In that declaration, father averred that mother "disclosed evidence" in the out-of-state litigation "to an unauthorized

party," leading to unwanted press coverage. Thus, father claimed, "[i]n just the first year of [her] practicing law, [mother] compromised her client and violated her ethical obligations as an officer of the court. [She] would not think twice about manipulating a family court in Marin County to achieve her objectives."

According to mother, father threatened "to frame [her] with leaking confidential client documents" related to the out-of-state litigation in late November 2021, prompting her to call 911. She explained that documents from the litigation had indeed leaked, and she called 911 because she thought father's accusation could expose her to jail time and she wanted to protect herself by immediately reporting his threats. Father's response was that mother had a "hypersensitivity to personal conflicts" due to her childhood trauma, and she had admitted to him that she "use[d] the threat of calling the police to make [him] feel fear even though she never felt that she was ever in any physical danger from [him]."

Finally, mother focused on an alleged incident that occurred in late March 2022 (March 2022 incident). That night, father, who appeared angry, went to the garage to use his punching bag. According to mother, "each time he punched the bag, the house inside shook." When father returned, he asked mother "in a menacing tone . . . to look at his 'bloody knuckles.'" After she repeatedly refused to look, he "started to reveal the reason for his anger," that she and some of their children "had reached out to an aunt, a psychiatrist, for support." Father "asked if [mother] understood that men 'snap'" and referred to

Will Smith's attack of Chris Rock at the Oscars, which occurred earlier the same night.

Father then told mother that she would "soon become 'disposable' to him." Mother interpreted this statement in light of "a threatening comment he had made a year[] earlier." When mother was in law school, the family moved to Connecticut, and they lived there for several years. In 2019, a man who lived in the same town as they had "allegedly killed his (almost ex) wife and mother of five children" and "then chopped up and disposed of his wife's body parts" (the Connecticut murder). According to mother, father "made a chilling and casual comment to [her] at the time: that women ought to know better than to humiliate a man in [a] divorce."

Father described the March 2022 incident very differently. He explained that he regularly boxed "at high intensity," and he "made no threats at all to [mother] pertaining to [his] bloody knuckles from a routine workout." He flatly denied threatening mother's life, characterizing their conversation as "a civil discussion about the reasons why Will Smith 'snapped' the way he did during the Academy Awards." Father agreed he had referred "to how humiliated . . . Smith must have felt," but he never "tr[ied] to insinuate to [mother] that [he] would 'snap' at [her] like . . . Smith 'snapped' at Chris Rock." Father also claimed he used the word "disposable" in reference to their marriage. Finally, father pointed to a text message mother sent him two days later, in which she told him he was welcome to have dinner with the family, as evidence she was not actually afraid of him.

Mother did not allege in either the DVRO request or her direct testimony that father ever sexually assaulted her. On cross-examination, after father's counsel asked her to confirm that father "never actually physically harmed [her]," she declined to do so, stating, "I could have included a couple of instances of sexual assault that I chose not to include in my statement." She elaborated that the last time she and father had sexual intercourse, in November 2021, she participated because she "was terrified of him." She claimed she did not include the incident in the DVRO request because she had not known "that sex under fear was even coercion under the law."

C. The Trial Court's Ruling

At the conclusion of the hearing on March 9, 2023, the trial court denied mother's request for a DVRO, finding that she had not met her burden of proof. After stating that the case was "very bizarre," the court identified the applicable law as follows:

> "So, I will start with this: The court is authorized pursuant to . . . [section] 6203 to issue [DVROs], and I understand that [DVROs] also include acts of non-violence: things like stalking, and excessive texting, and annoying behavior and behavior that disturbs someone's mental well-being. That can all be used as a basis to justify the issuance of a [DVRO].
>
> "The conduct must place a reasonable person—let me reiterate—a reasonable person

> in apprehension of imminent serious bodily injury from that person or acts caused by that person. So you have to look at reasonable. What would most people do? What is a reasonable person going to do? How is a reasonable person going to respond?"

The trial court then discussed its view of various incidents on which mother relied to seek a DVRO. Father's statement that he would "bash in [her] face" during the December 2020 incident occurred after she threatened "to tell the children's friends about [his] affairs," which was "a horrible thing to do" and involved "utter humiliation."[4] The court opined that mother made this threat "in order to entice a response from [father], to enrage him," and "she lit that fire." Although father was later recorded admitting he threatened to hurt mother during the December 2020 incident, the court believed she "contrived" the later conversation and "was trying to get [father] to say what he said."

In its ruling, the trial court did not address mother's claim that father had mocked her for being raped when she was a teenager. When mother testified about that incident, however, the court responded, "That's horrible trauma. But you're accusing him of putting you in the hospital. In domestic violence court, when I hear something like that, . . . I am used to when someone puts you in the hospital, it's because of a beating; not when someone uses harsh

4. Actually, according to father, mother threatened to tell the children about *her* cheating on *him*.

words that we feel the need to . . . check yourself in with some kind of heart condition."

As to the March 2022 incident, mother's claim that father's boxing caused the house to shake was "consistent with the overexaggeration presented by [her] throughout this case." The trial court appeared to discount mother's interpretation of the statement that she was "disposable" in light of the Connecticut murder, suggesting this was another instance of "bizarre facts com[ing] into play in this case." The court was also unconvinced by mother's claim that father threatened her with professional harm, stating there was "no evidence that he attempted to disbar her" and "no proof" he played a role in leaking documents in the out-of-state litigation.

Turning to mother's claim of sexual assault, the trial court found it "very troubling" that mother raised the issue "only when she was under cross-examination." The court said, "If [mother] was a victim of sexual assault, it should have been in the moving papers, it seems to me[,] because that's pretty awful. And the court is familiar with doing this for almost six years[.] When people suffer from domestic violence and sexual assaults, it's in the papers. . . . It's not what they use in defense of their argument during cross-examination." To the court, mother's late raising of the issue "seem[ed] manipulative" and was "consistent with how this case goes."

The trial court criticized mother in other respects as well. Referring to her threat to call the police about

father driving without insurance, the court said, "Law enforcement are busy folks. They are really busy worrying about real things that impact real people, hard-working folks, not a mother who is concerned about a minivan that is not ensured." The court continued, "This is a Yale Law School graduate, who is making these kind of threats to contact police. No reasonable person would do that." The court also downplayed her concern about food not being at father's house for the children, including their son, "a 16-year-old who weighs 170 pounds. He's a football player and that wasn't enough food for him."

Finally, the trial court questioned mother's desire for child support, which was also a subject of discussion at the DVRO hearing. The court stated that mother had "not disclose[d] to the court her income level," incorrectly believing she first revealed it during that hearing.[5] The court then implied that mother was making too much money to request child support from father, although the court also said it did not believe his claim that he had no income.

5. In fact, in conjunction with her divorce petition, mother submitted an income and expense declaration that revealed her income in 2021 was over $600,000. She affirmed this at the DVRO hearing, although she represented that her income was now "down to zero" and she was "spending from savings." Father, who never filed financial disclosures, also claimed he currently had no income.

Appendix A

II.

DISCUSSION

A. The Trial Court Applied the Wrong Legal Standard in Denying the DVRO Request.

Mother contends the trial court misapplied the Act in several respects, including by minimizing the evidence of father's threats to her. She also contends she was denied her due process right to a fair and impartial decisionmaker, based on the trial judge's alleged bias and hostility toward her case. We need not resolve all of mother's claims of error, because we agree the court prejudicially erred in evaluating whether father's past behavior qualified as "abuse" under the Act.

The purpose of the Act "is to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence." (§ 6220.) To effectuate this purpose, a trial court may issue a DVRO if the evidence "shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§ 6300, subd. (a).) The Act "should 'be broadly construed in order to accomplish [its] purpose' of preventing acts of domestic violence." (*In re Marriage of F.M. & M.M.* (2021) 65 Cal. App.5th 106, 115, 279 Cal. Rptr. 3d 522.)

Under the Act, "abuse" includes, but "is not limited to[,] the actual infliction of physical injury or assault."

(§ 6203, subd. (b).) The term is defined as "mean[ing] any of the following": (1) "intentionally or recklessly caus[ing] or attempt[ing] to cause bodily injury"; (2) "[s]exual assault"; (3) "plac[ing] a person in reasonable apprehension of imminent serious bodily injury to that person or to another"; and (4) "engag[ing] in any behavior that has been or could be enjoined pursuant to Section 6320." (§ 6203, subd. (a).) In turn, section 6320 provides that a court may enjoin a party from a variety of behavior, including "threatening, sexually assaulting, . . . harassing, . . . or disturbing the peace of the other party." (§ 6320, subd. (a).) The phrase "'disturbing the peace of the other party' refers to conduct that, based on the totality of the circumstances, destroys the mental or emotional calm of the other party." (§ 6320, subd. (c).)

Generally, we review an order denying a DVRO for abuse of discretion. (*S.M. v. E.P.* (2010) 184 Cal.App.4th 1249, 1264, 109 Cal. Rptr. 3d 792.) "But the question whether the trial court applied the correct legal standard in exercising its discretion is a question of law requiring de novo review. [Citation.] If the court's decision to deny a [DVRO] request is influenced by an erroneous understanding of the law, the court has not properly exercised its discretion under the law." (*Michael M. v. Robin J.* (2023) 92 Cal.App.5th 170, 179, 309 Cal. Rptr. 3d 13.)

We agree with mother that the trial court's "view of what constitutes abuse [was] too narrow." The trial court correctly acknowledged that "abuse" justifying issuance of a DVRO includes "acts of non-violence," including

"behavior that disturbs someone's mental well-being." (See §§ 6203, subd. (a)(4), 6320, subds. (a), (c).) But the court then incorrectly stated that "[t]he conduct must place a reasonable person . . . in apprehension of imminent serious bodily injury." Conduct causing such apprehension is one type of abuse under section 6203, but it is not the only one. Separately, "behavior that has been or could be enjoined pursuant to Section 6320" also qualifies as "abuse" (§ 6203, subd. (a)(4)), and section 6320 covers a wide range of conduct with no requirement that it place a reasonable person in apprehension of imminent serious bodily injury. (See § 6320, subd. (a).) If non-violent conduct was required to cause such apprehension to constitute "abuse," then section 6203, subdivision (a)(4), would be "render[ed] . . . meaningless as to this form of conduct." (*Vinson v. Kinsey* (2023) 93 Cal.App.5th 1166, 1175-1176, 311 Cal. Rptr. 3d 628 (*Vinson*) [rejecting argument that "threatening" another under section 6320 must cause reasonable fear of serious bodily injury to constitute "abuse"].)

We also conclude the error was prejudicial. If a trial court applies the wrong legal standard in ruling, we may nonetheless affirm if we determine there is no reasonable probability the court would have reached a more favorable result had it applied the correct standard. (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1504, 95 Cal. Rptr. 3d 343 & fn. 11 [addressing denial of application to terminate DVRO].) But here, the trial court dismissed most of father's alleged behavior as grounds to grant a DVRO, although that behavior could qualify as "abuse" even if it did not cause mother to reasonably fear serious bodily harm. (See *Vinson, supra*, 93 Cal.App.5th at p. 1176

["threats that do not directly refer to physical violence or cause reasonable fear of bodily harm may still constitute harassment or disturbing the peace of the recipient"].)

To be sure, even if some of father's conduct did meet the definition of "abuse," the trial court was not thereby required to grant a DVRO: The purpose of such an order "is not to punish past conduct, but to 'prevent acts of domestic violence [and] abuse' from occurring in the future." (*In re Marriage of F.M. & M.M., supra*, 65 Cal.App.5th at p. 117, quoting § 6220.) Although the court could have rationally concluded that a DVRO was unnecessary, we cannot say there is no reasonable probability of a different result had it evaluated the evidence under the proper standard. Thus, reversal is required, and the matter must be "remand[ed] for reconsideration of [mother's] request if she chooses to pursue it under presently existing circumstances." (*Vinson, supra*, 93 Cal.App.5th at p. 1180.)

Mother also claims that if we reverse the order denying the DVRO request, we must also reverse the trial court's subsequent orders granting father attorney fees and awarding father joint physical custody, because the later orders "were dependent on [the] DVRO ruling." She offers no authority to suggest this appeal encompasses these orders, from which she has not appealed. (See *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1520, 178 Cal. Rptr. 3d 168 [order of attorney fees is separately appealable]; *Enrique M. v. Angelina V.* (2004) 121 Cal. App.4th 1371, 1377, 18 Cal. Rptr. 3d 306 [same for child custody determinations after final judgment].) Although we do not have jurisdiction over them, that does not mean

they will stand. Rather, on remand the trial court should reverse any orders that necessarily depended on the DVRO denial. (See, e.g., *Allen v. Smith* (2002) 94 Cal. App.4th 1270, 1284, 114 Cal. Rptr. 2d 898 [where appellant obtained reversal of judgment but did not appeal order of attorney fees, appellate court lacked jurisdiction to reverse later order but noted trial court should do so].)

B. A Different Judge Shall Hear the Matter on Remand.

Mother also requests under Code of Civil Procedure section 170.1, subdivision (c), that a different judge be assigned to consider the matter on remand. We grant her request.

Code of Civil Procedure section 170.1, subdivision (c), provides that "[a]t the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court." Disqualification under this provision does not require a showing of actual bias. (*People v. LaBlanc* (2015) 238 Cal.App.4th 1059, 1079, 189 Cal. Rptr. 3d 886.) Rather, it is warranted "when necessary to dispel the appearance of bias" (*ibid.*), which exists when "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." (§ 170.1, subd. (a)(6).)

Here, several circumstances suggest that further proceedings should be held before a different judge to dispel any appearance of bias. To begin with, the trial judge seemed unduly focused on certain aspects of this matter. Above, we have quoted only a couple of the over 20 times he characterized the case or details of it as "bizarre." This refrain could give a reasonable person the impression that the judge took mother's claims of abuse less seriously because they peripherally involved unusual facts, such as the Connecticut murder and the out-of-state litigation.

A similar impression could be created by the trial judge's comments involving the parties' financial status. For example, when mother first stated at the DVRO hearing that her income the year before was around $600,000, the trial judge responded, "Okay. So this is a case of privilege and entitlement." He continued, "Real life's hard. There are a lot of people who struggle, who struggle to make a living every day. [¶] . . . [¶] And they come into court with these serious issues. And then there's you guys." Later, in addressing mother's recording of her conversations with father, the judge stated, "You know, bad actors, both of you. . . . [T]his is the price of privilege. This is how privilege and how people conduct themselves, apparently, because this is not a normal domestic violence case." A reasonable person could believe the judge discounted mother's claims because he perceived her as wealthy.

These comments were made in the context of the trial judge's unduly restricted view of what constitutes "abuse" under the Act. We recognize that "[m]ere judicial error does not establish bias" and generally does not warrant a judge's replacement on remand. (*People v. LaBlanc, supra*, 238 Cal.App.4th at p. 1079; *People v. Gulbrandsen* (1989) 209 Cal.App.3d 1547, 1562, 258 Cal. Rptr. 75.) But the trial judge not only incorrectly required mother to show father's conduct caused her a reasonable fear of serious physical harm, as discussed above, he also minimized her claimed emotional distress, such as when he said he was used to domestic violence victims going to the hospital because of "a beating," not "harsh words."

Mother may have exaggerated and overreacted to some of father's behavior, and the trial judge was entitled to find mother was not credible or to decide a DVRO was unnecessary. But mother presented evidence that father threatened her with significant physical and professional harm, and on remand further proceedings should be heard before a different trial judge to dispel any appearance of bias. We express no opinion on what the outcome of those proceedings should be.

III.

DISPOSITION

The March 9, 2023 order denying appellant's request for a DVRO is reversed, and the matter is remanded for the trial court to reconsider whether to issue a DVRO if appellant still wishes to seek one. (See *Vinson, supra*,

93 Cal.App.5th at p. 1180.) Appellant's request that a different judge be assigned to the matter on remand is granted. Appellant is entitled to her costs on appeal.

_____
Humes, P. J.

WE CONCUR:

_____
Banke, J.

_____
Getty, J.*

* Judge of the Superior Court of the County of Solano, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Appendix A

COURT OF APPEAL,
FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 1

Appeal No. A167778
Marin County Super. Ct. No. FL2200449

D.S.,

Appellant,

v.

B.S.,

Respondent.

BY THE COURT:

On February 2, 2024, respondent filed a petition for rehearing of this court's January 18, 2024 opinion. Respondent's conditional request for an extension of time to file the petition is denied as unnecessary. The petition for rehearing is denied.

Respondent's petition for rehearing includes a request for publication on page 16. In addition, on January 18, 2024, Kailin Wang filed a request for publication. Both requests for publication are denied. The opinion does not meet the standards for publication that are set forth in California Rules of Court, rule 8.1105(c).

Appendix A

The clerk of this court is directed to forward copies of (1) the January 18 request for publication; (2) the petition for rehearing, which includes the February 2 request for publication; (3) the opinion; and (4) this order to the clerk of the Supreme Court. (See Cal. Rules of Court, rule 8.1120(b).)

Date: February 5, 2024 /s/ Humes, P.J.
Presiding Justice

APPENDIX B — DRVO DENIAL OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN, DATED MARCH 9, 2023

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MARIN

DINA SRINIVASAN

PETITIONER(s)

vs.

BHUVANESH SRINIVASAN

RESPONDENT(s)

JUDGE: HON. MARK A. TALAMANTES
CLERK:
BAILIFF:
REPORTER:
INTERPRETER:

MINUTE ORDERS

DATE: 3/9/2023 TIME: 01:30 PM

CASE NUMBER: FL2200449

Appendix B

NATURE OF PROCEEDINGS: TRO - DOMESTIC VIOLENCE [PETR] DINA SRINIVASAN

MINUTE ORDERS:

JUDGE MARK A. TALAMANTES ,REPORTER PRO TEM LISA PALMER, CSR #9995 , DEP CLK J. FERENCZI

ZOOM REMOTE APPEARANCE BY ATTORNEY HANNAH SALASSI FOR AND WITH PETITIONER, DINA SRINIVASAN

DEFENDANT/RESPONDENT BHUVANESH SRINIVASAN IS PRESENT IN PRO PER

APPEARANCE BY ADVOCATE FROM CENTER FOR DOMESTIC PEACE ON BEHALF OF PETITIONER VIA ZOOM.

MATTER COMES BEFORE THE COURT ON CONTINUED HEARING ON PETITIONER'S REQUEST FOR DOMESTIC VIOLENCE RESTRAINING ORDER.

BOTH PARTIES INDICATE THEY ARE READY TO PROCEED WITH TODAY'S HEARING.

THE COURT NOTES RESPONDENT IS NOW IN PRO PER AND THAT THE LAST HEARING LEFT OFF ON CROSS-EXAMINATION OF PETITIONER BY ATTORNEY MR. LUGAY.

THE COURT INQUIRES IF RESPONDENT HAS ANY QUESTIONS FOR PETITIONER.

Appendix B

RESPONDENT'S STATES HE HAS NO QUESTIONS FOR PETITIONER.

MS. SALASSI STATES SHE HAS NO FURTHER WITNESSES.

RESPONDENT STATES HE HAS A STATEMENT TO READ THE COURT AND PROCEEDS TO READ THE STATEMENT ALOUD ON THE RECORD.

WITNESS(ES) SWORN AND TESTIFIED: RESPONDENT, BHUVANESH SRINIVASAN

AT 2:05 P.M. - CROSS-EXAMINATION OF RESPONDENT BY MS. SALASSI.

MS. SALASSI STATES SHE WOULD LIKE TO PLAY A 4/04/22 RECORDING FOR THE COURT.

RESPONDENT OBJECTS.

IT IS ORDERED: OBJECTION SUSTAINED.

MS. SALASSI STATES A VICTIM OF DOMESTIC VIOLENCE SEEKING A RESTRAINING ORDER MAY RECORD THOSE COMMUNICATIONS AND PROVIDES REASONING TO THE COURT.

RESPONDENT OBJECTS.

IT IS ORDERED: THE COURT HAS RECONSIDERED. THE COURT OVERRULES THE OBJECTION.

Appendix B

AT 2:18 P.M. MS. SALASSI PLAYS THE RECORDING.

THE COURT NOTES THE COURT REPORTER IS NOT REQUIRED TO TRANSCRIBE THE RECORDING IF UNABLE.

AT 2:19 P.M. MS. SALASSI REQUESTS TO CALL PETITIONER ON REBUTTAL OF THE POST-NUPTUAL AGREEMENT AND CALL TO THE POLICE.

IT IS ORDERED: THE COURT WILL ALLOW MS. SALASSI TO CALL PETITIONER ON REBUTTAL.

AT 2:19 P.M. - DIRECT EXAMINATION OF PETITIONER DINA SRINIVASAN ON REBUTTAL BY MS. SALASSI.

MS. SALASSI REQUESTS TO MOVE THE 4/04/22 RECORDING INTO EVIDENCE.

RESPONDENT OBJECTS.

IT IS ORDERED: RESPONDENT'S OBJECTION IS OVERRULED.

PETITIONER'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: - 2 - 4/04/22 RECORDING ** THE COURT ORIGINALLY INSTRUCTS MS. SALASSI TO PROVIDE A ZIP DRIVE OF THE RECORDING TO CLERK, BUT THE ZIP DRIVE IS LOCATED WITHIN PETITIONER'S EXHIBITS AND MARKED BY CLERK **

MS. SALASSI MOVES TO ADMIT PETITIONER'S EXHIBIT 1 INTO EVIDENCE.

PETITIONER'S EXHIBIT(S)-1 - LETTER DATED 8/15/2022 PREVIOUSLY IDENTIFIED ADMITTED IN EVIDENCE

MS. SALASSI REQUESTS TO PLAY A RECORDING FROM 10/30/21.

RESPONDENT CONSENTS TO PLAY RECORDING.

MS. SALASSI REQUESTS THE COURT PLAY THE RECORDING AND READ THE TRANSCRIPT.

THE COURT OPENS SEALED DOCUMENTS THAT CONTAINS 2 FLASH DRIVES AND A TRANSCRIPT.

THE COURT REMINDS PETITIONER SHE IS STILL UNDER OATH.

THE COURT PLAYS THE RECORDING, BUT NOTES THE AUDIO IS MUFFLED AND INAUDIBLE.

MS. SALASSI REQUESTS THE COURT READ THE TRANSCRIPT.

THE COURT REVIEWS THE TRANSCRIPT FOR THE 10/30/21 RECORDING AND READS PORTIONS OF THE TRANSCRIPT ALOUD.

MS. SALASSI REQUESTS TO SUBMIT THE RECORDING AND TRANSCRIPT INTO EVIDENCE.

Appendix B

RESPONDENT OBJECTS.

MS. SALASSI PROVIDES FOUNDATION.

IT IS ORDERED: OBJECTION IS OVERRULED.

PETITIONER'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: - 3 - ZIP DRIVE OF 10/30/21 RECORDING.

PETITIONER'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: - 4 - TRANSCRIPT OF 10/30/21 RECORDING.

MS. SALASSI MOVES TO ADMIT PHOTOGRAPH OF WRENCH INTO EVIDENCE.

RESPONDENT OBJECTS.

IT IS ORDERED: OBJECTION OVERRULED.

PETITIONER'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: - 5 - PHOTOGRAPH OF WRENCH.

AT 3:03 P.M. TESTIMONY OF PETITIONER CONCLUDES.

AT 3:03 P.M. - CLOSING ARGUMENT BY MS. SALASSI.

AT 3:06 P.M. - CLOSING ARGUMENT BY RESPONDENT.

Appendix B

THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:

THE COURT FINDS PETITIONER HAS NOT MET HER BURDEN.

TEMPORARY RESTRAINING ORDER IS DISSOLVED

RESPONDENTS EXHIBITS BINDERS RETURNED TO RESPONDENT IN COURT.

EXHIBIT LIST INCORPORATED HEREIN BY REFERENCE.

PETITIONER'S EXHIBITS STORED IN DEPT. L EXHIBIT CLOSET.

ENTERED BY: J. FERENCZI

APPENDIX C — SUPREME COURT DOCKET DENIAL

APPELLATE COURTS CASE INFORMATION

SUPREME COURT

Docket (Register of Actions)
S. (D.) & S. (B.), MARRIAGE OF
Division SF
Case Number S283965

Date	Description	Notes
04/17/2024	Petition for review & publication request(s) denied	The petition for review is denied. The requests for an order directing publication of the opinion are denied.