25-6787 ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

JAMES WEBB HUNTER,
Petitioner,

v.

S. F.,
Respondent.

On Petition for a Writ of Certiorari to the California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

Questions Presented

1. Second Amendment: Whether California's practice of automatically and prolongedly disarming individuals subject to non-violent restraining orders violates the Second Amendment (as applied to the States via the Fourteenth Amendment) when, as in Petitioner's case, there was no finding of any credible threat of physical harm and no history of violence, thus depriving an innocent person of the core right to keep and bear arms for self-defense for five years without proper constitutional guardrails.

2. Fifth Amendment: Whether a trial court violates the Fifth Amendment privilege against self-incrimination by forcing a civil defendant to choose between testifying in full or not testifying at all, thereby barring any selective invocation of the privilege. Here, the court presented Petitioner with an untenable ultimatum – either waive his Fifth Amendment rights entirely in order to present a defense, or remain silent and effectively forfeit the opportunity to testify. Does such compulsion, which punished Petitioner's attempt to invoke the privilege, comport with the Constitution's protection against self-incrimination?

3. Due Process: Whether Petitioner's due process rights were violated by judicial bias and fundamental unfairness in the restraining order proceedings – in particular, where the trial judge sua sponte converted the case from a Domestic Violence Restraining Order (DVRO) proceeding to a Civil Harassment Restraining Order (CHRO) without notice, and otherwise exhibited bias and prejudgment. Does the combination of a biased tribunal and a last-minute change of legal theory (which denied Petitioner a fair opportunity to defend against the new claim) amount to a violation of the Fourteenth Amendment's guarantee of a neutral arbiter and fair hearing?

4. Extrinsic Fraud: Whether a civil restraining order obtained through extrinsic fraud – including an alleged physical assault by Respondent's counsel immediately before the hearing (to intimidate Petitioner) and a campaign of collusion and perjury that prevented a fair adversarial proceeding – can stand. In other words, must such an order be vacated to prevent a grave miscarriage of justice, given that fraud which deprives a party of the chance to fully present his case is anathema to due process and renders the resulting judgment fundamentally unfair?

Parties to the Proceeding

- Petitioner: James W. Hunter, who was the respondent/defendant in the California restraining order proceedings. Mr. Hunter appears here pro se (in propria persona).

- Respondent: S.F. (initials used to protect privacy), who was the original petitioner in the California restraining order case. S.F. sought and obtained a restraining order against Mr. Hunter in the trial court and was the appellee in the California Court of Appeal.

(No corporate entities are involved. The proceedings below were titled S.F. v. James W. Hunter, Los Angeles County Superior Court No. 22SMRO00115. The California Court of Appeal decision was unpublished, and the California Supreme Court denied review. No party is a corporation or publicly held entity.)

Table of Contents

Table of Authorities

Cases

Opinions Below

The California Court of Appeal (Second Appellate District, Division 5) issued an unpublished opinion on February 25, 2025, affirming the restraining order. That opinion is included at Appendix A (unpublished disposition). The California Supreme Court denied Mr. Hunter's petition for review on May 14, 2025 (Appendix B). The trial court's original restraining order (Los Angeles County Superior Court) was issued on August 22, 2022.

Jurisdiction

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257(a). The California Supreme Court entered its order denying review on May 14, 2025. This petition is being filed within 90 days of that date (Supreme Court Rule 13.1), making it timely. The judgment of the California Court of Appeal (the highest state court decision on the merits) is now final, and this Court has jurisdiction to review the federal constitutional questions presented.

Constitutional and Statutory Provisions Involved

- U.S. Const. amend. I: "Congress shall make no law ... abridging the freedom of speech..." (Applied to the States via the Fourteenth Amendment's Due Process Clause.)
- U.S. Const. amend. II: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."
- U.S. Const. amend. V: "[N]or shall any person... be compelled in any criminal case to be a witness against himself... ." (Privilege against self-incrimination.)
- U.S. Const. amend. XIV: "... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Makes most Bill of Rights provisions, including the Second and Fifth Amendments, applicable to the States.)
- 18 U.S.C. § 922(g)(8): Federal law making it a crime for a person to possess firearms or ammunition while subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner, provided certain findings or notice conditions are met.
- California Family Code § 6210 et seq.: Provisions of California's Domestic Violence Prevention Act (DVPA) defining domestic violence restraining orders and the relationships and conduct that qualify. (Includes Family Code § 6389, which mandates firearm relinquishment by anyone subject to a DVPA restraining order.)
- California Code of Civil Procedure § 527.6: California's Civil Harassment Restraining Order statute, allowing a person to seek a restraining order for harassment (including a "course of conduct" that seriously alarms, annoys or harasses and serves no legitimate purpose, or a credible threat of violence), typically requiring clear and convincing evidence of harassment.

(Full text of the above provisions is set forth in the appendix, or will be provided upon request.)

Introduction

This petition presents an emergency situation at the intersection of individual liberty and state power. Petitioner James W. Hunter remains under a five-year civil restraining order (effective until August 2027) that, despite involving no violence or threat of physical harm, has stripped him of fundamental constitutional rights. Most notably, Mr. Hunter – an adult with no criminal record or history of violence – has been prohibited from possessing any firearms for the duration of the order, on pain of criminal prosecution. This automatic disarmament was imposed as a result of a restraining order proceeding devoid of allegations of physical violence and tainted by serious procedural irregularities. The ongoing enforcement of the order inflicts irreparable harm

on Petitioner's Second Amendment rights each day it remains in effect, and exposes him to significant criminal liability under both state and federal law simply for exercising his constitutional right to keep arms for self-defense.

The facts of this case are stark and underscore the urgency for this Court's intervention. Unlike typical restraining order cases involving domestic abuse, here no act of bodily harm, no assault, and no credible threat of violence was ever proven – or even specifically alleged – against Mr. Hunter. The dispute arose from a failed personal relationship and allegations of harassing communications and non-violent misconduct. Nevertheless, through a combination of state-law mechanisms and an overzealous application of restraining order statutes, California was able to impose a five-year ban on Mr. Hunter's Second Amendment rights "on a whim," as Petitioner describes it. This outcome should alarm anyone who values constitutional safeguards: it suggests that a fundamental right enumerated in the Bill of Rights can be treated as a mere privilege to be revoked as a convenient side-effect of civil litigation. The right to keep and bear arms, affirmed as individual and fundamental in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and incorporated against the States in *McDonald v. Chicago*, 561 U.S. 742 (2010), cannot be so lightly set aside. Yet California's restraining order procedure was used here to circumvent the strict protections normally required to disarm a person, effectively creating a backdoor deprivation of gun rights for an individual who has never been found dangerous or convicted of any crime.

Compounding the Second Amendment concerns, the proceedings below were marred by egregious violations of due process and fair trial rights. Petitioner was caught in a constitutional catch-22 at the hearing: the trial judge ruled that if Mr. Hunter wished to testify in his own defense, he had to do so without invoking his Fifth Amendment privilege at all – an all-or-nothing ultimatum. Facing this impossible choice (testify fully and potentially incriminate himself in a parallel criminal matter, or remain silent and suffer an adverse result), Petitioner chose to remain silent to preserve his privilege. The judge then openly expressed satisfaction – even "elation" – that Petitioner stayed silent, effectively celebrating the fact that only one side of the story was heard. Such comments betrayed an unseemly bias and prejudgment by the court, calling into question the neutrality of the tribunal. Moreover, the judge went beyond the pleadings to sua sponte convert the case into a different type of restraining order proceeding (from a domestic-violence based order to a civil harassment order) without notice to Petitioner. This maneuver – done to ensure that an order could issue despite potential technical deficiencies in the domestic violence claim – denied Petitioner a fair opportunity to marshal defenses specific to the new theory and exemplified the ends-driven partiality that dominated the hearing. In short, the process was fundamentally unfair at its core.

Finally, there is a strong showing that the restraining order was procured by fraudulent and unethical means, outside the bounds of the normal adversarial process. Petitioner alleges – and offers evidence – that on the day of the hearing, Respondent's attorney physically assaulted him (physically removing him from the courtroom waiting area) moments before entering the

courtroom. This extrinsic intimidation tactic was, according to Petitioner, part of a broader scheme of collusion and fraud that included orchestrated perjury by Respondent. Key portions of Respondent's testimony – for instance, her claim that she had cut off all contact with Petitioner after 2019 out of fear – have since been exposed as demonstrably false. Newly discovered photographs and communications show the parties interacting amicably in 2020 and 2021, utterly inconsistent with Respondent's narrative of unrelenting fear and harassment. In other words, the foundation of the trial court's findings was built on perjury and misrepresentations that went unchallenged at the time, in part because Petitioner was prevented from fully defending himself through a mix of intimidation and procedural shackles. Under long-established principles of law, a judgment obtained by fraud upon the court – especially fraud that prevents a fair adversarial trial – cannot be allowed to stand. Such a judgment is not merely an error; it is a nullity that undermines the integrity of the judicial system.

Emergency Nature of Relief Sought: This case presents an extraordinary situation warranting this Court's urgent attention. The restraining order against Mr. Hunter remains in force for two more years (until August 2027) unless vacated or overturned. During that time, Petitioner is forbidden from exercising core constitutional rights – most prominently, his Second Amendment right to possess a firearm for self-defense – and he faces felony criminal liability under 18 U.S.C. § 922(g)(8) and state law should he violate those terms. Every day that the order persists is another day that fundamental liberties are being irretrievably lost and that Petitioner lives under the threat of criminal prosecution for an activity (firearm possession) that the Constitution plainly protects. Unlike many petitioners who come to this Court, Mr. Hunter is not merely seeking review of a past wrong – he is currently enduring an ongoing deprivation of his rights, which will continue to irreparably harm him for years to come absent relief. This Court's intervention is needed now, not only to correct the errors in the lower courts, but to prevent the continued enforcement of an unconstitutional and fraudulently obtained order against an innocent citizen.

In sum, this petition asks the Court to vindicate bedrock constitutional principles – the right to keep and bear arms, the right against self-incrimination, and the right to due process of law in a fair tribunal – in a context where all have been flagrantly violated. The case presents an ideal vehicle to clarify the limits of state power in restraining order proceedings: how far can a State go in abridging fundamental rights under the banner of preventing harassment, and what procedural safeguards are required when such serious liberties are at stake? The contrast with the Fifth Circuit's decision in *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), is instructive. In *Rahimi*, a violent individual with a documented history of armed altercations was nonetheless held by the court to fall within the Second Amendment's protection, invalidating a federal law that disarmed him under a domestic restraining order due to a lack of historical analogue. Here, by contrast, we have a peaceable individual with *no* history of violence, who has been disarmed under state law by an untested, ex parte civil order – a situation even more removed from any historically recognized basis for disarmament. If Rahimi (whose conduct was egregious) could not be stripped of his Second Amendment rights consistent with the Constitution, then a fortiori

neither can Mr. Hunter. This Court's guidance is urgently needed to resolve these issues of national importance, restore Petitioner's rights, and ensure that "shall not be infringed" means exactly what it says when confronted with modern state practices. Petitioner respectfully requests the Court's urgent review and relief.

Statement of the Case

Factual Background: Petitioner James W. Hunter and Respondent S.F. were involved in a brief personal relationship in the past, described by Respondent as a consensual "sugar baby" arrangement (i.e. a dating relationship with financial aspects). The relationship ended in 2019, according to Respondent. According to Respondent's testimony, for a period of time thereafter, there was no contact between the two. Then suddenly in mid-2022 – roughly three years after the breakup, again according to Respondent – Respondent S.F. filed a request in Los Angeles Superior Court for a Domestic Violence Restraining Order (DVRO) against Mr. Hunter.

In her application, S.F. alleged that Mr. Hunter had engaged in a pattern of harassing behavior: she claimed he incessantly contacted her via messages and phone calls, threatened to release intimate personal photos of her, and caused her emotional distress after the end of their relationship. Notably, Respondent did not allege any actual physical violence by Mr. Hunter. In fact, she acknowledged that he never directly threatened to physically harm her at any point. Her fears and allegations were centered on non-violent misconduct – such as unwanted communications, threats of reputational harm, and other upsetting but non-physical interactions.

The absence of any violence or credible threat of violence is a critical aspect of this case. Respondent's own account, even if taken at face value, painted a picture of a former partner who was bothersome and intrusive, but not physically dangerous. She cited no instances of assault, no attempts by Mr. Hunter to approach her in person with violent intent, and no weapon use or threats of shooting or bodily injury. In the typical restraining order scenario that legislators likely envisioned when linking firearm prohibitions to such orders, there is an element of demonstrated danger – e.g., a history of domestic abuse or a specific threat to kill or injure. Nothing of that sort was present here. This was, by all accounts, a restraining order case about unwanted texts, emails, and personal embarrassment, not about looming physical peril.

Restraining Order Proceedings: The DVRO request was heard in the Los Angeles County Superior Court (Santa Monica courthouse) on August 22, 2022, before the Honorable David W. Swift (Commissioner acting as Temporary Judge). Mr. Hunter was present with his then attorney, Chad Lewin. Respondent S.F. was represented by counsel, Sam J. Israels. What transpired at this hearing forms the basis for Petitioner's constitutional claims:

- Fifth Amendment Catch-22: At the outset of the hearing, Mr. Hunter faced a dilemma concerning his testimony. Because some of S.F.'s allegations (specifically, those involving purported "threats" to release intimate photos) could potentially be construed as criminal conduct (e.g. criminal threats, extortion, or other offenses), Mr. Hunter had

valid reason to invoke his Fifth Amendment privilege against self-incrimination with respect to certain questions. Petitioner was, in fact, under investigation by law enforcement at the time for related allegations, making the risk of self-incrimination very real. Mr. Hunter wished to testify in his own defense to rebut S.F.'s accusations (most of which he vehemently denied), but he also wished to assert his Fifth Amendment rights selectively, i.e. on a question-by-question basis, for any specific inquiries that could tend to incriminate him in a possible criminal case.

The trial court, however, refused to allow this. In an extraordinary (and legally erroneous) ruling, the court told Petitioner that he could not take the witness stand at all unless he agreed to answer every question asked of him – in essence, forcing him to waive his Fifth Amendment privilege entirely if he wanted to say anything in his defense. The judge threatened Petitioner with contempt if he attempted to testify but then refuse to answer any specific question. Faced with the "Hobson's choice" of either surrendering his constitutional right against self-incrimination or forfeiting his ability to present any testimony, Petitioner, under advice from counsel, understandably chose to preserve his Fifth Amendment rights and declined to take the stand under those conditions. As a result, the only live testimony the court heard was from Respondent S.F., with Mr. Hunter effectively gagged and unable to give his side of the story.

- One-Sided Evidence and Judicial Bias: The evidentiary presentation was thus lopsided – a circumstance orchestrated in part by the court's ruling and in part by Petitioner's need to avoid self-incrimination. After S.F. testified to her allegations, Mr. Hunter remained silent. The trial judge then did something both revealing and troubling: he remarked (on the record or in a clear statement at the hearing) that he felt it "a very wise choice" that Mr. Hunter had not testified. This comment is documented and is a centerpiece of Petitioner's bias claim. A judge expressing *elation* that one side of a dispute was effectively muzzled is the antithesis of neutrality. It suggested that the court had prejudged Mr. Hunter as someone whose testimony would either be incriminating or not worth hearing, and it welcomed the absence of his voice. Such a viewpoint is strongly indicative of bias – or at least an appearance of bias – because a truly impartial judge would not take pleasure in *not* hearing from a party, even if that party intended to invoke the Fifth Amendment. The court's comment came off as punitive and hostile toward Petitioner, effectively penalizing him for exercising a constitutional right.

- Conversion to Civil Harassment Order: After hearing S.F.'s testimony and without Mr. Hunter's, Judge Swift announced that he would grant a restraining order effective for five years. However, the court took the unusual step of invoking an alternative legal basis for the order. Although the case was initiated and litigated as a domestic violence restraining order under the Family Code (DVPA), the judge stated on the record that he was granting relief under *either* the DVPA **or, in the alternative, under California's civil harassment statute (Code of Civil Procedure § 527.6)*. In other words, the court sua sponte "converted" the matter into a Civil Harassment Restraining Order (CHRO) proceeding,

even though Respondent had not petitioned under § 527.6. This was done without prior notice to Petitioner and without any amended pleadings. The apparent reason was that the trial judge harbored doubt whether S.F. and Mr. Hunter's past relationship technically qualified under the DVPA's definition of a "dating relationship" (since it was a brief, non-traditional arrangement). The DVPA applies only to certain defined relationships (e.g. dating partners, cohabitants, etc. – see Cal. Fam. Code § 6211). If the parties' relationship fell outside those categories, a DVPA order would not be available. Rather than deny the restraining order for lack of jurisdiction under the DVPA, the judge chose to "ensure" an order could issue by treating the case as one of civil harassment.

This procedural shift had significant consequences. A Civil Harassment Restraining Order (CHRO) has different statutory criteria – notably, it requires *clear and convincing evidence* of "harassment," which is defined to include a course of conduct that seriously alarms, annoys, or harasses and serves no legitimate purpose (or a credible threat of violence). While the underlying factual allegations might overlap, the CHRO statute is a different cause of action with its own elements and defenses. Petitioner was never put on notice that he needed to defend against a CHRO claim; he prepared for a DVRO case under the Family Code (where "abuse" can include broader things like "disturbing the peace" of the other party). By unilaterally switching theories at the conclusion of the hearing, the court denied Mr. Hunter any opportunity to contest the specific requirements of § 527.6. He might, for example, have argued that his alleged conduct did not meet the stringent definition of "harassment" under that law, or that any emotional distress caused to S.F. was not so severe as to justify relief, or that the higher clear-and-convincing standard was not met by the scant evidence. But because the conversion was sprung as a surprise, Petitioner's due process right to notice and an opportunity to be heard on that claim was effectively nullified. The court's priority appeared to be ensuring an order would issue by any means necessary, rather than ensuring a fair process. This bolsters Petitioner's contention that the proceeding was infected by judicial bias and a predetermined outcome – the judge was not neutrally considering whether an order was warranted under the law invoked by S.F., but rather searching for *any* legal hook to grant the order regardless.

- Entry of the Order and Its Terms: On August 22, 2022, the court entered a five-year restraining order against Mr. Hunter, set to expire on August 22, 2027. The order, as signed by the court, cited authority under the Domestic Violence Prevention Act (Cal. Fam. Code § 6300 et seq.) *and* also referenced Code of Civil Procedure § 527.6 (civil harassment). In practical effect, it doesn't matter under which statute it was issued – the restrictions on Petitioner's liberty are the same. The order includes standard no-contact and stay-away provisions: Mr. Hunter is forbidden from contacting, harassing, or coming within 100 yards of S.F. at home, work, or anywhere else. It also extends protection to certain members of S.F.'s family (her parents and brother), meaning Mr. Hunter must stay away from them as well. These provisions severely limit his freedom of movement and association – for example, he must avoid places he might otherwise lawfully go if there is

any chance of encountering S.F. or her family, under threat of arrest. Perhaps most significantly, pursuant to both federal and state law, Mr. Hunter is dispossessed of his Second Amendment rights for the duration of the order. The court's order included an explicit requirement under California law (Family Code § 6389) that Mr. Hunter surrender any firearms he owns to law enforcement or a licensed dealer, and refrain from possessing or purchasing any guns or ammunition while the order is in effect. Furthermore, because the restraining order meets the criteria of 18 U.S.C. § 922(g)(8) (it was issued after a hearing with notice, it restrains conduct toward an intimate partner, and it includes at least an implicit finding of a threat or prohibition on force), federal law independently makes it a felony for Mr. Hunter to possess any firearm or ammunition for the duration of the order. Thus, from August 2022 to August 2027, Petitioner is completely barred, on pain of criminal prosecution, from exercising his right to keep and bear arms.

It bears emphasizing how extraordinary the five-year firearm prohibition is in this context. Mr. Hunter has never been convicted of any disqualifying offense; he is not under any criminal probation or parole. Yet, by virtue of this civil order arising from non-violent accusations, he has been relegated to the same status as a convicted felon in terms of gun rights. Even individuals charged with serious crimes often retain a presumption of innocence and the right to possess guns unless and until convicted or subjected to specific bail conditions. Here, an unadjudicated allegation of harassment, handled through a summary civil proceeding, resulted in a half-decade suspension of a core constitutional right. Petitioner contends that this is precisely the sort of "infringement" on the right to keep and bear arms that the Second Amendment was meant to guard against – especially absent any showing that the person is dangerous.

- Post-Trial Discoveries (Fraudulent Evidence): After the restraining order was issued, Mr. Hunter complied with its terms under protest. He ceased all contact with S.F. In the months following the hearing, however, Petitioner uncovered new evidence that calls into question the integrity of the evidence presented by S.F. at the hearing. Most importantly, Mr. Hunter obtained photographs and electronic communications from March 2020 and beyond which show that he and S.F. had voluntary, friendly encounters and correspondence well after the end of their romantic relationship. For instance, Petitioner has dated photographs of himself and S.F. together at a public event in Los Angeles in late March 2020. He also recovered messages suggesting that as late as 2021, S.F. initiated or welcomed contact with him. These pieces of evidence directly contradict S.F.'s testimony at the hearing, in which she asserted that after some point in 2019, she wanted nothing to do with Mr. Hunter and was in constant fear of him. At the hearing, S.F. portrayed herself as having cut off all amicable contact with Mr. Hunter post-2019, to bolster her claim that any subsequent outreach from him was unwanted and terrifying. The newly uncovered evidence exposes that testimony as false. It appears that S.F. misled the court about the timeline and nature of their post-breakup interactions, perhaps to

make Mr. Hunter look more like an obsessed stalker and to hide the fact that she had voluntarily spent time with him (which would obviously undercut her narrative of being in fear).

Petitioner alleges that this false testimony was not a mere lapse of memory or minor inconsistency, but a deliberate, material lie that went to the heart of the case – i.e., whether S.F.'s fear was genuine and reasonable. If indeed S.F. and Mr. Hunter met socially in 2020 and kept in friendly contact into 2021, it strongly suggests that S.F. did not actually regard Mr. Hunter as a serious threat until perhaps a later falling-out or a strategic decision to obtain leverage over him (as Petitioner suspects). Petitioner's theory – supported by some circumstantial evidence – is that S.F. sought the restraining order in mid-2022 as a tactical maneuver related to other disputes (potentially a financial disagreement or fear of him revealing embarrassing information), rather than from an actual fear of violence. In any event, the important point for this Court is that there is now evidence that the restraining order was procured by false testimony. This raises the question of fraud on the court and whether the judgment can stand when its factual basis has been undermined.

- Alleged Extrinsic Fraud (Attorney Misconduct): The most shocking allegation to emerge is that Respondent's attorney engaged in extrinsic misconduct by physically assaulting Petitioner just before the hearing. According to a sworn declaration later provided by Mr. Hunter (and a complaint he filed with the State Bar), on the morning of August 22, 2022, as the parties and counsel were assembling in the courthouse hallway, Respondent's counsel forcibly removed Mr. Hunter from the courtroom waiting area, effectively dragging him by the arm for more than sixty feet, while at the same time threatening to have him arrested for "being close to my client". This occurred out of the judge's sight, and courthouse security did not witness it. Mr. Hunter asserts that he was stunned and temporarily disoriented by the encounter. The attorney allegedly muttered a threat or warning along the lines of "I dare you to testify, I'll destroy you" during this incident. Petitioner did not retaliate or respond with violence – partly out of surprise and partly out of fear that any reaction would jeopardize him further in the eyes of the court (had an altercation ensued, it might play into a narrative that he was violent). Instead, Mr. Hunter notified his attorney and calmly waited for him to arrive, regrouped and proceeded into the courtroom for the hearing. It is unknown why Mr. Lewin chose to ignore the altercation and did not immediately bring this up in court. Petitioner now recognizes that this assault had a profound effect on his ability to focus and effectively make decisions for himself during the hearing; he was literally shaken up right before standing at counsel table. More broadly, Petitioner contends that this was a calculated move by Respondent's side to intimidate him and throw him off balance, thereby depriving him of a fair chance to present his case. In legal terms, this amounts to extrinsic fraud or misconduct – i.e., wrongful behavior that occurs outside the courtroom and directly undermines the adversarial process by preventing one party from fully participating. Unlike intrinsic

fraud (such as perjury, which a trier of fact can theoretically detect and weigh), an *extrinsic* attack on a party (like physically assaulting them or otherwise coercing them) is not something the judge can remedy during the trial, especially if it's hidden. Its effect is to vitiate the fairness of the proceeding altogether.

In the immediate aftermath of the August 22, 2022 hearing, Mr. Hunter's world was drastically changed. He ceased all communication with S.F. He effectively had to live under significant restraints, as though under a form of quasi-criminal supervision, despite never having been charged with (let alone convicted of) any crime arising from the dispute.

Procedural History: Mr. Hunter timely appealed the restraining order to the California Court of Appeal, Second Appellate District. His appeal raised multiple issues, including the constitutional claims (Fifth Amendment, Due Process) and arguments that the trial court abused its discretion or misapplied state law. On February 25, 2025, the Court of Appeal issued an unpublished opinion affirming the trial court's order. The appellate court, applying a deferential standard, rejected Mr. Hunter's arguments. It held, in essence, that there was sufficient evidence of "harassment" to support the issuance of a restraining order and that any procedural errors were either invited or not prejudicial. The Fifth Amendment argument was disposed of by noting that Petitioner chose not to testify (without grappling with the coercive context of that "choice"). The court also found that even if issued under the wrong statute, the order could stand under the alternative statute – essentially ratifying the trial judge's dual basis approach.

Petitioner sought discretionary review in the California Supreme Court. In his petition for review (filed in April 2025), Mr. Hunter highlighted the due process concerns and the newly surfaced evidence of fraud, urging the state high court that this case presented a "perfect storm" of issues that merited clarification. On May 14, 2025, the California Supreme Court summarily denied review without comment.

Parallel to these direct appeals, Petitioner also pursued collateral avenues for relief given the unique nature of what had transpired:

- In September 2025, upon gathering the new evidence of perjury and the details of the attorney's assault, Mr. Hunter filed a petition for writ of habeas corpus in the California Criminal Court Division under California Penal Code § 1473. He invoked a provision of California habeas law that allows habeas corpus to challenge a restraint of liberty imposed *as a result of a judgment* where that judgment was obtained by fraud or where fundamental constitutional rights were violated. Because the restraining order, though civil, has quasi-criminal effects (violation can result in jail, and it triggers firearm prohibitions), Petitioner argued that habeas corpus was an appropriate and more expedient remedy than a separate civil action. He raised four grounds in that habeas petition: (1) the Fifth Amendment violation (identical to that raised here); (2) judicial bias and due process violations (including the DVRO-to-CHRO conversion issue); (3)

extrinsic fraud (the attorney's pre-hearing battery and related misconduct); and (4) intrinsic fraud/new evidence (Respondent's perjury about no-contact after 2019, revealed by new evidence). He also argued that the ongoing enforcement of the order was unconstitutional in its own right given Bruen and Rahimi.

- Additionally, Petitioner filed an Independent Equitable Action (sometimes termed a "bill of review" or independent suit in equity) in the Los Angeles Superior Court seeking to set aside the restraining order judgment for extrinsic fraud. This lawsuit, filed against S.F. and her attorney, asserted causes of action for declaratory relief and equitable relief, essentially asking the court to declare the restraining order void due to the fraudulent manner in which it was obtained. In that complaint, Mr. Hunter detailed the assault and the perjury, and emphasized that he had exhausted normal legal remedies (appeals) without getting relief because the fraud was not apparent on the face of the trial record. He argued that equity must intervene to prevent a grave injustice and to restore him to the position he would have been in had the proceeding been fair. As of the filing of this Supreme Court petition, that independent action is pending. In summary, after exhausting all avenues in the California courts, Mr. Hunter remains subject to a five-year restraining order (expiring 2027) that, by all indications, was issued in a manner incompatible with fundamental constitutional guarantees. The stakes for Petitioner are extraordinarily high: he continues to live under a cloud of legal disability and personal stigma (being labeled as a restraining order violator/harasser), suffers the daily loss of core Second Amendment rights, and faces potential felony prosecution should he inadvertently run afoul of the order's terms or attempt to reclaim his rights. For the broader public, this case raises pressing questions about the proper limits of restraining orders in our constitutional framework and the remedies for grave injustices that slip through the cracks of the normal appellate process. The following Reasons for Granting the Writ will address each of the four questions presented, demonstrating why this Court's review is warranted and indeed imperative.

Reasons for Granting the Writ

I. California's Prolonged Disarmament of an Individual Under a Non-Violent Restraining Order Violates the Second Amendment and Fourteenth Amendment

The core of this case is the Second Amendment issue: whether the government (state or federal) may extinguish an individual's right to keep and bear arms for a multi-year period based solely on a civil restraining order issued without any finding of danger or violence. The facts here are

especially compelling because Petitioner has no criminal record or history of violence, and the restraining order against him was grounded only in allegations of harassment and emotional distress, not physical harm. Yet, by operation of California law (Family Code § 6389) and federal law (18 U.S.C. § 922(g)(8)), Mr. Hunter was immediately stripped of his Second Amendment rights for five years upon issuance of the order. This case thus squarely presents an important and unresolved constitutional question: Does such a blanket, automatic firearm prohibition, triggered by a civil order in a case devoid of violence, comport with the Second Amendment as applied to the states via the Fourteenth Amendment?

A. The Second Amendment's Protections and Bruen's Historical Tradition Test: The Second Amendment declares that "the right of the people to keep and bear Arms, shall not be infringed." This Court's landmark decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), affirmed that the right to keep and bear arms is an individual right centered on self-defense, and it exists independently of militia service. *Heller* struck down a ban on handgun possession in the home, emphasizing that the ability to possess firearms for self-defense is at the Amendment's core. Two years later, *McDonald v. City of Chicago*, 561 U.S. 742 (2010), held that this fundamental right is fully applicable to the States through the Fourteenth Amendment. Most recently, in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S., 142 S. Ct. 2111 (2022), this Court clarified the standard for evaluating firearms regulations: the government must justify any law that burdens Second Amendment conduct by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. If no analogous historical tradition exists for disarming a person in the circumstances at issue, then the law is unconstitutional, full stop.

Crucially, *Bruen* rejected the prior "two-step" approach (which had allowed means-end scrutiny) and reaffirmed that the Second Amendment is not a "second-class right." In the wake of *Bruen*, courts must look to history and tradition: what did the Founding era (and Reconstruction era) understand about disarming individuals, and under what conditions was it permissible?

B. No Historical Tradition Supports Disarming Individuals Absent Proof of Dangerousness: Petitioner's situation fails the *Bruen* test. There is no historical analogue from the Founding era (or earlier) of American law where an individual was categorically disarmed by the state purely on the basis of a civil adjudication of "harassment" or non-violent misbehavior. At most, historical laws disarmed categories of persons who were deemed dangerous or disloyal (for example, actively rebellious groups, or those convicted of violent crimes). Even those historical examples are relatively few and were often tied to actual threats to public safety or order. It was simply unheard of in the 18th or 19th century for an American court to issue a broad injunction stripping a person of weapons when that person was not charged with a crime like breach of the peace or not shown to be actively violent.

In the case at bar, the restraining order was essentially a tool to stop unwanted communications and contact – something akin to a peace bond or anti-harassment measure. Historically, peace bonds did exist (an individual could be required to post a bond to keep the peace if they

threatened violence), but even those required some oath of credible fear of bodily harm and did not typically entail disarmament absent explicit conditions. Nothing in our Anglo-American legal tradition remotely approximates a blanket multi-year firearm ban on a person with no criminal conviction and no specific finding of dangerousness. Such a practice is a modern contrivance, and indeed, as the U.S. Constitution sees it, an illegal atrocity.

The State of California has, in recent decades, expanded its protective order statutes to automatically include firearm prohibitions in every restraining order, whether or not the underlying conduct involved violence. California Family Code § 6389 mandates that anyone subject to a DVRO must surrender firearms and cannot purchase or possess firearms for the duration of the order. Similarly, California Code of Civil Procedure § 527.6 (civil harassment) has been interpreted to allow courts to include firearm prohibitions. These laws cast a wide net, treating a person who sent annoying texts the same as a person who tried to stab their spouse, in terms of firearm dispossession. *Bruen* teaches that such one-size-fits-all prohibitions must find a historical pedigree. They do not.

To illustrate the extremity of California's approach: even a single incident of non-violent harassment (say, repeated unwanted phone calls) can lead to a 5-year gun ban under current law, if a restraining order is issued. This is far removed from any historical understanding. At the time of the founding, the idea that the government could completely disarm a citizen for something like rudeness or pestering would have been inconceivable – the right to bear arms was considered essential to the concept of a free citizenry, and only by conviction of a serious crime or demonstration of an intent to violently breach the peace might one's arms be forfeited.

Even in the 20th century, until recently, such civil provisions were rare. It has only been in the last few decades, amid changing attitudes towards gun policy, that states like California have experimented with using civil orders as a surrogate means of gun control – effectively doing an end-run around the high burden of proof required to impose criminal sanctions by using civil proceedings to achieve similar outcomes (here, removal of gun rights). This modern innovation lacks historical support and should be scrutinized carefully under *Bruen*.

C. The Fifth Circuit's Rahimi Decision Underscores the Constitutional Problem: The tension between modern restraining-order-based disarmament and the Second Amendment was highlighted in *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023). In *Rahimi*, the Fifth Circuit struck down 18 U.S.C. § 922(g)(8) – the very federal law that applies to Petitioner's restraining order – as unconstitutional under *Bruen*. The court reasoned that while protecting domestic violence victims is a compelling interest, the Second Amendment's text and history did not countenance a broad ban on firearm possession by individuals subject to domestic restraining orders. *Rahimi* noted the lack of a historical tradition of disarming those accused (but not convicted) of domestic abuse. Notably, the respondent in *Rahimi* had a violent background – he was actually involved in multiple shootings and was far from a model citizen. If even *Rahimi*, with his checkered history, could not be stripped of his gun rights consistent with the Second

Amendment (in the Fifth Circuit's view), then Mr. Hunter's disarmament is on even thinner ice. Mr. Hunter is, comparatively, a law-abiding individual with no history of violence or criminality. He was never accused of any physical harm to S.F. Where *Rahimi* asked whether the government can disarm someone who *did* have a propensity for violence but had not yet been convicted – and answered "no" – this case asks whether the government can disarm someone who has shown no propensity for violence at all. The intuitive answer must be the same, if not a more emphatic "no."

It is worth emphasizing how stark the contrast is: *Rahimi* (whose case is now before this Court on certiorari, with cert granted in 2023) involved a man who *allegedly fired a gun at a house and threatened a woman*, among other violent acts, yet the constitutional principle elucidated by the Fifth Circuit was that the Second Amendment still protected him absent a historical basis to remove his rights. In Mr. Hunter's case, the state's justification is far weaker – Respondent's allegations at most describe an unpleasant ex-boyfriend who fell in love and wouldn't leave her alone, not a violent batterer. And unlike *Rahimi*, where the disarmament at least followed a finding by a judge of a credible threat (as required by §922(g)(8) criteria), here the restraining order contained no explicit finding that Mr. Hunter posed a physical danger. The California trial court made a general finding that harassment occurred (and even that is contested as based on false evidence), but did not find that Mr. Hunter was likely to use physical force. Indeed, such a finding would have been implausible on these facts. Thus, even the minimal safeguards of §922(g)(8) (notice, hearing, finding of threat or prohibition on force) were arguably lacking or perfunctory here.

As Justice Thomas – the author of *Bruen* – has keenly observed in the context of protective orders, *"the question is whether the Government can strip the Second Amendment right of anyone subject to a protective order – even if he has never been accused or convicted of a crime. It cannot."* (Statement of Thomas, J., in reference to the issues raised by *Rahimi*). This insight applies with full force to Petitioner's situation. Mr. Hunter's Second Amendment rights have been treated as a contingent privilege that the state can withdraw as a bonus outcome of a civil proceeding – precisely what the Constitution forbids. The "shall not be infringed" guarantee is not a mere suggestion; it takes certain policy options off the table (to borrow Heller's phrasing). Disarming an innocent, non-violent citizen for five years based on a civil restraining order is one of those forbidden options, absent some concrete historical analogue or the highest degree of individualized adjudication (neither of which is present here).

D. Profound National Importance of the Issue: Beyond Petitioner's personal circumstances, this case carries broad implications for millions of Americans. Protective orders with firearm prohibitions are extremely common in the United States. States have varying standards, but many issue domestic violence restraining orders on a prima facie showing of harassment or fear, often in ex parte settings initially. The consequences include firearm prohibitions under federal and state laws. If such orders can be obtained without rigorous due process and used to nullify Second Amendment rights, there is a danger of abuse and overreach. This concern is not

hypothetical; it has been voiced in public discourse that restraining orders can at times serve as a "backdoor" means to disarm individuals who have not been convicted of any wrongdoing. Some commentators refer to this phenomenon as "cultural disarmament" – using civil mechanisms and low standards of proof to achieve what criminal law would normally require a conviction to accomplish. While the intention of protecting victims is laudable, the constitutional cost is severe if these orders are issued too liberally or without proper safeguards.

By taking up this case, the Court can provide much-needed guidance on where the line must be drawn. Is it constitutional for a state to have a *de facto* regime of disarmament by allegation, as California does? Or must there be at least a showing akin to historical justifications (e.g., proof of violent conduct or a concrete threat)? The Court's decision in *Bruen* began the work of recalibrating Second Amendment jurisprudence to align with historical tradition. Addressing the status of restraining order-based gun bans is a natural and necessary next step, especially in light of the *Rahimi* case. Indeed, *Rahimi* and this case can be seen as two sides of the same coin – one federal, one state; one involving a violent actor, one involving a non-violent actor; both highlighting the question of whether modern preventive laws have overshot constitutional limits.

Petitioner respectfully submits that under a faithful application of *Heller*, *McDonald*, and *Bruen*, his ongoing disarmament is unconstitutional. No matter how one parses it – be it under strict scrutiny (if it applied) or Bruen's historical test – the government cannot show a justification rooted in our Nation's history for what has been done here. The Court of Appeal did not engage with this argument, and the California Supreme Court declined to review it. Therefore, it falls to this Court to step in and protect the fundamental right at stake. The Second Amendment issue alone warrants granting the writ.

II. The Trial Court's "All-or-Nothing" Ultimatum Violated Petitioner's Fifth Amendment Right and Undermines the Fairness of Civil Proceedings

The second question presented concerns the Fifth Amendment privilege against self-incrimination, and it arises in a unique but increasingly important context: civil protective order hearings that carry quasi-criminal consequences. The trial court's handling of Petitioner's attempt to testify was not only unfair; it was plainly unconstitutional. By conditioning Mr. Hunter's right to testify on a total waiver of his Fifth Amendment rights, the court forced Petitioner into an impossible dilemma that this Court's precedents and fundamental principles of justice forbid. The result was that Petitioner could not speak in his own defense without risking self-incrimination – a classic "cruel trilemma" scenario (stay silent and lose by default, testify and potentially incriminate oneself, or perjure oneself – obviously Petitioner would not choose the last). Such a setup has no place in our legal system. This Court should grant review to vindicate the principle that a person does not forfeit all right to defend himself in a civil proceeding merely because he wishes to invoke the Fifth Amendment as to specific questions.

A. The Right to Selective Invocation of the Fifth Amendment in Civil Proceedings: It is well-established that the Fifth Amendment's protection against compelled self-incrimination applies in civil proceedings as well as criminal cases. A witness (party or not) may invoke the privilege if answering a question might tend to incriminate him in a future or pending criminal case. Critically, the accepted procedure – in federal and state courts alike – is that the privilege is invoked question by question, not in a blanket fashion. A person cannot be forced to answer incriminating questions simply because he is a party to a civil case. Conversely, a person who invokes the privilege to certain questions cannot be barred from testifying entirely to other matters that are not incriminating. The normal rule is that a witness must assert the privilege in response to specific questions and the trial court must evaluate whether the privilege is properly invoked as to each. If a question is innocuous, the witness must answer; if it tends to incriminate, the witness may refuse. There is no rule of law that saying "I plead the Fifth" to one question disqualifies a person from speaking at all.

Indeed, if such a rule existed, it would wreak havoc in many contexts (e.g., civil depositions, congressional hearings, etc.) where witnesses routinely answer some questions and plead the Fifth as to others. The California Court of Appeal itself has explicitly stated the correct approach: *"A blanket refusal to testify is unacceptable; a person claiming the Fifth Amendment privilege must do so with specific reference to particular questions... [and] the trial court must undertake a particularized inquiry with respect to each claim of privilege."* (See *Warford v. Medeiros*, 160 Cal. App. 3d 1035, 1045 (1984), italics omitted). The trial judge in Petitioner's case did the opposite of what Warford and basic Fifth Amendment jurisprudence require – he issued a blanket prohibition on any invocation, thus short-circuiting the required particularized inquiry into whether specific answers might incriminate.

From a federal perspective, while this Court has not had many occasions to address partial invocations in civil cases, it has consistently guarded the Fifth Amendment's reach. For example, *Kastigar v. United States*, 406 U.S. 441 (1972), and other cases underscore that the government cannot compel incriminating testimony without immunity. In *Lefkowitz v. Cunningham*, 431 U.S. 801 (1977), this Court struck down a law that forced public officials to waive their Fifth Amendment rights or lose their jobs. That situation is analogous by close analogy to what happened here: in *Lefkowitz*, the state told the individual, "surrender your Fifth Amendment privilege or be penalized (terminated from employment and barred from office)"; in Mr. Hunter's case, the court effectively said, "surrender your Fifth Amendment privilege or be penalized (lose your case and be subjected to a restraining order)." In both instances, the government put a "price" on the exercise of the Fifth Amendment. This Court in *Lefkowitz* held such a price to be unconstitutional: the state cannot condition a benefit or the avoidance of a penalty on relinquishing the Fifth Amendment. Mr. Hunter's circumstance is, if anything, more sympathetic – he was a defendant in a proceeding that could (and did) severely burden his liberty, and he was told he must effectively give up one constitutional right (the privilege against self-incrimination)

to assert another (the right to testify in his own defense). This is reminiscent of the kind of coercion the Fifth Amendment squarely prohibits.

B. The Trial Court's Error Was Structural and Prejudicial: By barring Petitioner's testimony entirely unless he waived his privilege, the trial court ensured that the only narrative the judge heard was Respondent's. This one-sided presentation of evidence fatally tainted the proceeding. The ability to tell one's story is at the heart of a fair hearing. Petitioner was prepared to, and wanted to, categorically deny many of S.F.'s allegations. He could have provided innocent explanations or context for certain messages, challenged her credibility, and introduced his own evidence. All of that was lost. The judge made no effort to accommodate Mr. Hunter's twin needs of defending himself and avoiding self-incrimination. For instance, the court could have sealed certain testimony or crafted questions that avoided touching on the most sensitive topics – or simply allowed Petitioner to take the stand and assert the privilege only to particular queries. Instead, the court's stance was absolutist. The result, as Petitioner argued to the courts below, was a proceeding in which the outcome was almost preordained: with only one side testifying, naturally the judge found that side credible and granted the restraining order.

This error is structural in the sense that it "permeated the entire proceeding", much like bias does. In *In re Murchison*, 349 U.S. 133 (1955), cited by Petitioner below, this Court emphasized that some errors (like having a biased judge) affect the framework of the trial and thus can never be deemed harmless. Similarly, preventing a party from testifying at all is a drastic curtailment of due process that undermines any confidence in the result. The prejudice here is patent – the judge explicitly noted that he was happy not to have to consider Petitioner's testimony, which reveals that the absence of Petitioner's voice impacted the judge's view of the case. If Mr. Hunter had testified and, say, the judge still found against him, at least one could say both sides were heard. But forbidding his testimony means we can never know what weight his evidence might have carried. Given that the case largely boiled down to a he-said, she-said credibility contest, silencing the "he-said" was essentially tipping the scales entirely to one side.

Moreover, the trial judge's attitude exacerbated the problem. As mentioned, the judge's expression of "elation" and relief that Petitioner didn't testify betrays a mindset that likely influenced the judgment. It suggests the judge had a negative view of Petitioner or assumed Petitioner's testimony would be false or self-serving. This dovetails with Petitioner's bias argument (discussed in the next section), but it also shows that the Fifth Amendment violation had real, concrete effects: it pleased the court and made his job easier to rule against Petitioner. That should never be the case in an adversarial proceeding.

C. Chilling Effect on Exercise of the Privilege: Allowing the lower courts' approach to stand would set a dangerous precedent beyond this case. It would signal that in civil proceedings – especially those with quasi-criminal overtones like restraining orders – individuals must either testify fully or not at all. This would have a chilling effect on the exercise of the Fifth Amendment. Many civil respondents would feel compelled to waive the privilege, fearing that

silence would doom their case (as indeed it did for Mr. Hunter). But forcing that choice is precisely what the Constitution guards against. *Hoffman v. United States*, 341 U.S. 479 (1951), instructs that courts are to give a broad, liberal construction to the privilege and not penalize its invocation. Yet here, the trial court expressly penalized the invocation by equating it with a total forfeiture of defense. This Court's intervention is needed to correct that misapplication and to reaffirm that courts cannot shortcut a litigant's Fifth Amendment rights for the sake of convenience or expediency.

There is also a broader due process dimension: in any proceeding where the government (or another party) seeks to deprive someone of protected liberty or property, the individual has a right to be heard and to present evidence. By conditioning Petitioner's right to present evidence on sacrificing a constitutional privilege, the trial court in effect denied him a meaningful opportunity to be heard. It turned the proceeding into an inquisition where invoking silence was fatal. This is incompatible with the notion of a fair hearing under the Fourteenth Amendment's Due Process Clause as well.

D. Lack of Remedy in Lower Courts and Need for Clarification: The California Court of Appeal's treatment of this issue was cursory. It did not acknowledge the constitutional problem, and instead implied that Petitioner simply chose not to testify (obscuring that his "choice" was coerced by the court's improper ruling). The California Supreme Court's denial of review leaves this serious issue unresolved and ripe for this Court's guidance. There is scant Supreme Court precedent on the precise scenario of partial Fifth Amendment invocation in civil protective order hearings – likely because the issue is somewhat novel and such hearings have become more consequential in recent years (with their attendant firearm prohibitions). However, the principles from *Lefkowitz*, *Hoffman*, *Garrity*, and others can be straightforwardly applied: a state may not force an individual to surrender one constitutional right as the price of exercising another. The trial court forced Petitioner to choose between his privilege against self-incrimination and his right to defend himself in a civil proceeding – a choice that violates the basic rule that "constitutional rights coexist and must each be respected."

This Court should grant certiorari to make clear that what happened here was unconstitutional. The ruling would protect not only Mr. Hunter, but also set a precedent to guide trial courts across the country that encounter similar situations. As more jurisdictions enact "red flag" laws or expand civil restraining orders that have criminal consequences, the scenario of individuals asserting Fifth Amendment rights in such hearings will become increasingly common. Clear guidance is needed that the proper approach is a question-by-question invocation, not an all-or-nothing ultimatum. By addressing this issue, the Court will reinforce the vitality of the Fifth Amendment in all settings and ensure that no court can ever again declare itself "elated" that it silenced one side of a case through constitutional compulsion.

III. Petitioner Was Denied Due Process of Law Due to Judicial Bias, Prejudicial Irregularities, and Lack of a Fair Opportunity to Defend

The third ground for this Court's review centers on the Due Process Clause and its guarantee of a fair trial before an impartial tribunal. The restraining order proceedings against Mr. Hunter deviated so far from the judicial neutrality and procedural fairness required by the Fourteenth Amendment that the resulting order cannot be deemed constitutionally sound. Two related aspects particularly stand out: (A) the conduct and attitude of the trial judge demonstrated actual bias or, at minimum, a constitutionally intolerable risk of bias, and (B) the judge's sua sponte conversion of the case to a different cause of action without notice – along with other procedural irregularities – deprived Petitioner of a fair opportunity to defend himself on the merits. Each of these is independently alarming; together, they paint a picture of a proceeding where the scales of justice were tipped from the start against Mr. Hunter. Such a proceeding fails the fundamental requirement of due process: *"A fair trial in a fair tribunal is a basic requirement of due process." In re Murchison*, 349 U.S. 133, 136 (1955).

A. Judicial Bias and Appearance of Bias: It is a foundational principle that litigants are entitled to a judge who is impartial and has not predetermined the outcome. In Petitioner's case, multiple indicators suggest that Judge Swift was not the neutral arbiter the Constitution demands.

1. Judge's Expressed "Elation" at Petitioner's Silence: As discussed earlier, the trial judge openly stated on the record that he was somewhat pleased or relieved that Petitioner did not testify. This is an extraordinary and telling comment. An impartial judge might note that one party didn't present evidence, but he would not normally express personal satisfaction about it. The judge's remark betrays a mindset that Petitioner's testimony was not welcome – likely because the judge anticipated it would complicate the narrative or cast doubt on Respondent's story, which the judge perhaps was inclined to believe. This prejudgment (that Petitioner's side was not worth hearing) is itself a serious breach of neutrality. It indicates the judge had formed a negative opinion of Mr. Hunter or his credibility before hearing a word from him. It aligns with the inference that the judge might have seen Petitioner as a bad actor and was content to grant the order without being troubled by his defense. In *Murchison*, this Court warned against even "the probability of unfairness", stating that our justice system "has always endeavored to prevent even the probability of unfairness" by avoiding situations that tempt the judge to be biased (349 U.S. at 136). Here, we have more than a probability; we have an actual manifestation of partiality.

2. Unilateral Conversion of the Legal Theory: The judge's decision to re-characterize the case as a civil harassment matter in addition to a DV matter was not just a technical move; it evidences a determination to ensure a particular outcome (granting a restraining order) regardless of the constraints of the law. Normally, judges rule on the claims as brought by the parties. If a petition is brought under the DVPA and the petitioner fails to establish the requisite relationship or abuse, the judge should deny relief. That's how due process and adversarial litigation work: the petitioner must meet the legal standard for the relief requested. Judge Swift's action – essentially re-writing the petition on the fly to fit a

statute that might authorize relief – suggests he favored the petitioner (S.F.) to the extent of actively assisting her in getting an order. It is akin to a judge in a civil case, seeing that Plaintiff sued under the wrong law, stepping in to say "I'll treat it as if you sued under a correct law so that you win." That is not the role of a neutral judge; it is more like the role of an advocate.

The conversion also blindsided Mr. Hunter, which the judge either did not consider or did not care about. Doing so "sua sponte" (on his own motion) and at the end of the hearing suggests the judge had perhaps made up his mind to grant an order and was troubleshooting how to make it stick. This again reflects a mindset more concerned with reaching a predetermined result than with fairly weighing what was proven and what law applies. It creates at least an appearance of bias, if not actual bias, because a reasonable observer would question whether the judge was partial to the petitioner's cause (and perhaps sympathetic to the notion that restraining orders should issue liberally) rather than neutral.

3. General Conduct of the Hearing: While a full transcript is not recited here, Petitioner avers that the judge's general tone and management of the hearing were adversarial toward him. For instance, the judge threatened contempt if Petitioner tried to invoke the Fifth Amendment selectively (an incorrect legal threat, as discussed, and one delivered sharply). The judge did not exhibit similar sternness toward Respondent or her counsel. Furthermore, after granting the order, the judge reportedly made some comments indicating that he felt Petitioner "probably had done something wrong" even if it wasn't physical – reflecting a moral judgment beyond the evidence. These kinds of remarks, even if offhand, cumulatively signal that the judge was not approaching Petitioner's case with an open mind but rather viewing him through a lens of suspicion or disapproval from the start.

Due process demands not just the absence of actual bias, but the absence of circumstances that would lead an average judge in the judge's position to be biased (*Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 877 (2009)). In *Caperton*, this Court set aside a judgment because one party's extreme campaign contributions created a probability of bias in the judge. Here, we do not have a financial conflict, but we have a scenario where the judge's words and actions themselves reveal bias. This is even more directly violative of due process. Under *Caperton* and *Tumey v. Ohio*, 273 U.S. 510 (1927), if the situation "would offer a possible temptation to the average judge… not to hold the balance nice, clear and true" between the parties, due process is offended. In Mr. Hunter's case, perhaps the nature of the allegations (which involved personal and salacious details) or the judge's own predispositions about domestic disputes tempted him not to hold the balance fair and true. By converting the case to ensure S.F. got protection, and by lauding the absence of Mr. Hunter's testimony, Judge Swift did not hold the balance level.

B. Lack of Fair Opportunity to Defend – Procedural Unfairness: Apart from bias, due process was also denied by specific procedural unfairness:

1. No Notice of CHRO Theory: Petitioner came to court prepared to defend against a Domestic Violence Restraining Order claim under the Family Code. That has distinct criteria: it required S.F. to prove "abuse" (which can include things like "disturbing the peace" of the petitioner, a somewhat nebulous concept, but nonetheless defined in DVPA case law). Petitioner's defense strategy – including what evidence to highlight – was tailored to showing he did not "abuse" S.F. as the DVPA defines it (for example, perhaps that his communications did not rise to the level of "destroying her mental or emotional calm" which California case law sometimes calls abuse). However, by switching to Civil Harassment, the judge moved the goalposts. Now the question (after the fact) became whether Mr. Hunter engaged in "harassment" – defined differently, requiring a showing of a course of conduct that seriously alarmed or annoyed with no legitimate purpose and that would cause a reasonable person substantial emotional distress, proven by clear and convincing evidence. Petitioner was not given a chance to argue that S.F. failed to meet this stricter standard. If he had known, he might have argued that her distress wasn't reasonable or that some of his acts had legitimate purposes (for instance, if any messages related to trying to collect a debt or resolve a misunderstanding, they might not be "no legitimate purpose"). None of that was explored.

Additionally, a DVRO is typically considered in family court, where certain informalities might apply, whereas a §527.6 CHRO is a civil action in civil court – by merging them the judge blurred procedural rules. Petitioner did not knowingly consent to have his case heard as a civil harassment matter, which under California law should typically be in a limited civil court context (with possibly different appellate routes, etc.). The judge's action thus also potentially messed with jurisdiction and appeal routes, although the Court of Appeal ended up exercising jurisdiction.

The bottom line is that Petitioner was ambushed by a legal theory he had no notice of. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), established that notice must be "reasonably calculated" to apprise parties of the claims against them. Here, notice was entirely lacking for the CHRO claim. Deciding the case on a theory that was never noticed is a textbook violation of due process. It is akin to a criminal court convicting a defendant of an uncharged offense because the facts happened to fit – utterly unacceptable.

2. Denial of Continuance or Accommodation: When confronted with the Fifth Amendment issue, the trial court could have granted a brief continuance or fashioned some remedy that would allow Petitioner to better assess his position. The record indicates Petitioner was under obvious duress. Petitioner went on record stating "I would certainly like to testify", although chose to follow his attorney's ill advice. The court's rigid stance and refusal to allow any adjournment or discussion of immunity effectively cornered Petitioner. Due process isn't a fixed checklist, it's a malleable doctrine that calls for fairness – sometimes, that might mean giving a litigant a bit more time or flexibility when

constitutional rights are at stake. The trial court's failure to consider any such measures contributed to the overall unfairness.

3. Composite Effect – No "Meaningful Hearing": If one steps back and looks at the hearing as a whole, one sees that Petitioner did not receive what we would consider a meaningful opportunity to be heard. He was physically intimidated before the hearing (as discussed under extrinsic fraud), he was legally gagged during the hearing, and then the legal framework was changed at the end to ensure an outcome. This was a "hearing" in name only – the real decision (grant an order, disarm Petitioner) seemed to have been a foregone conclusion, and the process adjusted itself to reach that conclusion. Under the Mathews v. Eldridge, 424 U.S. 319 (1976), balancing test for due process (though often applied in administrative contexts), one would weigh: the private interest (here, extremely high – fundamental rights), the risk of erroneous deprivation through the procedures used (here, extremely high – one-sided evidence, biased judge), and the government's interest (here, valid interest in protecting people, but also an interest in fairness). By any measure, the procedures used were deficient and created an intolerable risk of an erroneous (or unjust) result. Indeed, we contend the result was erroneous and unjust, as evidenced by the later revelations of perjury and lack of truly threatening conduct.

C. Caperton/Recusal Aspect: While Petitioner did not have a chance to formally move for recusal at the hearing (the bias became clear only as things unfolded), the case in many ways calls for the application of *Caperton*. In *Caperton*, the Court acknowledged that most bias issues are handled by statutes or codes of judicial conduct, but in "extreme" cases, due process itself requires recusal. If a judge had a personal financial stake, or a deep personal animosity, for example, it would violate due process to let him sit. Here, the "extreme" factor is the combination of the judge's statements and actions. It is unusual for a judge to say something as blatant as expressing happiness that one side didn't speak. That, combined with the judge's active altering of the case, makes this one of those rare instances where the judge's conduct transcended ordinary error and entered the realm of a constitutional violation. Mr. Hunter essentially did not have a neutral judge – he had one who, intentionally or not, aligned himself with the petitioner's aims.

D. Importance of Court's Review: When state courts brush off or overlook such significant due process issues, it falls to this Court to enforce the Constitution's minimum guarantees. If a restraining order proceeding – which can greatly curtail liberty – can be conducted in this manner, then the integrity of judicial process in similar cases nationwide is called into question. Many such proceedings happen in lower courts with self-represented litigants. The risk of injustice is high if judges do not scrupulously remain neutral and ensure fairness. By granting certiorari here, the Court can send a message that * *"any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias"*

(Murchison, 349 U.S. at 136), and that drastic deviations from procedural fairness (like changing theories mid-stream) are not tolerated.

In conclusion on this point, the restraining order was the product of a procedurally and structurally defective hearing. The judge's actions violated the maxim that justice must satisfy the appearance of justice (Murchison, 349 U.S. at 136). As such, even apart from the substantive Second Amendment problem, the order cannot stand because it was not obtained through a constitutionally legitimate process. This Court's intervention is needed to correct this and to clarify the standards for due process in civil protective order hearings, ensuring that basic fairness is not sacrificed in the rush to issue restraining orders.

IV. The Restraining Order Was Procured by Extrinsic Fraud and Collusion, Warranting Relief to Prevent a Grave Miscarriage of Justice

Finally, this Court should grant review because extraordinary evidence of fraud and collusion has emerged, demonstrating that the restraining order at issue was not the product of a fair adversarial contest, but rather the result of one party's deliberate subversion of the judicial process. Petitioner's case is an object lesson in how a determined litigant (aided by an unethical attorney) can pervert the course of justice by deceit, and how current procedures failed to correct that. While this Court is not typically a forum for re-litigating facts, the magnitude and nature of the fraud here implicate fundamental due process considerations and the integrity of the court's judgment. Under long-standing legal doctrine, a judgment obtained by extrinsic fraud – meaning fraud that goes to the ability of the opposing party to present his case – is not merely wrong, but voidable as a matter of law and equity.

The fraud in this case can be categorized in two parts: (A) extrinsic fraud via physical intimidation and interference, and (B) intrinsic fraud through perjury and false evidence, so egregious that it undermines the validity of the outcome. Together, these actions prevented the restraining order hearing from being a real "trial" at all; they turned it into a sham where the truth could not emerge.

A. Extrinsic Fraud – Assault and Intimidation by Counsel: Perhaps the most shocking aspect of this case is the allegation – supported by sworn evidence from Petitioner – that Respondent's attorney assaulted Mr. Hunter just before the court hearing. This was not some trivial scuffle or a minor incident; it was a deliberate act of violence by an officer of the court aimed at sabotaging Petitioner's ability to defend himself. It is hard to imagine a more blatant example of extrinsic fraud upon the court: literally "might makes right" being employed to win a legal dispute. Petitioner was physically dragged down the hallway, stunning him and no doubt instilling fear. This occurred moments before he had to stand up in court to argue his case, with an attorney who decided to stay mute, because he did not want to inflame his colleague. The effect – as intended, one presumes – was to leave Petitioner shaken, off-balance, and deterred from effectively participating. He did not even immediately report the assault to the judge (possibly out of fear

that complaining would anger the judge or not be believed, or simply because he was in shock). The upshot is that Respondent's side gained a grotesque advantage: Petitioner was literally battered into silence.

This kind of behavior strikes at the heart of the adversarial system. Courts rely on the premise that each side can present evidence and argument without duress. When one side secretly attacks the other side outside the courtroom to gain an edge, the proceeding becomes a farce. The victim is deprived of his day in court in any meaningful sense.

The law has long recognized that judgments obtained by such means cannot stand. Over a century ago, this Court in *United States v. Throckmorton*, 98 U.S. 61 (1878), drew a distinction between intrinsic fraud (fraudulent evidence presented at trial, which, according to that decision, generally does not warrant overturning a judgment once it's final) and extrinsic fraud (conduct that prevents the losing party from fully presenting his case). *Throckmorton* noted that extrinsic fraud – such as keeping a party away from court, or misleading them so they don't defend, or an attorney betraying a client – can justify setting aside a judgment even after the fact, because the integrity of the judicial process was compromised. In the words of that case, *"where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent... there has never been a real contest in the trial or hearing of the case"* (98 U.S. at 65-66, summarizing earlier doctrine). That is exactly what happened here: there was never a real contest, because Petitioner was literally impeded and deterred by violence from exhibiting his case.

The California Supreme Court echoed these principles in *Pico v. Cohn*, 91 Cal. 129 (1891), a seminal case on extrinsic fraud that followed Throckmorton. In *Pico*, the court lamented that even perjured testimony (an intrinsic fraud) might not be enough to set aside a judgment, but it reaffirmed that if a party "was kept in ignorance... or in some other way fraudulently prevented from presenting his claim or defense," then equity would intervene (91 Cal. at 134-35). Petitioner here was "prevented from presenting his defense" in the most direct way imaginable – by being assaulted into apprehension and confusion. This is fraud upon the court in the classic sense: it is conduct that "undermines the working of the adversary process itself" (to borrow language from modern formulations of fraud on the court, see *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944)). Courts have inherent authority to vacate judgments obtained by such fraud, and indeed have a duty to do so when the fraud is clear, because letting such a judgment stand would implicate the courts in the fraud.

In Petitioner's case, the extrinsic fraud was raised as a ground in his state habeas petition and independent action, but the state courts did not grant relief – likely for procedural reasons or because they felt constrained by the record of the original hearing (where the assault, being extrinsic, was not documented). This Court's intervention is warranted because the normal avenues failed to address a manifest injustice. If an assault by opposing counsel to win a case does not trigger relief, one shudders at what that implies for the rule of law. It sends a dangerous

message: that underhanded tactics prosper unless caught in the act. Public confidence in the judiciary suffers if people believe that brute force or intimidation can dictate legal outcomes. As one of Petitioner's filings aptly put it, *"Allowing a restraining order to stand when it was effectively won by literally assaulting the opponent would undermine the integrity of the judicial system. Conversely, vacating it due to extrinsic fraud upholds the principle that outcomes must rest on evidence and law, not on 'might makes right' physical intimidation."*. This Court should grant certiorari at least to affirm that fundamental principle.

B. Perjury and False Evidence – Manifest Injustice: In addition to the extrinsic fraud, the record now contains compelling evidence of intrinsic fraud – namely, that Respondent's key testimony was false and that she and her attorney likely colluded to present a perjurious narrative to the court. As detailed earlier, Respondent S.F. testified that after her relationship with Mr. Hunter ended in 2019, she severed contact and lived in fear of him, implying that any outreach from him was stalking/harassment. She denied, under oath, that she voluntarily saw or communicated with him in any friendly manner post-breakup. This testimony was critical in painting Mr. Hunter as a relentless pursuer and in establishing the "serious alarm/distress" necessary for the court to issue a CHRO.

We now know that testimony was false. Petitioner's newly obtained evidence – photographs, messages, etc. – show that S.F. and Petitioner spent time together in March 2020, many months after the supposed final falling-out. They show the two smiling, in bed, apparently on good terms. Petitioner also has in his possession a timestamped video of the Respondent from September 2021. This indicates continued communication into 2021. Why is this so important? Because it eviscerates the factual predicate of Respondent's case. It suggests that far from being terrified of Petitioner continuously since 2019, S.F. was actually amicable with him for a significant period. The logical inference is that something changed later (perhaps a dispute unrelated to fear, or an opportunistic motive) that led S.F. to seek the restraining order in mid-2022. In fact, Petitioner suspects (and some evidence hints) that S.F.'s true motive was to obtain an upper hand in an unrelated legal or financial dispute – i.e., to use the restraining order as a tool or weapon, rather than out of genuine protection needs. The Court need not determine the exact motive, but the material falsity of her claims is demonstrable.

Now, ordinarily, perjury that is discovered after trial could be the basis for a motion for new trial or some relief, but after time passes it becomes harder to address. However, this is where the combination with extrinsic fraud and the nature of this case make it important for the Court to step in. Petitioner is suffering under an order that is based on lies. The integrity of the fact-finding was compromised not only by his inability to testify, but by the court having been affirmatively misled. If this were a criminal conviction obtained by perjured testimony, it would raise due process issues (Napue v. Illinois and its progeny hold that the state may not knowingly use false evidence). Here, though it's civil, the effect is similar: a court order depriving someone of liberty was obtained via false evidence. To allow that to stand when the falsity comes to light is a manifest injustice.

Equity has long provided an "independent action" remedy to set aside judgments for fraud on the court. Petitioner has done that in state court, and that case is pending. To underscore that truth and justice are paramount and procedural finality cannot shield a judgment obtained by fraud, especially when constitutional rights hang in the balance. As Justice Cardozo famously said, *"Fraud vitiates everything it touches."* If not corrected, the fraud here will mean that a citizen remains branded and restrained based on a lie, and the perpetrators of the lie (and even of an assault) face no consequence from the legal system.

C. The Need for Supreme Court Review: The overlay of constitutional issues makes this more than a routine fraud case. Petitioner's Second Amendment rights and others are being curtailed right now on the basis of a fraudulent order – so the ongoing constitutional injury is predicated on the fraud. Granting the writ in this case would allow the Court to address the matter holistically. The Court can, for instance, reverse on the Second Amendment or due process grounds, which would vacate the order, thereby incidentally also curing the fraud problem. Or it could note the fraud as an independent reason why this case is such a suitable and urgent vehicle (because it underscores the injustice of what happened). In either event, acknowledging the fraud on the record would set a precedent that might deter similar conduct in future restraining order cases (which unfortunately are sometimes rife with exaggeration or falsehood, given the high emotions and stakes).

Moreover, one might argue: why isn't this simply for state courts to handle under state law? The answer is that state courts here have failed to provide relief, and the consequence is ongoing federal constitutional violations (Second Amendment infringement, etc.). When state processes for correcting a wrong fail, this Court is often the last resort to vindicate federal rights. This Court has at times carved out relief for egregious frauds (e.g., *Hazel-Atlas*, where it allowed a judgment to be undone years later due to a fraud on the Patent Office and the courts). While Hazel-Atlas was an exercise of the federal courts' inherent power, the spirit was that no court should abide a judgment obtained by fraud.

In practical terms, if certiorari is granted and the Court finds for Petitioner on any of the constitutional grounds, it can vacate the restraining order. That not only corrects the constitutional wrongs but also corrects the fraud-induced wrong. The result will be to restore Petitioner to the position he was in before this tainted proceeding occurred – a free man, with his rights intact, and no stigma of being labeled an abuser or predator by a court. Respondent, notably, would not be left without recourse; if she truly feels threatened (despite evidence to the contrary), she could seek a new restraining order under proper procedures and honest evidence. But as Petitioner argued in his filings, *"the current order, born of multiple violations of Petitioner's rights, cannot be allowed to stand"*.

Leaving this order in place would "perpetuate a miscarriage of justice". This Court's intervention would not only help Mr. Hunter, but also uphold the principle that courts of law will not be parties to fraud. In an era where public trust in institutions can waver, it is crucial to send the

message that our highest Court stands for truth and fairness, even if that means unraveling a case that lower courts allowed to congeal in unfair form.

To quote from Petitioner's state habeas brief: *"Judicial decisions must be based on legal principles rather than personal biases or strategic maneuvering by litigants."* Here, unfortunately, the original decision was based on improper influences and falsehoods. The most just remedy is to void that decision. This Court can and should do so by granting certiorari and ultimately reversing the judgment below with directions to vacate the restraining order.

Conclusion

This case presents a rare convergence of critical constitutional issues and extraordinary facts that cry out for this Court's intervention. Petitioner James W. Hunter is suffering under a state court order that, by any fair measure, should never have issued and certainly should not continue to burden him. The Second Amendment implications alone warrant this Court's review: a law-abiding citizen with no violent history has been stripped of his right to keep and bear arms for five years, based on an ex parte civil process, in a manner inconsistent with the text and tradition of the Constitution. At a time when this Court is reasserting the fundamental nature of the Second Amendment (see *Bruen* and pending *Rahimi*), granting certiorari here would reinforce that states cannot simply circumvent constitutional rights through civil labels and lowered standards.

Beyond that, the case illuminates how procedural rights (Fifth Amendment privilege, due process fairness) can be easily eroded in lower court proceedings unless firmly protected. If left unchecked, the errors and misconduct in this case set a dangerous precedent: that one can effectively lose one constitutional right (to silence) by attempting to use it, and lose another (arms) without any showing of danger, all in a proceeding where the judge tilts the field and the opponent cheats. That is not justice; that is a mockery of justice.

This petition is urgent. Unlike many cases which deal with past convictions or completed sentences, Mr. Hunter faces ongoing, daily harm. Every day until August 22, 2027, he remains a person who cannot exercise a fundamental right – a disability that marks him as an inferior citizen in the eyes of the law, and one that leaves him defenseless in a perilous world. Furthermore, the sword of Damocles hangs: any misstep or attempt to reclaim his rights could result in criminal charges under federal or state law. He effectively lives in a state of legal peril and diminished liberty, not because of any crime he committed or any adjudication by a jury, but because of a civil order produced by a flawed hearing and fraudulent evidence. This is precisely the scenario the Framers would have feared – the government (or a wieldy private litigant using government power) dispossessing a citizen of rights without due process of law.

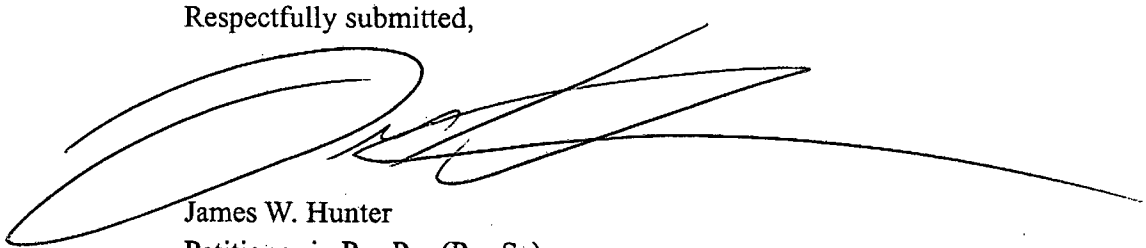
Granting the writ will not only remedy the injustice to Petitioner, but it will allow this Court to set important precedent on several points:

- Clarifying that Second Amendment rights cannot be nullified by restraining orders issued in the absence of violence or proper findings, ensuring lower courts apply *Bruen*'s principles rigorously in this context.
- Reiterating that the Fifth Amendment privilege must be respected in civil proceedings and that courts cannot force a litigant to choose between self-incrimination and self-defense in court.
- Emphasizing that due process requires an impartial judge and adherence to the claims and defenses as framed, without springing new theories on litigants or exhibiting bias.
- Affirming that fraud on the court – especially acts as egregious as physical intimidation and perjury – undermines the validity of orders and must be confronted, not condoned.

In doing so, this Court would uphold the foundational notion that ours is "a government of laws, and not of men." No person – not a vindictive litigant, not an overzealous judge, not a dishonest lawyer – should be allowed to trample on someone's rights by manipulating the legal system. The Supreme Court's voice is needed to correct the course here and to provide guidance that will resonate in courtrooms across the nation. Petitioner prays that the eyes of the federal government are opened to what has been going on in California with respect to the 2nd Amendment and Non-Violent restraining orders.

Petitioner respectfully urges that the writ of certiorari be granted. Given the ongoing deprivation of constitutional rights, Petitioner additionally prays that this Court, upon granting the writ, consider expediting the briefing and argument or granting a stay of the restraining order pending its decision. Time is of the essence when fundamental freedoms are at stake; justice delayed truly is justice denied in this context.

Respectfully submitted,



James W. Hunter
Petitioner in Pro Per (Pro Se)

Dated: October 8, 2025