26-5962 ORIGINAL

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

RYAN P. KOLSTAD,

Petitioner,

v.

S. E.,

Respondent.

On Petition for a Writ of Certiorari

to the Court of Appeal of the State of California,

Sixth Appellate District

California Court of Appeal No. H052811

California Supreme Court No. S296918

Santa Clara County Superior Court No. 24DV000546

QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment guarantees meaningful appellate review when a State imposes a multi-year order burdening an enumerated constitutional right after an unreported evidentiary hearing, but the State's substitute for a transcript omits material evidence expressly reflected in the contemporaneous trial-court record.

2. Whether due process permits an appellate court simultaneously to treat a trial judge's materially incomplete reconstruction of an unreported hearing as effectively beyond appellate correction and to presume that evidence omitted from that same reconstruction supports the judgment under review.

3. Whether the Second and Fourteenth Amendments permit a multi-year firearm prohibition to be sustained where the preserved record contains no express finding that the restrained person posed a credible threat to another's physical safety, the evidentiary basis for the prohibition cannot meaningfully be reviewed because the underlying hearing was neither reported nor adequately reconstructed, and prior emergency or ex parte orders are treated as supplying the factual basis for the final post-hearing order without an independent evidentiary determination.

PARTIES TO THE PROCEEDING

Petitioner Ryan P. Kolstad was the appellant below.

Respondent S.E. was the respondent below.

Neither party has a stock ticker symbol.

Petitioner was subjected to a multi-year domestic-violence restraining order carrying a mandatory prohibition on firearm possession following an evidentiary hearing that was neither reported nor electronically recorded.

California therefore required the proceeding to be reconstructed through a settled statement. Petitioner submitted a detailed proposed reconstruction. Respondent did not submit a competing settled statement. The judicial officer who entered the restraining order rejected Petitioner's reconstruction and substituted an exceptionally abbreviated handwritten statement that omitted the substance of the testimony and evidence presented at the hearing.

The omission was not merely theoretical. The contemporaneous minute order states that Respondent presented the court with emails allegedly sent by Petitioner to Respondent's mother—evidence apparently relied upon in granting the restraining order—yet the judge-approved settled statement contains no reference whatsoever to those emails, their contents, their authentication, their admission into evidence, or the purpose for which they were considered. Petitioner expressly challenged the modified statement as containing material misstatements and omissions. The California Court of Appeal nevertheless held that it lacked authority to correct the statement and simultaneously presumed that evidence omitted from the record supported the judgment.

OPINIONS AND ORDERS BELOW

The California Court of Appeal issued its unpublished opinion affirming the restraining order on May 15, 2026.

The California Supreme Court denied Petitioner's petition for review, motion for consideration of additional evidence, and application for stay on July 29, 2026.

The California Court of Appeal issued its remittitur on August 3, 2026.

The July 24, 2024 domestic-violence restraining order, the contemporaneous minute order, Petitioner's proposed settled statement, and the trial court's October 17, 2025 modified settled statement are reproduced in the appendix.

JURISDICTION

The California Court of Appeal entered judgment on May 15, 2026. Petitioner timely sought review in the Supreme Court of California. That court denied review on July 29, 2026.

This Court has jurisdiction under 28 U.S.C. § 1257(a). This petition is timely under Supreme Court Rule 13.

CONSTITUTIONAL PROVISIONS INVOLVED

The Second Amendment provides:

"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."

The Fourteenth Amendment provides, in relevant part:

"No State shall . . . deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

A. California imposed a multi-year restraining order after an evidentiary hearing for which no verbatim record exists

On July 24, 2024, the Superior Court of California for Santa Clara County conducted an evidentiary hearing concerning competing requests for domestic-violence restraining orders. The hearing involved significant liberty interests. The resulting order prohibited Petitioner from contacting Respondent and certain members of her family and subjected Petitioner to California's mandatory firearm prohibition.

Yet **no court reporter was present**.

The contemporaneous minute order expressly identifies: "Courtroom Reporter: No Court Reporter."

Nor was the hearing electronically recorded.

Thus, when Petitioner exercised his right to appeal, there was no transcript from which the California Court of Appeal could determine what testimony was actually given, what objections were made, what evidence was authenticated or admitted, or what factual findings supported the order.

The absence of a reporter was particularly consequential because the July 24 proceeding was not merely administrative. It was the evidentiary hearing from which a multi-year restraining order and firearm disqualification resulted.

B. The contemporaneous minute order identifies evidence that Saldivar's later settled statement omitted entirely

The trial court's own July 24 minute order demonstrates the magnitude of the reconstruction problem.

It states that Respondent "is directly examined by the Court and presents testimony on her own behalf."

Immediately thereafter, the minute order states:

"Petitioner provides the court with Emails from Respondent to Petitioner's Mother."

The court then granted the restraining order for five years.

Those emails therefore appear in the contemporaneous court record at the precise point between Respondent's testimony and the grant of the restraining order.

But what were the emails?

What did they say?

Who authored them?

Were they authenticated?

Were they admitted into evidence?

Were they offered to establish harassment?

Did Respondent testify about them?

Did Petitioner object to them?

Did the trial judge rely upon them in determining that abuse or harassment occurred?

The settled statement answers **none of those questions**.

That is not a peripheral omission. The minute order itself identifies the emails as evidence presented during the hearing immediately before the court granted relief.

Yet when the same judicial officer later reconstructed that hearing for appellate review, the evidence disappeared from his account entirely.

C. Petitioner attempted to create a meaningful record; the trial judge replaced it with an abbreviated reconstruction

Because there was no transcript, Petitioner invoked California Rule of Court 8.137 and prepared a proposed settled statement.

Petitioner's proposed statement specifically challenged the evidentiary basis for the DVRO and identified the email issue. He stated that the minute order represented that emails to Respondent's mother had been presented even though, according to Petitioner, no such authenticated email had been entered into the evidentiary record.

Petitioner therefore placed the precise evidentiary dispute squarely before the trial court during reconstruction.

Respondent did not file a response to Petitioner's proposed settled statement. The trial court's own APP-022 reflects that the box identifying a respondent's APP-020 response is blank.

The trial court nevertheless rejected Petitioner's proposed account and issued its own modified statement.

That replacement statement is extraordinary in its brevity.

Instead of reconstructing the testimony and evidence bearing on the issues designated for appeal, the statement discusses principally a disagreement concerning Petitioner's witness or support person and then states, in substance, that both parties were asked whether they had anything further to say, both submitted their matters, and the court sustained the petition.

It does not reconstruct Respondent's testimony.

It does not reconstruct Petitioner's testimony.

It does not identify the allegedly harassing communications.

It does not describe the emails expressly identified in the July 24 minute order.

It does not say whether those emails were authenticated or admitted.

It does not identify findings of violence.

It does not identify findings of threatened violence.

It does not identify a finding that Petitioner represented a credible threat to Respondent's physical safety.

Thus, the document that became the substitute for a transcript did not preserve the evidence necessary to test the judgment on appeal.

D. The problem was not merely that the statement was short; it contradicted the purpose of a settled statement

A settled statement exists because a reviewing court cannot review what occurred at an unreported proceeding without some reliable substitute for a transcript.

California's process therefore purported to provide Petitioner with an alternative appellate record.

But the alternative furnished here did not reconstruct the relevant proceedings.

The distinction matters.

Petitioner does not complain merely that Commissioner Saldivar failed to include every incidental remark exchanged during a hearing. Rather, the modified statement omitted the **substance of the evidence the court's own contemporaneous minute order says Respondent presented to establish her case.**

The email evidence demonstrates the defect concretely.

The contemporaneous minute order says the emails were presented.

Petitioner specifically disputed their evidentiary significance in his proposed settled statement.

The final settled statement says nothing about them.

A reviewing court therefore could not determine from that statement whether the emails existed as represented, what they showed, whether they were authenticated, whether they were relied upon, or whether their contents could constitutionally support the restrictions imposed.

E. Petitioner expressly alerted the reviewing court to the material omissions

Petitioner did not silently accept the abbreviated statement.

He challenged the modified statement as containing **"misstatements and material omissions."**

The Court of Appeal expressly acknowledged that challenge. It stated that although Petitioner had not used the particular proposed-modification procedure identified in California Rule of Court 8.137(b)(2), he objected that the modified statement contained "misstatements and material omissions."

Petitioner also filed papers identifying specific alleged inaccuracies and omissions in the reconstructed record.

The constitutional problem therefore was actually presented to the reviewing court.

F. The Court of Appeal acknowledged the incomplete record but used the incompleteness against Petitioner

The Court of Appeal recognized that the July 24 hearing "was neither reported nor recorded." It further recognized that Petitioner attempted an agreed statement, could not reach agreement with Respondent, sought a settled statement, and that the trial court rejected Petitioner's proposed statement and issued "a short, handwritten statement of its own."

It likewise acknowledged that Petitioner challenged the modified statement as containing material omissions.

But rather than requiring a constitutionally adequate record, the Court of Appeal held that it lacked authority to review or change the trial court's statement. The appellate opinion also

characterized Petitioner's visits as "unannounced and uninvited." But the reconstructed record did not preserve testimony establishing either proposition. Petitioner maintained that Respondent had never expressly told him that further contact or visits were prohibited, and his rehearing petition further challenged the characterization of the encounter as unannounced. The modified settled statement contains no factual reconstruction resolving those points. Yet the Court of Appeal relied upon the characterization as part of the circumstances from which abuse could be inferred. This illustrates the broader constitutional problem: material factual predicates were supplied through appellate inference even though the hearing record necessary to verify those predicates had not been preserved.

The appellate process therefore produced an anomalous result:

The issuing judge controlled what the record would say.

The resulting record omitted material evidence.

Petitioner challenged those omissions.

The appellate court declined to correct them.

And the appellate court then used ordinary presumptions concerning an incomplete record against Petitioner.

That combination made meaningful review impossible.

G. The Emergency Protective Order, temporary restraining order, and DVRO were distinct adjudicative stages, not a single automatically extending order

California's statutory structure separates these proceedings. Emergency protective orders are governed by Part 3 of the Domestic Violence Prevention Act and may issue ex parte on a law-enforcement officer's assertion of reasonable grounds to believe that a person is in immediate and present danger, but the order itself must issue only from a judicial officer who independently

reviews that reasonable ground. Cal. Fam. Code §§ 6250 and 6251. An EPO is expressly short-lived, expiring no later than the fifth court day or seventh calendar day after issuance. Id. § 6256. A temporary restraining order is a separate ex parte order under Part 4. It may issue upon reasonable proof of a past act or acts of abuse. Id. § 6300. A longer restraining order after hearing is governed by a different statutory stage: Article 2 authorizes an order only "after notice and a hearing." Id. § 6340(a). The statutory architecture therefore distinguishes emergency police-initiated relief, temporary ex parte judicial relief, and the post-hearing order that may remain in force for years.

That distinction is constitutionally important here. Evidence supporting an EPO or TRO may of course be relevant at the later hearing, but the existence of an earlier temporary order is not itself proof that the requirements for a multi-year DVRO have been established. The July 24 hearing was the stage at which disputed allegations had to be tested through a meaningful opportunity to be heard and the court had to determine, on the evidence before it, whether a longer order should issue. See In re Marriage of D.S. & A.S. (2023) 87 Cal.App.5th 926, 934–937 (a DVRO may issue only after notice and a hearing that comports with due process).

Petitioner raised this precise concern on rehearing, arguing that the opinion risked "conflating the separate procedural stages of the restraining-order process," and that an EPO did not itself establish the factual basis for a long-term DVRO, just as a TRO did not automatically resolve the disputed factual and constitutional questions at the later evidentiary hearing.

To the extent the decision below treated the final DVRO as a continuation or extension of prior temporary protection, that framing obscured the independent function of the July 24 hearing. The constitutional question is not whether temporary protection could issue while allegations were being adjudicated. It is whether a multi-year order—and the firearm prohibition that followed—

could be sustained without a preserved, independently reviewable evidentiary basis from the post-notice hearing itself.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS AN IMPORTANT QUESTION ABOUT WHAT "MEANINGFUL APPELLATE REVIEW" REQUIRES WHEN THE STATE ITSELF HAS FAILED TO PRESERVE THE HEARING

This Court has long recognized that where appellate review exists, the record must be sufficiently complete to permit meaningful consideration of the issues raised.

In *Draper v. Washington*, 372 U.S. 487 (1963), the Court explained that an alternative to a transcript must provide an equivalent report of the events from which the appellant's contentions arise.

That principle matters especially here because Petitioner did not merely fail to order an available transcript. California then supplied a settled-statement mechanism as the substitute. But the substitute omitted the substance of the underlying testimony and even omitted evidence expressly identified by the contemporaneous minute order.

A procedure that nominally provides an appellate record but excludes the evidence necessary to resolve the appeal cannot function as a meaningful substitute for a transcript.

The defect becomes more serious where substantial constitutional rights are at stake.

The resulting order not only restrained Petitioner's movement and communications for years; it prohibited possession of firearms.

A State should not be permitted to say simultaneously that an evidentiary hearing is sufficiently consequential to extinguish an enumerated right for years but insufficiently consequential to

require either a verbatim record or a reconstruction preserving the evidence upon which the deprivation rests.

II. THE EMAIL OMISSION PROVIDES A CONCRETE EXAMPLE OF WHY THE RECONSTRUCTED RECORD WAS CONSTITUTIONALLY INADEQUATE

This case does not require the Court to speculate about whether the settled statement might have omitted something important.

The trial court's own documents establish that it did.

The July 24 minute order states that Respondent presented emails from Petitioner to Respondent's mother.

The October 17 settled statement omits those emails completely.

The discrepancy is constitutionally significant because those emails were potentially central evidence supporting the allegation of harassment.

A reviewing court evaluating sufficiency of the evidence cannot intelligently evaluate an alleged harassing communication without knowing what the communication said.

Nor can it determine whether evidence was admissible without knowing whether it was authenticated, offered, admitted, or merely handed to the trial judge.

The omission therefore prevented review of precisely the kind of factual predicate upon which the challenged restraint apparently rested.

The point is not that the email necessarily disproves Respondent's case.

The point is that **no appellate court could know what it proves because the State-created substitute record did not preserve it.**

III. THE PROCESS BELOW CREATED A SELF-VALIDATING JUDGMENT

The procedure used below contains a deeper constitutional problem.

Commissioner Saldivar issued the restraining order.

When the lack of a reporter made reconstruction necessary, Saldivar also determined what account of his own hearing would become the operative appellate record.

Petitioner submitted a substantially more detailed proposed reconstruction.

Respondent filed no competing APP-020 response.

Saldivar nevertheless substituted an abbreviated handwritten account.

That account omitted material evidence reflected elsewhere in the court's own record.

The Court of Appeal then held that it could not correct or review the judge-approved reconstruction.

And because the resulting record failed to preserve the testimony, the appellate court invoked presumptions favoring the judgment.

The process therefore became self-validating:

The trial judge entered the order.

The trial judge controlled the account of what happened.

Missing evidence could not be reviewed.

The appellate court would not correct the account.

And missing evidence was presumed to support the trial judge.

Due process cannot turn the absence of a reliable record into affirmative proof that the constitutional deprivation was justified.

IV. THE LACK OF A REPORTER IS PARTICULARLY TROUBLING WHERE THE HEARING DIRECTLY BURDENED THE SECOND AMENDMENT

This Court held in *United States v. Rahimi* that:

"An individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment."

That was the limited constitutional holding.

Here, however, the appellate record does not preserve an express finding that Petitioner posed such a credible threat.

That alone presents a serious question.

But the record problem makes the question more fundamental.

If there was testimony establishing dangerousness, the settled statement does not preserve it.

If the trial judge made an oral finding of dangerousness, the settled statement does not preserve it.

If the allegedly harassing email demonstrated threatened violence, the settled statement does not preserve its contents.

California nevertheless imposed and affirmed the firearm prohibition.

The interaction between *Rahimi* and the inadequate record therefore presents a question this Court should resolve: whether a State may presume the constitutionally significant factual basis for disarmament from evidence that its own appellate record fails to preserve.

V. THE STATE COULD NOT TREAT THE EPO, TRO, AND DVRO AS A SINGLE CONTINUING ADJUDICATION WITHOUT AN INDEPENDENT EVIDENTIARY BASIS FOR THE FINAL ORDER

The decision below should also be reviewed because the procedural sequence cannot constitutionally be collapsed into a single continuum in which each temporary order supplies presumed factual support for the next. California itself assigns materially different predicates and functions to the successive orders.

An Emergency Protective Order under Family Code section 6250 is emergency, ex parte relief initiated through law enforcement and based on reasonable grounds concerning immediate and present danger. It expires within days. Cal. Fam. Code §§ 6250, 6256. A temporary restraining order under section 6300 is likewise ex parte and temporary. By contrast, section 6340 places the longer post-hearing order in an article expressly titled "Orders Issuable After Notice and Hearing" and authorizes such relief after notice and a hearing.

Those differences matter because an ex parte emergency determination is not an adjudication after confrontation of disputed evidence. Nor is a TRO a final merits determination. The later hearing is the procedural safeguard that converts temporary protection into a longer restraint after the respondent has notice and an opportunity to contest the allegations. California precedent recognizes that section 6300 does not override the due-process requirement of a hearing under section 6340 and that a contested DVRO proceeding must afford a meaningful opportunity to examine evidence and refute the allegations. In re Marriage of D.S. & A.S., 87 Cal.App.5th at 934–937.

Petitioner preserved this point in his petition for rehearing. He argued that the opinion risked "conflating the separate procedural stages of the restraining-order process" and expressly maintained that the EPO did not itself establish the factual basis for a long-term DVRO and that the TRO did not automatically resolve the factual and constitutional questions to be decided at the July 24 hearing.

The record problem magnifies the error. If the July 24 hearing supplied independent evidence sufficient to support the DVRO, that evidence should be identifiable in a transcript or adequate substitute. Instead, no transcript exists, the modified settled statement omits the substance of the testimony, and even evidence identified by the contemporaneous minute order disappears from

the reconstruction. The appellate court therefore could not test whether the final order rested on independently evaluated evidence rather than on the momentum of earlier temporary orders. This distinction is especially important for the Second Amendment consequence. The EPO and TRO were temporary mechanisms designed to preserve safety while allegations could be adjudicated. The multi-year DVRO carried a much longer firearm prohibition. Treating that final burden as merely the extension of temporary relief risks allowing an emergency or ex parte determination to perform the work of the later adversarial hearing that due process requires. The Court should grant review to determine whether due process permits a State to sustain a long-term order burdening an enumerated constitutional right when the decisive post-notice hearing lacks an independently reviewable evidentiary basis and earlier emergency or ex parte orders are effectively treated as cumulative validation of the final restraint.

VI. PETITIONER'S JUDICIAL-MISCONDUCT COMPLAINT UNDERSCORES THAT THE RECORD DEFECT WAS NOT A NEWLY INVENTED CERTIORARI THEORY

Petitioner considered the omissions sufficiently serious that he pursued a separate complaint through California's judicial-discipline process concerning Commissioner Saldivar's handling of the settled statement.

Petitioner does not ask this Court to adjudicate that disciplinary complaint.

Nor must this Court determine whether Commissioner Saldivar acted with subjective bad faith. The complaint is relevant for a narrower reason: it demonstrates that Petitioner contemporaneously treated the omissions as a serious failure in the integrity of the appellate-record reconstruction rather than inventing the issue only after losing the appeal.

The constitutional question is objective.

Whatever Commissioner Saldivar's subjective motive, the state-created appellate record did not preserve material evidence that the contemporaneous minute order says was presented.

And the reviewing court declined to correct that deficiency.

That is sufficient to present the federal question.

VII. THE COURT SHOULD NOT REQUIRE A PRO SE LITIGANT TO LOSE AN ENUMERATED RIGHT BECAUSE THE STATE FAILED TO CREATE A REVIEWABLE RECORD

Petitioner proceeded without appointed counsel in a civil proceeding carrying consequences ordinarily associated with serious governmental restraints: a multi-year stay-away order, mandatory relinquishment of firearms, and a substantial attorney-fee award.

There is ordinarily no public defender in a DVRO proceeding.

Petitioner nevertheless attempted to preserve his rights through the procedures California provided. He appealed. He attempted an agreed statement. When Respondent did not respond, he prepared a settled statement. He identified the evidence and proceedings he believed material. He later challenged misstatements and omissions. He sought rehearing. And he petitioned California's highest court for review.

The constitutional problem should therefore not be characterized as merely a pro se litigant's failure to create an adequate record.

The State failed to record the hearing in the first instance.

Petitioner then invoked the State's substitute procedure.

That substitute omitted material evidence.

And the reviewing court treated the deficiency as Petitioner's burden.

The Fourteenth Amendment does not permit meaningful appellate review to depend upon proving facts from a proceeding the State failed to preserve.

VIII. THIS CASE IS A SUITABLE VEHICLE

This case cleanly presents the interaction between:

- the absence of any reporter or electronic recording;
- a constitutionally consequential civil order;
- a settled statement controlled by the issuing judge;
- a nonparticipating opposing party during reconstruction;
- an objective contradiction between the contemporaneous minute order and the later reconstruction;
- the appellate court's refusal to correct the record;
- appellate presumptions concerning omitted evidence; and
- an ongoing Second Amendment burden.

This Court need not decide whose version of the July 24 hearing is ultimately correct. Indeed, that is the point.

The constitutionally adequate procedure should have created a record from which that question could actually be answered.

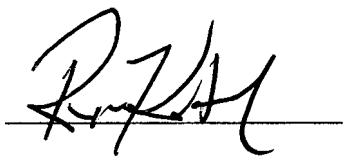
CONCLUSION

The petition for a writ of certiorari should be granted.

Alternatively, this Court should grant the petition, vacate the judgment below, and remand for further proceedings on a constitutionally adequate record and for reconsideration of the firearm prohibition in light of *United States v. Rahimi*.

Date: September 16, 2026

Respectfully submitted,



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