

Use this form if you do not want the court to extend the Gun Violence Emergency Protective Order for a longer period.

- Read *How Can I Respond to a Gun Violence Emergency Protective Order?* (form GV-020-INFO) to protect your rights.
- Fill out this form and take it to the court clerk.
- Have someone age 18 or older—not you—mail a copy of this form and any attached pages to the law enforcement agency that applied for the EPO-002. (Use, Proof of Service by Mail, form GV-025.)

1 Requesting Agency

San Diego Police Department

2 Restrained Person

a. Your Name: Guillermo Barragan, Jr.

Your Lawyer (if you have one for this case):

Name: Scott A. McMillan State Bar No.: 212506

Firm Name: The McMillan Law Firm, APC

b. Your Address (If you have a lawyer, give your lawyer's information. You do not have to give telephone, fax, or e-mail address.)

Address: 4670 Nebo Drive, Suite 200

City: La Mesa State: CA Zip: 91941

Telephone: (619) 464-1500 Fax: _____

E-Mail Address: scott@mcmillanlaw.us

Fill in court name and street address:

Superior Court of California, County of
San Diego
330 West Broadway
San Diego, CA 92101

See Notice of Hearing for case number and fill in:

Case Number:

37-2020-14804-CU-PT-CTL

Be prepared to present your opposition at the hearing. Write your hearing date, time, and place from the Notice of Hearing here:

Hearing Date → Date: Aug 7, 2020 Time: 9:00 a.m.
Dept.: S-09 Room: _____

You must obey the Gun Violence Emergency Protective Order until the expiration date. At the hearing, the court may make an order against you for one year.

3 Gun Violence Restraining Order

☒ I do not agree that a gun violence restraining order should be issued because:

☒ Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 3—Reasons I Disagree" as a title. You may use form MC-025, Attachment.

4 ☒ **Denial, Justification, or Excuse**

☐ I did not do anything described in item 6 of form EPO-002.

☒ If I did some of the things stated in the Gun Violence Emergency Protective Order, my actions were justified or excused for the following reasons (*explain*):

☒ Check here if there is not enough space below for your answer. Put your complete answer on an attached sheet of paper and write "Attachment 4—Denial, Justification, or Excuse" as a title. Use form MC-025, Attachment.

5 **Surrender of Guns, Ammunition, and Magazines**

A *Gun Violence Emergency Protective Order* (form EPO-002) was issued. You cannot own or possess any guns, other firearms, ammunition, or magazines. You must surrender any of these items in your possession to law enforcement when they ask you to do so. You must sell to or store with a licensed gun dealer, or turn in to a law enforcement agency, any other guns, other firearms, ammunition, or magazines in your immediate possession or control within 24 hours of being served with form EPO-002. You must file a receipt with the court and the law enforcement agency. You may use, *Proof of Firearms, Ammunition, and Magazines Turned In, Sold, or Stored* (form GV-800) for the receipt.

- a. ☐ I do not own or control any guns, other firearms, ammunition, or magazines.
- b. ☒ I have turned in my guns, other firearms, ammunition, and magazines to a law enforcement officer or agency, or sold them to or stored them with a licensed gun dealer. A copy of the receipt ☐ is attached. ☐ has already been filed with the court.

6 Number of pages attached to this form, if any: 8

Date: August 6, 2020

Scott A. McMillan
Lawyer's name (if any)


Lawyer's signature

I declare under penalty of perjury under the laws of the State of California that the information above and on all attachments is true and correct.

Date: August 6, 2020

Guillermo Barragan, Jr.
Type or print your name


Sign your name

1 Scott A. McMillan, CBN 212506
2 The McMillan Law Firm, APC
3 4670 Nebo Drive, Suite 200
4 La Mesa, CA 91941-5230
5 (619) 464-1500 x 14
6 scott@mcmillanlaw.us

7 Attorney for Guillermo Barragan, Jr.

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 SAN DIEGO POLICE
11 DEPARTMENT,

12 Petitioner,

13 v.

14 GUILLERMO BARRAGAN, JR.,

15 Respondent.

Case No. 37-2020-14804-CU-PT-CTL
ATTACHMENTS TO RESPONSE TO
GUN VIOLENCE EMERGENCY
PROTECTIVE ORDER;
ATTESTATION OF SURRENDER
OF GUNS, AMMUNITION AND
MAGAZINES.

16
17
18 Attachment 3 - Reasons I disagree

19 Background:

20 On March 4, 2020 Gov. Newsom issued EXECUTIVE ORDER N-33-20
21 which ordered "ordered all individuals living in the State of California to stay
22 home or at their place of residence", irrespective of whether such individuals were
23 healthy or ill. This placed California residents, including Mr. Barragan and his
24 family, in a functional state of house arrest. Thereafter, the beaches were ordered
25 "closed," despite stores such as Costco, Walmart, Target and other businesses
26 operated by large corporations to remain open.

27 Beginning April 19, 2020, Mr. Barragan had participated in an online
28 Facebook Group called "Free Encinitas and San Diego County." That group

1 organized several protests against Governor Newsom's confinement of
2 Californians, which Mr. Barragan attended. Mr. Barragan was unarmed during
3 the protest, acted peacefully, and did not advocate violence.

4 On April 25, 2020, as an organized act of protest against the state of house
5 arrest that had been imposed upon him, Mr. Barragan entered onto the beach and
6 engaged in a sit-in with other individuals. Mr. Barragan was immediately placed
7 under arrest, to which he submitted to without resisting. Mr. Barragan followed
8 commands by the arresting officers. Mr. Barragan pointed out to the officers that
9 it was his belief that the mass-confinement of the population was unconstitutional,
10 and that they were violating their oath to uphold and defend the United States
11 Constitution by enforcing the orders.

12 San Diego County Sheriff's transported Mr. Barragan to the San Diego
13 County Sheriff's sub-station in Encinitas, whereupon he was cited for a violation
14 of Government Code section 8665, "State of Emergency", Case No. 20118433.
15 Mr. Barragan was released at the Sheriff's substation.

16 Mr. Barragan exercised his right to peaceably assemble, submitted to the
17 authorities when they arrested him for violating the Executive Order forbidding
18 him from being on the beach. His act of civil disobedience was no less offensive
19 than that of Henry David Thoreau in refusing to pay taxes to the Government that
20 waged an unjust war against Mexico and supported slavery. ("'Resistance to Civil
21 Government" by H.D. Thoreau ("Civil Disobedience)"). The Picket Line. ¶22.)

22 In the evening on May 7, 2020 the San Diego Police Department officers
23 executed a search warrant at Mr. Barragan's apartment. The officers seized Mr.
24 Barragan in front of his family members. They referenced that Mr. Barragan had
25 made posts against the police, calling them "Nazi's" after he had been cited and
26 taken to the Sheriff's substation. The police informed him that reference that this
27 would not end without "bloodshed" was a threat. The police seized Mr.
28 Barragan's Glock 19 pistol, and his 12 gauge pump shotgun, both of which he had

1 legally purchased.

2 The SDPD officers transported Mr. Barragan to County Mental Health
3 where he was placed on a 72 hold. During his evaluation, he was asked why he
4 needed his firearms, i.e., a Glock 19, and a 12 gauge pump shotgun. The
5 physician or mental health specialist did not approve of his response which was
6 words to the effect that it was Second Amendment Right, and he has firearms to
7 protect himself and his family. Based upon his statement of reliance on the
8 Second Amendment to the U.S. Constitution, he was placed on hold according to
9 W&I Code § 5150. He was told that he must accept the medication “Haldol”, and
10 if he refused, it would be forcibly administered to him. Mr. Barragan had a severe
11 reaction to Haldol, and experienced numbness, and painful spasms that
12 permanently injured him. Mr. Barragan cooperated at all times with the medical
13 personnel.

14 At the end of the 72 hours, Mr. Barragan was told that he could agree to stay
15 longer or they would involuntarily extend his hold, and if he put them to the
16 trouble of seeking an extension of the 5150 hold they would hold him for an extra
17 fourteen days. In his medicated state, Mr. Barragan, in light of that choice readily
18 agreed to stay for an extra three days to avoid being subjected to additional
19 confinement.

20 Petitioner’s mailed fist treatment of Mr. Barragan is not without precedent
21 in other places. In the former USSR, during the leadership of General Secretary
22 Leonid Brezhnev, psychiatry was used to disable and remove from society
23 political opponents ("dissidents") who openly expressed beliefs that contradicted
24 the official dogma. The term "philosophical intoxication", for instance, was widely
25 applied to the mental disorders diagnosed when people disagreed with the
26 country's Communist leaders and, by referring to the writings of the Founding
27 Fathers of Marxism–Leninism—Karl Marx, Friedrich Engels, and Vladimir
28 Lenin—made them the target of criticism. The Petitioner’s use of the GVEPO

1 procedure is similarly pernicious in this instance.

2 First Amendment activity in response to Governor Newsom's
3 disproportionate response to those challenging traditional dogma concerning the
4 Covid19 "pandemic" does not justify the removal of firearms.

5 **Attachment 4**

6 **Justification or Excuse**

7 Nothing that Respondent has done satisfies the factors the Legislature
8 commanded that the Courts' consider before issuing an order. (See, Penal Code §
9 18155(b)(1).) All that Respondent did was a simple act of civil disobedience, i.e.,
10 sitting on the beach and accepting a citation for same, attend protests over the
11 house arrest orders, state his commitment to defending the United States
12 Constitution, and comment on the likely outcome of the broad effort by the
13 Government to control its people. And, lest it be ignored, own two firearms – both
14 legal under California law, and protected activity under the Second Amendment to
15 the United States Constitution.

16 The petitioner of a GVRO must prove two elements by clear and convincing
17 evidence: 1) the subject individual poses a significant danger of causing personal
18 injury to himself or herself, or to someone else, by controlling, owning,
19 purchasing, possessing, or receiving a firearm or ammunition; and 2) a GVRO is
20 necessary to prevent personal injury to the subject individual or someone else
21 "because less restrictive alternatives either have been tried and found to be
22 ineffective, or are inadequate or inappropriate" under the circumstances. (See,
23 Penal Code § 18175.)

24 Central to Petitioner's case is the existence of a *threat*. But, that does not
25 embrace an abstract threat, hyperbole, or a generalized prediction of riots and civil
26 disorder. Petitioner must prove the existence of a true threat threat by Respondent.
27 Respondent made no "true threat" towards anyone.

1 **1. The First Amendment prohibits the punishment sought by the**
2 **Petitioner.**

3 It is clear from this prosecution that the Petitioner San Diego Police
4 Department does not appreciate Respondent's attitude towards compliance with
5 the Governor's house arrest order. But, the Petitioner must prove that a true threat
6 was made, rather than some abstract hyperbolic statement or observations
7 regarding the dystopian nature of society resulting from Covid-19 and the efforts
8 that the Government has made to clamp down upon fundamental rights under the
9 guise of health and safety.

10 The First Amendment to the United States Constitution states:

11 Congress shall make no law respecting an establishment of
12 religion, or prohibiting the free exercise thereof; or abridging the
13 freedom of speech, or of the press; or the right of the people
peaceably to assemble, and to petition the Government for a redress
of grievances.

14 First Amendment, United States Constitution.

15 The Gun Violence Restraining Order sought is unsupported by the
16 allegations under the U.S. Supreme Court authority of *Brandenburg v. Ohio*
17 (1969) 395 U.S. 444.

18 In *Brandenburg*, Clarence Brandenburg, a Ku Klux Klan (KKK) leader in
19 rural Ohio, contacted a reporter at a Cincinnati television station and invited him
20 to cover a KKK rally that would take place in Hamilton County in the summer of
21 1964. Portions of the rally were filmed, showing several men in robes and hoods,
22 some carrying firearms, first burning a cross and then making speeches. One of the
23 speeches made reference to the possibility of "revengeance" against African
24 Americans (referring to them by epithet), "Jews," and those who supported them.
25 (*Id.*, 395 U.S. 444, 446, 89 S. Ct. 1827, 1829.) One of the speeches also claimed
26 that "our President, our Congress, our Supreme Court, continues to suppress the
27 white, Caucasian race," and announced plans for a march on Washington to take
28 place on the Fourth of July. (*Ibid.*)

1 Brandenburg was charged with advocating violence under Ohio's criminal
2 syndicalism statute for his participation in the rally and for the speech he made. In
3 relevant part, the statute – enacted in 1919 during the First Red Scare – proscribed
4 "advocat[ing]...the duty, necessity, or propriety of crime, sabotage, violence, or
5 unlawful methods of terrorism as a means of accomplishing industrial or political
6 reform" and "voluntarily assembl[ing] with any society, group or assemblage of
7 persons formed to teach or advocate the doctrines of criminal syndicalism."

8 Convicted in the Court of Common Pleas of Hamilton County, Brandenburg
9 was fined \$1,000 and sentenced to one to ten years in prison. On appeal, the Ohio
10 First District Court of Appeal affirmed Brandenburg's conviction, rejecting his
11 claim that the statute violated his First Amendment and Fourteenth Amendment
12 right to freedom of speech. The Supreme Court of Ohio dismissed his appeal
13 without opinion.

14 The United States Supreme Court reversed, and in so doing explained:

15 “[t]he constitutional guarantees of free speech and free press do not
16 permit a State to forbid or proscribe advocacy of the use of force or of
17 law violation except where such advocacy is directed to inciting or
18 producing imminent lawless action and is likely to incite or produce
19 such action. "the mere abstract teaching . . . of the moral propriety or
20 even moral necessity for a resort to force and violence, is not the
21 same as preparing a group for violent action and steeling it to such
22 action." [] A statute which fails to draw this distinction impermissibly
23 intrudes upon the freedoms guaranteed by the First and Fourteenth
24 Amendments. It sweeps within its condemnation speech which our
25 Constitution has immunized from governmental control.

26 (*Brandenburg v. Ohio, id.*, 395 U.S. 444, 447-8, 89 S. Ct. 1827, 1829-30.)

27 *Brandenburg* stands for the proposition that the “ ‘First Amendment
28 protects speech that advocates violence, so long as the speech is not directed to
inciting or producing imminent lawless action and is not likely to incite or produce
such action.’ ” (*Novartis Vaccines & Diagnostics, Inc. v. Stop Huntingdon Animal
Cruelty USA, Inc.* (2006) 143 Cal. App. 4th 1284, 1301, 50 Cal. Rptr. 3d 27, 39.)

California has applied this law to the civil harassment statutes.
[T]he First Amendment also permits a State to ban a ‘true threat.’
[Citations.] [¶] ‘True threats’ encompass those statements where the

1 speaker means to communicate a serious expression of an intent to
2 commit an act of unlawful violence to a particular individual or group
3 of individuals. [Citations.]” (Virginia v. Black, supra, 538 U.S. at p.
4 359.) “Violence and threats of violence ... fall outside the protection
5 of the First Amendment because they coerce by unlawful conduct,
6 rather than persuade by expression, and thus play no part in the
‘marketplace of ideas.’ As such, they are punishable because of the
state's interest in protecting individuals from the fear of violence, the
disruption fear engenders and the possibility the threatened violence
will occur.

7 (*Huntingdon Life Scis., Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005)
8 129 Cal. App. 4th 1228, 1250, 29 Cal. Rptr. 3d 521, 538.)

9 Context is everything in threat jurisprudence. Context is critical in a true
10 threats case and history can give meaning to the medium. (*Id.*, 129 Cal. App. 4th
11 1228, 1250.)

12 Read in context, Respondent made no threat.

13 **2. Respondent is entitled to a jury trial.**

14 The right to have firearms is a liberty interest, and is specifically recognized
15 by the Second Amendment to the United States Constitution. The Framers and
16 ratifiers of the Fourteenth Amendment counted the right to keep and bear arms
17 among those fundamental rights necessary to our system of ordered liberty.
18 (*McDonald v. City of Chi.* (2010) 561 U.S. 742, 778, 130 S. Ct. 3020, 3042.) It is
19 a significant liberty interest that can not be taken without a jury trial.

20 **3. Petitioner failed to timely prosecute this action.**

21 The ex-parte order was issued May 7, 2020. According to Penal Code
22 section 18165, the court was required to hold a hearing within 21 days. The
23 Superior Court reopened on May 26, 2020. A hearing could have been held at that
24 time. The Court lacked jurisdiction to continue the hearing, and thus the Court
25 must dismiss the petition. The Petitioner must be required to re-state the grounds
26 for issuance of the GVRO, re-serve, and re-set the hearing.

1 SURRENDER OF GUNS AMMUNITION AND MAGAZINES

2 Respondent has no firearms in his possession, his modest ownership of a
3 pistol and a long gun having been confiscated without due process. Nor does he
4 have any magazines, or ammunition, as the Petitioner took those all from
5 Respondent.
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