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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CITY OF SACRAMENTO, a municipal
corporation,

Petitioner,

vs.

SKYLER MICHEL-EVLETH, aka SKYLER
HENRY

Respondent.

Case No.: 34-2021-70009184

SUBMISSION OF ARGUMENT AND
EVIDENCE IN SUPPORT OF
PERMANENT RESTRAINING
ORDER AGAINST SKYLER
MICHEL-EVLETH, aka SKYLER
HENRY

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1 This is a case about workplace safety and the City of Sacramento ("City") respectfully
2 submits additional evidence and argument as requested by the Court's June 18, 2021, decision.

3 I. INTRODUCTION

4 Violence in the workplace is not a new phenomenon. The most recent data published on
5 February 24, 2020, by the U.S. Bureau of Justice about workplace violence specific to public
6 employees found that from 2002 to 2011, public employers and employees in particular are
7 uniquely exposed to workplace violence.¹ Due to recent political events, violence against
8 public employees has been on the rise.

9 The City of Sacramento has not been immune to the recent surge in violence against
10 government employees and public officials.² On March 28, 2021, the Sacramento City Council
11 released a letter to those targeting our public officials in their homes. (See a true and correct
12 copy of the letter attached hereto as Exhibit A.) Because of the growth and reach of social
13 media, easy access to internet-connected devices, and the increased number of "content-
14 creators"³ and "influencers,"⁴ like-minded individuals are more connected than ever before.
15 This means that these content-creators and influencers, are more empowered by their followers
16 and simultaneously more easily able to move those people to act, especially when they
17 frequently use mechanisms like Twitter or podcasts to spread their messages broadly and
18 quickly.

19 For these reasons, content creators and influencers can, directly and indirectly, threaten
20 harm against government employees merely by using their words. Words that once
21 constituted *de minimis* threats, can, and have, spread like wildfire through the Internet. The

22 ¹ [https://www.lcwlegal.com/news/safety-first-what-employers-need-to-know-about-workplace-violence-
23 prevention](https://www.lcwlegal.com/news/safety-first-what-employers-need-to-know-about-workplace-violence-prevention).

24 ² See Sacramento City Council denounces city manager home protest at
<https://www.sacbee.com/news/local/article250272405.html> (last accessed June 22, 2021); see also
25 Sacramento mayor condemns vandalism at home as anarchy at [https://apnews.com/article/darrell-
steinberg-sacramento-coronavirus-pandemic-crime-vandalism-d78c9a4481480cf04438c713e005156e](https://apnews.com/article/darrell-steinberg-sacramento-coronavirus-pandemic-crime-vandalism-d78c9a4481480cf04438c713e005156e) (last
accessed June 22, 2021).

26 ³ Wikipedia defines "content creation" as the contribution of information to any media and most
especially to digital media for an end-user/audience in specific contexts.
https://en.wikipedia.org/wiki/Content_creation (last accessed June 21, 2021).

27 ⁴ Merriam-Webster defines "influencer" as (1) a person who inspires or guides the actions of others; (2) a
28 person who is able to generate interest in something by posting about it online. [https://www.merriam-
webster.com/dictionary/influencer](https://www.merriam-webster.com/dictionary/influencer) (last accessed June 21, 2021).

1 threats are even more dangerous for the target when the content-creator or influencer has
2 thousands of devoted followers who seek direction from that influencer and are ready to spring
3 to action. To that end, governments and Courts face a new reality: what constitutes a credible
4 threat or course of conduct that would put a person in reasonable fear for his or her safety or
5 the safety of his or her family has evolved due to the spread of social media, access to digital
6 devices, and content-creators and influencers such as Respondent.

7 Respondent has stated that Howard Chan should be "terrified" for the rest of his life.
8 These comments likely reached thousands of people because he has thousands of followers
9 through his combined social media channels. The City has a legal and moral duty to provide
10 a safe workplace for employees, including Howard Chan. When employees face threats, the
11 implications are often extremely serious. On January 8, 2011, during a constituent meeting,
12 U.S. Representative, Gabby Giffords of Arizona was shot in the head; 18 other people were
13 injured and 6 others died, including a federal judge and congressional staff member.⁵ In June
14 2017, during a congressional baseball team practice, a gunman shot House Majority Whip
15 Steve Scalise and injured 6 in total.⁶ In July 2020, a gunman who appeared before Federal
16 Judge Ester Salas, and who was upset because she had postponed a ruling on his case, went
17 to her home and subsequently shot and killed her son after knocking on the door.⁷ In October
18 2020, the FBI thwarted a plot against Michigan Governor Gretchen Whitmer by anti-
19 government extremists who were angry over the Governor's coronavirus policies, whereby
20 they intended to storm the Michigan Capitol building and kidnap her.⁸ In 2020, Portland
21 Mayor Ted Wheeler declared a state of emergency after failing to decrease violence against
22 the government arising from policy decisions of his City.⁹

23
24 ⁵ <https://www.nytimes.com/2021/01/08/opinion/gabby-giffords-shooting-capitol-attack.html> (last
accessed June 22, 2021).

25 ⁶ https://en.wikipedia.org/wiki/Congressional_baseball_shooting (last accessed June 22, 2021).

26 ⁷ [https://www.npr.org/2020/11/20/936717194/a-judge-watched-her-son-die-now-she-wants-to-protect-
other-judicial-families](https://www.npr.org/2020/11/20/936717194/a-judge-watched-her-son-die-now-she-wants-to-protect-other-judicial-families)

27 ⁸ <https://www.nytimes.com/2020/10/08/us/gretchen-whitmer-michigan-militia.html> (last accessed June
22, 2021).

28 ⁹ <https://www.nytimes.com/2021/04/27/us/portland-protests-mayor-ted-wheeler.html> (last accessed
June 21, 2021).

1 After the 2020 presidential elections, at the urging of President Trump to “find” votes to
2 reverse his election loss, his social media followers terrorized Georgia Secretary of State Brad
3 Raffensperger and his wife with countless death threats, forcing him and his family into
4 hiding.¹⁰

5 Earlier this year, at the “Stop the Steal Rally” on January 6, 2021, President Trump’s son
6 addressed the crowd, many of whom identified as the President’s followers, saying “If you’re
7 going to be the zero and not the hero, we’re coming for you, and we’re going to have a good
8 time doing it.” The President’s personal lawyer, Rudy Giuliani told the same crowd, “Let’s
9 have trial by combat.” To further incite the crowd, the President further said, “We fight like
10 hell. If you don’t fight like hell, you’re not going to have a country anymore... Our exciting
11 adventures and boldest endeavors have not yet begun... We’re going to the Capitol. We’re
12 going to try and give them [Republicans] the kind of pride and boldness that they need to take
13 back our country.” Thereafter, the United States Capitol was breached, leaving five people
14 dead and more than 140 people injured.¹¹

15 Because of this increasing trend of violence and threats against public employees, on June
16 15, 2021, U.S. Attorney General Merrick Garland, concluded that such incidents are instances
17 of domestic terrorism and announced the first National Strategy for Countering Domestic
18 Terrorism. One of the core principles of the National Strategy is to focus on violence, not on
19 ideology. Attorney General Garland explained that “[o]ur focus, as members of the
20 Department of Justice – and as a federal government – is to prevent, disrupt, and deter
21 unlawful acts of violence, whatever their motive. As the National Strategy makes clear, there
22 is no place for ‘violence as a means of resolving political differences in our democracy.’” (see
23 full remarks by United States Attorney General, Merrick Garland, attached hereto as Exhibit
24 B).

25 ///

26 ¹⁰ <https://www.reuters.com/investigates/special-report/usa-trump-georgia-threats/> (last accessed June
27 22, 2021).

28 ¹¹ [https://abcnews.go.com/Politics/lawsuit-accuses-donald-trump-giuliani-conspiring-incite-
capitol/story?id=75921776](https://abcnews.go.com/Politics/lawsuit-accuses-donald-trump-giuliani-conspiring-incite-capitol/story?id=75921776) (last accessed June 22, 2021).

1 Within this context, the City seeks to protect its employee, Howard Chan, against
2 Respondent's credible threats and course of conduct promoting acts violence, arising from Mr.
3 Chan's position as a public employee and his policy decisions, perceived or actual, with which
4 Respondent has disagreed, particularly now that as a recently hired city employee, Respondent
5 now has physical access, and can grant other's access, to Howard Chan in the workplace.

6 II. ARGUMENT

7 A. The Restraining Order to Protect Howard Chan and his Family Should be Granted.

8 1. The City has an obligation to provide a secure and safe workplace for its employees.

9 In California, employers (including the City) have both a statutory and common-law duty
10 to furnish a safe workplace for employees. (Lab. Code § 6400; *Devens v. Goldberg*, 33 Cal. 2d
11 173, 178.) The Workplace Violence Safety Act ("Act"), along with other statutory provisions
12 including Labor Code section 6400 et. seq., establishes "an explicit public policy requiring
13 employers to...take reasonable steps to address credible threats of workplace violence."
14 (*Franklin v. The Monadnock Co.* (2007) 151 Cal.App.4th 252, 259, citing *City of Palo Alto v. Service*
15 *Employees Internat. Union* (1999) 77 Cal.App.4th 327 336-37.) The express intent of the Act
16 was to "address the growing phenomenon in California of workplace violence by providing
17 employers with injunctive relief so as to *prevent* such acts of workplace violence. (Sen. Rules
18 Com., 3d reading analysis of Assem. Bill No. 68 (1993–1994 First Ex.Sess.) Aug. 31, 1994;
19 Assem. Bill No. 68, Concurrence in Sen. Amends. (1993–1994 First Ex.Sess.) Aug. 31, 1994;
20 Sen. Com. on Judiciary, Analysis of Assem. Bill No. 68 (1993–1994 First Ex.Sess.) as
21 amended June 30, 1994.)" (*USS-Posco Industries, v. Edwards*, 111 Cal.App.4th 436, 443.)

22 When read together, the Labor Code and the Act establish an employer's obligation to
23 provide a safe and secure workplace. (*Franklin, supra*, 151 Cal.App.4th at 259-260.) This
24 obligation is triggered when an employee has been the subject of a credible threat of violence
25 that the employee reasonably believes will be carried out. (*Ibid.*) In that situation, the
26 employer's obligation is to take affirmative steps to protect that employee (*Ibid.*), but the menu
27 of options available to the employer is limited. The Act provides one of the few preemptive
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1 options: a workplace injunction. (Cal. Code Civ. Proc. § 527.8.)

2 If a Restraining Order (TRO or permanent injunction) is granted, the Court can order that
3 the restrained person stay away from the employee and not contact or otherwise harass the
4 employee. (Cal. Code Civ. Proc. § 527.8, sub. (b)(6); *In re M.B.* (2011) 201 Cal.App.4th 1057,
5 1063.)

6 On June 7, the City received a formal complaint from one of its employees, Howard
7 Chan, regarding a threat of violence or course of conduct against him and involving the
8 Respondent. The City immediately acted on this complaint and after its investigation, the City
9 determined, by a totality of the circumstances, that the threat was credible and, as required by
10 law, took the reasonable step of petitioning for a Restraining Order against Respondent to
11 protect Mr. Chan and his family at home, and Mr. Chan at the workplace where Respondent
12 now has physical access to Mr. Chan. On June 18, 2021, the court denied the TRO, requested
13 additional evidence and argument for a determination on the Permanent Restraining Order,
14 and set the matter for hearing on July 12, 2021.

15 2. Respectfully, it appears that The Court's denial of the TRO was based on a factual
16 misreading of the evidence presented.

17 A petition for an injunction preventing workplace violence against employees is heard by
18 the court, not a jury, and is decided by the clear and convincing standard of proof. (Cal. Code
19 Civ. Proc. § 527.8, subd. (f); *Kaiser Found. Hosps. v. Wilson* (2011) 201 Cal. App. 4th 550, 557.)
20 Relevant hearsay evidence is admissible at a hearing on an employer's petition for an
21 injunction preventing workplace violence against its employees. (*Ibid.*) To find against the
22 City and deny the Restraining Order requires the Court to make a finding that Howard's
23 Chan's fear for his safety at the workplace and at home, and the safety of his family, is
24 unreasonable.

25 Pursuant to section 527.8, a Restraining Order may be granted when there is a credible
26 threat of violence toward an employee; such credible threats of violence can be established in
27 one incident or in a course of conduct. The standard is whether conduct places a reasonable
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1 person in fear of his or her safety or the safety of his or her family. (Cal. Code Civ. Proc. §
2 527.8(b)(2) and (3).)

3 The City respectfully submits that the Court's denial of the City's TRO, dated June 17,
4 2021, was based on incorrect facts, including a misreading of the City's evidence by the Court.
5 First, the decision states that "Respondent protested outside Howard Chan's home on July 22,
6 2020, and that Mr. Chan stated 'I am not concerned at the moment' when talking about
7 Respondent pounding on his door and causing damage to his garage door." The facts as cited
8 by the Court are incorrect. In fact, as set forth in the declaration that was submitted with the
9 application, when he made that statement, Mr. Chan was referring to a different person, Brazy
10 Liberty. (See Second Declaration of Howard Chan p.1, ¶ 3, (hereinafter "Chan Sec. Decl.")
11 attached hereto as Exhibit C.)

12 Second, the Court based its decision on the fact that the alleged conduct at the protest
13 occurred almost a year ago and that no restraining order was requested against Mr. Liberty or
14 anyone else at the time. The Court further based its denial on the fact that Mr. Chan refused
15 to press charges against Mr. Liberty. That is accurate – Mr. Chan did refuse to press charges
16 against Mr. Liberty, however, the credible threat to Mr. Chan and his family, which is the
17 subject of this action, does not involve Mr. Liberty. Nor did Mr. Chan say Respondent was
18 present at the protest.

19 Third, the Court based its denial on the fact that: 1) there was no violence, threats, or
20 vandalism during the March 2021 protest; 2) it was unclear whether Respondent attended the
21 second protest; and 3) it was unclear whether Respondent created the flyer showing Mr.
22 Chan's name in bloody letters. Here again, the credible threat of violence is not premised upon
23 the specific role that Respondent played at the 2021 protest where Mr. Chan was forced to
24 protect himself and his terrified family with 80 police officers surrounding his home given his
25 experience during the previous protest. Instead, the credible threat of violence is due to
26 Respondent's words and statements made with full knowledge of the recurring protests and
27 violence against Mr. Chan and his family, the fact that Mr. Chan and his family find those
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1 threats credible, and the fact that, as a newly hired City employee, Respondent now has
2 physical access to Mr. Chan at his workplace and other City events where Respondent could
3 attend as part of his job duties. When evaluating whether to grant an injunction, courts have
4 instructed that it is “not only the words” that matter “but also circumstances surrounding its
5 submission” (*City of San Jose v. Garbett*, (2010) 190 Cal.App.4th 526, 541-42), and that “context
6 is critical in a true threats case...history can give meaning to the medium” (*Huntingdon Life
7 Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1250.)
8 Therefore, Respondent’s threats regarding how Mr. Chan needs to continue to suffer terror for
9 doing his job, or simply being at his workplace, is what constitutes the credible threat of
10 violence. More significantly, Respondent’s threats and course of conduct must be viewed in
11 the context of Mr. Chan experiencing repeated violent protests at his family’s home, and the
12 newly gained physical access that Respondent now enjoys as a city employee working on the
13 same floor as Mr. Chan, including sharing the same restroom as Mr. Chan.

14 Accordingly, the City respectfully requests that the Court reevaluate the Petition for
15 Restraining Order seeking to protect Mr. Chan and his family in view of the correct facts and
16 relevant evidence as set forth below.

- 17 3. Respondent’s statements constitute a credible threat of violence and/or course of
18 conduct because they placed Mr. Chan and his family in reasonable fear for their
safety.

19 Pursuant to section 527.8, a “credible threat of violence” is “a knowing and willful
20 statement or course of conduct that would place a reasonable person in fear for his or her
21 safety, or the safety of his or her immediate family, and that serves no legitimate purpose.”
22 (Cal. Code Civ. Proc. § 527.8, subd. (b)(2).) In *Planned Parenthood of Columbia/Willamette, Inc.
23 v. American Coalition of Life Activists*, the court adopted the “reasonable speaker” test: “Whether
24 a particular statement may properly be considered to be a threat is governed by an objective
25 standard—whether a reasonable person would foresee that the statement would be interpreted
26 by those to whom the maker communicates the statement as a serious expression of intent to
27 harm or assault.” (*Planned Parenthood of Columbia/Willamette, Inc. v. American Coalition of Life*
28

1 *Activists* (9th Cir.2002) 290 F.3d 1058, 1074.) Moreover, in *Huntingdon Life Sciences* the Court
2 found that publications on a web site constituted credible threats of violence within the
3 meaning of both sections 527.6, subdivision (b)(2) and 527.8, subdivision (b)(2). Examining
4 section 527.6, the harassment statute, the court stated, " 'It is not necessary that the defendant
5 intend to, or be able to carry out his threat; the only intent requirement for a true threat is that
6 the defendant intentionally or knowingly communicate the threat.' " (*Huntingdon Life Sciences,*
7 *Inc., supra*, 129 Cal.App.4th at p. 1256.)

8 Respondent argues that the City failed to prove that his actions constituted a "credible
9 threat" and the Petition fails because there is a lack of "ongoing, future harm." (Brief at 12:20.)
10 However, section 527.8 does not require "ongoing harm," or even actual physical violence to
11 any person, before the Court grants a Restraining Order to protect that person. Per section
12 527.8, Respondent's contention that he did not intend to inflict harm or pose a "real" threat
13 are irrelevant. (See *City of San Jose, supra*, 190 Cal.App.4th at 539 [a person's subjective intent
14 is not required for his conduct to be deemed a credible threat].) Instead, the Court must
15 evaluate the threat from Howard Chan's perspective rather than Respondent's disingenuous
16 and self-serving excuses; "being a well-known "trash talker" without an intent to take violent
17 action is irrelevant and meritless." (*USS-Posco Industries, supra*, 111 Cal.App.4th at 445-446.)

18 Here, it is undisputed that Respondent used his podcast to threaten Mr. Chan with
19 terrorism, promoted and supported terrorism against Mr. Chan, and that terrorism serves no
20 legitimate purpose in any system of government. A plain reading of Respondent's statements
21 against Mr. Chan proves the City's point that Howard Chan is reasonable in his belief that
22 Respondent's course of conduct put him and his family in harm's way both in his workplace
23 and at his home: "...You should be terrified for the rest of your life..." or "...You should never
24 be able to leave your house if that is how you're going to use your position to govern..." In
25 fact, these statements broadcast and support actions to terrify public employees in their homes
26 by intending harm or assault to those employees for simply doing their jobs. When Mr. Chan
27 heard the statements, he considered them a threat, and when he learned that Respondent had
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1 just been hired as a City employee and granted physical access to Mr. Chan's workplace,
2 including the same floor he works on, he credibly believed these threats could be carried out
3 at work or home and, as a result, he and his family were reasonably placed in great fear for
4 their safety. (Chan Sec. Decl. p.2, ¶ 4-5.)

5 In this unfortunate modern era of violence towards public officials, in both their
6 workplaces and homes, one has no choice but to recognize the inherent power of words that
7 seek to incite violent acts. Words have power when weaponized to encourage actions that
8 terrorize people. According to Respondent's Motion to Strike, he was chosen over 79
9 applicants to lead constituent services and communications work for a City Councilmember.
10 (Brief at 2:22). By all accounts, Respondent is articulate and in fact was hired to be a
11 communications person for a City Councilmember. One must then assume he is trained in
12 the communication of messages, and understands their power. It should also be noted that
13 based on his application for the position, Respondent provides that he has a sizable social
14 media following prior to his selection for this position.¹² Thus, it is equally reasonable to
15 conclude that Respondent used these skills to clearly communicate his ideas and intentions,
16 including but not limited to subscribers of his podcast. Clearly, Respondent knows the power
17 of words; one has to assume he said what he meant, and he meant what he said.

18 The Merriam-Webster Dictionary, defines the word "terror" as: "violence or the threat
19 of violence used as a weapon of intimidation or coercion."¹³

20 Respondent describes himself as "an articulate podcast critic" (Brief at 1:21).
21 Unfortunately for Mr. Chan and his family, he used these honed skills to advocate and support
22 terrorism against Mr. Chan when he stated the following on his podcast:

23 "You should be terrified for the rest of your life. You should never be able to
24 leave your house if that is how you're going to use your position to govern.
25 And like, to me the same thing sort of applies with the mayor and the city
26 manager of this City. It's like no, no, no, you don't get to do that. You do

12 As of June 22, 2021, Respondent had, for example, over 1,500 followers on his podcast's Twitter
account, over 1,300 followers on his podcast's Facebook account, nearly 700 followers on his personal
Twitter account, and nearly 400 followers on his personal Instagram account.

13 <https://www.merriam-webster.com/dictionary/terror> (last accessed June 21, 2021).

1 not get to make the decisions that you have made over and over and over again
2 to the detriment of everybody who lives here and then go home to you little f-
3 --- little McMansion in Natomas and like have a good night's rest. I'm sorry,
4 you don't get to do that. You do not have a right to do that. Absolutely not.
(emphasis added)

(Brief at 3:7-11)

5 A plain and reasonable interpretation of Respondent's words is that he intended to use
6 violence or the threat of violence as a weapon to intimidate or coerce Mr. Chan to do his job
7 differently and, in a manner agreeable to Respondent. Through his Motion to Strike,
8 Respondent now attempts to take this plain language and reinvent it by asking the Court to
9 believe that his only 'point' was that "our leaders should operate with a sense of accountability
10 to the people they are representing." (Brief at 3:12-14) Given that he is a skilled communicator,
11 content-creator, and influencer, he could have actually said that very thing he claims to have
12 meant. But that is not what he said. Instead, he now goes out of his way to sanitize his own
13 statements of terrorism against Mr. Chan—who should be terrified at his F---McMansion in
14 Natomas and be absolutely without a right to a good night's rest. In another disingenuous
15 attempt to rewrite his own history, Respondent objects to the Restraining Order by saying that
16 the terrorist statement was "directed primarily towards federal elected officials, like Senator
17 Sinema..." (Brief at 4:7-9) That self-serving statement is irrelevant, because Respondent
18 specifically directed these statements at Mr. Chan as well. His attempts to now sanitize his
19 words once they were publicly exposed, is disingenuous because he absolutely directed the
20 statement to Howard Chan and local Sacramento City officials when he specifically said the
21 words are equally intended for people who "live here," [Sacramento], and that [Mr. Chan as
22 the main object of his derision] returning to his "f---- little McMansion in Natomas." (Brief at
23 3:7-11.) In fact, Mr. Chan lives in Natomas, and it is at this house in Natomas where the
24 violence supported by Respondent has taken place. Respondent even uses the phrase "Fucking
25 little McMansion" words commonly used to enhance the hatred and threats of public officials
26 like Mr. Chan, , by labeling them as out of touch elitists, even though Mr. Chan and his family
27 actually live in a modest, family home, in a modest neighborhood. Simply put, Respondent's
28

1 statements, which he made as a skilled communicator dealing with the public, coupled with
2 his access as a newly hired City employee with physical access and working within close
3 proximity to Mr. Chan, pose a credible threat to Mr. Chan as defined by the statute. "A true
4 threat occurs when a reasonable person would foresee that the threat would be interpreted as
5 a serious expression of intention to inflict bodily harm." (*In re Steven S.* (1994) 25 Cal.App.4th
6 598, 607.) Sadly, Respondent achieved his goal: Howard Chan and his family now live with
7 daily fear, terrified both at their home and Mr. Chan at his workplace.

8 4. Irreparable harm would result to an employee if a prohibitory injunction were not
9 issued due to the reasonable probability unlawful violence will occur in the future.

10 Respondent also challenges the sufficiency of the evidence that there is a likelihood of
11 future harm. Section 527.8, subdivision (f), requires a finding of clear and convincing evidence
12 "not only that a defendant engaged in unlawful violence or made credible threats of violence,
13 but also that great or irreparable harm would result to an employee if a prohibitory injunction
14 were not issued due to the reasonable probability that unlawful violence will occur in the
15 future." (*Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 335.) Respondent has openly
16 advocated terrorism against Mr. Chan on his podcast, and he has also devoted several episodes
17 of his show to discuss Howard Chan's job performance, upon which his terroristic threats
18 against Mr. Chan are based. Accordingly, the Petition's scope is narrow and reasonable: it
19 requests Respondent to stop harassing and advocating terrorism against Howard Chan, who
20 fears for his safety and the safety of his family. This threat has been enhanced with
21 Respondent's hiring as a communications and public engagement staffer for a
22 Councilmember. Accordingly, given that Respondent is now a newly hired City employee,
23 with physical access to Mr. Chan both at the workplace and at City events Mr. Chan is required
24 to attend, he now credibly lives in fear of physical harm should Respondent disagree with job-
25 related decisions Mr. Chan makes on a daily basis. However, as a member of a
26 Councilmember's staff, which privilege gives him access to confidential information
27 including building security information and having possession of an employee badge that
28

1 gives him physical access to common areas of the building such as stairways, elevators,
2 hallways, secured parking and even restrooms used by Mr. Chan on a daily basis, the
3 credible threat to Mr. Chan became exponentially more real. Accordingly, Mr. Chan
4 reasonably believes Respondent could act on his rage and impulses against him in the future,
5 continue to encourage or facilitate others to do harm to him or his family, have the means to
6 give access to such persons at Mr. Chan's workplace at any time, and cause irreparable harm
7 to them if the Court does not protect them by granting the Restraining Order before they are
8 actually harmed. (Chan Sec. Decl. p.2, ¶ 4-6.)

9 Respondent's brief indicates that he has not "engaged in any violence, endorsed violence,
10 threatened violence, or even approved violence." (Brief at 1:10-11) The facts, in fact the
11 Respondent's own words, clearly demonstrate this statement is false. The reality is far
12 different, and in fact the Respondent has engaged in a course of conduct that has supported
13 and encouraged acts of violence against public officials, and Mr. Chan specifically. The City's
14 application for a TRO referenced an April 11, 2021, tweet by Respondent following the
15 protests at Howard Chan's home in which Mr. Chan and his family were openly threatened
16 and had property destroyed.¹⁴ Respondent's response to the violent event was a re-tweet
17 stating: "We'll see you soon Darrell," essentially serving to advocate and encourage more
18 violent acts at the home of Mayor Darrell Steinberg. The Court need only look to
19 Respondent's actual words to recognize this is as another disingenuous attempt to revise
20 history because he unequivocally supported the violent acts that had occurred at Mr. Chan's
21 home, and was either indicating that he was part of the group, his intent to either participate
22 in the next violent protest, or endorsing such acts. Further examples of Respondent's
23 undeniable endorsement or support for violence against public employees come from his own
24 words during his podcast "Voices: River City":

- 25 • On June 2, 2020, rejoicing the fact that people burned down a police precinct in
26 Minneapolis, Minnesota, and happy to have seen officers running away from the

27 ¹⁴ <https://www.latimes.com/california/story/2021-04-11/sacramento-slams-protests-at-officials-homes>
28 (last accessed on June 23, 2021.)

1 burning building, he stated "100 [percent], dude it's the dream...every time anything
2 like this happens, that's the fucking dream. It's like, dude, go to where they fucking
3 work, burn their shit down. Make them run. Make them fucking scared."

4 (emphasis added.)

- 5 • On June 12, 2020, he stated that "the people who burned that police precinct [in
6 Portland, OR] did more for police reform in a night than the Democrats have done in
7 like centuries or ever."
- 8 • On April 6, 2021, Respondent stated that "You don't often in real life, see someone
9 get in someone else's face in an attempt to tear them down in that way, and it's pretty
10 intense to watch, and your first reaction is like wow, that's pretty messed up, to do
11 that to another human being because it is so hostile. But because of the way that
12 things are ordered, it is really one of the best tactics you have..." (emphasis added.)
- 13 • On April 6, 2021, he stated "And I applaud any protester who does anything that they
14 have in their arsenal to make sure that the cops understand that they are regarded as
15 an enemy and as a trespasser in a neighborhood they are not welcome in."

16 These comments speak for themselves and they expose the fact that Respondent's
17 sanitized declaration is a shameless effort to re-write his own public statements and refuse to
18 take responsibility for his own words and the "terror" they have credibly caused now that he
19 has physical access to the workplace of the same City employees he has vilified. The Court
20 should not be swayed by Respondent's empty excuses or rationalizations for terrorism against
21 Mr. Chan, nor by the statements from his acquaintances because the damage is already done;
22 Howard Chan and his family now live-in fear for their safety because of the direct access that
23 Respondent has to Mr. Chan at his workplace. More significantly, irreparable harm is
24 reasonably likely to occur if the Restraining Order is not issued, because a denial of the Order
25 would leave Howard open to potential violence at work, and would send a message to
26 Respondent and others like him that terrorizing public officials for the rest of their lives, going
27 to their work to make them "f-----" scared, preventing them from leaving home or having a
28

1 restful night, is completely acceptable, especially if it's a coworker.

2 B. The Restraining Order Does Not Unconstitutionally Impair Respondent's Free Speech
3 Rights.

4 Contrary to Respondent's argument and distracting rhetoric, the Restraining Order
5 sought by this application is not a prohibited prior restraint of speech because it does not seek
6 to prevent him from engaging in lawful speech a constitutionally protected course of conduct.
7 (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 140; see also *USS-Posco Industries,*
8 *supra*, 111 Cal.App.4th at 445-446.) Instead, the Order, consistent with the Labor Code and
9 the Act, seeks only to fulfill the legal obligations owed by the City to all of its employees and
10 provide a safe and secure workplace for Mr. Chan by restricting only physical and proximate
11 access to Mr. Chan by a fellow employee that has credibly threatened him with terrorism. The
12 protective order will not prevent the Respondent from having a job with the City, will not
13 prevent him from performing his communications work for the Councilmember, will not
14 prevent him from interacting with the community and constituents or from producing videos
15 (as a matter of fact, City Hall has no studio equipment). Like every other City employee,
16 including other councilmember staffers, who have had to do all of their work remotely over
17 the last 15 months, Respondent will be able to completely perform every aspect of his job, and
18 will continue to have the ability to express himself. Nothing in the City's application seeks to
19 restrict that aspect.

20 Respondent's right to expression is not at issue here. What is at stake is that as an employer
21 the City of Sacramento simply cannot ask employees at City Hall to sit alongside a co-worker
22 who has openly advocated for terror tactics against them and require them to work in an
23 environment where they – with excellent reason – feel their safety is in question.

24 The right to free speech is not absolute or unlimited. (*Near v. Minnesota* (1931) 283 U.S.
25 697, 708; *Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 486.) As the California
26 Supreme Court has explained, "[T]he state may penalize threats, even those consisting of pure
27 speech, provided the relevant statute singles out for punishment threats falling outside the
28

1 scope of First Amendment protection. [Citations.] In this context, the goal of the First
2 Amendment is to protect expression that engages in some fashion in public dialogue, that is,
3 'communication in which the participants seek to persuade, or are persuaded; communication
4 which is about changing or maintaining beliefs, or taking or refusing to take action on the basis
5 of one's beliefs....' [citations.]'... A statute that is otherwise valid, and is not aimed at protected
6 expression, does not conflict with the First Amendment simply because the statute can be
7 violated by the use of spoken words or other expressive activity. [Citation.]" (*Aguilar, supra*, 21
8 Cal.4th at 134, quoting *In re M.S.* (1995) 10 Cal.4th 698, 710.)

9 It is well-established that subdivision (c) of section 528.7 cautions that the statute "does
10 not permit a Court to issue a temporary restraining order or injunction prohibiting speech or
11 other activities that are constitutionally protected, or otherwise protected by Section 527.3 or
12 any other provision of law." (*City of San Jose, supra*, 190 Cal.App.4th at 536.) Here, the City
13 has never asked for Respondent's speech to be restricted or curtailed; nowhere in the
14 Restraining Order does the City request a remedy related to his right to express his beliefs,
15 other than threats to harass or terrorize Mr. Chan and his family, and even then only when in
16 close proximity. Unfortunately, Respondent insists on offering the Court a red herring—
17 attempting to turn a workplace safety issue into a First Amendment issue. The Court should
18 not be misled or persuaded by such arguments because the First Amendment was not intended
19 to protect terroristic threats.

20 The United States Supreme Court recently explained that whether the State may regulate
21 speech because of its offensive nature "turns largely on whether that speech is of public or
22 private concern. (*Snyder v. Phelps* (2011) 131 S. Ct. 1207, 1215.) Threats of violence are outside
23 the protection of the First Amendment. (*RAV v. City of St. Paul* (1992) 505 U.S. 377, 388.) A
24 constitutionally unprotected threat is one that "a reasonable listener would understand, in light
25 of the context and surrounding circumstances, to constitute a true threat, namely, 'a serious
26 expression of an intent to commit an act of unlawful violence' [citation] rather than an
27 expression of jest or frustration." (*People v. Lowery* (2011) 52 Cal.4th 419, 427, quoting *Virginia*
28

1 *v. Black* (2003) 538 U.S. 343, 359.) Once a Court has found that a specific pattern of speech is
2 unlawful, an injunctive order prohibiting the repetition, perpetuation, or continuation of that
3 practice is not a prohibited prior restraint of speech. (*Aguilar, supra*, at 121, 140; see also *USS-*
4 *Posco Industries, supra*, 111 Cal.App.4th at 445-46.)

5 The First Amendment does not assist Respondent here. If the elements of section
6 527.8 are met by the expression of a credible threat of violence toward an employee, then that
7 speech is not constitutionally protected and an injunction is appropriate. (*City of San Jose, supra*,
8 190 Cal.App.4th at 536-537.) Here, the elements are met because the Respondent has
9 advocated for terrorism against Mr. Chan and, as a result, Mr. Chan and his family have been
10 reasonably placed in fear for their safety. “As speech strays further from the values of
11 persuasion, dialogue and free exchange of ideas, and moves toward willful threats to perform
12 illegal acts, the state has greater latitude to regulate expression.” (*In re M.S., supra*, 10 Cal.4th
13 at 710.)

14 Respondent further contends that the Restraining Order deprives him of constitutionally
15 protected right to engage in a public discussion about the qualifications of those who hold or
16 wish to hold office. However, no explanation is offered as to how advocating for Mr. Chan to
17 be terrified, never be able to leave his house, or have a good night’s rest, is reasonably related
18 to a public discussion about Mr. Chan’s performance as City Manager and his qualifications.
19 If Respondent’s actual intent were to discuss the latter, he had a plethora of options to engage
20 in a public discussion about such performance and qualifications. For example, he could have
21 (and still can) discussed these issues using his podcast, social media platforms, sent emails to
22 elected officials, and offered public comments during City Council meetings on these topics.
23 However, based on his statements, that is not really what he intended; his actual intent appears
24 to be expressing violence or the threat of violence as a weapon to intimidate or coerce Mr.
25 Chan to perform his job differently. Accordingly, Respondent’s argument is disingenuous and
26 should be rejected under section 527.8 because speech advocating for “terror” against a person
27 is not constitutionally protected. “A threat is an ‘ ‘expression of an intent to inflict evil, injury,
28

1 or damage on another." ' (U.S. v. Orozco-Santillan (9th Cir.1990) 903 F.2d 1262, 1265.) When
2 a reasonable person would foresee that the context and import of the words will cause the
3 listener to believe he or she will be subjected to physical violence, the threat falls outside First
4 Amendment protection. (Id. at pp. 1265-1266; People v Borelli (2000) 77 Cal.App.4th 703,
5 715; In re Steven S., supra, 25 Cal.App.4th at 607; Wurtz v. Risley [(9th Cir.1983)] 719 F.2d
6 [1438,] 1441 ['It is true that threats have traditionally been punishable without violation of the
7 [F]irst [A]mendment, but implicit in the nature of such punishable threats is a reasonable
8 tendency to produce in the victim a fear that the threat will be carried out.']) Accordingly, an
9 injunction is appropriate because Respondent's terroristic threats are not within the scope of
10 First Amendment protection and, consequently, the elements of section 527.8 are met.

11 In summary, Respondent's public statements through his podcast, strayed far from the
12 values of persuasion, dialogue and free exchange of ideas. He made a credible threat and
13 engaged in a course of conduct of violence toward Mr. Howard Chan and his family, which
14 put them in reasonable fear for their safety. Therefore, Respondent's claim that the injunction
15 should be denied because it violates his right to free speech is without merit.

16 III. CONCLUSION

17 The City, as an employer, submits that there is sufficient evidence to support a Restraining
18 Order against Respondent and respectfully requests this Court to assist to protect Mr. Chan
19 and family as authorized under the Act. At minimum, the City respectfully requests that
20 Respondent be ordered to stay away from Mr. Chan's home.

21 DATED: July 2, 2021

SUSANA ALCALA WOOD,
City Attorney

22
23 

24 By: Emilio Camacho (Jul 2, 2021 11:40 PDT)

25 EMILIO CAMACHO
Senior Deputy City Attorney

26 Attorneys for the
27 CITY OF SACRAMENTO
28

EXHIBIT A

MAR
28

Council, community denounce 'wanted' posters and action targeting City Manager's home

COMMUNITY & NEIGHBORHOOD (/BLOG-CIVIC-ENGAGEMENT/CATEGORY/COMMUNITY+%26+NEIGHBORHOOD), POLICE (/BLOG-CIVIC-ENGAGEMENT/CATEGORY/POLICE)

A letter to those targeting our public officials in their homes

Sacramento (March 28, 2021) On Saturday morning, hundreds of people participated in a caravan of cars through south Sacramento to denounce

Too often in the past year, we have seen an altogether different kind of protest that traffics in violence, hate and intimidation. Now, the self-described group is planning to bring their campaign of intimidation to Mr. Chan's home on Sunday evening.

No more. A small group of people willing to embrace violence to advance their ill-defined agenda cannot be allowed to put our City leaders and the

These protestors cannot be allowed to appropriate righteous causes like helping those experiencing homelessness or protecting and valuing Black li

We will not be intimidated. We are Sacramento.

Signed,

Mayor Darrell Steinberg

Vice Mayor Jay Schenirer

Mayor Pro Tem Angelique Ashby

Councilmember Katie Valenzuela

Councilmember Jeff Harris

Councilmember Sean Loloee

Councilmember Eric Guerra

Councilmember Mai Vang



California Black Chamber of Commerce

Sacramento Asian Chamber of Commerce

Sacramento Hispanic Chamber of Commerce

Sacramento Black Chamber of Commerce

Sacramento Rainbow Chamber of Commerce

Greater Sacramento Urban League

Stockton Boulevard Partnership

Chinese American Council of Sacramento

OCA Sacramento

Asian Pacific Islander Capitol Association

Hmong Youth and Parents United

Asian Resources, Inc.

Asian Pacific Islander American Public Affairs

Asian Community Center of Sacramento

Vietnamese American Community of Sacramento

Asian American Real Estate Association

Asian American Peace Officers Association

Sacramento Chinese of Indochina Friendship Association

Sacramento Asian Pacific Film Festival

Korean-American Scientists and Engineers Association

Robert S. Nelson, President, California State University, Sacramento

Jim Gonzalez, chair of the Latino Economic Council

Mervin Brookins, Brother to Brother

Chief Sahib Lanre Hassan, past president, Sacramento Association of Nigerians

Jay King



Michael J. Pappan

Heyman Matlock

Derrick Winrow, Sr.

Merrell O. Wilson

Chris B. Young

Ollie Mack, JD, MD

Kevin Mitchell

Mark Havener

Debra Mack

Juan Walker

Jim Gavin

Trancey Williams

Dr. Allen L. Dosty, Jr.

Michael McClain

Cory D. Jackson

Elliott R. Stevenson, Esq.

Stephen Nichols

Claude Kennix

David Cooper, Jr.

Ryan Harrison, Esq.

Jameel Pugh

Rob Matthews, Jr.

Johnny L. Griffin III

Joe Howard

Aaron Roberson



Edward T. Lewis, MA, MSW

Eric Walker

Rev. Dr. Efrem Smith

Martha Guerrero, Mayor, West Sacramento

Quirina Orozco, Councilmember, City of West Sacramento

Brian Ridgeway

C. Scott Harris Jr. Retired Chief Deputy, Sacramento County Sheriff's Dept.

MARY LYNNE VELLINGA (/BLOG-CIVIC-ENGAGEMENT?AUTHOR=5AD4D46549BAD678F1A637C1)

protest (/blog-civic-engagement/tag/protest), Sacramento (/blog-civic-engagement/tag/Sacramento), vandalism (/blog-civic-engagement/tag/vandalism), police chief (/blog-civic-engagement/tag/police+chief), mayor (/blog-civic-engagement/tag/mayor)



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SIGN UP FOR TEXT ALERTS ([HTTP://RES.UPDATES.CITYOFSACRAMENTO.ORG/LP/LANDINGPAGECITYSUBSCRIPTIONSMS?SERVICE=%40-UXQ1D1A_XAQDVH0JTFUEVGFQRLANUVHYBPGN7DTRNHYOQK2_THCVGMIGYPGF--TZQZDT6KOZISHQ74CU9XVLOXUEDVO9EQKFFX2VZ7TFCQTHWSO](http://res.updates.cityofsacramento.org/LP/LANDINGPAGECITYSUBSCRIPTIONSMS?SERVICE=%40-UXQ1D1A_XAQDVH0JTFUEVGFQRLANUVHYBPGN7DTRNHYOQK2_THCVGMIGYPGF--TZQZDT6KOZISHQ74CU9XVLOXUEDVO9EQKFFX2VZ7TFCQTHWSO))

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EXHIBIT B

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Attorney General Merrick B. Garland Remarks: Domestic Terrorism Policy Address

Washington, DC ~ Tuesday, June 15, 2021

Remarks as Delivered

Oh, this is the whole, the whole place is filled. This is good. The Great Hall is beginning to look like a great hall again. This is really good. Well, good morning. I am very happy to be in the Great Hall today with representatives of the FBI, the ATF, the U.S. Marshals Service, the Executive Office for U.S. Attorneys; and with representatives of the National Security Division, Civil Rights Division, the Criminal Division, and the Office of Justice Programs.

I am pleased to announce that the Administration is today releasing the first *National Strategy for Countering Domestic Terrorism*. Each of your components will play an important role in ensuring its success.

The National Strategy is designed to coordinate and provide a principled path for the federal government's efforts to counter the heightened domestic terrorism threat, using all available tools. It is the culmination of an effort undertaken at the President's direction by federal agencies all across the government – from the Justice Department to the Departments of Homeland Security, Defense, State, Health and Human Services, and others.

As part of this effort, our law enforcement and intelligence agencies examined the evolving threat that faces us today. From that base of understanding, we developed this National Strategy to guide the work of a broad set of federal actors.

At the Justice Department, the Deputy Attorney General and I have already begun implementing a range of measures. Among other things, we have begun to reinvigorate the Domestic Terrorism Executive Committee, and we will convene that interagency body in the coming days and months.

Attorney General Janet Reno originally created the Executive Committee in the aftermath of the 1995 Oklahoma City bombing. The investigation of that bombing, which required an enormous commitment of resources from agencies across the federal and state governments, had demonstrated the importance of such a coordination mechanism.

Our current effort comes on the heels of another large and heinous attack – this time, the January 6th assault on our nation's Capitol. We have now – as we have then – an enormous task ahead: to move forward as a country; to punish the perpetrators; to do everything possible to prevent similar attacks; and to do so in a manner that affirms the values on which our justice system is founded and upon which our democracy depends.

The resolve and dedication with which the Justice Department has approached the investigation of the January 6th attack reflects the seriousness with which we take this assault on a mainstay of our democratic system: the peaceful transfer of power.

Over the 160 days since the attack, we have arrested over 480 individuals and brought hundreds of charges against those who attacked law enforcement officers, obstructed justice, and used deadly and dangerous weapons to those ends.

That would have not been possible without the dedication of our career prosecutors and agents, as well as the critical cooperation of ordinary Americans, who in acts large and small have shown that they are our best partners in keeping America safe. Within the very first week following the attack, members of the public took it upon themselves to submit over 100,000 pieces of digital media to the FBI.

Unfortunately, we know from experience that domestic terrorism and violent extremism comes in many forms.

Six years ago, nine Black men and women were shot and killed while praying at their church in Charleston. Four years ago this week, an attacker shot four people at a Congressional baseball practice, after confirming that the players were Republicans. Two months later, a man drove his car into a crowd of peaceful protesters against white supremacy in Charlottesville, murdering one and injuring many more.

In 2018, 11 Jewish worshippers were shot and killed at their synagogue in Pittsburgh. And two summers ago, 23 people, most of whom were Latino, were gunned down while shopping at a Walmart in El Paso.

Such attacks are not only unspeakable tragedies for the victims' loved ones; they are also a tragedy for our country, an attack on our core ideals as a society. We must not only bring our federal resources to bear; we must adopt a broader, societal response to tackle the problem's deeper roots.

This effort begins with taking a rigorous look at the problem we face.

During President Biden's first week in office, he directed the Administration to undertake an assessment of the domestic terrorism threat, and then to use that assessment to develop the National Strategy being released today.

Our intelligence and law enforcement agencies undertook that assessment in the first several weeks of this Administration. In March, they concluded that domestic violent extremists "pose an elevated threat to the Homeland in 2021." Our experience on the ground confirms this. The number of open FBI domestic terrorism investigations this year has increased significantly.

According to an unclassified summary of the March intelligence assessment, the two most lethal elements of the domestic violence extremist threat are "racially or ethnically motivated violent extremists, and militia violent extremists." In the FBI's view, the top domestic violent extremist threat comes from "racially or ethnically motivated violent extremists, specifically those who advocated for the superiority of the white race."

The March assessment concluded that the militia violent extremist threat, which it describes as those who "take overt steps to violently resist or facilitate the overthrow of the United States Government in support of their belief that the United States Government is purportedly exceeding its Constitutional authority," also "increased last year and . . . will almost certainly continue to be elevated throughout 2021."

Particularly concerning is the March assessment's observation that the threat from lone offenders or small cells poses "significant detection and disruption challenges because of those actors' capacity for independent radicalization to violence, ability to mobilize discretely, and access to firearms."

The domestic violent extremist threat is also rapidly evolving. As FBI Director Wray has noted, we continue to observe actors driven by a diverse set of violent motivations — sometimes personalized and developed from a mix of violent ideologies.

Developments in technology exacerbate the overall threat. Today, people may be drawn to social media and then to encrypted communications channels.

There, they may interact with like-minded people across the country, and indeed the world, who want to commit violent attacks. And they may then connect with others who are formulating attack plans, as well as mustering the resources — including firearms and explosives — to execute them.

Technology has amplified and enabled transnational elements of the threat. In earlier days, foreign terrorist groups had to board airplanes to conduct attacks in America. Now, they take advantage of technology to inspire others already located in the U.S. to violence.

The same is true for domestic violent extremists, who increasingly take common cause and inspiration from events and actions around the world, indicating an important international dimension to this problem.

The man who allegedly killed one person and injured three in an April 2019 attack on a synagogue in Poway, California, cited as inspiration an attack that took place a month before halfway across the world in Christchurch, New Zealand. That attack killed 51 people and injured dozens more at two mosques.

In response to these many and serious challenges, the National Strategy today seeks to confront the threat from all angles. The Strategy rests on four “pillars,” each of which is essential to support the whole:

“First are efforts to understand and share information regarding the full range of domestic terrorism threats. Second are efforts to prevent domestic terrorists from successfully recruiting, inciting, and mobilizing Americans to violence. Third are efforts to deter and disrupt domestic terrorist activity before it yields violence. And finally, the long-term issues that contribute to domestic terrorism in our country must be addressed to ensure that this threat diminishes over generations to come.”

The National Strategy recognizes that we cannot prevent every attack. The only way to find sustainable solutions is not only to disrupt and deter, but also to address the root causes of violence.

We have not waited until completion of the National Strategy to begin implementing it. At the Justice Department, for example:

- The FBI has increased the domestic threat information it provides to our state, local, Tribal, and territorial partners; is enhancing training provided to these important partners; and continues to work closely with them in our Joint Terrorism Task Forces.
- Through the Anti-Terrorism Advisory Councils that we have established in every U.S. Attorney’s Office across the country, we are strengthening our domestic terrorism-related prosecutorial resources and expertise.
- Our Civil Rights and National Security Divisions are working more closely than ever in determining whether a given investigation should be handled as a hate crime, an incident of domestic terrorism, or both. This will ensure that we consider all appropriate criminal offenses and that, whenever we encounter domestic terrorism, we treat it for what it is.
- Through a directive we issued earlier this year, we are ensuring that we carefully track investigations and cases with a domestic terrorism nexus.
- And our grant-making components are dedicating additional resources to helping states, localities, and others focus on the threat. The Office of Community Oriented Policing Services, for example, has started prioritizing grants to local law enforcement agencies committed to community-based approaches to combating racially motivated violence and domestic terrorism.

And we will seek to determine whether there are any gaps in our capabilities that should, consistent with our needs and our shared values, be addressed through legislation.

To support these efforts, the President’s discretionary budget request for Fiscal Year 2022 seeks over \$100 million in additional funds for the Justice Department to address the threat of domestic violent extremism and domestic terrorism.

The actions that agencies are taking in support of the National Strategy are held together by several core principles.

First, we are focused on *violence*, not on ideology.

In America, espousing a hateful ideology is not unlawful. We do not investigate individuals for their First Amendment-protected activities.

In 1976, Attorney General Levi established the guidelines that form the foundation for a detailed set of rules that continue to govern the FBI’s conduct of investigations today. In doing that, he made clear that “Government monitoring of individuals or groups because they hold unpopular or controversial political views is intolerable in our country.”

As the National Strategy makes clear, safeguarding our country’s civil rights and liberties is itself a vital national security imperative.

We do not prosecute people for their beliefs. Across the world, “extremist” or “terrorist” labels have at times been affixed to those perceived as political threats to the ruling order. But there is no place for partisanship in the enforcement of the law. This Justice Department will not tolerate any such abuse of authority.

The National Strategy explains that “it is critical that we condemn and confront domestic terrorism regardless of the particular ideology that motivates individuals to violence.” Although we often describe violent extremist motivations by reference to different violent ideologies, the purpose of those characterizations is to help us categorize and understand motivations.

That is why, even as we’re here today to discuss domestic terrorism-related violence, we are addressing violent crime more broadly, including through a directive to reduce violent crime that the Deputy Attorney General and I announced last month in the form of a new initiative.

It is also why, even as we augment our efforts against domestic terrorism, we remain relentless in our focus on international terrorism perpetrated by foreign terrorist organizations like al-Qa’ida and ISIS.

Our focus, as members of the Department of Justice – and as a federal government – is to prevent, disrupt, and deter unlawful *acts of violence*, whatever their motive. As the National Strategy makes clear, there is no place for “violence as a means of resolving political differences in our democracy.”

The *second* principle is that we need, not only a whole-of-government, but also a whole-of-society approach to domestic terrorism. Implementation of the National Strategy will therefore occur across the federal government and beyond.

The State Department will focus on the transnational aspects of domestic terrorism, including mapping links between foreign and domestic terrorists. And, with the Department of the Treasury, it will assess whether foreign organizations and individuals linked to domestic terrorism can be designated as terrorists under existing authorities.

The Department of Homeland Security is expanding its intelligence analysis, production, and sharing. It is prioritizing relevant grant funding to support state and local partners. It is enhancing its collaboration with community-based organizations, and state, and local, and industry partners, to address domestic terrorism threats while protecting privacy, civil rights, and civil liberties. And is working to support the development of resources that enhance critical thinking and media literacy as a mechanism to strengthen resilience to misinformation and disinformation.

The Department of Homeland Security is also focused on community-based violence prevention programs in order to empower and revamp support to community partners who can help to prevent individuals from ever reaching the point of committing a terrorist attack.

The Department of Defense will train service members on the potential targeting of current and former military members by violent extremists in order to help prevent radicalization.

The Department of Health and Human Services will work with the Departments of Education, Homeland Security, and Justice to develop a website that aggregates and publicizes information on federal resources – including grants, training, and technical assistance – that can assist state and local authorities and the general public in identifying the resources they need to implement their own counter domestic terrorism programs.

And those are just a few examples.

We have a track record of successful collaborative approaches to the challenges posed by terrorism – not just at the federal level, but also with our state, local, Tribal, and territorial partners.

The Justice Department’s first Joint Terrorism Task Force, for example, was established in New York in 1980. At the time, it was staffed with just 11 FBI investigators and 11 members of the New York City Police Department.

Today, our approximately 200 Joint Terrorism Task Forces have over 4,300 officers from more than 550 local, state and federal agencies, who work together every day as our first line of defense against terrorist attacks. The work that we do to support and enhance the resource and capabilities of our local partners, who are on the front lines of our counterterrorism efforts, is vital to our success.

Nearly every day, I get a briefing from the FBI Director and his team. In those briefings, I am struck by the frequency with which a critical tip or lead in an investigation comes from a state or local law enforcement member or from a member of the public. The FBI reports that roughly 50 percent of our cases originate from tips and leads from law enforcement or private sector partners and private citizens, who identify potential threats and report them to the FBI or our partners.

Creating and maintaining an environment in which individuals, community groups, and others continue to come to us depends on the extent to which we can continue to merit their trust. This includes making sure that our determinations are made free from bias. So that, too, must be part of our long-term approach.

Equally important is our work with private industry and with international partners. The National Strategy emphasizes that the government should continue to enhance the domestic terrorism-related information it offers to the private sector.

The technology sector is particularly important to countering terrorist abuse of internet-based communication platforms to recruit, incite, plot attacks, and foment hatred.

Along with more than 50 other countries, the United States has joined the *Christchurch Call to Action* to collaborate with each other and relevant stakeholders – including tech companies, NGOs, and academics – to tackle the on-line aspects of this threat. The *Christchurch Call* is just one example of the many productive engagements we have had with our international partners.

Our *third* principle is that we build upon, and learn from, the past.

A look at our past efforts to combat terrorism teaches valuable lessons about what can go right and what can go wrong. It should also give us hope about our ability to rise, and adapt, to the challenge.

I am personally struck by three events that occurred not far from each other at different points in the last one hundred years.

When I visited the Greenwood District in April of this year, where Black Wall Street once thrived in Tulsa, Oklahoma, I was struck by the failure to do justice after the 1921 Tulsa Race Massacre. Over 1,250 homes were burned down; some 10,000 people were left homeless; businesses, schools, houses of worship, and 35 city blocks were destroyed. The number of people killed is estimated in the hundreds.

All that destruction and death, and not a single person was prosecuted for it.

Almost 75 years later, just over 100 miles southwest of Tulsa in Oklahoma City, after an attack that resulted in the deaths of 168 people, the Justice Department successfully apprehended, prosecuted, and convicted the men responsible for the bombing of the Murrah Federal Building.

And five years ago, across Oklahoma's northern border in Kansas, federal authorities disrupted a plot to bomb an apartment complex and its mosque and to kill its residents – immigrants from Somalia. Working with Joint Terrorism Task Force partners, the government prevented the bombing. No one died, and those who sought to commit it were convicted of their crimes.

Since the tragedy of 9/11, we have changed our intelligence community infrastructure, created national mechanisms for coordinating counterterrorism efforts across the government, and disrupted and prosecuted hundreds of terrorism-related offenses through a legal system that has proven resilient and just.

We cannot promise that we will be able to disrupt every plot, defuse every bomb, or arrest every co-conspirator before they manage to wreak unspeakable horror. But we can promise that we will do everything in our power to prevent such tragedies. And we can further promise that we will never again fail, as we did after Tulsa, to pursue justice.

Finally, the long-term issues that contributed to domestic terrorism in America must be addressed to ensure that this threat diminishes over generations to come. To defuse the underlying causes of domestic terrorist attacks, we must promote a society that is tolerant of our differences and respectful in our disagreements.

The Justice Department remains acutely aware of the continuing threat posed by international terrorist organizations. We will never take our eyes off the risk of another devastating attack by foreign terrorists. At the same time, we must respond to domestic terrorism with the same sense of purpose and dedication.

Attacks by domestic terrorists are not just attacks on their immediate victims. They are attacks on all of us collectively, aimed at rending the fabric of our democratic society and driving us apart.

To confront the menace they pose, we must: (i) understand and share information regarding the full range of threats we face; (ii) prevent domestic terrorists from successfully recruiting, inciting, and mobilizing Americans to violence; (iii) redouble and expand our efforts to deter and disrupt domestic terrorism activity before it yields violence; and (iv) address the long-term issues that contribute to domestic terrorism in our country.

The *National Strategy for Countering Domestic Terrorism* is a key step in our efforts. We have much work ahead. Thank you all for joining me today and for the work you will do to put this Strategy into action. Thank you.

Speaker:

Attorney General Merrick B. Garland

Attachment(s):

[Download National Strategy for Countering Domestic Terrorism](#)

[Download Fact Sheet for National Strategy for Countering Domestic Terrorism](#)

Topic(s):

Counterterrorism

National Security

Component(s):

[Bureau of Alcohol, Tobacco, Firearms and Explosives \(ATF\)](#)

[Civil Rights Division](#)

[Federal Bureau of Investigation \(FBI\)](#)

[National Security Division \(NSD\)](#)

[Office of Justice Programs \(OJP\)](#)

[Office of the Attorney General](#)

[U.S. Marshals Service](#)

Updated June 15, 2021

EXHIBIT C

1 SUSANA ALCALA WOOD, City Attorney (SBN 156366)
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8 Attorneys for the CITY OF SACRAMENTO

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SACRAMENTO

11 CITY OF SACRAMENTO, a municipal
12 corporation,

13 Petitioner,

14 vs.

15 SKYLER MICHEL-EVLETH, aka SKYLER
16 HENRY

17 Respondent.

Case No.: 34-2021-70009184

**SECOND DECLARATION OF CITY
MANAGER HOWARD CHAN IN
SUPPORT OF CITY OF
SACRAMENTO'S PETITION FOR
RESTRAINING ORDER**

Date: July 12, 2021
Time: 9:00 a.m.
Dept: 1

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20 I, Howard Chan, declare:

21 1. I have personal knowledge of the facts stated herein and, if called to testify, I can
22 competently testify thereto.

23 2. I submit this declaration to supplement my declaration dated June 16, 2021.

24 3. For clarification, Respondent is not the person who was pounding on my garage
25 door and damaged my property during the protests at my family's home in 2020. Similarly,
26 Respondent is not the individual I was referring to when I said, "I am not concerned at the
27 moment." My family and I do fear Respondent due to his statements and course of conduct in
28 light of the violent protests at our home.

4. Respondent has stated, among other things, that I should be terrified for the rest of my life; that I should never be able to leave my house; and that I do not have a right to have a good night's rest because of policy decisions I have made in the course and scope of my employment as a City Manager for the City of Sacramento. My family and I live in fear for our safety because Respondent and his thousands of followers could terrorize me and prevent me from leaving my house. This sense of fear is heightened due to violent protests that have occurred at my personal residence on more than one occasion. I live afraid that Respondent or one of his followers at his direction, will break into our house in the middle of the night because Respondent has stated that I am not entitled to have a good night's rest. I live in fear that Respondent, or someone at his direction, will come up with additional ways to terrorize me or my family. Finally, I live in fear that Respondent, or someone at his direction, in an attempt to harm me or terrorize me, will target one of my children either willingly or by mistake.

5. The feelings of fear have intensified now that I am being forced to share workspace at City Hall with Respondent. He now has potential direct access to harm me or facilitate others to do the same. I am afraid that Respondent, or potentially someone at his direction, will use Respondent's key to access City Hall to terrify me at my place of employment. This is especially worrisome because I often work late, long hours, which make me an even easier target.

6. Finally, several City employees have independently told me they are afraid of Respondent working at City Hall. As a City Manager, I have a duty and obligation to protect these employees and provide for a safe work environment. Ironically, I am helpless to protect them because I can't even protect myself or my family without assistance from the court.

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

Executed on June 28, 2021, in Sacramento, California.

Howa
Howard Chan (Jun 28, 2021 13:58 PDT)
HOWARD CHAN

EXHIBIT D

SUSANA ALCALA WOOD, City Attorney (SBN 156366)
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Attorneys for the CITY OF SACRAMENTO

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CITY OF SACRAMENTO, a municipal
corporation,

Petitioner,

vs.

SKYLER MICHEL-EVLETH, aka SKYLER
HENRY

Respondent.

Case No.: 34-2021-70009184

**DECLARATION OF MARIELA
CRUZ IN SUPPORT OF CITY OF
SACRAMENTO'S PETITION FOR
RESTRAINING ORDER**

Date: July 12, 2021
Time: 9:00 a.m.
Dept: 1

I, Mariela Cruz, declare:

1. I have personal knowledge of the facts stated herein and, if called to testify, I can competently testify thereto.

2. I am currently employed by Petitioner CITY OF SACRAMENTO ("City") in the City Manager's Office, as an Executive Assistant to the City Manager. I have been so employed for almost six years.

3. My duties as Executive Assistant to the City Manager include, but are not limited to: managing the City Manager's schedule and calendar; setting up appointments; fielding telephone calls; checking the City Manager's voicemail; preparing and finalizing correspondence; and preparing materials for meetings.

1 4. I am familiar with threatening statements made by SKYLER H. MICHEL-
2 EVLETH, aka Skyler Henry ("Respondent"). After the March 28, 2021 protest at City
3 Manager Howard Chan's residence, I heard on the news that Respondent made statements that
4 the City Manager and Mayor should be terrified for the rest of their lives and that they should
5 never be able to leave their houses.

6 5. On or about June 7, 2021, I first learned that Respondent was offered a position at
7 City Hall when the District 4 Councilmember announced it on social media. That would mean
8 Respondent would be working on the same floor as, and be in close proximity to, the City
9 Manager and me.

10 6. Because of the threatening statements that Respondent has made and the fact that
11 he has thousands of followers on social media, I am fearful for my safety. For example, when
12 Petitioner disclosed on his social media that the City was seeking a temporary restraining order
13 against him, several of his followers made comments that they will be ready to fight the system
14 and to let them know. In my opinion, that is a call to arms; a threat is a threat and the fear is
15 real. Moreover, I am the first line of contact to the City Manager. My work area is the first
16 stop between the offices of the City Manager and the Mayor. Respondent would have a badge
17 and access to our work area. I fear what Respondent or his followers or sympathizers could do
18 to harm the City Manager, and/or me in the process, at work.

19 7. In my almost six years of working for the City, I have never worried about coming
20 to work, until now. With constantly repeating new stories of workplace violence perpetuated
21 by employees, my fear of Respondent's access to my office is significant. The City has a duty
22 to protect its employees, but if the City Manager can't protect himself, then how can employees
23 like me be protected?

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

3 Executed on July 1, 2021, in Sacramento, California.

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5 Mariela Cruz
6 Mariela Cruz (Jul 1, 2021 13:21 PDT)

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MARIELA CRUZ

PROOF OF SERVICE

CASE NAME: City of Sacramento v. Skyler Michel-Evleth, aka Skyler Henry (TRO)
COURT: Sacramento Superior Court
CASE NUMBER: 34-2021-70009184

I declare that:

I am employed in the County of Sacramento, California. I am over the age of eighteen years and not a party to this action; my business address is 915 I Street, Room 4010, Sacramento, CA 95814-2604. On the date executed below, I served the following document(s):

**SUBMISSION OF ARGUMENT AND EVIDENCE IN SUPPORT OF PERMANENT
RESTRAINING ORDER AGAINST SKYLER MICHEL-EVLETH, aka SKYLER
HENRY**

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept electronic service. I caused the documents to be sent to the persons at the electronic address as follows:

Mark E. Merin
Paul Masuhara
Law Office of Mark E. Merin
1010 F Street, Suite 300
Sacramento, CA 95814
mark@markmerin.com
paul@markmerin.com

I declare under penalty of perjury that the foregoing is true and correct, and that the declaration was executed on July 2, 2021, at Sacramento, California.



Christina L. Will (Jul 2, 2021 11:40 PDT)

CHRISTINA WILL