

1 PETER BIBRING (State Bar No. 223981)  
pbibring@aclusocal.org  
2 ADRIENNA WONG (State Bar No. 282026)  
awong@aclusocal.org  
3 ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
1313 West Eighth Street  
4 Los Angeles, California 90017  
Telephone: (213) 977-9500  
5 Facsimile: (213) 977-5299

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Superior Court Of California  
County Of Los Angeles

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Sherril R. Carter, Executive Officer/Clerk  
By: Charlie L. Coleman, Deputy

6 DAVID A. SCHULZ, *pro hac vice*  
david.schulz@lskslaw.com  
7 JOHN LANGFORD, *pro hac vice*  
john.langford@ylsclinics.org  
8 Allison Douglas, law student intern  
Brandon Sadowsky, law student intern  
9 Regina Wang, law student intern  
10 MEDIA FREEDOM AND INFORMATION ACCESS CLINIC  
P.O. Box 208215  
New Haven, Connecticut 06520  
11 Telephone: (203) 432-9387  
Facsimile: (203) 432-3034

D.86

13 *Attorneys for Petitioners*

14  
15 **SUPERIOR COURT OF CALIFORNIA**  
16 **COUNTY OF LOS ANGELES**

17 ALI WINSTON, an individual; KELLY LYTLE  
18 HERNANDEZ, an individual; SHAWN NEE, an  
individual; AMERICAN CIVIL LIBERTIES UNION  
OF SOUTHERN CALIFORNIA,

CASE NO. **BS 169474**

Petitioners and Plaintiffs,

**VERIFIED PETITION FOR WRIT  
OF MANDATE AND COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF  
(Code of Civ. Proc. §§ 526a, 1060,  
1085; Gov't Code 6250 et seq.)**

v.

LOS ANGELES POLICE DEPARTMENT,

Respondent and Defendant.

1 INTRODUCTION

2 1. Under the California Constitution, the people have a “right of access to government  
3 information.” Cal. Const. art. 1 § 3. In recognition of this right, the California legislature created the  
4 California Public Records Act (the “CPRA”), a comprehensive framework enabling citizens to access  
5 government records. In doing so, the legislature affirmed that “access to information concerning the  
6 conduct of the people’s business is a fundamental and necessary right of every person in this state.”  
7 Gov’t Code § 6250.

8 2. The CPRA lays out a specific process for facilitating public access to records. First, a  
9 member of the public submits a records request to an agency. The agency then has ten days to notify the  
10 requestor of whether it will grant the request. *Id.* § 6253(c). In “unusual circumstances,” an agency may  
11 extend this timeframe for up to fourteen additional days. *Id.* If the agency determines that the request  
12 seeks disclosable public records, it must state the estimated date and time at which it will make the  
13 records available. *Id.* After making a determination, the agency must “promptly” make the records  
14 available to the requestor. *Id.* § 6253(b).

15 3. The Los Angeles Police Department (“LAPD”) systemically fails to comply with the  
16 CPRA. By its own admission, the LAPD as a matter of standard practice does not respond to public  
17 records requests within the timeframe or in the manner required by law. The LAPD refuses to enforce  
18 policies or institute protocol to ensure CPRA compliance, and it willfully fails to allocate sufficient staff  
19 or resources to timely respond to records requests. By regularly requiring persistent inquiries and threat  
20 of litigation before even partially responding to CPRA requests, the LAPD discourages members of the  
21 public from submitting and following up on requests for information—particularly when they lack the  
22 resources to enforce their rights under the CPRA. Thus, the LAPD undermines the public access to  
23 government information that is the central purpose of the CPRA. Petitioner-Plaintiffs therefore seek  
24 relief to compel the LAPD’s compliance with the CPRA for all requestors.

25 4. This complaint-petition details the LAPD’s pattern and practice of failing to comply with  
26 the CPRA’s requirements through the experiences of four Plaintiffs-Petitioners (hereinafter,  
27 “Petitioners”): Ali Winston, a journalist; Kelly Lytle Hernandez, a UCLA professor; Shawn Nee, a  
28 photographer and community activist; and the ACLU of Southern California, a non-profit, non-partisan

1 civil rights organization. Based on their occupations and community activities, all Petitioners regularly  
2 submit public records requests to LAPD and intend to do so in the future. Their experiences demonstrate  
3 by example the LAPD's persistent refusal to follow state right of access law.

4 5. For example, Petitioners document herein nearly a dozen instances in which the LAPD  
5 not only failed to provide a determination within ten or twenty-four days, but failed to respond to the  
6 request at all. In many cases, this failure to notify requestors of the LAPD's determinations has stretched  
7 on for years and is ongoing. In other instances, the LAPD replied to requests several months after the  
8 expiration of its statutory deadlines—only to produce incomplete and unsatisfactory responses.

9 6. More and more, police departments throughout the United States acknowledge the value  
10 of transparency—to increase public trust, promote better law enforcement, and facilitate effective  
11 oversight. *See, e.g.,* U.S. Dep't of Justice, Office of Community Policing Servs., *Final Report of the*  
12 *President's Task Force on 21st Century Policing* (May 2015), 12-13, 21-22. The LAPD's pattern and  
13 practice of violating the CPRA and ignoring requests for public information is not only unlawful, but  
14 also out of step with recognized standards for law enforcement agencies. *Id.*

15 7. The subject matter of Petitioners' requests—which concern core civil liberties, and even  
16 matters of life and death—highlight the importance of bringing LAPD into compliance with the CPRA.  
17 Petitioners' requests seek, among other items: records relating to dragnet and warrantless surveillance of  
18 Los Angeles residents; data revealing racial disparities in policing and their economic and human  
19 consequences; and information about fatal officer-involved shootings. The public has a substantial  
20 interest in the disclosure of such information. The public's access to information is obstructed  
21 unlawfully by LAPD's systematic violation of the CPRA.

## 22 THE PARTIES

### 23 **Plaintiffs-Petitioners**

24 8. Plaintiff-Petitioner Ali Winston ("Winston") is a journalist affiliated with the Center for  
25 Investigative Reporting. His reporting covers law enforcement, criminal justice, and surveillance issues.  
26 His articles have been featured in news sources throughout the United States, including LA Weekly,  
27 KCRW, ProPublica, and Bloomberg BusinessWeek. Winston's reporting has been influential on public  
28 conversations about the role of law enforcement. For example, his reporting led to a court order

1 requiring the Oakland police department to reform its discipline procedures for police misconduct.  
2 Winston's coverage of Oakland's attempt to implement a surveillance program contributed to the city's  
3 decision to roll back its program and create a privacy committee.

4 9. Plaintiff-Petitioner Kelly Lytle Hernandez ("Hernandez") is a professor in the  
5 Departments of History and Black Studies at UCLA. She is one of the nation's leading historians of  
6 race, policing, immigration, and incarceration in the United States. She is the author of a forthcoming  
7 book, City of Inmates: Conquest and the Rise of Human Caging in Los Angeles (University of North  
8 Carolina Press, 2017), that details the history of incarceration in Los Angeles. She also leads "Million  
9 Dollar Hoods," a project to map where individuals arrested by LAPD live and how much the city spends  
10 to incarcerate them. She is a resident of Culver City and has paid taxes in the city and county of Los  
11 Angeles within the last year.

12 10. Plaintiff-Petitioner Shawn Nee ("Nee") is a community activist and award-winning  
13 photographer based in Los Angeles. His photography has appeared on NBC, NPR's website,  
14 LAist.com, as well as in *The New Yorker*, *The Atlantic*, *the Stranger*, and *The Advocate*; it has also been  
15 exhibited at various galleries in Los Angeles. Nee is a founder and member of the National  
16 Photographers' Rights Organization. Much of Nee's work focuses on street photographs of various  
17 Hollywood communities, but he also photographs in downtown Los Angeles, including capturing the  
18 homeless in Los Angeles's skid row. Nee files CPRA requests with LAPD to obtain information about  
19 police shootings in the neighborhoods in which he lives and photographs, as well as for other  
20 information on police activity and LAPD policy. He is a resident of Los Angeles and within the last year  
21 has paid taxes therein.

22 11. Plaintiff-Petitioner the American Civil Liberties Union of Southern California (the  
23 "ACLU") is a non-profit, nonpartisan organization with an office in the City of Los Angeles. The  
24 ACLU has over 100,000 members, many of whom are assessed and pay taxes in Los Angeles every  
25 year. The ACLU is committed to ensuring that law enforcement agencies at all levels of government  
26 comply with the Constitution and laws affecting civil liberties and human rights. The ACLU is also  
27 committed to principles of transparency and accountability, and seeks to ensure that the public is  
28 informed about the conduct of government officials. Dissemination of information to the public about

1 actual or alleged government activity, including law enforcement activity, is a critical and substantial  
2 component of the ACLU's mission and work.

3 12. Plaintiffs-Petitioners are each persons and members of the public with the right under the  
4 California Public Records Act (the "CPRA") to inspect public records and to seek relief in a court of  
5 competent jurisdiction to enforce that right. Cal. Gov't Code §§ 6252(b)-(c), 6253, 6258, 6259. They  
6 have a clear, present, and substantial right to the relief sought herein, and no plain, speedy, and adequate  
7 remedy at law other than that sought here.

### 8 **Defendant-Respondent**

9 13. Defendant-Respondent the Los Angeles Police Department (the "LAPD") is located in  
10 Los Angeles, California, and is a "local agency" within the meaning of the CPRA. *Id.* § 6252(d).

### 11 JURISDICTION AND VENUE

12 14. This Court has jurisdiction pursuant to sections 526a and 1085 of the Code of Civil  
13 Procedure, section 6258 of the Government Code, and Article VI, section 10 of the California  
14 Constitution.

15 15. Venue is proper in this Court, as LAPD is situated in Los Angeles, and the acts and  
16 omissions complained of herein occurred in Los Angeles. Cal. Code. Civ. P. §§ 393(b), 394(a), 395.

### 17 FACTUAL ALLEGATIONS

#### 18 The California Public Records Act

19 16. Under the CPRA, "access to information concerning the conduct of the people's  
20 business"—business conducted by public agencies on behalf of the people—is a "fundamental and  
21 necessary right of every person in this state." Cal. Gov't Code § 6250.

22 17. To ensure that state and local agencies are transparent and accountable, the CPRA  
23 empowers members of the public to inspect and copy agency records. The CPRA facilitates this transfer  
24 of information by codifying specific requirements and deadlines that agencies must observe upon receipt  
25 of a public records request.

26 18. Upon request, a public agency must "promptly" make publicly available for inspection or  
27 copy any record that it prepared, owns, uses, or retains – so long as the record is not subject to the  
28 CPRA's limited exemptions to disclosure. *Id.* § 6253(b).

1 19. After an agency receives a CPRA request, it has ten days to respond. Within those ten  
2 days, the agency must: determine whether the request seeks disclosable public records, notify the  
3 requestor of its determination and reasoning, and provide the requestor with an estimate of when the  
4 disclosable records will be made available. *Id.* § 6253(c).

5 20. In “unusual circumstances,” an agency can extend this timeframe for up to fourteen days,  
6 but it must notify the requestor in writing and estimate when the records will be made available. *Id.*  
7 Even when an agency obtains an extension, it cannot “delay or obstruct the inspection or copying of  
8 public records.” *Id.* § 6253(d).

9 21. If an agency determines that a request should be denied, it must issue a denial in writing.  
10 *Id.* § 6255.

### 11 **LAPD’s Pattern and Practice of Violating CPRA Requirements**

12 22. LAPD routinely and habitually violates the CPRA’s deadline and response requirements,  
13 as evidenced by its treatment of Petitioners’ CPRA requests.

#### 14 **Ali Winston**

15 23. Over the course of the past eight years, in pursuit of his work as a journalist, Winston has  
16 regularly filed CPRA requests with the LAPD. He has observed a substantial decrease in their  
17 responsiveness over that time period. In Winston’s experience, the department now chooses to respond  
18 at its own discretion.

19 24. Winston has filed requests with several other California agencies, including the Oakland  
20 Police Department, the San Francisco Police Department, the California Highway Patrol, and the San  
21 Diego Police Department. In contrast to these agencies, Winston has found the LAPD to be uniquely  
22 unhelpful and nonresponsive to his CPRA requests.

23 25. The LAPD’s treatment of three of Winston’s recent requests exemplifies this  
24 nonresponsiveness. Between 2014 and 2015, Winston sent three CPRA requests to the LAPD to which  
25 the department has yet to respond. Today, more than two years since Winston initially submitted these  
26 requests, the LAPD has not produced any of the requested records. Nor has the LAPD informed Winston  
27 whether it intends to produce the records.

28 *January 13, 2014, Facial Recognition Request and Palantir Technology Request*

1 26. On January 13, 2014, Winston submitted two CPRA requests to the LAPD.

2 27. The first request was about facial recognition technology used by the LAPD. In early  
3 2013, the LAPD purchased sixteen facial recognition cameras. A true and correct copy of the Facial  
4 Recognition Request is attached as Exhibit A.

5 28. These cameras are mobile and can identify a person from distances of up to six hundred  
6 feet. Adolfo Flores, *LAPD Unveils Surveillance Cameras in West San Fernando Valley*, L.A. Times:  
7 L.A. Now (Jan. 17, 2013, 1:12 PM), [http://latimesblogs.latimes.com/lanow/2013/01/lapd-surveillance-](http://latimesblogs.latimes.com/lanow/2013/01/lapd-surveillance-cameras-san-fernando-valley.html)  
8 [cameras-san-fernando-valley.html](http://latimesblogs.latimes.com/lanow/2013/01/lapd-surveillance-cameras-san-fernando-valley.html). The cameras cost hundreds of thousands of dollars. *Id.*

9 29. Winston requested records about the use of these cameras. For example, he requested  
10 contracts, reports, and policies related to the facial recognition technology.

11 30. The second request was about LAPD's use of Palantir technology. Palantir is a private  
12 company that makes powerful data analysis software. By tying multiple data sets together, the software  
13 can provide extensive information about individuals. A true and correct copy of the Palantir Request is  
14 attached as Exhibit B.

15 31. The program, for instance, can "track [a] suspect's past locations based on previous  
16 license plate scans." Thom Patterson, *Data Surveillance Centers: Crime Fighters or 'Spy Machines?'*,  
17 CNN (May 26, 2014, 12:56 PM EST), [http://www.cnn.com/2014/05/26/tech/city-of-tomorrow-video-](http://www.cnn.com/2014/05/26/tech/city-of-tomorrow-video-data-surveillance/)  
18 [data-surveillance/](http://www.cnn.com/2014/05/26/tech/city-of-tomorrow-video-data-surveillance/). According to another report: "Under the [Palantir] program, police crunch historical  
19 data to determine where crimes have frequently occurred so officers can spend more time at those  
20 places. It also creates a list of people it considers more likely to commit crimes based on past behavior."  
21 *LAPD Uses Big Data To Target Criminals*, CBS News (Nov. 14, 2014, 1:50 PM),  
22 <http://www.cbsnews.com/news/lapd-uses-big-data-to-target-criminals/>.

23 32. Winston requested records about the LAPD's use of Palantir software, including records  
24 of any LAPD policies and training manuals that concern Palantir technology.

25 33. The LAPD failed to respond to the Facial Recognition and Palantir Technology requests  
26 within the ten-day deadline provided by the CPRA—*i.e.*, by January 23, 2014.

27 34. On January 30, 2014, seventeen days after he initially sent both requests, Winston  
28 followed up with the LAPD through email. A true and correct copy of the January 30, 2014, Follow-Up

1 Email is attached as Exhibit C.

2 35. When the LAPD failed to respond to that message, Winston contacted the City  
3 Attorney's office by phone—in an attempt to encourage the LAPD to reply to his record request. These  
4 contacts proved equally unsuccessful.

5 36. It has been more than three years since Winston sent that follow-up message and called  
6 the City Attorney's office, and he has yet to receive a response from the LAPD.

7 *February 3, 2015, Cell Simulator Request*

8 37. Winston submitted another LAPD records request on February 3, 2015. In this request,  
9 like the ACLU, Winston sought records about the LAPD's use of cell simulators, which allow  
10 authorities to track a suspect's cell phone—and obtain information from bystanders in the process. A  
11 true and correct copy of the Cell Simulator Request is attached as Exhibit D.

12 38. Winston received a response ten days later. The LAPD, complying with California law,  
13 requested a fourteen-day extension to decide whether to grant Winston's request, citing unusual  
14 circumstances. LAPD did not, however, follow up. A true and correct copy of the LAPD Cell Simulator  
15 Extension Response is attached as Exhibit E.

16 39. On April 8, 2015, fifty-four days after the LAPD requested its fourteen-day extension,  
17 Winston emailed the official handling his request and asked for a status update. A true and correct copy  
18 of Winston's Status Update Email is attached as Exhibit F.

19 40. The next day, the official responded, promising to find out about the status of Winston's  
20 request and provide an update. A true and correct copy of the LAPD Response Email is attached as  
21 Exhibit G.

22 41. Winston never received a response. His further attempt to follow up went unanswered. A  
23 true and correct copy of Winston's Second Follow-Up Email is attached as Exhibit H.

24 **Kelly Lytle Hernandez**

25 42. Hernandez is the lead researcher for Million Dollar Hoods, which produces digital maps  
26 showing how much LAPD spends on incarceration for neighborhoods in Los Angeles. As part of her  
27 research process, she has submitted CPRA requests to LAPD.

28 *March 8, 2016, Arrest Data Request*



1 43. On March 8, 2016, Hernandez filed a CPRA request to the LAPD for the full name,  
2 occupation, physical description, arrest date and time, and other arrest data of all arrestees from 2010 to  
3 2016. A true and correct copy of the March 8 Request is attached as Exhibit I.

4 44. Hernandez made this request as part of her research for Million Dollar Hoods.

5 45. On March 11, LAPD responded requesting the statutory 14-day extension. A true and  
6 correct copy of the March 8 Extension Request is attached as Exhibit J.

7 46. Even with the extension, the CPRA required LAPD to respond by April 1, 2016. The  
8 LAPD, however, did not respond until on or about April 19, with incomplete data.

9 47. In June 2016, the LAPD again provided incomplete response documents, with nearly one  
10 half of the arrest entries lacking release dates, times, or home addresses.

11 48. In August 2016, the LAPD provided further response documents that were still  
12 incomplete, this time with home addresses but still lacking release dates or times.

13 *September 7, 2016 Arrest Data Request*

14 49. Given the incomplete nature of the June and August 2016 responses, on September 7,  
15 2016, Hernandez sent another CPRA request as a follow-up to her March 8, 2016 request for the same  
16 arrest data. A true and correct copy of the September 7 Request is attached as Exhibit K.

17 50. On September 8, 2016, Mary Ann Taylor ("Taylor") from the LAPD responded by email,  
18 informing Hernandez her September 7, 2016 request would be handled as a new public record request.

19 51. On September 28, 2016, three weeks after her request, Hernandez followed up by email,  
20 noting that the ten-day response period had passed for the September 7, 2016 request.

21 52. Two days later, on September 30, 2016, Hernandez left a voicemail with Taylor. Taylor  
22 responded by email, stating that she would follow up.

23 53. On October 3, 2016, Hernandez followed up again by email, noting that she had not  
24 received any response, including whether the request had been approved. Taylor responded by email that  
25 the request was still pending. A true and correct copy of these September 7 Email Communications is  
26 attached as Exhibit L.

27 54. On November 3, 2016, Hernandez sent a demand letter to the LAPD to follow-up on the  
28 September 7, 2016 request. A true and correct copy is attached as Exhibit M.

1           55.     On November 14, 2016, Taylor at LAPD replied by email, informing Hernandez that the  
2 division responsible for processing her request was down to one employee, who would soon be leaving  
3 LAPD and that, as a result, all pending requests have been affected or delayed by the staffing shortage.  
4 A true and correct copy of the email is attached as Exhibit N.

5           56.     On or about March 9, 2017, more than a year after her initial March 8, 2016 request,  
6 LAPD provided some, but not all, of the missing responsive documents. While Hernandez's March 8,  
7 2016 and September 7, 2016 CPRA requests were for all arrest data since January 1, 2010, the LAPD  
8 only provided documents from 2012-2016.

9           57.     As a result of the delay, Hernandez and her research team have had to make large  
10 assumptions and gross estimates.

11                   *March 23, 2016, LAPD Police Chiefs and Task Forces Request*

12           58.     On March 23, 2016, Hernandez submitted a CPRA request to LAPD for the disclosure of  
13 historical LAPD records related to previous police chiefs and task forces, between 1965 and 1992. A  
14 true and correct copy of the March 23 request is attached as Exhibit O.

15           59.     Hernandez also noted that Max Felker-Kantor (another history professor) made a similar  
16 CPRA request on August 4, 2012. Hernandez attached a response of LAPD's response to Felker-Kantor  
17 from August 16, 2012, acknowledging that it had found 254 potentially responsive boxes that it would  
18 begin to make available as each box was reviewed. A true and correct copy of the Felker-Kantor request  
19 is attached as Exhibit P.

20           60.     On April 6, 2016, Hernandez forwarded her her March 23, 2016 request to LAPD by  
21 email because she did not receive confirmation from LAPD.

22           61.     On April 13, 2016, she forwarded her request again.

23           62.     On April 22, 2016, she forwarded her CPRA request for the third time. She also called  
24 the office, which had no record of receiving the request.

25           63.     On April 26, 2016, Taylor responded for the first time, informing Hernandez by email  
26 that the request had been forwarded to the supervisor in charge of the CPRA section.

27           64.     On June 23, 2016, Hernandez followed up again by email after not hearing anything from  
28 the LAPD. Taylor responded by email that she had forwarded her inquiry to Greg Toyama ("Toyama"),

1 the supervisor of the CPRA unit.

2 65. On June 28, 2016, Hernandez followed up directly with Toyama via email.

3 66. On October 12, 2016, Hernandez sent Toyama another email to follow up on a phone  
4 conversation from several weeks ago, when Toyama confirmed that he would be sending her a formal  
5 response letter regarding her request. A true and correct copy of these communications pertaining to the  
6 March 23 Request is attached as Exhibit Q.

7 67. As of March 30, 2017, more than a year after her initial request, Hernandez has not  
8 received any responsive documents or a denial of her request.

9 *August 11, 2016, Budget Request*

10 68. On August 11, 2016, Hernandez submitted a CPRA request to LAPD for the disclosure of  
11 any documents (such as internal studies and correspondence) regarding the development of the budget  
12 for the department's Custody Division between 2010 and 2015. A true and correct copy of the August  
13 11 Request is attached as Exhibit R.

14 69. As of March 30, 2017, more than seven months after her initial request, Hernandez has  
15 not received any responsive documents or a denial of her request.

16 *Summary of Hernandez Requests*

17 70. As of March 30, 2017, Hernandez has not received complete responses to or denials of  
18 any of her requests, with consequences for her research reliant on this data.

19 **Shawn Nee**

20 71. An LAPD press release reported that on August 2, 2016, LAPD Officers Eui Joung and  
21 Raina Foster were involved in an incident that resulted in the shooting of a male at Walgreens in  
22 Hollywood, CA. News Release: Struggle for Officers Gun Results in Officer Involved Shooting  
23 NRf049-16ma, L.A. Police Dep't (Aug. 29, 2016), [http://www.lapdonline.org/home/news\\_view/61157](http://www.lapdonline.org/home/news_view/61157).

24 72. Another LAPD press release reported that on August 9, 2016, LAPD Officer Eden  
25 Medina was involved in an incident that resulted in the fatal shooting of a man, determined to be Jesse  
26 Romero. News Release: Hollenbeck Gang Officer Involved in Shooting of Suspected Armed with a  
27 Handgun NRF053-16ma, L.A. Police Dep't (Sept. 6, 2016),  
28 [http://www.lapdonline.org/newsroom/news\\_view/61183](http://www.lapdonline.org/newsroom/news_view/61183).

1           73.     Another LAPD press release reported that on August 19, 2016, LAPD Officers Jennifer  
2 Nodes and Jonathon Johnson were involvd in an incident that resulted in the shooting death of a man,  
3 later identified as Marcello Luna. News Release: Officer Involved Shooting of Hollywood Officers  
4 Confronted by a Man with Rifle NRF057-16ma, L.A. Police Dep't (Sept. 7, 2016),  
5 [http://www.lapdonline.org/newsroom/news\\_view/61194](http://www.lapdonline.org/newsroom/news_view/61194).

6           74.     On October 10, 2016, Nee filed five separate CPRA requests with LAPD for details on  
7 officer-involved shootings involving Officers Eden Medina, Eui Joung, Raina Foster, Jonathan Johnson,  
8 and Jennifer Nodes.

9           75.     For the requests regarding Officers Eden Medina, Eui Joung, and Jonathan Johnson, the  
10 LAPD never responded. True and correct copies of these requests is attached as Exhibits S.

11           76.     For the requests regarding Officer Raina Foster, LAPD requested a fourteen-day  
12 extension on October 21, and then provided no further information. True and correct copies of this  
13 request and LAPD's response is attached as Exhibit T.

14           77.     For the request regarding Officer Jennifer Nodes, LAPD requested a fourteen-day  
15 extension on October 21, 2016, and finally provided a link to an LAPD press release on November 9,  
16 2016, in violation of the fourteen-day deadline. True and correct copies of this request and LAPD's  
17 response is attached as Exhibit U.

18           78.     In sum, LAPD did not formally grant or deny four of the five requests Nee filed on  
19 October 10, 2016. For three of the five requests, LAPD did not provide any response.

20           79.     Although all five requests were filed on the same date and ask for similar information,  
21 LAPD only responded to two of the five requests within the ten-day deadline. In both instances, the  
22 deadline-compliant response was a request for a fourteen-day extension, a new deadline which the  
23 LAPD subsequently failed to meet.

24           **The ACLU**

25                 *July 29, 2014, Cell Simulator Request*

26           80.     As part of its mission to advance civil liberties, the ACLU has attempted to monitor law  
27 enforcement's use of IMSI-catchers—surveillance devices that allow law enforcement to track a  
28 suspect's cell phone and, in the process, obtain a wide variety of information about all cell phones and

1 bystanders that happen to be within the surveillance device's significant range.

2 81. The increasing, unchecked use of this new surveillance technology by local law  
3 enforcement agencies is troubling because of its breadth and vulnerability to insidious usage, and the  
4 public has an interest in ensuring that appropriate privacy safeguards will protect its interest when law  
5 enforcement agencies use or access cell simulators or their data.

6 82. The only way for the public to know monitor law enforcement agencies' use of cell  
7 simulators and whether such use infringes on privacy, constitutional, or other interests is by gathering  
8 records and other documentation from the agency in question.

9 83. On July 29, 2014, in an effort to fill the gap in the public's knowledge, the ACLU sent a  
10 valid CPRA request in the form of a letter through USPS certified mail to the LAPD for the disclosure  
11 of public records related to cell simulators in LAPD's possession ("**Simulator Request**"). A true and  
12 correct copy of the Simulator Request is attached as Exhibit V.

13 84. The Simulator Request included, among other items, requests for records related to the  
14 number of Cell Site Simulators owned, operated, and/or used by LAPD; the number of times Cell Site  
15 Simulators were used from January 1, 2008 to the time the request was filed; and policies related to the  
16 handling of data obtained by Cell Site Simulators.

17 85. The CPRA required LAPD to respond by August 8, 2014.

18 86. If the LAPD faced unusual circumstances in the process, it should have notified the  
19 ACLU in writing and disclosed the records fourteen days later, by August 22, 2014, as required by the  
20 CPRA.

21 87. The LAPD did not notify the ACLU that it would need an extension to decide if the  
22 requested records were disclosable or to compile them.

23 88. Despite the ACLU's repeated attempts to contact the LAPD in the three months after  
24 these CPRA deadlines, the LAPD neither disclosed the records nor enumerated which records, if any, it  
25 had determined were not disclosable and why.

26 89. On September 29, 2014, the ACLU sent the LAPD a follow-up letter through USPS  
27 certified mail ("**Follow-Up Letter**"). A true and correct copy of the Follow-Up Letter is attached as  
28 Exhibit W. The ACLU received no response.

1 90. The following day, September 30, 2014, the ACLU received a confirmation receipt from  
2 the LAPD confirming receipt of the Simulator Request.

3 91. On October 6, 2014, the ACLU called the LAPD to follow up. No one answered.

4 92. On October 10, 2014 – more than seventy days after the initial request – the ACLU called  
5 the LAPD to follow up. The representative who answered asked when the Simulator Request and  
6 Follow-Up Letter were sent. She stated said that neither were received by the LAPD and that “we didn’t  
7 get anything from the P.O. box, you need to email it.”

8 93. Accordingly, that same day at 2:47 p.m., the ACLU sent LAPD an email (“**Follow-Up**  
9 **Email**”) to discovery@lapd.lacity.org with a subject line reading “July 29, 2014, Public Records Act  
10 Request re: Cell Site Simulators.” Attached to the Follow-Up Email for the LAPD’s convenience were  
11 the Simulator Request and the Follow-Up Letter.

12 94. On October 14, 2014, the ACLU called the LAPD, left a voice message, and at 4:43p.m.,  
13 received an email confirmation receipt confirming that the LAPD’s Discovery Section had received the  
14 Follow-Up Email. A true and correct copy of communications regarding the October 10, 2014 Follow-  
15 Up Email is attached as Exhibit X.

16 95. On October 27, 2014, the ACLU called the LAPD to let it know that it had received its  
17 confirmation email. The ACLU was transferred to David Lee’s voicemail at (213) 978-2152, where it  
18 left a voice message.

19 96. On October 31, 2014, the ACLU received a voice message from David Lee which said  
20 the LAPD was still working on the Simulator Request. Neither David Lee nor any other LAPD  
21 representative estimated when the records would be made available.

22 97. The ACLU called the LAPD on three separate occasions after receiving David Lee’s  
23 voice message: first on November 18, 2014, at 1:56 p.m., second on November 24, 2014, at 8:30 a.m.,  
24 and again on December 5, 2014 at 2:57p.m. The ACLU left voice messages each time as all three calls  
25 went unanswered.

26 98. The ACLU’s last attempt to contact the LAPD with regard to the Simulator Request was  
27 made on December 5, 2014.

28 99. LAPD never responded to ACLU’s request or December 5, 2014, follow-up call.

1           *October 9, 2014, Stops Data Request*

2           100.    The ACLU regularly requests data from the LAPD concerning information about  
3 pedestrian and motor vehicle stops, including the circumstances of the stop, the initial reason for the  
4 stop, and whether and why a warrantless search was conducted during the stop.

5           101.    This data has been used, among other things, to conduct a statistical analysis of racial  
6 disparities in the LAPD's pedestrian and motor vehicle stops. *See* Ian Ayres & Jonathan Borowsky, *A*  
7 *Study of Racially Disparate Outcomes in the Los Angeles Police Department 1* (Oct. 2008) (Exhibit Y).

8           102.    On information and belief, requesting records from the LAPD is the only way to obtain  
9 the data ACLU regularly monitors.

10          103.    On October 9, 2014, the ACLU sent a valid CPRA request by mail to the LAPD for  
11 updated records pertaining to traffic stop data for the period of May 13, 2013 through September 30,  
12 2014 ("**Stops Data Request**"). A true and correct copy of the Stops Data Request is attached as Exhibit  
13 Z.

14          104.    The CPRA required LAPD to respond by October 19, 2014.

15          105.    If the LAPD faced unusual circumstances in the process, it should have notified the  
16 ACLU in writing and disclosed the records fourteen days later, by November 2, 2014, as required by the  
17 CPRA.

18          106.    On May 11, 2015, over six months after the initial request, the LAPD produced records in  
19 response to the Stops Data Request. A true and correct copy of the LAPD's response to the Stops Data  
20 Request is attached as Exhibit AA.

21           *November 3, 2016, Public Records Response Request*

22          107.    The public currently has little oversight over the LAPD's compliance with the CPRA,  
23 including its internal policies for responding to CPRA requests within the statutorily mandated  
24 timeframe.

25          108.    On November 3, 2016, in order to promote public oversight of LAPD compliance with  
26 the CPRA, the ACLU sent a valid CPRA request through electronic mail to the LAPD for the disclosure  
27 of information regarding the LAPD's CPRA response practices ("**CPRA Compliance Request**"). A  
28 true and correct copy of the CPRA Compliance Request is attached as Exhibit BB. The request sought,

1 among other items, records related to LAPD's ten oldest, currently outstanding CPRA requests and the  
2 LAPD's internal policies regarding CPRA requests.

3 109. On the same day, the LAPD replied with an email confirming receipt of the CPRA  
4 Compliance Request. The email did not notify the ACLU of the LAPD's determination of whether  
5 disclosable records existed, nor did it provide an estimate of when LAPD might disclose responsive  
6 records. A true and correct copy of the email receipt is attached as Exhibit CC.

7 110. The CPRA required LAPD to notify the ACLU of its determination by November 13,  
8 2016.

9 111. If the LAPD faced justifiable unusual circumstances in the process, it should have  
10 notified the ACLU in writing and disclosed the records fourteen days later, by November 27, 2016.

11 112. The LAPD did not notify the ACLU that it would need an extension to decide if the  
12 requested records were disclosable or to compile them.

13 113. As of the date of this filing, the LAPD has not made a determination regarding the  
14 CPRA Compliance Request or contacted the ACLU in any way regarding the request beyond  
15 acknowledgment of receipt.

16 *February 8, 2017, Tellez Records Request*

17 114. The ACLU is additionally committed to advancing police accountability and protecting  
18 the First Amendment right to record. In furtherance of this commitment, the ACLU monitors  
19 complaints about police interference with the right to record. These complaints sometimes include  
20 allegations that police retaliatorily arrest citizens who film police in public on trumped-up charges.

21 115. On September 4, 2016, the LAPD arrested Alberto Tellez. Mr. Tellez submitted a  
22 complaint to the ACLU that this arrest was in retaliation for his act of recording a police officer in  
23 public.

24 116. On February 8, 2017, the ACLU sent a valid CPRA request through electronic mail to  
25 LAPD for all records pertaining to the arrest of Mr. Tellez ("**Tellez Records Request**"). The request  
26 included the arrest report, booking record, and any recordings made of the arrest. The request  
27 specifically sought readily available information that the CPRA expressly requires agencies to disclose,  
28



1 Gov't Code 6254(f)(1). A true and correct copy of the Tellez Records Request is attached as Exhibit  
2 DD.

3 117. On February 9, 2017, one day after the request was submitted, the ACLU received  
4 electronic mail from the LAPD's Discovery Section in response to the request stating "For all requests, a  
5 turnaround time frame takes 4 to 8 weeks. Just an FYI." A true and correct copy of LAPD's response is  
6 attached as Exhibit EE.

7 118. To date, LAPD has not provided the ACLU with records or information responsive to the  
8 Tellez Records Request. The LAPD has not even notified the ACLU of its determination regarding  
9 whether the request seeks disclosable records, in violation of the CPRA.

10 119. Because the LAPD failed to respond to this request in a timely fashion, Mr. Tellez was  
11 forced to go through an administrative citation hearing related to his arrest without even the most basic  
12 information about the LAPD's position on the facts surrounding his arrest.

13 **Table of Requests Summary**

14 120. The following table summarizes the allegations set forth above:

15

16 Requestor: Request	Acknowledgment	Determination	Relevant Allegations
17 Winston: 1/13/14 Facial 18 Recognition Request	None (three years late)	None (three years late)	¶¶ 26-29, 33-36
19 Winston: 1/13/14 Palantir Technology Request	None (three years late)	None (three years late)	¶¶ 26, 30-36
20 Winston: 2/3/15 Cell 21 Simulator Request	2/13/15 (fourteen- day extension requested)	None (two years late)	¶¶ 37-41
22 Hernandez: 3/8/16 Arrest 23 Data Request	3/11/16 (fourteen- day extension requested)	Incomplete production of documents in 8/16 (five months late)	¶¶ 42-48
24 Hernandez: 9/7/16 Arrest 25 Data Request	9/8/16	Incomplete production of documents on 3/9/17 (six months late)	¶¶ 49-57
26 Hernandez: 3/23/16 LAPD 27 Police Chiefs and Task 28	4/26/16 (24 days)	None (one year late)	¶¶ 58-67

1	Forces Request	late)		
2	Hernandez: 8/11/16 Budget Data Request	None (seven months late)	None (seven months late)	¶¶ 68-69
3	Nee: 10/10/16 Officer Eden Medina Request	None (six months late)	None (six months late)	¶¶ 72, 74-75
4	Nee: 10/10/16 Officer Eui Joung Request	None (six months late)	None (six months late)	¶¶ 71, 74-75
5	Nee: 10/10/16 Officer Raina Foster Request	10/21/16 (requested fourteen-day extension)	None (six months late)	¶¶ 71, 74, 76
6	Nee: 10/10/16 Officer Jonathan Johnson Request	None (six months late)	None (six months late)	¶¶ 73-75
7	Nee: 10/10/16 Officer Jennifer Nodes Request	10/21/16 (requested fourteen-day extension)	11/9/16 (five days late)	¶¶ 73-74, 77
8	ACLU: 7/19/2014 Cell Simulator Request	9/30/2014 (one month late)	None (three years late)	¶¶ 80-99
9	ACLU: 10/9/2014 Stops Data Request	5/11/2015 (seven months late)	5/11/2015 (seven months late)	¶¶ 100-106
10	ACLU: 11/3/2016 Public Records Response Request	11/3/2016	None (five months late)	¶¶ 107-113
11	ACLU: 2/8/2017 Tellez Records Request	2/9/2017	None (two months late)	¶¶ 114-119

**FIRST CAUSE OF ACTION**

**For Writ of Mandate, California Public Records Act,**

**Gov't Code § 6250 et seq., Code of Civ. Proc. § 1085**

121. Plaintiffs-Petitioners incorporate by reference the foregoing paragraphs as though fully set forth herein.

122. The CPRA creates mandatory, non-discretionary duties on the part of LAPD to adhere to deadlines and notice requirements when responding to records requests. Cal. Gov't Code §§ 6253(c)-(d). LAPD systemically fails to perform these duties.

123. Specifically, California Government Code section 6253(c) creates duties on the part of

1 LAPD to determine and notify CPRA requestors whether requested records are disclosable within ten  
2 days, to be extended by no more than fourteen days in the event of “unusual circumstances” upon  
3 notification of requestors in writing of the existence of such circumstances. LAPD fails to reach  
4 determinations and notify requestors within the statutory time periods, in violation of the CPRA.

5 124. Issuance of a writ of mandate compelling LAPD to perform its duties under the CPRA is  
6 required because there exists no plain, speedy, and adequate remedy in the ordinary course of law which  
7 would protect Plaintiffs-Petitioners’ rights and interests.

8 **SECOND CAUSE OF ACTION**

9 **For Declaratory Relief, California Public Records Act,**

10 **Gov’t Code § 6250 et seq., Code of Civ. Proc. §§ 526a, 1060**

11 125. Plaintiffs-Petitioners incorporate by reference the foregoing paragraphs as though fully  
12 set forth herein.

13 126. The LAPD has acted and is continuing to act in violation of the CPRA by maintaining  
14 conduct, policies, and a pattern and practice of ignoring the mandatory statutory deadline and notice  
15 requirements for CPRA requests, Cal. Gov’t Code §§ 6253(c)-(d).

16 127. LAPD’s pattern and practice of violating the CPRA in this manner is an illegal  
17 expenditure of public funds in violation of a non-discretionary duty.

18 128. An actual controversy exists between the parties concerning whether LAPD has engaged  
19 in conduct or established policies that violate the statutory deadline and notice requirements of the  
20 CPRA and California Constitution.

21 129. A judicial determination to resolve this actual controversy is necessary and appropriate  
22 at this time.

23 **THIRD CAUSE OF ACTION**

24 **For Injunctive Relief, California Public Records Act,**

25 **Gov’t Code § 6250 et seq., Code of Civ. Proc. §§ 526a, Civ. Code § 3422**

26 130. Plaintiffs-Petitioners incorporate by reference the foregoing paragraphs as though fully  
27 set forth herein.

28 131. If not enjoined by order of this Court, LAPD will continue to ignore requests, disregard

1 statutorily required deadlines and notice requirements, and arbitrarily prevent parties from obtaining  
2 information under the CPRA.

3 132. LAPD's pattern and practice of violating the CPRA in this manner is an illegal  
4 expenditure of public funds in violation of a non-discretionary duty.

5 133. Plaintiffs-Petitioners do not have a plain, speedy, and adequate remedy in the ordinary  
6 course of law.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioners pray for judgment as follows:

9 1. For issuance of a writ of mandate compelling LAPD to take all necessary steps to  
10 consistently perform its duties under the CPRA;

11 2. For a declaration that LAPD's conduct, policies, and pattern and practice of failing to  
12 timely respond to public records requests violates the CPRA;

13 3. For a permanent injunction enjoining the LAPD, its agents, employees, officers, and  
14 representatives from continuing its existing pattern and practice of violating the deadline and notice  
15 requirements of the CPRA, and ordering LAPD to track and report to the court and to the public on its  
16 responses to public records requests for a period of time not less than three years;

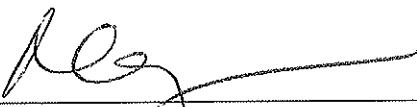
17 4. For reasonable attorneys' fees pursuant to California Code of Civil Procedure section  
18 1021.5 and Government Code section 6259(d);

19 5. For costs of suit; and

20 6. For such other and further relief as the Court may deem just and proper.

21  
22 Dated: April 25, 2017

23 Respectfully submitted,

24  
25 By   
26 ADRIENNA WONG  
27 ACLU FOUNDATION OF SOUTHERN  
28 CALIFORNIA  
Attorney for Petitioners

1 Of Counsel:  
2 David A. Schulz  
3 John Langford  
4 Allison Douglis (law student intern)  
5 Brandon Sadowsky (law student intern)  
6 Regina Wang (law student intern)  
7 Media Freedom and Information Access Clinic  
8 Abrams Institute for Freedom of Expression  
9 Yale Law School\*  
10 P.O. Box 208215  
11 New Haven, CT 06520  
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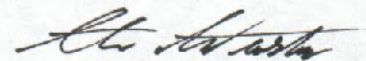
25 \* This brief was prepared by the Media Freedom and Information Access Clinic, a program  
26 of the Abrams Institute for Freedom of Expression at Yale Law School. The brief does not purport  
27 to express the School's institutional views, if any.  
28

**ALI WINSTON VERIFICATION**

I, Ali Winston, hereby declare as follows:

I am a petitioner in this matter. I have read paragraphs 4, 8, 23-41, and 120 of the VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and know its contents. The facts alleged in this matter concerning my claims are within my own personal knowledge, and I know these facts to be true, except for matters stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 24<sup>th</sup> day of April, 2017 in Oakland, California.

  
ALI WINSTON

## **KELLY HERNANDEZ VERIFICATION**

I, Kelly Hernandez, hereby declare as follows:

I am a petitioner in this matter. I have read paragraphs 4, 9, 42-70, and 120 of the VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and know its contents. The facts alleged in this matter concerning my claims are within my own personal knowledge, and I know these facts to be true, except for matters stated on information and belief, and I believe them to be true.

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

verification was executed this 24 day of April, 2017 in Los Angeles California.

*Kelly Lode Hernandez*

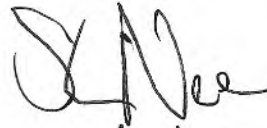
**SHAWN NEE VERIFICATION**

I, Shawn Nee, hereby declare as follows:

I am a petitioner in this matter. I have read paragraphs 4, 10, 71-79, and 120 of the VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and know its contents. The facts alleged in this matter concerning my claims are within my own personal knowledge, and I know these facts to be true, except for matters stated on information and belief, and I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 21 day of April, 2017 in Los Angeles, California.

SHAWN NEE



4/21/17



**AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA  
VERIFICATION**

I, Adrienna Wong, hereby declare as follows:

I am an attorney representing the American Civil Liberties Union of Southern California (ACLU), a Petitioner in this matter. I have the authority to act on behalf of the ACLU and to make this verification for, and on behalf of, the ACLU. I have read paragraphs 1-7, 11, 12-22, and 80-133 of the VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and know its contents. The facts alleged in paragraphs 107-119 concerning the ACLU are within my own personal knowledge, and I know these facts to be true. On information and belief, I believe the facts alleged in paragraphs 1-7, 11-22, 80-106, and 120-133 to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 24 day of April, 2017 in Los Angeles, California.

ADRIENNA WONG  
Attorney for the American Civil Liberties Union  
of Southern California

**AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA  
VERIFICATION**

I, James Gilliam, hereby declare as follows:

I am the Deputy Executive Director of the American Civil Liberties Union of Southern California (ACLU), a Petitioner in this matter. I have the authority to act on behalf of the ACLU and to make this verification for, and on behalf of, the ACLU. I have read paragraphs 1-7, 11, 12-22, and 80-133 of the VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF and know its contents. The facts alleged in paragraph 11 concerning the ACLU are within my own personal knowledge, and I know these facts to be true. On information and belief, I believe the facts alleged in paragraphs 1-7, 11-22, and 80-133 to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed this 24<sup>th</sup> day of April, 2017 in Los Angeles, California.

JAMES GILLIAM  
Deputy Executive Director,  
American Civil Liberties Union  
of Southern California