

1 DAVID W. TYRA, State Bar No. 116218
dtyra@kmtg.com
2 ALEC D. TYRA, State Bar No. 339922
alectyra@kmtg.com
3 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation
4 1331 Garden Hwy, 2nd Floor
Sacramento, California 95833
5 Telephone: (916) 321-4500
Facsimile: (916) 321-4555

6 Attorneys for Defendant California Department
7 of Corrections and Rehabilitation
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN FRANCISCO**
11

12 AMERICAN CIVIL LIBERTIES UNION OF
13 NORTHERN CALIFORNIA, a non-profit
corporation,

14 Petitioner,

15 v.

16 THE CALIFORNIA DEPARTMENT OF
17 CORRECTIONS AND REHABILITATION,

18 Respondent.
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Case No. CPF-23-517967

**RESPONDENT CALIFORNIA
DEPARTMENT OF CORRECTIONS AND
REHABILITATION'S OPPOSITION TO
ACLU'S MOTION FOR PARTIAL
JUDGMENT ON THE WRIT**

*Declaration of Thomas Quezada; Declaration
of Christopher Beach; Declaration of Chantel
Quint; Declaration of Kyle Langowski;
Declaration of David Tyra*

Judge: Hon. Richard B. Ulmer, Jr.
Date: September 19, 2023
Time: 9:30 a.m.
Dept.: 302

Action Filed: February 15, 2023

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1 I.

2 **INTRODUCTION**

3 Since February 2023, the California Department of Corrections and Rehabilitation
4 (“CDCR”) has produced responsive documents to the ACLU every two weeks. Despite this rolling
5 and expeditious production schedule, the ACLU argues that the CDCR is moving too slowly in
6 producing documents. The ACLU erroneously claims that the pace of production is being slowed
7 by “improper redactions” and “unjustified and boilerplate exemptions.” That is simply not true. As
8 the discussion to follow explains, the CDCR’s redactions are not only fully justified by applicable
9 law but in the vast majority of instances, the CDCR is legally required to withhold redacted
10 information. Absent such redactions, the CDCR would impermissibly, and perhaps even
11 unlawfully in some instances, be providing the ACLU with protected Personally Identifiable
12 Information (“PII”) and/or confidential Criminal Offender Record Information (“CORI”). The
13 ACLU has been made well aware of this through the extensive dialogue and correspondence
14 between the parties and, therefore, their claim the CDCR simply is asserting boilerplate or
15 overbroad exemptions is disingenuous.

16 The remaining arguments in the ACLU’s motion are equally lacking in merit. For instance,
17 the ACLU argues that while the names of inmates may be redacted, the ACLU claims it is entitled
18 to information regarding those inmates’ race, nationality, and gender. In fact, the CDCR no longer
19 redacts that information and ceased doing so long ago as the ACLU is well aware. The ACLU’s
20 argument on this point, therefore, is moot and not brought in good faith.

21 In addition, the ACLU seeks a detailed production index. This request renders impossible
22 an already burdensome PRA request. As the discussion to follow will establish, the CDCR is
23 working diligently to produce the approximately 65,000 documents responsive to the ACLU’s
24 PRA request and is doing so with extremely limited resources. Requiring the CDCR to prepare a
25 detailed index of the documents would defeat the ACLU’s main purpose behind its motion by only
26 further slowing the pace at which the CDCR can produce those documents.

27 Apart from the merits – or more precisely, the lack thereof – of the ACLU’s arguments,
28 this Court should refrain from granting the ACLU the relief it is seeking pursuant to the doctrine

1 of judicial abstention. Granting such relief could involve this Court in an ongoing enforcement
2 regime over a process that involves economic considerations relating to the expenditure of public
3 funds, and could compel either the executive or legislative branches of state government, or both,
4 to significantly alter the manner in which PRA requests of this type are addressed, the resources
5 made available to respond to such requests, and budget appropriations to fund those efforts.

6 Accordingly, the CDCR respectfully requests that this Court deny the ACLU the relief it is
7 seeking and allow CDCR to continue expeditiously producing responsive documents as it has been
8 over the last several months.

9 II.

10 **FACTUAL BACKGROUND**

11 **A. The Subject PRA Request**

12 On September 13, 2022, the ACLU submitted a PRA request to the CDCR seeking the
13 following documents:

14 1. Dating January 1, 2018 to the date of your response to this request, any and all
15 records related to CDCR's policies, procedures, regulations, memoranda, guidance,
and forms related to active or potential immigration holds or detainers.

16 2. Dating January 1, 2021 to the date of your response to this request, any and all
17 records of communication between CDCR and U.S. Immigration and Customs
18 Enforcement ("ICE"). This includes any email communication between CDCR and
entities using the email domain of "@ice.dhs.gov."

19 CDCR responded to ACLU's request by providing the following:

20 The CA Department of Corrections and Rehabilitation is partially denying your
21 request because some of the identified records are exempt from disclosure. The
applicable exemptions are fully discussed below:

22 Government Code section 7922.000

23 Penal Code sections 11075, 11076, and 13102; Government Code section 7927.705

24 California Code of Regulations Title 15, section 3261.2(e); Government Code
25 section 7927.705

26 Penal Code section 1203.05; Government Code section 7927.705

27 Penal Code sections 11105, 11140, and 11142; Government Code section 7927.705

28 Civil Code section 56 et. seq; Code of Federal Regulations title 45, sections
160.103, 164.502(a), 164.508(a)(1); Government Code section 7927.705
Government Code section 7927.700

The legal basis for the redactions/ withholding of individually identifying
information (including AOJs, under the circumstances of this request) is Gov Code
7927.700 (former Gov Code 6254(c)), as analyzed by the court in *Los Angeles
Unified School District v. The Superior Court of Los Angeles County*, 228

1 Cal.App.4 222; and *United States Department of State v. The Washington Post*
2 *Company*, 456 U.S. 595. These cases stand for the proposition that Gov Code
3 7927.700 (former Gov Code 6254(c)) operates to bar the disclosure of the
4 individually identifiable citizenship information that would otherwise be revealed
5 by the redacted records. Please note that CDCR is still reviewing documents that
6 may be responsive to your request, and it is possible that additional documents
7 and/or exemptions will be identified during the review and compilation of these
8 records.

9
10 (Declaration of Thomas Quezada (Quezada Decl.), ¶7, Exhibit A.)

11 Before addressing CDCR's specific efforts in responding to Petitioner's request, it is useful
12 for the Court to have a general understanding of how CDCR manages the numerous PRA requests
13 it receives.

14 **B. CDCR's Diligent Efforts**

15 **1. General Background Re CDCR's PRAU**

16 CDCR created the Public Records Act Unit (PRAU) in 2021 to centralize the department's
17 response to PRA requests seeking records of its Division of Adult Institutions (DAI) and to
18 provide support to local institutions. (Declaration of Associate Warden Chantel Quint (Quint
19 Decl), ¶ 5.) The PRAU is divided into three categories of employees: (1) employees responsible
20 for producing records in compliance with the audit requirements in the *Armstrong* litigation,¹ (2)
21 employees responsible for responding to video record requests, and (3) employees responsible for
22 responding to PRA document record requests. (Quint Decl., ¶¶ 7-10, Exhibit A.) CDCR only has
23 three analyst positions and one lieutenant position budgeted for the PRAU team that is responsible
24 for gathering, reviewing, and redacting DAI records in response to PRA requests, such as the
25 ACLU's in this case. (Quint Decl., ¶¶ 11-12, Quezada Decl., ¶¶ 2-3.) While CDCR has the budget
26 for three analysts to perform document redactions. (Quezada Decl. ¶ 3.), due to ongoing staffing
27 challenges CDCR currently only has two of those positions filled. (Quezada Decl., ¶ 3.)

28

29 ¹ CDCR's Budget Change Proposal from the *Armstrong* records is attached as Exhibit B to
30 Associate Warden Quint's declaration.

1 **(a) PRAU's Budget.**

2 The PRAU's budget for the fiscal year of 2022-2023 was approximately 2.7 million
3 dollars. (Quint Decl. ¶¶ 16-17.) As a result, the CDCR's resources are limited relative to the
4 number of requests to which it must respond. By way of example, the PRAU was assigned 418
5 PRA requests in 2022 and has already received over 350 such requests in 2023. (Quint Decl. ¶ 13;
6 Quezada Decl. ¶ 4.) This large volume of PRA requests is handled within the budget and staffing
7 restrictions noted above.

8 CDCR has requested additional resources to develop its E-discovery team to better address
9 discovery requests and Public Records Act requests. (Quint Decl., ¶ 22, Exhibit E.) In a typical
10 year, Budget Change Proposals take approximately 12 months to complete the budgetary process
11 from drafting stage to final approval by the Legislature. Any additional request for funding for the
12 PRAU in order to accelerate current production of documents comes at a time when California is
13 experiencing a multi-billion dollar deficit in the state budget. This further exacerbates the
14 difficulty in obtaining additional resources for the PRAU.

15 **(b) The PRAU's General Method For Responding To PRA Requests**

16 At present, CDCR does not have automated tools to place electronically stored information
17 ("ESI"), other than email communications, on a preservation hold nor is there a single mechanism
18 to manage this ESI. This is due to decentralized processes and storage options among the various
19 correctional institutions. In addition, there is no central platform to process ESI across the
20 Department, which requires personnel to maintain separate and decentralized work logs as well as
21 potentially storing redundant copies of ESI. This inevitably requires manual review of records in
22 identifying and gathering responsive records, determining privileges, tagging documents, and
23 creating a privilege log as necessary, as well as managing the cases associated with the collected
24 ESI, including PRA requests. (Quint Decl. ¶ 21; Quezada Decl. ¶ 9.)

25 CDCR uses two technology platforms in reviewing documents potentially responsive to
26 PRA requests. The Ev.Cloud platform is an archive system that stores emails sent to and from
27 each user account within CDCR's domain. (Declaration of Christopher Beach (Beach Decl.), ¶ 3.)
28 Search results for emails in response to a PRA request, utilizing search terms and queries, are then

1 uploaded to the GovQA platform, where CDCR analysts can review, redact, and produce
2 documents in response to a PRA request. (Beach Decl., ¶ 6; Declaration of Kyle Langowski
3 (Langowski Decl.), ¶¶ 5-6.) The GovQA platform as developed for the State is limited in its ability
4 to conduct large scale reviews of documents. (Langowski Decl., ¶ 6.) It is not capable of
5 performing batch redactions, email threading, key word searches, and only one analyst can work
6 on a file at any given time. (*Id.*) The GovQA platform is not cloud-based, and therefore, the
7 platform capabilities are also limited by the reviewer's hardware and network capabilities.
8 (Langowski Decl. ¶ 7.) Particularly large searches, like that required by the ACLU's request, can
9 and do slow the review capabilities based on the limitations of the reviewer's hardware and
10 network speed. (Langowski Decl., ¶ 7; Quezada Decl., ¶ 13.)

11 **2. CDCR's Current Effort to Respond to the ACLU's PRA Request.**

12 The ACLU's request for communications between ICE and CDCR from January 1, 2021
13 to the date of the request has generated more than 65,000 potentially responsive emails, some of
14 which have attachments ranging from 1-100 pages in length. (Quezada Decl. ¶ 6.) In November
15 2022, CDCR began producing records. (Quezada Decl. ¶ 7, Exhibit A). Unfortunately, there were
16 errors that resulted in protected information to be released and required a pause in the production
17 of documents which was communicated to the ACLU via the GovQA portal. (Quezada Decl. ¶ 7,
18 Exhibit A) Since February 2023, the CDCR has been producing batches of documents every two
19 weeks to Petitioner. (Quezada Decl. ¶ 7, Exhibit A) The PRA tool currently used by the PRAU,
20 GovQA, limits the review and redaction of records to only one analyst at a time without otherwise
21 compromising the integrity of the record and the accuracy of the work performed. Since the
22 CDCR has received the request, there has always been at least one analyst (out of the two
23 available) assigned to the ACLU's request. One analyst, one third of those assigned to processing
24 DAI's 350 PRAs for calendar year 2023, is solely dedicated to the ACLU's request in two-week
25 rotations. After a two-week rotation is complete, another analyst is assigned and continues the
26 work. (Quezada Decl. ¶12.) Each completed batch by the analysts must be reviewed by a
27 lieutenant and then Captain or Associate Warden to ensure compliance with California law.
28 (Quezada Decl. ¶ 10.)

1 Because all communications between the CDCR and ICE contain protected information
2 regarding inmates and federal agents, every document must be reviewed and redacted. (Quezada
3 Decl. ¶8.) Analysts redact the name and identification number of inmates, records related to their
4 incarceration and mental health or medical status, records that contain identifying information that
5 could disclose the inmate's citizenship status, the names and contact information of federal
6 officials, and the direct contact information of non-public facing CDCR employees. (Quezada
7 Decl. ¶ 9.) The PRAU produces all responsive emails in redacted form. There are no responsive
8 emails that have been withheld. (Quezada Decl. ¶11.)

9 Given the present circumstances, the CDCR has been able to produce 200-240 records
10 every two weeks. (Quezada Decl. ¶ 14.)

11 III.

12 LEGAL ARGUMENT

13 A. CDCR Is Working Diligently To Respond To Petitioner's Burdensome Request

14 The CDCR has made a good faith, diligent effort to respond to the ACLU's request within
15 the logistical, practical, and economic limitations of state resources. The PRA does not require the
16 unlimited expenditure of public resources. Instead, under the PRA, a government agency is only
17 obliged to disclose public records that can be located with reasonable effort and cannot be
18 subjected to a limitless disclosure obligation. (*Bertoli v. City of Sebastopol* (2015) 233
19 Cal.App.4th 353, 372.) Thus, a request like ACLU's, which "requires an agency to search an
20 enormous volume of data and "compels the production of a huge volume of material," is
21 objectionable as "unduly burdensome." (See *ibid.*, [citing *California First Amendment Coalition v.*
22 *Superior Court* (1998) 67 Cal.App.4th 159, 666].) In *Times Mirror Co. v. Superior Court* (1991)
23 53 Cal.3d 1325, for example, the Supreme Court concluded that:

24 "whatever merit disclosure might otherwise warrant **in principle is simply**
25 **crushed under the massive weight of the Times's request in this case...**almost
26 five years of the Governor's calendars and schedules, covering undoubtedly
27 thousands of meetings, conferences, and engagements of every conceivable nature.
28 We are not persuaded that any identifiable public interest supports such a
wholesale production of documents." (*Id.* at p. 1345, emphasis added.)

1 The ACLU has never argued that the responsive records do not contain confidential PII
2 and CORI data that require redaction. Given the nature of the ACLU's request, the records need to
3 be reviewed for specific exemptions. In fact, *all* records responsive to the ACLU's PRA request
4 have exempt information that requires CDCR to redact portions or all of the responsive records.
5 CDCR has made every effort to respond to the ACLU's PRA request in a timely, diligent fashion,
6 while fulfilling its legal obligation to redact confidential PII and CORI data.

7 Without a basis in the facts or the law, the ACLU demands more. The ACLU's simple
8 desire for faster production, however, does not merit relief or any action by this Court. .

9 **B. This Case Does Not Warrant An Index.**

10 The PRA does not require an index and the ACLU's request for such an index is
11 unsupported by California law. Moreover, the demand for an index typical of Freedom of
12 Information Act ("FOIA") litigation would involve a substantial increase in state personnel and
13 fiscal resources not contemplated by the PRA.

14 The ACLU mainly relies on a dissenting opinion in *Times Mirror Co. v. Superior Court* to
15 support its request for an index, while ignoring more applicable and well-established California
16 cases. Contrary to the ACLU's request for an index here, "[t]he Public Records Act does not, like
17 the FOIA, require the maintenance of an index of records available for public inspection...." (*State*
18 *Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th at 1177, 1193). As the California
19 Supreme Court held in *Haynie v. Superior Court* (2001) 26 Cal.4th 1062, 1074-75:

20 The burdens and risks of such a requirement appear substantial. Requiring a public
21 agency to provide a list of all records in its possession that may be responsive to a
22 CPRA request has the potential for imposing significant costs on the agency. A
23 single request may involve thousands of pages of materials. (E.g., *State Bd. of*
24 *Equalization v. Superior Court*, *supra*, 10 Cal.App.4th at p. 1183, fn. 6, 13
25 Cal.Rptr.2d 342.) To require each public agency to catalog the responsive
documents for each of the requests it receives—even when the agency could
legitimately claim that all responsive documents are exempt from disclosure—
would be burdensome and of scant public benefit. (Cf. *Times Mirror Co. v.*
Superior Court (1991) 53 Cal.3d 1325, 1345, 283 Cal.Rptr. 893, 813 P.2d 240.)

26 The present case represents exactly the risks of which the *Haynie* Court warned in terms of
27 requiring the CDCR to produce an index. The CDCR already is faced with the task of producing
28 over 65,000 documents, all of which must be reviewed because all documents contain exempt

1 information. Placing the burden on CDCR to now index all of those documents would impose an
2 untenable burden on the CDCR to no discernible public benefit. Accordingly, this Court should
3 deny the ACLU's request for an index.

4 **C. This Case Does Not Warrant A Production Schedule.**

5 Petitioner does not cite to a single authority establishing the Court's ability to set a
6 production schedule under the PRA. CDCR is unable to identify a single case which supports that
7 proposition. As described above, CDCR is promptly and diligently releasing all records to the
8 ACLU given the limit of its available resources. The Court should not read into the PRA the
9 creation of a production schedule as doing so would be unduly burdensome on both the Court and
10 CDCR. Courts routinely abstain from ordering relief that will require them to monitor such
11 enforcement regimes (see argument below) and CDCR does not have the resources to increase
12 production beyond what it already is doing.

13 **D. CDCR's Redaction Of Exempt Material Is Proper.**

14 The right of access to public records under the PRA is not absolute. (*Copley Press, Inc. v.*
15 *Superior Court* (2006) 39 Cal.4th 1272, 1282.) The California Constitution contains an explicit
16 right of privacy that operates against private and governmental entities. (Cal. Const., art. I, § 1;
17 *Gilbert v. City of San Jose* (2003) 114 Cal.App.4th 606, 613.) In enacting the CPRA, the
18 Legislature was "mindful of the right of individuals to privacy." (*Los Angeles Unified Sch. Dist. v.*
19 *Superior Ct.* (2014) 228 Cal. App. 4th 222, 238.) Furthermore, CDCR is statutorily obligated to
20 withhold Criminal Offender Record Information. (Penal Code §§ 11075, 11076, and 13102.)

21 **1. CDCR's Exemptions Are Not Overbroad.**

22 CDCR exemptions are tailored to respond to the nature of the ACLU's request. The
23 ACLU's request indisputably requires the production of documents that contain protected PII,
24 including citizenship status, and protected CORI data. CDCR has provided to the ACLU the
25 correct and pertinent citations to the PRA and relevant Penal Code sections as well as highlighting
26 specific cases that address the need to redact PII and CORI data in the documents being produced
27 to the ACLU.

1 **2. CDCR Exemptions Justify Its Redactions.**

2 The ACLU cherry picks from CDCR’s partial denial as not being specific while ignoring
3 the CDCR’s response that the requested records contain protected PII such as citizenship status.
4 CDCR also provided specific Penal Code sections, which support the redaction of the law
5 enforcement records contained in the files that the ACLU is seeking. The ACLU also ignores the
6 fact that CDCR is not withholding records and that the partial denial is for the portions of the
7 produced records that are redacted.

8 **3. Criminal Court Records Contain Exempt Information.**

9 **(a) The Records Contain Information Regarding Citizenship Status.**

10 The United States Supreme Court, in *U.S. Dept. of State v. Washington Post Co.* (1982)
11 456 U.S. 595 expressly held that citizenship status is exempt from disclosure under FOIA’s
12 exemption 6, and disclosure of which would “constitute a clearly unwarranted invasion of personal
13 privacy.” (*Id.* at 602.) Exemption 6 prohibits the disclosure of “personnel and medical files and
14 similar files the disclosure of which would constitute a clearly unwarranted invasion of personal
15 privacy.” (5 U.S.C. § 552(b)(6).). The language of Exemption 6 is identical to the privacy
16 exemption found in the PRA at Government Code section 7927.700. While the PRA is distinct
17 from FOIA in several material ways, California courts have recognized that case law interpreting
18 FOIA is also instructive in interpreting like provisions of the PRA. (*Los Angeles Unified Sch. Dist.*
19 *v. Superior Ct.*, *supra*, 228 Cal. App. 4th at 238)² As such California Courts have found “the term
20 ‘similar files’ has been interpreted to ‘have a broad, rather than a narrow, meaning.’ They need not
21 contain intimate details or highly personal information. They may simply be government records
22 containing ‘information which applies to a particular individual.’” (*Id.* at 239 [quoting *Washington*
23 *Post Co.*, *supra*, 456 U.S. at 600.]) Moreover, the nature of the file in which the requested
24 information contained is not determinative, and therefore, “information about an individual should
25 not lose the protection” simply because it is contained in a court proceeding that becomes a part of
26 the agency’s file on an individual. (*See Washington Post Co.*, *supra*, 456 U.S. at 601.)

27 _____
28 ² These are the same citations provided to the ACLU in response to their PRA request.

CDCR stores the abstract of judgment (AOJ) of the criminal proceedings for individuals that are sentenced and housed in its facilities as those documents include information pertaining to the sentence imposed, how multiple sentences are to run, and the amount of pre-sentence credit awarded by the court. For inmates that are subject to ICE investigations, the AOJ is contained as a part of its file that CDCR provides to ICE. For individuals subject to ICE investigation, the AOJ if provided unredacted, would disclose the identity of individuals and in conjunction with other records provided to the ACLU would disclose those individuals' immigration status, which the U.S. Supreme court has ruled is exempt from disclosure. (*Washington Post Co.*, *supra*, 456 U.S. at 600.) Therefore, the records contain a determination of the inmate's citizenship status which is expressly protected information under the CPRA.

4. California Law and Rules of Court Restrict Access to Certain Information Contained in Criminal Court Records.

The ACLU argues that public court records must be produced in response to its PRA request regardless of the information contained in them. Without any meaningful analysis, the ACLU cites to *Copley Press Inc. v. Superior Court* (2006) 39 Cal.4th 1272 for this proposition. *Copley*, however, is inapposite in that it does not address the question of whether CORI data becomes discoverable through a PRA request if contained in a court file. Rather, *Copley* involved access to court records regarding civil settlements and in holding that access to such court records should be permitted, the California Supreme Court noted that "[s]tatutory exemptions to disclosure of court records exist." (*Copley Press*, *supra*, 63 Cal.App.4th at 373.)

California statutes and Rules of Court protect the disclosure of CORI data even when contained in court records. For example, Penal Code section 13302 provides in relevant part as follows: "An employee of the local criminal justice agency who knowingly furnishes a record or information obtained from a record to a person who is not authorized to receive the record or information is guilty of a misdemeanor." The term "record" as used in this code section refers to a "local summary of criminal history information," which, in turn, is defined as "the master record of information compiled by any local criminal justice agency ... pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, dates of

1 arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the
2 person. (See Pen. Code §§ 13300(a)(1), 13301(a)(1).) These Penal Code sections generally
3 prohibit the “furnish[ing] [of] ... information obtained from a record [of local summary criminal
4 history information] to a person who is not authorized by law to receive the ... information.” (§
5 13302. (See also § 13125 [listing “standard data elements,” to be included in “criminal offender
6 record information systems,” including “personal identification data.” See generally, *International*
7 *Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007)
8 42 Cal.4th 319, 339 [“section 13300 ... generally prohibits a local criminal justice agency,
9 including a court, from distributing information that relates a person’s criminal history”].)

10 California Rules of Court expressly limit the release of criminal court records. California
11 Rules of Court, chapter 2, article 1, addresses the maintenance of electronic records in California
12 courts. As stated at Rule 2.500, “the rules in this chapter are intended to provide the public,
13 parties, parties’ attorneys, legal organizations, court-appointed persons, and government entities
14 with reasonable access to trial court records that are maintained in electronic form, while
15 *protecting privacy interests.*” (Emphasis added.) Rule 2.503 generally prevents courts from
16 providing public remote access to records in criminal proceeds except for specific situations. (*Id.*
17 at Rule 2.503(c)(5); (e).) Even when a court is permitted to provide electronic public access to
18 criminal court files, courts must redact “driver license numbers; dates of birth; social security
19 numbers; Criminal Identification and Information and National Crime Information numbers;
20 addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or
21 psychiatric information; financial information; account numbers, and *other personal identifying*
22 *information.*” (*Id.* at Rule 2.503(e).) Finally, Rule 2.507, provides at subdivision (c) that “[t]he
23 following information must be excluded from a court’s electronic calendar, index, and register of
24 actions: social security number; any financial information; arrest warrant information; search
25 warrant information; victim information; witness information; ethnicity; age; gender; government-
26 issued identification card numbers (i.e., military); driver’s license number; and date of birth.”

27 As these Rules of Court establish, criminal records maintained by the courts are restricted
28 from remote public access and courts are not permitted to include personally identifying

1 information in their court calendars, indexes, and registers of actions. The application of these
2 Rules of Court was addressed in *All of US or None - Riverside Chapter v. Hamrick* (2021) 64
3 Cal.App.5th 751. In that case, plaintiffs filed an action seeking declaratory and injunctive relief
4 against defendants, Superior Court of California, County of Riverside (Riverside Superior Court),
5 and its Executive Officer and Clerk. Plaintiffs alleged that defendants improperly maintained the
6 Riverside Superior Court's records in criminal cases in various ways, including: (1) failing to
7 properly destroy certain court records of old marijuana-related offenses, as required under Health
8 and Safety Code section 11361.5 ("section 11361.5") (first cause of action); (2) allowing users of
9 the Riverside Superior Court's public website to search the court's electronic index by inputting a
10 defendant's known date of birth and driver's license number, in violation of California Rules of
11 Court, rule 2.507 (Rule 2.507) (third cause of action); and (3) disclosing protected criminal record
12 information in violation of Penal Code section 13300 et seq. (fourth cause of action).

13 The trial court sustained defendants' demurrer to plaintiffs' third cause of action (violation
14 of Rules of Court 2.507) and fourth cause of action (violation of Penal Code section 13300, et
15 seq.) On appeal, the appellate court reversed as to the third cause of action. In so ruling, the
16 appellate court reviewed the Rules of Court cited above and found that "the text of the relevant
17 rules of court, the rules' history, and the purpose of the rules, all support the conclusion that
18 allowing the public to search an electronic index by inputting an individual's known date of birth
19 or driver's license number constitutes a violation of Rule 2.507." (Id. at 772.) The court found that
20 this conclusion was not only consistent with the history underlying the adoption of Rule 2.507 and
21 the specific treatment of birth dates, but it also was consistent with the broader purpose underlying
22 the Rules of Court regarding trial court electronic records. On this latter point the appellate court
23 noted that in adopting the Rules of Court governing electronic court records, the Judicial Council
24 "sought to balance the public's interest in convenient access to court records with the privacy
25 concerns of victims, witnesses, and parties." (Id. at 777.)

26 The ACLU does not and cannot articulate a legal basis why inmates' criminal records
27 should be released. Moreover, if these records were released to the ACLU there is a significant
28 threat that CDCR would be deemed to have waived the applicable exemptions under Government

1 Code 7921.505(b) and that they could be publicly released by the ACLU. The ACLU already has
2 publicized records released to them. (Declaration of David Tyra (Tyra Decl.), ¶ 4.) There is no
3 ability to stop the ACLU from utilizing the documents released to it to create an index of criminal
4 proceedings and little ability to redress the publication it does. As such, the records that the ACLU
5 is seeking should be and are properly redacted to protect inmates' confidential information,
6 including Citizenship status and CORI information.

7 **5. Nationality, Race, Gender, and Other Secondary Personal Identifiable**
8 **Information is Not Being Redacted**

9 The ACLU also complains that CDCR is impermissibly redacting secondary PII. That is
10 not true. CDCR is not instructing its analysts to redact the nationality, race, gender, or other
11 secondary PII. The ACLU acknowledges, that after meeting and conferring with CDCR,
12 subsequent productions do not contain redacted secondary PII except in a few instances where an
13 analyst mistakenly marked an area for redaction. CDCR already has confirmed that it is not
14 redacting that information, and that any errors will be corrected. (Tyra Decl. ¶¶ 2-3.) The PRA
15 does not demand perfection and the overwhelming weight of the evidence here shows that the
16 CDCR is working diligently to meet its obligations in responding to the ACLU's request.

17 **E. This Court Should Abstain From These Proceedings.**

18 Finally, this Court should abstain from granting the ACLU the relief it seeks. California
19 courts long have recognized that a court of equity may abstain from granting the requested relief in
20 a variety of contexts. Courts may abstain when the lawsuit involves determining complex
21 economic policy, which is best handled by the legislature or an administrative agency. (See
22 *Alvarado v. Selma Convalescent Hospital* (2007) 153 Cal.App.4th 1292, 1298 [citing, *California*
23 *Grocers Assn. v. Bank of America* (1994) 22 Cal.App.4th 205, 218.]) Judicial abstention is
24 appropriate in cases in which granting equitable relief would be unnecessarily burdensome for the
25 trial court to monitor and enforce given the availability of more effective means of redress. (*Ibid.*
26 [citing, *Diaz v. Kay-Dix Ranch* (1970) 9 Cal.App.3d 588, 599.])

27 The CDCR has presented substantial evidence to this Court regarding the practical and
28 budgetary constraints under which its PRAU operates. This evidence demonstrates that CDCR is

1 allocating all currently available resources to respond to the ACLU's request. If a writ were to
2 issue and compel an index or production schedules beyond the means of state resources, this Court
3 would simply be setting up the CDCR for failure, which would, in turn, require the Court to
4 engage in an ongoing enforcement regime. Furthermore, and to the extent speeding up production
5 would require the hiring of additional staff or the purchase of additional hardware or software
6 resources, such an order likely is beyond the purview of this Court. This Court should not involve
7 itself in determining complex economic policy, like the budgets of a California agency such as the
8 CDCR and its PRAU. This is especially true in times of significant budget shortfalls when the
9 allocation of public funds involves difficult policy choices. As such, the Court should abstain from
10 granting Petitioner's request for an index of records and a production schedule.

11 **F. Attorney's Fees Are Not Warranted Based On CDCR's Diligent Efforts**

12 CDCR has been diligent in reviewing and producing the documents that are responsive to
13 Petitioner's request. The delay in producing records is unavoidable due to the limitations of CDCR
14 resources and the accompanied due diligence in the process. The delay is not a result of agency
15 intransigence and as such, attorneys' fees are not warranted even if a writ were to issue. (*Motorola*
16 *Comm'n & Elecs., Inc. v. Dep't of Gen. Servs.* (1997) 55 Cal. App. 4th 1340, 1346. The ACLU
17 has not, and cannot, overcome its burden in establishing the necessity of the litigation in producing
18 the records. (*Ibid.*)

19 **IV.**


20 **CONCLUSION**

21 For the foregoing reasons, CDCR respectfully requests that this Court not grant
22 Petitioner's motion and deny all of Petitioner's requested relief, including attorneys' fees.

23 DATED: September 6, 2023

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation

24
25
26 By:



David W. Tyra
Alec D. Tyra
Attorneys for Defendant CDCR

1 **PROOF OF SERVICE**

2 **ACLU of Northern California v. California Department of Corrections and Rehabilitation**
3 **San Francisco Superior Court Case No. CPF-23-17967**

4 **STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**

5 At the time of service, I was over 18 years of age and not a party to this action. I am
6 employed in the County of Sacramento, State of California. My business address is 1331 Garden
Hwy, 2nd Floor, Sacramento, CA 95833.

7 On September 6, 2023, I served true copies of the following document(s) described as
8 **RESPONDENT CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION'S OPPOSITION TO ACLU'S MOTION FOR PARTIAL
JUDGMENT ON THE WRIT** on the interested parties in this action as follows:

9 **Attorneys for Petitioner American Civil Liberties
Union of Northern California**

10 Sana Singh
11 Sean Riordan
American Civil Liberties Union
12 Foundation of Northern California, Inc.
39 Drumm Street
13 San Francisco, CA 94111
Telephone: (415) 621-2493
14 Facsimile: (415) 255-1478
E-Mail: ssingh@aclunc.org
15 sriordan@aclunc.org

16 Megan Vees
Aseem Mehta
17 Asian Americans Advancing Justice – Asian Law Caucus
55 Columbus Avenue
18 San Francisco, CA 94111
Telephone: (415) 896-1701
19 Facsimile: (415) 896-1702
E-Mail: meganv@advancingjustice-alc.org
20 aseemm@advancingjustice-alc.org

21 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the
22 document(s) to be sent from e-mail address mmarlowe@kmtg.com to the persons at the e-mail
addresses listed in the Service List. I did not receive, within a reasonable time after the
23 transmission, any electronic message or other indication that the transmission was unsuccessful.

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

25 Executed on September 6, 2023, at Sacramento, California.

26 

27
28 May Marlowe