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12 *Attorneys for Petitioners*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN FRANCISCO**
15

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

17 Petitioner,

18 v.
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20 THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND
REHABILITATION,

21 Respondent.
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FILED
San Francisco County Superior Court

SEP 19 2023

CLERK OF THE COURT

BY:  Deputy Clerk

CASE NO. CPF-23-517967

**[PROPOSED] ORDER GRANTING
PETITION FOR WRIT OF
MANDATE**

**Presiding Judge: Hon. Richard B.
Ulmer, Jr.**

PROPOSED ORDER

Petitioner's petition for writ of mandate is granted.

Petitioner made a public records request on respondent seeking documents regarding respondent's ongoing collaboration with U.S. Immigration and Customs Enforcement ("ICE"). Petitioner contends that respondent's production, which is ongoing, impermissibly redacts documents without sufficient justification or explanation.

The California Public Records Act ("PRA") and California Constitution create a presumptive right of access to public records. (*City of San Jose v. Superior Ct.* (2017) 2 Cal.5th 608, 616-617.) "Since disclosure is favored, all exemptions are narrowly construed. [Citations.] The agency opposing disclosure bears the burden of proving that an exemption applies. [Citation.]" (*County of Santa Clara v. Superior Court* (2009) 170 Cal.App.4th 1301, 1321.) The agency is also required to provide the requesting party adequate specificity regarding an exemption to assure proper justification by the governmental agency. (*ACLU of Northern Cal. v. Super. Ct.* (2011) 202 Cal.App.4th 55, 82.) "Because the agency has full knowledge of the contents of the withheld records and the requester has only the agency's affidavits and descriptions of the documents, its affidavits must be specific enough to give the requester 'a meaningful opportunity to contest' the withholding of the documents and the court to determine to determine whether the exemption applies." (*Id.* at 83.) "Conclusory or boilerplate assertions that merely recite statutory standards are not sufficient." (*Id.*)

Petitioner can seek a writ to enforce the right of access. (Gov. Code secs. 7923.000, 7923.100; CCP 1085 et seq.) Here, the Singh declaration—which is not meaningfully contested—establishes that respondent has provided boilerplate objections that lack the required detailed justification. (Singh Decl., Ex. B at pgs. 21-22.) The Singh declaration also shows apparently overbroad redactions with entire pages blacked out. (*Id.* at Ex. F.)

Respondent cites various Penal Code sections and the Cal. Rules of Court to argue that Criminal Offender Record Information shall be withheld. But if personal identifying information such as the name, date of birth, and Social Security number is redacted, the court does not see how the individual privacy rights are compromised. "The protections of Penal Code section 13300 apply to the master record of 'criminal offender record information, as that term is defined in Penal Code section 13102 [],

1 including the defendant's name, date of birth, physical description, dates of arrests, arresting agencies,
2 booking numbers, charges, dispositions, 'and similar data about the person.'" (*Westbrook v. County of*
3 *Los Angeles* (1994) 27 Cal.App.4th 157, 164.) The court notes that Penal Code sec. 13302 was amended
4 to allow public prosecutors to respond to PRA requests. (*Weaver v. Superior Court* (2014) 224
5 Cal.App.4th 746, 751.) "As with any of the PRA's statutory exemptions, '[t]he fact that parts of a
6 requested document fall within the terms of an exemption does not justify withholding the entire
7 document.' [citation] What the PRA appears to offer is a ready solution for records blending exempt and
8 nonexempt information: 'Any reasonably segregable portion of a record shall be available for inspection
9 by any person requesting the record after deletion of the portions that are exempted by law.' [citation]
10 While this provision does not dictate which parts of a public record are privileged, it requires public
11 agencies to use the equivalent of a surgical scalpel to separate those portions of a record subject to
12 disclosure from privileged portions." (*Los Angeles County Bd. of Supervisors v. Superior Court* (2016) 2
13 Cal.5th 282, 292.) Respondent must therefore turn over court records with appropriate redactions.
14 Respondent has indicated that it is not redacting secondary personal identifiable information ("PII") such
15 as nationality, race or gender information.

16 Respondent shall also disclose citizenship information. Respondent cites *U.S. Dept. of State v.*
17 *Washington Post Co.* (1982) 456 U.S. 595, 602 for the proposition that individuals have a privacy interest
18 in their citizenship status. But that decision involved a request where the disclosure applied to a
19 particular individual. As petitioner aptly notes, "[w]ithholding citizenship information found in records
20 from which names and other unique identifiers have been redacted does not serve the purpose of
21 protecting the privacy rights of individuals." (Reply, 7:22-23.)

22 The parties seem to agree that petitioner's request implicates approximately 65,000 documents.
23 The court presently believes that ordering respondent to prepare a *Vaughn* Index may be unduly
24 burdensome. The parties are ordered to appear and meet and confer regarding petitioner's other
25 suggested remedies: California Department of Corrections and Rehabilitation ("CDCR") produce a
26 sampling of exemplar documents with an index specifying the exemptions that apply to the redactions in
27 each record (redactions for PII need not be specified); CDCR produce a sampling of records from each
28 month covered by the Request, with an index specifying the asserted exemptions (redactions for PII need

1 not be specified); and/or CDCR produce at least 200 unique (not metadata duplicate) records every two
2 weeks.

3 Any fee determination shall be made by subsequent motion. ✓

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5 **IT IS SO ORDERED.**

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7 Dated: 9/19/23

Ulmer
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9  HON. RICHARD B. ULMER, JR.

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JUDGE OF THE SUPERIOR COURT