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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

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

Petitioner,

v.

CITY OF FRESNO,

Respondent.

CASE NO.

**VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

[Gov. Code, §§ 7920.000, et seq.; Code
Civ. Proc., §§ 1085, et seq.]

**VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY RELIEF**

1 **INTRODUCTION**

2 1. The California Public Records Act (“PRA”) guarantees public access to the records of
3 government agencies as “a fundamental and necessary right of every person in this state.” (Gov. Code, §
4 7921.000.)¹ Petitioner AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA
5 (“ACLU”) submitted a PRA request to the CITY OF FRESNO (“FRESNO”) in 2023 relating to
6 FRESNO’s use of police canines. The ACLU requested these records due to growing community
7 concerns about FRESNO’s egregious use of police canine force, and its disproportionate use against
8 communities of color.

9 2. Despite ACLU’s request and attempts to obtain responsive records, FRESNO appears
10 determined to ignore its obligations under the law absent intervention by this Court. After months of
11 delay, FRESNO released only a subset of the records responsive to ACLU’s request. Of the records
12 released, many suffered from heavy redactions stripping them of their most relevant responsive content.
13 FRESNO produced documents replete with improper redactions of crucial information relating to the
14 facts of the incident, the injuries sustained, the deputies involved, and the discipline imposed. Most of
15 the reports produced contain block redactions so extensive that it is impossible to determine the nature
16 of the redacted information or any plausible basis for FRESNO’s decision to withhold that information.²
17 FRESNO refuses, without any lawful basis, to release the remaining responsive documents and the
18 content redacted from those already produced.

19 3. The ACLU made multiple follow-up efforts seeking FRESNO’s compliance with the
20 PRA to no avail. Due to FRESNO’s blatant disregard for its legal obligation to disclose public records,
21 the ACLU is now forced to seek relief through these proceedings, and therefore asks this court for a
22 peremptory writ of mandate compelling FRESNO to produce all non-exempt requested records and to
23 reproduce previously produced records without improper redactions, and for declaratory and injunctive
24 relief to the same effect.

25 **PARTIES**

26
27 ¹ All further statutory references are to the Government Code unless otherwise indicated.
28

4. Petitioner ACLU is a non-profit public interest organization under the laws of the state of California. The ACLU is an affiliate of the national American Civil Liberties Union, a nonprofit, nonpartisan civil liberties organization with more than 1.1 million members dedicated to the principles of liberty and equality embodied in our civil rights laws and both the United States and California Constitutions. The ACLU defends the fundamental rights outlined in the United States Constitution, California Constitution, and the Bill of Rights. The ACLU is also committed to principles of transparency and accountability and seeks to ensure that the public is informed about the conduct of governmental officials. As part of its advocacy, the ACLU relies on public records to gather information and ensure that the public is informed about the conduct and practices of local, state, and federal officials. The ACLU routinely uses information from public records to support civil rights litigation, publish reports, and work with the press and the public at large to promote participation in civil affairs. The ACLU is a member of the public with the right to inspect and receive public records and enforce a request for records under the PRA. (§§ 7920.515-7920.520, 7923.000.)

5. Defendant and Respondent FRESNO is a public agency within the meaning of Government Code section 7920.525, subdivision (a), and is a parent entity of the Fresno Police Department.

6. The records that ACLU has requested are prepared and maintained by FRESNO, and are, or should be, in its possession.

JURISDICTION AND VENUE

7. This Court has jurisdiction under Government Code, sections 7923.000 and 7923.100; Code of Civil Procedure, section 1085, and Article VI, section 10 of the California Constitution. Venue is proper in this Court because Respondent FRESNO, the acts and omissions complained of herein, and the records in question, or some portion of them, are situated in the County of Fresno. (See § 7923.100; Code Civ. Proc., §§ 394, subd. (a), 395, subd. (a), 401, subd. (1).)

LEGAL BACKGROUND

A. The Statutory and Constitutional Right to Public Records

8. The right to access public records is governed, primarily, by the PRA and the California Constitution.

1 9. In 1968, the California Legislature enacted the PRA “for the purpose of increasing
2 freedom of information by giving members of the public access to information in possession of public
3 agencies.” (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1281 [citations omitted].) The
4 Legislature declared “that access to information concerning the conduct of the people’s business is a
5 fundamental and necessary right of every person in this state.” (§ 7921.000.)

6 10. To ensure that state and local agencies are transparent and accountable, the PRA
7 empowers members of the public to inspect and copy agency records upon request. (See § 7922.525,
8 7922.530.)

9 11. Prior to 2019, peace officer personnel records—defined to include records relating to the
10 “advancement, appraisal, or discipline” of peace officers, “complaints, or investigations of complaints
11 . . . pertaining to the manner in which [an officer] performed his or her duties,” and “any other
12 information the disclosure of which would constitute an unwarranted invasion of personal privacy”—
13 were exempted from PRA disclosure. (See Pen. Code, §§ 832.7-832.8.) This former exemption included
14 records regarding investigation into serious uses of force and allegations of serious misconduct, even
15 when the agency had concluded that the officer had engaged in misconduct. (*City of Hemet v. Superior*
16 *Court (Press-Enterprise Co.)* (1995) 37 Cal.App.4th 1411, 1431.)

17 12. However, in 2018, the California Legislature enacted Senate Bill 1421 (S.B. 1421),
18 which amended Penal Code, section 832.7 by making certain categories of peace officer personnel
19 records disclosable under the PRA. The categories include, among others, records related to use of force
20 against a person by a peace officer resulting in death or great bodily injury. (See Pen. Code, § 832.7,
21 subd. (b)(1)(A)(ii) (effective Jan. 1, 2019).)

22 13. Accordingly, a member of the public who files a PRA request on or after January 1, 2019
23 is entitled to disclosure of all such documents in the possession of the public agency, regardless of when
24 those documents were created. (See *Walnut Creek Police Officers’ Assn. v. City of Walnut Creek* (2019)
25 33 Cal.App.5th 940, 941–42.)

26 14. The amendments to Penal Code, section 832.7 mandate redaction of certain categories of
27 information (such as to protect the identity of a complainant) but generally do not permit withholding
28 entire records subject to disclosure. (See Pen. Code, § 832.7, subd. (b)(6).) An agency may withhold a

disclosable record only under limited, enumerated circumstances during “an active criminal or administrative investigation[.]” (*Id.*, § 832.7, subd. (b)(8).) Such withholding of disclosable records on this basis, however, is time-limited and the agency must substantiate, in writing, the specific basis for doing so. (See, e.g., Pen. Code, § 832.7, subd. (b)(8).)

15. The California Constitution provides an additional, independent right of access to government records: “[t]he people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.” (Cal. Const., art. I, § 3(b)(1).) The Constitution requires that any “statute, court rule, or other authority,” such as the PRA, “be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access.” (*Id.*, art. I, § 3(b)(2).)

16. Mandate lies to compel the government to comply with the PRA and the California Constitution. (§ 7923.000; Code Civ. Proc., § 1085.) The Court may also grant declaratory and prospective injunctive relief to ensure an agency complies with its obligations in conformance to the law. (Code Civ. Proc., § 526, subd. (a); Civ. Code § 3422.)

B. The Duty to Disclose Public Records.

17. Under the PRA, all records prepared, owned, used, or retained by any public agency—unless subject to the PRA’s statutory exemptions—must be made publicly available for inspection and copying upon request. (§§ 7922.525, 7922.530.) The PRA facilitates this transfer of information by codifying specific requirements and deadlines that agencies must observe upon receipt of a public records request.

18. The PRA requires an agency to conduct a search that is “reasonably calculated to locate responsive documents,” *American Civil Liberties Union of Northern California v. Superior Court* (2011) 202 Cal.App.4th 55, 85, and an agency may be required to assist a requestor to formulate a request based on the agency’s greater knowledge of its own recordkeeping system. (§ 7922.600, subds. (a)(1)–(3).)

19. A public agency must “promptly” make publicly available for inspection, or provide a copy of, any record that it prepared, owns, uses, or retains—unless the record is subject to the PRA’s limited exemptions to disclosure. (§ 7922.530, subd. (a).) Peace officer personnel records subject to disclosure under S.B. 1421 must be provided no later than 45 days from the date of the request. (Pen.

Code, § 832.7, subd. (b)(11).)

20. If an agency determines that a request should be denied, it must justify its denial in writing. (§ 7922.540.) The agency must show that “the record in question is exempt under express provisions of [the PRA], or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (§ 7922.000.)

21. If records contain both exempt and non-exempt material, the public agency must disclose any reasonably segregable non-exempt material. (§ 7922.525, subd. (b).) “[W]here nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is required to serve the objective of the [PRA] to make public records available for public inspection and copying unless a particular statute makes them exempt.” (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 453, fn. 13 (quoting *Northern Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116, 124).)

22. The PRA makes clear that a verified petition is the correct procedural vehicle to address public records improperly withheld: “Whenever it is made to appear, by verified petition to the superior court of the county where the records or some part thereof are situated, that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose those records or show cause why that person should not do so.” (§ 7923.100.) The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, examining any papers filed by the parties and considering any oral argument and additional evidence as the court may allow. (§ 7923.105.)

23. If the court finds that the failure to disclose is not justified, it shall order the public official to make the record public. (§ 7923.100.)

FACTUAL BACKGROUND

A. FRESNO’s Use of Police Canines Creates Ongoing Concerns About Violence in Law Enforcement, Especially in Communities of Color.

24. The use of police canines has been a mainstay in this country’s dehumanizing, cruel, and violent abuse of Black Americans and people of color for centuries. From slave catchers in the

1 antebellum South to police officers responding to Black Lives Matter protests, state officials have
2 consistently weaponized canines to terrorize, harass, and injure people of color.³

3 25. Moreover, police canines are a powerful, deadly tool. Police attack dogs “exert between
4 800 and 1,500 pounds of pressure per square inch when they bite—force the Ninth Circuit Court of
5 Appeals likened to having a limb run over by an automobile.”⁴ A single bite from a police attack dog
6 can cause deep flesh wounds and extensive tissue lacerations, sometimes resulting in exposed muscle,
7 tendon, and bone.⁵ These wounds leave bite victims vulnerable to serious bacterial infections, life-
8 threatening blood vessel damage, and permanent nerve damage, including loss of sensation, loss of
9 mobility, and chronic pain.⁶

10 26. For years, the ACLU and its community partners have been alarmed by disfiguring
11 injuries and deaths caused by police canine attacks.⁷ Over the last two years in California, police dogs
12
13
14

15 ³ See ACLU California Action, *Weaponizing Dogs: The Brutal and Outdated Practice of Police*
16 *Attack Dogs* (January 2024) pages 12-15 <[https://aclucalaction.org/wp-](https://aclucalaction.org/wp-content/uploads/2024/01/ACLUReport_Weaponizing-Dogs_1.10.2024.pdf)
17 [content/uploads/2024/01/ACLUReport_Weaponizing-Dogs_1.10.2024.pdf](https://aclucalaction.org/wp-content/uploads/2024/01/ACLUReport_Weaponizing-Dogs_1.10.2024.pdf)> (as of February 22, 2024)
(hereafter *Weaponizing Dogs*).

18 ⁴ Mike Riggs, *So Far This Year, L.A. County Sheriff’s Dogs Have Only Bitten People of Color*,
19 Bloomberg (October 9, 2013) <[https://www.bloomberg.com/news/articles/2013-10-09/so-far-this-year-](https://www.bloomberg.com/news/articles/2013-10-09/so-far-this-year-l-a-county-sheriff-s-dogs-have-only-bitten-people-of-color)
20 [l-a-county-sheriff-s-dogs-have-only-bitten-people-of-color](https://www.bloomberg.com/news/articles/2013-10-09/so-far-this-year-l-a-county-sheriff-s-dogs-have-only-bitten-people-of-color)> (as of February 22, 2024). A more recent
21 report published by Physicians for Human Rights estimates the force of an attack dog bite to be even
22 greater, exceeding “4000 pounds per square inch (psi), which is the equivalent pressure of a rhinoceros
balancing on a postage stamp.” Altaf Saadi, et al., Physicians for Human Rights, *Unleashed Brutality:*
An Expert Medical Opinion on the Health Harms from California Police Attack Dogs (January 2024)
page 5 <[https://phr.org/wp-content/uploads/2024/01/PHR-Expert-Opinion-Police-Canine-Medical-](https://phr.org/wp-content/uploads/2024/01/PHR-Expert-Opinion-Police-Canine-Medical-Harms-January-2024.pdf)
[Harms-January-2024.pdf](https://phr.org/wp-content/uploads/2024/01/PHR-Expert-Opinion-Police-Canine-Medical-Harms-January-2024.pdf)> (as of February 22, 2024).

23 ⁵ Altaf Saadi, et al., Physicians for Human Rights, *Unleashed Brutality: An Expert Medical*
24 *Opinion on the Health Harms from California Police Attack Dogs* (January 2024) page 5
25 <[https://phr.org/wp-content/uploads/2024/01/PHR-Expert-Opinion-Police-Canine-Medical-Harms-](https://phr.org/wp-content/uploads/2024/01/PHR-Expert-Opinion-Police-Canine-Medical-Harms-January-2024.pdf)
[January-2024.pdf](https://phr.org/wp-content/uploads/2024/01/PHR-Expert-Opinion-Police-Canine-Medical-Harms-January-2024.pdf)> (as of February 22, 2024).

26 ⁶ *Ibid.*

27 ⁷ Lisa Fernandez and Evan Sernoffsky, *Graphic Photos: Police K-9s cause serious injuries*
28 *throughout the Bay Area*, KTVU FOX2 (May 16, 2022) <[https://www.ktvu.com/news/graphic-photos-](https://www.ktvu.com/news/graphic-photos-police-k-9s-cause-serious-injuries-throughout-the-bay-area)
[police-k-9s-cause-serious-injuries-throughout-the-bay-area](https://www.ktvu.com/news/graphic-photos-police-k-9s-cause-serious-injuries-throughout-the-bay-area)> (as of February 22, 2024).

were responsible for seriously injuring more people than batons or tasers.⁸ In 2021, injuries caused by police canines accounted for nearly twelve percent of police use of force cases that resulted in severe injury or death.⁹ Notably, many of these attacks are perpetrated against people who are unarmed, and many of them occur accidentally when police officers lose control of their dogs.¹⁰ FRESNO is no stranger to such tragic accidents. FRESNO has been involved in several accidental police canine attacks, including attacks on an innocent bystander,¹¹ a child,¹² and even the accidental bite of a police sergeant.¹³

27. Injuries caused by police canines disproportionately affect communities of color. In 2021, Black and Latine people accounted for about two thirds of Californians seriously injured or killed by police canines, and Black people were 2.6 times more likely to be seriously injured by police canines than white people.¹⁴

B. FRESNO's Improper Withholding and Redaction of Requested Records Violates the Public Records Act.

28. On March 27, 2023, ACLU submitted a PRA request to FRESNO seeking public records to understand the scope and impact of police canine force.

⁸ *Weaponizing Dogs*, *supra*, at page 3 <https://aclucalaction.org/wp-content/uploads/2024/01/ACLUReport_Weaponizing-Dogs_1.10.2024.pdf> (as of February 22, 2024).

⁹ California Department of Justice, *2021 Use of Force Incident Reporting*, at page 31 <<https://data-openjustice.doj.ca.gov/sites/default/files/2022-08/USE%20OF%20FORCE%202021.pdf>> (as of February 22, 2024).

¹⁰ *Weaponizing Dogs*, *supra*, at pages 4-10, 16-23 <https://aclucalaction.org/wp-content/uploads/2024/01/ACLUReport_Weaponizing-Dogs_1.10.2024.pdf> (as of February 22, 2024).

¹¹ ABC30, *Fresno Police K-9 Attacks Innocent Bystander* (May 21, 2015) <<https://abc30.com/hanley-sell-jerry-dyer-k-9-attack/733733/>> (as of February 24, 2022).

¹² *Weaponizing Dogs*, *supra*, at page 19 <https://aclucalaction.org/wp-content/uploads/2024/01/ACLUReport_Weaponizing-Dogs_1.10.2024.pdf> (as of February 22, 2024).

¹³ ABC30, *Fresno Police K9 Fatally Shot After Biting Officer* (January 5, 2022) <<https://abc30.com/fresno-police-k9-killed-officer-shot-odin-department/11425605/>> (as of February 24, 2022).

¹⁴ *Weaponizing Dogs*, *supra*, at page 12 <https://aclucalaction.org/wp-content/uploads/2024/01/ACLUReport_Weaponizing-Dogs_1.10.2024.pdf> (as of February 22, 2024).

1 29. As relevant to this petition, the PRA request sought the following records related to
2 FRESNO's use of police canines, all of which are "public records" under the PRA, see Government
3 Code, section 7920.530: (1) any completed use of force forms or use of force reports concerning use of a
4 police canine; (2) use of force reports documenting police canine bite(s) and/or injur(ies); (3) records,
5 including reports, concerning accidental police canine bite(s) and/or injur(ies); and (4) all records
6 relating to the report, investigation, or findings of a police canine incident involving use of force
7 resulting in death or serious bodily injury, unreasonable or excessive force, failure to intervene against
8 another officer using unreasonable or excessive force, dishonesty about a police canine incident, or
9 discriminatory use or threat of police canine force.

10 30. On April 7, 2023, FRESNO provided an initial response stating that they needed
11 additional time to respond to the request, but promising a response no later than April 21, 2023.

12 31. On May 19, 2023, having received no further correspondence from FRESNO, ACLU
13 sent a follow up message to the Fresno Public Records Center inquiring as to the status of the PRA
14 request.

15 32. On May 19, 2023, the Fresno Public Records center replied that FRESNO was still in the
16 process of gathering responsive documents.

17 33. Finally, on June 2, 2023, FRESNO produced an initial set of responsive documents.
18 FRESNO withheld or redacted responsive information and records with regard to Requests 10 (use of
19 police canine), 11 (canine bites), 12 (accidental bites), and 13 (reports, investigations, or findings
20 regarding canine incidents).

21 34. Specifically, FRESNO only produced seventy-six K9 Use of Force Reports from years
22 2019-2022. FRESNO did not produce any reports from the year 2021. FRESNO also redacted entire
23 pages of narrative information from the K9 Use of Force Reports and Accidental Bite Reports it did
24 produce. Rather than illuminating the circumstances surrounding FRESNO's use of police canines, these
25 redacted reports provide little but a series of empty gray boxes.

26 35. On June 30, 2023, FRESNO sent a supplemental response memorializing its response to
27 each request and articulating its alleged justifications for withholding records and information. FRESNO
28 stated that it had redacted information from records responsive to ACLU's request and listed various

1 justifications: 1) attorney-client privilege, 2) attorney work product doctrine, 3) the constitutional right
2 to privacy, 4) unwarranted invasion of privacy resulting from disclosure of confidential peace officer
3 personnel records, and 5) the investigatory records exemption.

4 36. On November 17, 2023, after no further production from FRESNO, ACLU sent a letter to
5 the Fresno City Attorney's Office. The letter reiterated ACLU's request for records and addressed the
6 inapplicability of each of FRESNO's asserted justifications for nondisclosure. ACLU's letter further
7 advised the City Attorney's Office that, "if you violate the PRA by failing to respond substantively and
8 failing to produce documents, the ACLU of Northern California will be forced to litigate these issues."

9 37. On December 4, 2023, having received no response to the letter, ACLU sent a follow-up
10 email to the Fresno City Attorney's Office. The email expressed ACLU's desire to speak with FRESNO
11 to resolve the request and asked for availability for a phone call. FRESNO made no reply.

12 38. On December 12, 2023, FRESNO sent a letter replying to ACLU's November 17 letter,
13 "to address the alleged deficiencies" in their disclosures. FRESNO doubled down on their initial
14 justifications, asserting that documents responsive to ACLU's requests were properly redacted pursuant
15 to 1) the attorney-client privilege, 2) the constitutional right to privacy, and 3) the statutory exemption
16 for confidential peace officer personnel records. FRESNO further asserted that "Requests 10-12 all
17 involve records subject to the investigatory records exemption" and that "such records remain non-
18 disclosable." The letter concluded with a final, unambiguous refusal, insisting that FRESNO
19 "appropriately made disclosures in response to ACLU's Requests Nos. 10-12 and it will not be
20 supplementing those responses . . . [T]he City will now consider the ACLU's March 27, 2023, CPRA
21 requests to the Fresno Police Department closed."

22 **FIRST CAUSE OF ACTION**

23 **For Violation of Government Code, section 7920 et seq., Article I, section 3 of the California**
24 **Constitution, and Code of Civil Procedure, section 1085.**

25 39. ACLU incorporates by reference the foregoing paragraphs as though fully set forth
26 herein.

27 40. Under the PRA, ACLU has a right to request and inspect, and FRESNO has a duty to
28 provide promptly and without delay, responsive records subject to disclosure.

41. ACLU submitted a valid request for records under the PRA on March 27, 2023.

42. FRESNO has failed to provide all nonexempt documents responsive to ACLU's request. FRESNO cannot demonstrate that the outstanding responsive records are exempt under express provisions of the PRA, or any authority, or that on the facts of this particular case, the public interest served by nondisclosure of the records clearly outweighs the public interest served by disclosure.

43. Thus, FRESNO has failed to satisfy its obligations under the PRA to produce all records responsive to ACLU's request. This conduct violates the PRA, as well as article I, section 3 of the California Constitution.

44. Issuance of a writ of mandate compelling FRESNO to perform its duties under the PRA is required because there exists no plain, speedy, and adequate remedy in the ordinary course of law which would protect ACLU's rights and interests.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for judgement as follows:

45. For issuance of a peremptory writ of mandate directing FRESNO to immediately disclose all non-exempt, requested public records, or parts thereof, in its possession;

46. For an injunction requiring FRESNO to produce all disclosable records and to re-produce records absent improper redactions, forthwith;

47. For a declaration that FRESNO's conduct violates the PRA in failing to timely disclose all non-exempt, requested public records in its possession, and in improperly redacting information from the records it did produce;

48. For reasonable attorneys' fees pursuant to Code of Civil Procedure, section 1021.5 and Government Code, section 7923.115, subdivision (a);

49. For costs of the suit pursuant to Government Code, section 7923.115, subdivision (a);
and,

50. For such other and further relief as the Court deems just and proper.

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Dated: April 22, 2024

Respectfully submitted,

By: Shayla D. Harris

Shayla Harris (SBN 354010)
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA, INC.

Angelica Salceda (SBN 296152)
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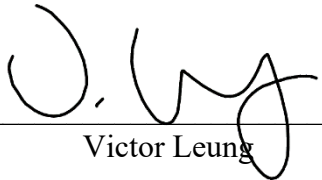
Attorneys for Petitioner

VERIFICATION

I, Victor Leung, am the Chief Legal and Advocacy Officer of the American Civil Liberties Union of Southern California. I have read the foregoing Verified Petition for Peremptory Writ of Mandate (“Petition”) and know the contents thereof. I am informed and believe and, on that ground, allege that the matters stated in the foregoing Petition are true. The facts as alleged therein are true to the best of my knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true. I have authorization to verify such facts on behalf of the ACLU of Southern California.

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

Dated: April 17, 2024



Victor Leung