

1 PAUL B. BEACH, State Bar No. 166265  
pbeach@lbaclaw.com  
2 JIN S. CHOI, State Bar No. 180270  
jchoi@lbaclaw.com  
3 RAYMOND W. SAKAI, State Bar No. 193507  
rsakai@lbaclaw.com  
4 HRACH E. AGAZARYAN, State Bar No. 339758  
hagazaryan@lbaclaw.com  
5 LAWRENCE BEACH ALLEN & CHOI, PC  
150 South Los Robles Ave., Suite 660  
6 Pasadena, California 91101  
Telephone No. (818) 545-1925

7 Attorneys for  
8 County of Los Angeles and  
Los Angeles County Sheriff's Department  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES**  
12

13 IN RE APPLICATION OF MEDIA  
14 COALITION TO UNSEAL SEARCH  
15 WARRANT NO. NW20500854 AND  
RELATED COURT RECORDS  
16  
17  
18  
19  
20  
21  
22

Case No.  
Honorable Margaret M. Bernal  
**COUNTY OF LOS ANGELES AND  
LOS ANGELES COUNTY SHERIFF'S  
DEPARTMENT'S MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
OPPOSITION TO NON-PARTY  
MEDIA COALITION'S MOTION TO  
UNSEAL COURT DOCUMENTS  
RELATED TO EXECUTED SEARCH  
WARRANT; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF RAYMOND W.  
SAKAI AND EXHIBITS**

Date: September 22, 2022  
Time: 10:30 a.m.  
Department: F

23  
24  
25  
26 ///  
27 ///  
28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR ATTORNEYS  
OF RECORD:

The County of Los Angeles (the "County") and the Los Angeles County Sheriff's  
Department ("LASD") hereby submit the following Memorandum of Points and Authorities,  
Declaration of Raymond W. Sakai and Exhibits in opposition to Media Coalition's Motion to  
Unseal Court Documents Related to Executed Search Warrant.

Dated: September 9, 2022

LAWRENCE BEACH ALLEN & CHOI, PC

By  \_\_\_\_\_

Paul B. Beach  
Jin S. Choi  
Raymond W. Sakai  
Hrach E. Agazaryan  
Attorneys for County of  
Los Angeles and Los Angeles County  
Sheriff's Department

1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 I. INTRODUCTION.

4 This Motion to unseal Search Warrant No. NW20500854 (“search warrant”) should be  
5 denied for several reasons. First, as a preliminary matter, this Court previously addressed  
6 another similar motion seeking the unsealing of the same search warrant filed by plaintiffs to a  
7 federal lawsuit alleging that their personal property, which was the subject of search warrant,  
8 had been unlawfully seized. While those plaintiffs arguably had a greater interest in seeking  
9 disclosure of the search warrant than Media Coalition here, the Court nevertheless denied the  
10 motion to unseal the search warrant in its entirety and referred the matter to the federal court to  
11 determine if there were any redactions “that could protect any ongoing investigation or justify  
12 the blanket non-disclosure order as case law requires.” Implicit in this Court’s ruling was the  
13 determination that the search warrant must properly remain under seal in order to protect the  
14 integrity of an ongoing criminal investigation, and for this same reason alone, this Court should  
15 deny this Motion. By necessity, though unacknowledged by the Media Coalition, the Motion’s  
16 foundation is built on speculation and conjecture as to what the federal court (where this Court  
17 referred the issue) decided, including matters under seal, when denying virtual identical  
18 request.

19 Second, Media Coalition does not, and cannot, reasonably dispute that the search  
20 warrant was properly sealed under the law to protect confidential information and an ongoing  
21 criminal investigation. None of the authorities cited by Media Coalition offer any support for  
22 their contention that this Court should unseal the search warrant while an ongoing criminal  
23 investigation is still pending and the statute of limitations on such crimes has not run.

24 As Media Coalition ability to carry its burden is weighed down by the speculative  
25 nature of this Motion, it should be denied.

26 ///

27 ///

28 ///

1 **II. THIS MOTION SHOULD BE DENIED FOR THE SAME REASONS THIS**  
2 **COURT, AND THE FEDERAL COURT, DENIED THE PRIOR MOTION TO**  
3 **UNSEAL THE SAME SEARCH WARRANT.**

4 On December 14, 2021, this Court addressed similar arguments asserted in a motion to  
5 unseal the same warrant – Search Warrant No. NW20500854 – filed by Christina Astorga,  
6 Hugo Padilla, Kiyoko Dodson and Ryan Dodson, who are plaintiffs in a pending federal civil  
7 rights action – *Christina Astorga, et al. v. County of Los Angeles, et al.*, United States District  
8 Court Case No. 2:20-cv-09805-AB-AGR. The *Astorga* plaintiffs alleged that their personal  
9 property, which was the subject of search warrant, had been unlawfully seized.<sup>1</sup> (Sakai Decl., ¶  
10 2; *see* Exhibit “A”.)

11 This Court’s December 14, 2021 Order explained in part:

- 12 • “The Court is proceeding today with the Motion by Non Partie[s]’ Christina  
13 Astorga, Hugo Padilla, Kiyoko Dodson and Ryan Dodson filed on 11/1/2021.”
- 14 • “This hearing is pertaining to Search Warrant Number NW20500854.”
- 15 • “The Court indicates that an In Camera Hearing was held with Sergeant Peter Hish,  
16 from the Los Angeles County Sheriff’s Department.”
- 17 • “[The] *Court orders the warrant unsealed for the purpose of Judge Birotte or*  
18 *Magistrate Rosenberg to determine if there is any redacting that could protect any*  
19 *ongoing investigation or justify the blanket non-disclosure order as case law*  
20 *requires.*” (Emphasis added.)
- 21 • “The In Camera proceedings held with the Court this date are ordered sealed.”

22 (Sakai Decl., ¶ 3; *see* Exhibit “B”.)

23 In accordance with this Court’s December 14, 2021 Order, the issue of whether this  
24 search warrant should be unsealed was fully adjudicated by the federal court, which rejected the  
25 plaintiffs’ request to unseal this warrant in its entirety. Instead, on January 7, 2022, after

26 \_\_\_\_\_  
27 <sup>1</sup> The lawsuit is asserted against the Los Angeles County Sheriff’s Department, the County of  
28 Los Angeles and Sheriff Alex Villanueva alleging that defendants violated their rights by  
seizing their personal property without a warrant or seeking judicial review of any type.

1 conducting an in camera hearing and considering the interests of the respective parties in the  
2 *Astorga* matter to determine whether there were any redactions “that could protect any ongoing  
3 investigation or justify the blanket non-disclosure order as case law requires,” Magistrate Judge  
4 Rosenberg ordered production, under a protective order, of only a *redacted* version of the  
5 search warrant. (Sakai Decl., ¶ 4; Exhibits “C” and “D”.) Further, the January 3, 2022 order  
6 states that the search warrant contains information about “two possible crimes that may be the  
7 subject of ongoing investigations.” (Exhibit “C”. p. 1-2).

8 Implicit in this Court’s December 14, 2021 Order, and explicit in the federal court’s  
9 ruling, is the determination by both courts that the search warrant must properly remain under  
10 seal in order to protect the integrity of an ongoing criminal investigation. Thus, not only has  
11 this Court already fully addressed, and rejected, the same arguments raised in this Motion with  
12 respect to the unsealing of the search warrant, Media Coalition has not and cannot present any  
13 reasonable argument as to why this Court should deviate from, or reconsider, its prior ruling,  
14 especially when the interests of the plaintiffs in the *Astorga* matter were arguably more  
15 compelling than here.

16 Accordingly, for the same reasons this Court denied the prior motion to unseal the  
17 search warrant in its entirety, this Motion should be denied.

18 **III. THE SEARCH WARRANT WAS PROPERLY SEALED UNDER CALIFORNIA**  
19 **LAW TO PROTECT CONFIDENTIAL INFORMATION AND AN ONGOING**  
20 **INVESTIGATION.**

21 Warrants related to an ongoing investigation containing sensitive or confidential  
22 information have been historically granted a sealing order. The Ninth Circuit has held that  
23 “members of the public have no First Amendment right to attend warrant proceedings, or to  
24 obtain the documents relating to those proceedings, while the investigation is ongoing but  
25 before indictments have been returned.” *Times Mirror Co. v. United States*, 873 F.2d 1210,  
26 1218 (9th Cir. 1989). Indeed, “[t]he process of disclosing information to a neutral magistrate to  
27 obtain a search warrant ... has always been considered an extension of the criminal  
28 investigation itself” and therefore, such information “is entitled to the same confidentiality

1 accorded other aspects of the criminal investigation.” *Id.* at 1214. As such, courts “[b]oth the  
2 magistrate in granting the original sealing order and the district court in reviewing such orders  
3 have necessarily been highly deferential to the government’s determination that a given  
4 investigation requires secrecy and that warrant materials be kept under seal.” *Id.*

5 In *People v. Jackson*, 128 Cal.App.4th 1009 (2005), the California Court of Appeal held  
6 that a “warrant affidavit was properly sealed to achieve the government’s compelling interest in  
7 the protection of its continuing investigation.” *Jackson*, 128 Cal.App.4th at 1024. In reaching  
8 this decision, *Jackson* cited to *Times Mirror Co.* for its recognition of the “importance of  
9 guarding the secrecy of criminal investigations” and its statement that ““complete openness ...  
10 may, for example, frustrate criminal investigations and thereby jeopardize the integrity of the  
11 search for truth that is so critical to the fair administration of justice.”” *Id.* Accordingly, the  
12 Court of Appeal properly held that “[d]isclosure of any portion of the sealed warrant materials  
13 could reveal the focus of the investigation and potentially compromise its progress.” *Id.* at  
14 1026.

15 Sealing orders are used not only to protect the general secrecy of an investigation but  
16 also to protect the informant’s privilege codified in California law under Evidence Code §§  
17 1041 and 1042. As the California Supreme Court has stated, “[t]he informant’s privilege, the  
18 long-standing rule extending coverage of that privilege to information furnished by the  
19 informant which, if disclosed, might reveal his or her identity, and the codified rule that  
20 disclosure of an informant’s identity is not required to establish the legality of a search pursuant  
21 to a warrant valid on its face ([Evidence Code,] § 1042, subd. (b)) compel a conclusion that all  
22 or any part of a search warrant affidavit may be sealed if necessary to implement the privilege  
23 and protect the identity of a confidential informant.” *People v. Hobbs*, 7 Cal.4th 948, 971  
24 (1994); *see also People v. Heslington*, 195 Cal.App.4th 947, 955-56 (2011) (holding that “[b]y  
25 statutory privilege, public entities may refuse to disclose official information and an informant’s  
26 identity when disclosure is against the public interest.”).

27 Here, the search warrant was properly sealed by this Court under California law to  
28 protect confidential information. In its Motion, Media Coalition attempts to downplay the

1 ongoing criminal investigation by contending, without any reasonable basis, that “[t]here’s a  
2 good chance that no charges will be brought ....” (Motion at 5:11-12.) However, as reviewed  
3 in camera, the statute of limitations for the referenced criminal acts has not expired. *See* Penal  
4 Code § 801; *see also People v. Soni*, 134 Cal.App.4th 1510, 1517 (2005). Furthermore, as set  
5 forth above, both this Court and the federal court have already concluded that this search  
6 warrant must remain under seal to protect the integrity of an ongoing criminal investigation.  
7 Thus, Media Coalition’s unsupported and speculative contentions regarding the status of the  
8 ongoing criminal investigations are without merit.

9 **IV. MEDIA COALITION FAILS TO PROVIDE ANY AUTHORITY REQUIRING**  
10 **THE UNSEALING OF THE SEARCH WARRANT WHERE THERE REMAINS**  
11 **AN ONGOING INVESTIGATION.**

12 None of the authorities cited by Media Coalition require this Court to unseal a search  
13 warrant that has been sealed to protect an ongoing investigation. First, Media Coalition  
14 citation’s to *PSC Geothermal Servs. Co. v. Superior Court*, 25 Cal.App.4th 1697, 1714 (1994)  
15 for the proposition that “[t]here is no exception,” even for ongoing investigations, to Penal Code  
16 § 1534(a)’s requirement that executed search warrants “shall be open to the public as a judicial  
17 record,” completely ignores the Court of Appeal’s further holding that such information may  
18 nevertheless “be privileged as official information under Evidence Code sections 1040,  
19 subdivision (a) and 1042, subdivision (b).” *See PSC Geothermal Servs. Co.*, 25 Cal.App.4th at  
20 1714. Indeed, the Court of Appeal in *PSC* *did not* order the unsealing of a search warrant, but  
21 remanded the matter back to the trial court to determine whether the search warrant contained  
22 any confidential information that required protection. *See id.* at 1716. Therefore, the *PSC*  
23 decision, in actuality, supports the position here that the search warrant itself, or certain  
24 information contained within it, may be properly withheld from disclosure in the interests of  
25 protect confidential information.

26 Second, Media Coalition’s citation to *NBC Subsidiary (KNBC-TV), Inc. v. Superior*  
27 *Court*, 20 Cal.4th 1178 (1999) is inapposite. The *NBC Subsidiary* decision concerned whether  
28 proceedings during a civil trial held outside the presence of the jury should be open to the

1 public. *Id.* The decision did not address under what circumstances search warrants in criminal  
2 proceedings, or information contained therein, should be unsealed, and therefore does not  
3 constitute any authority mandating the unsealing of the search warrant in this matter.


4 Finally, Media Coalition’s citation to the sealing requirements set forth under California  
5 Rules of Court, Rule 2.550(d) is equally unavailing. The standard set forth in Rule 2.550(d) is  
6 based on the *NBC Subsidiary* decision, which as noted above, is inapposite here. More  
7 importantly, the Advisory Committee Comment on this Rule expressly states that it does not  
8 apply to “records that courts must keep confidential by law,” including “search warrant  
9 affidavits sealed under *People v. Hobbs* (1994) 7 Cal.4th 948.” Advisory Committee Notes,  
10 California Rule of Court, Rule 2.550. Therefore, this Rule 2.550 is simply inapplicable here.

11 **V. CONCLUSION**

12 Based on the foregoing reasons, the instant Motion should be denied.

13  
14 Dated: September 9, 2022

LAWRENCE BEACH ALLEN & CHOI, PC

15  
16 By  \_\_\_\_\_  
17 Paul B. Beach  
18 Jin S. Choi  
19 Raymond W. Sakai  
20 Hrach E. Agazaryan  
21 Attorneys for County of  
22 Los Angeles and Los Angeles County  
23 Sheriff’s Department  
24  
25  
26  
27  
28



1 **DECLARATION OF RAYMOND W. SAKAI**

2 I, Raymond W. Sakai, declare as follows:

3 1. I am an attorney at law, duly appointed to practice before this Court and am an  
4 associate with the law firm of Lawrence Beach Allen & Choi, PC, attorneys of record for the  
5 County of Los Angeles and Los Angeles County Sheriff's Department in this matter and in the  
6 matter of *Christina Astorga, et al. v. County of Los Angeles, et al.*, United States District Court  
7 Case No. 2:20-cv-09805-AB-AGR. I have personal knowledge of the facts stated herein,  
8 except those stated upon information and belief and as to those matters, I believe them to be  
9 true. If called to testify to the matters herein, I could and would competently do so.

10 2. On December 14, 2021, this Court addressed similar arguments asserted in a  
11 motion to unseal the same warrant – Search Warrant No. NW20500854 – filed by Christina  
12 Astorga, Hugo Padilla, Kiyoko Dodson and Ryan Dodson, who are plaintiffs in a pending  
13 federal civil rights action – *Christina Astorga, et al. v. County of Los Angeles, et al.*, United  
14 States District Court Case No. 2:20-cv-09805-AB-AGR – wherein they allege that their  
15 personal property, which was the subject of search warrant, had been unlawfully seized.  
16 Attached hereto as Exhibit “A” is a true and correct copy of the Notice of Motion and Motion  
17 by Non-party Christina Astorga Et Al. to Unseal Search Warrant Records filed in this Court on  
18 November 1, 2021.

19 3. This Court's December 14, 2021 Order explained in part:

- 20 • “The Court is proceeding today with the Motion by Non Partie[s'] Christina  
21 Astorga, Hugo Padilla, Kiyoko Dodson and Ryan Dodson filed on 11/1/2021.”  
22 • “This hearing is pertaining to Search Warrant Number NW20500854.”  
23 • “The Court indicates that an In Camera Hearing was held with Sergeant Peter Hish,  
24 from the Los Angeles County Sheriff's Department.”  
25 • “*Court orders the warrant unsealed for the purpose of Judge Birotte or Magistrate*  
26 *Rosenberg to determine if there is any redacting that could protect any ongoing*  
27 *investigation or justify the blanket non-disclosure order as case law requires.”*  
28 • “The In Camera proceedings held with the Court this date are ordered sealed.”

1 A true and correct copy of this Court's December 14, 2021 Order is attached hereto as Exhibit  
2 "B".

3 4. Attached hereto as Exhibits "C" and "D" are true and correct copies of  
4 Magistrate Judge Rosenberg's January 3, 2022 (rejecting motion to publicly unseal, granting  
5 limited redacted production under protective order) and January 7, 2022 Orders (order for  
6 redacted production under protective order) (Docket Nos. 200 and 202 in the *Astorga v. County*  
7 *of Los Angeles*).

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

10 Executed on September 9, 2022, at Pasadena, California.

11 

12 \_\_\_\_\_  
13 Raymond W. Sakai

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FILED**  
Superior Court of California  
County of Los Angeles

**NOV 01 2021**

Sherril R. Carter, Executive Officer/Clerk of Court  
By Catherine MacElvany, Deputy  
Catherine MacElvany

1 **COLLEEN FLYNN, CSB 234281**  
ATTORNEY AT LAW  
2 3435 Wilshire Blvd., Suite 2910  
Los Angeles, CA 90010  
3 (213) 252-9444 / (213) 252-0091 facsimile  
E-mail: cflynnlaw@yahoo.com

4 **PEDRAM ESFANDIARY, CSB 312569**  
5 **MONIQUE ALARCON, CSB 311560**  
BAUM HEDLUND, ARISTEL, & GOLDMAN, P.C.  
6 10940 Wilshire Blvd., 17th Floor  
Los Angeles, CA 90024  
7 (310) 207-3233 / (310) 820-7444 facsimile  
Email: pesfandiary@baumhedlundlaw.com  
8 Email: malarcon@baumhedlundlaw.com

**DONALD W. COOK, CSB 116666**  
ATTORNEY AT LAW  
3435 Wilshire Blvd., Ste. 2910  
Los Angeles, CA 90010  
(213) 252-9444 / (213) 252-0091 facsimile  
Email: manncooklaw@gmail.com

9 Attorneys for Interveners Christina Astorga,  
Hugo Padilla, Ryan Michael Dodson,  
10 Kiyoko Dodson

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES**

13 IN RE APPLICATION OF CHRISTINA  
14 ASTORGA, HUGO PADILLA, KIYOKO  
15 DODSON, AND RYAN DODSON TO  
16 UNSEAL SEARCH WARRANT  
17 MATERIALS PERTAINING TO  
18 WARRANT NUMBERS 21220 AND  
19 21221.

Case No.  
**NOTICE OF MOTION AND  
MOTION BY NON-PARTY  
CHRISTINA ASTORGA ET.  
AL. TO UNSEAL SEARCH  
WARRANT RECORDS;  
MEMORANDUM OF POINTS  
AND AUTHORITIES;  
DECLARATION OF  
COLLEEN FLYNN**

**Date:** 12/3/21  
**Time:** 8:30 a.m.  
**Ctrm:** 006

**Hon. Judge Deborah L. Sanchez**

23 PLEASE TAKE NOTICE that on December 3, 2021, at 8:30 a.m., or as soon  
24 thereafter as counsel may be heard in Department 006 of the above-entitled Court, located  
25 at 10025 Flower Street, Bellflower, California 90706, Christina Astorga, Hugo Padilla,  
26 Ryan Dodson, and Kiyoko Dodson (“Interveners”) will and hereby do move to intervene  
27 and for a court order unsealing the following court records: search warrant numbers  
28

1 21220 and 21221, which have been executed, and the supporting affidavits and returns,  
2 as well as any inventory taken, all of which have been filed in Los Angeles Superior  
3 Court. The Los Angeles Sheriff's Department ("LASD") has executed the search warrants  
4 for property seized by the LASD on September 8 and 25, 2020. The returns on the  
5 warrants at issue here were not filed with the Court until over ten months later, on August  
6 23, 2021. The warrants purportedly relate to property belonging to Christina Astorga,  
7 Hugo Padilla, Ryan Dodson, and Kiyoko Dodson.  
8

9 Interveners seek access to all search and arrest warrants, probable cause statements  
10 submitted to the Court in support of issuance of those warrants, returns, and lists of  
11 inventory seized (hereinafter, the "Warrant Materials").

12 This motion is made on the following independent grounds:

13 ● First, pursuant to the express provisions of California Penal Code § 1534(a),  
14 executed and returned search warrant materials "shall be open to the public as a judicial  
15 record."  
16

17 ● Second, pursuant to the United States Constitution, the California Constitution,  
18 Article I, § 2(a) and § 2(b), California Code of Civil Procedure § 1904, California Rule  
19 of Court 2.550, and the common law, judicial records are presumptively open, and cannot  
20 be sealed absent specific, on-the-record findings that there is an overriding interest that  
21 overcomes the right of public access to the records.

22 ● Third, pursuant to California Penal Code Sections 1537 and 1538, Interveners  
23 are entitled to a written inventory of their property seized pursuant to the warrants.  
24

25 To the Interveners' knowledge, no publicly docketed motion to seal has been made  
26 by the prosecution or police to justify the continued sealing of the Warrant Materials  
27 beyond the date the warrants were executed or 10 days after their issuance. Cal. Penal  
28 Code. § 1534 (a). Additionally, to the Interveners' knowledge, no supporting on-the-

1 record findings have been made by the Court justifying the continued sealing of the  
2 Warrant Materials afer the warrants were executed and returned; nor could such a  
3 justification be made. There is no ongoing criminal investigation regarding the  
4 Interveners, none of them were ever charged with any crime, and no fair trial rights  
5 relating to the search and seizure of Interveners' property exist that would justify the  
6 continued sealing of these court records.

7  
8 For these reasons, Interveners respectfully request that the Court make immediately  
9 available to the public all of the Warrant Materials.

10 This Motion is based upon the attached Memorandum of Points and Authorities,  
11 the Declaration of Colleen Flynn appended hereto, on all pleading, records, and files in  
12 this action, on all matters of which judicial notice may be taken, and on argument and  
13 evidence presented at the hearing on this Motion.

14 DATED: October 29, 2021

15  
16 **COLLEEN FLYNN**  
17 **PEDRAM ESFANDIARY**  
18 **MONIQUE ALARCON**  
19 **DONALD W. COOK**  
20 Attorneys for Interveners

21  
22  
23  
24  
25  
26  
27  
28  
By Colleen Flynn  
Colleen Flynn

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. STATEMENT OF FACTS.

3 Christina Astorga and Hugo Padilla attended a September 8, 2020 protest, called  
4 “Justice for Dijon Kizzee,” a young black man who was shot to death by LASD deputies  
5 in South Los Angeles on August 29, 2020. Flynn Decl., ¶ 3.

6 Ms. Astorga attended as a member of “Wall of Vets,” a group of military veterans  
7 that supports the rights of protesters. Ms. Astorga intended to provide updates about the  
8 protest via Wall of Vets’ social media. Mr. Padilla also attended to document and  
9 broadcast the events. As he has done on other occasions at protests, Mr. Padilla was  
10 “livestreaming” a video with audio narration to viewers on Youtube.com so those not in  
11 attendance could observe what was happening in real time. Mr. Padilla was riding his  
12 bicycle as he livestreamed, wearing a hat which prominently displayed “PRESS.” Flynn  
13 Decl., ¶ 4.

14 The LASD shot both Ms. Astorga and Mr. Padilla with less-lethal weapons and  
15 arrested them for failure to disperse (Cal. Penal Code § 409), a low-level protest-related  
16 misdemeanor charge. When the LASD released them the next day, the LASD refused to  
17 return to them their cell phones and other property, including Mr. Padilla’s bicycle and  
18 bicycle helmet. Flynn Decl., ¶ 5.

19 No criminal charges were ever filed against Ms. Astorga or Mr. Padilla; both of  
20 their arrests have been converted to a “detention only.” There is no ongoing investigation  
21 regarding Ms. Astorga or Mr. Padilla. Flynn Decl., ¶ 6, **Exhibit A**.

22 Nevertheless, the LASD did not return Mr. Padilla’s bicycle for three months, until  
23 December 9, 2020. The LASD did not return his iPhone for nine months, until June 9,  
24 2021. The LASD never returned his second phone, a Samsung, that he used as a hotspot,  
25 which the LASD claims to never have booked, and the LASD never returned his bicycle  
26  
27  
28

1 helmet. The LASD did not return Ms. Astorga's cell phone for nine months, until about  
2 June 7, 2021, and it did not return her goggles for over a year, until September 22, 2021.

3 Flynn Decl., ¶ 7.

4 Kiyoko and Ryan Dodson are husband and wife. On September 25, 2020, they  
5 attended a "Justice for Breonna Taylor" protest in West Hollywood. While Ms. Dodson  
6 walked with the protesters, Mr. Dodson, at the request of the protest organizers, drove  
7 their truck slowly at the beginning of the march carrying water, etc. for the protesters and  
8 to keep them safe from vehicular traffic. The LASD arrested Mr. Dodson for reckless  
9 driving (Cal. Vehicle Code § 23102(a)) and unlawful assembly (Cal. Penal Code § 407).

10 Ms. Dodson was not arrested. Flynn Decl., ¶ 8.

11 No criminal charges were ever filed against Mr. or Ms. Dodson and there is no  
12 ongoing investigation regarding them. Flynn Decl., ¶ 9, **Exhibit A**.

13 Nevertheless, the LASD seized the Dodson's truck and all its contents, including  
14 Ms. Dodson's wallet, camera, clothes and other personal property and Mr. Dodson's cell  
15 phone and about \$7,000 worth of his work tools. (Mr. Dodson is an electrician.) The  
16 LASD did not return the truck to the Dodsons for two months, until November 10, 2020.  
17 When the Dodson's picked up their truck its contents has been tossed, the tool box was  
18 unlocked, and Mr. Dodson's phone, many of his work tools, and Ms. Dodson's California  
19 drivers licence, credit cards, cash and other personal items were missing. The LASD did  
20 not return to Ms. Dodson her ID and credit and debit cards for almost three months, until  
21 December 3, 2020. The LASD never returned the cash that had been in her wallet when  
22 it was seized. After almost nine months, on June 4, 2021, the LASD finally returned Mr.  
23 Dodson's cell phone and most, but not all of his work tools. The SIM card for his cell  
24 phone was missing. Additional property that the LASD has still not returned to Mr.  
25 Dodson includes a work fan, borescope inspection camera, voltage tester large, expensive  
26  
27  
28

1 batteries, and the cash that he kept in the truck's console. The LASD just recently found  
2 Ms. Dodson's camera which she picked up on October 26, 2021. The camera's battery,  
3 battery charger, and memory cards were not returned. Flynn Decl., ¶ 10.

4 The LASD booked the Intervener's property as evidence and purportedly obtained  
5 the warrants at issue here to justify the ongoing seizures and to search the contents of the  
6 truck, phones, camera, etc. The returns on the warrants at issue here were not filed with  
7 the Court until over ten months later, on August 23, 2021. Flynn Decl., ¶ 12. Over a year  
8 has passed and, unsurprisingly, no criminal charges have been filed. Such search and  
9 long-term seizure of protester's phones and other property raises serious First Amendment  
10 concerns about the LASD's true motives as to the Interveners and their property.

11  
12 Importantly, Interveners are also plaintiffs in a pending federal lawsuit in which  
13 they contend they were wrongfully arrested and had their property wrongfully withheld  
14 in violation of Fourth Amendment and due process guarantees. *Astorga et al v. County*  
15 *of Los Angeles*, U.S.D.C. No. 2:20-cv-9805 AB (AGRx); Flynn Decl., ¶2. In that federal  
16 litigation the defendants (the County of Los Angeles and its Sheriff's Department), citing  
17 to the state courts' *Hobbs* sealing orders, refuse to produce the warrants and supporting  
18 affidavits. When Interveners asked the federal court to order the *Astorga* defendants to  
19 produce the warrant materials, the federal court declined; for reasons of comity, that court  
20 instead directed Interveners to ask this Court. Hence, Interveners bring the instant  
21 motion.<sup>1</sup>

22  
23  
24 <sup>1</sup> The law firm that represents the *Astorga* defendants admits it has copies of the  
25 warrants and supporting affidavits. Flynn Decl., ¶14. This fact undermines any claim of  
26 confidentiality. The defense law firm is *not* a prosecutor. As lawyers representing clients  
27 in *civil* litigation, the defense law firm has no legitimate role or interest in pursuing  
28 *criminal* prosecutions. Moreover, the law firm's admission it has copies of the warrant  
materials supports a claim that the law firm obtained the materials in violation of  
Interveners' constitutional rights. *Gonzalez v. Spencer*, 336 F.3d 832 (9th Cir. 2003)



1 **II. SUMMARY OF ARGUMENT.**

2 Penal Code Section 1534(a) expressly requires that executed and returned search  
3 warrants “shall be open to the public as a judicial record.” Cal. Pen. Code § 1534(a)  
4 (emphasis added). Courts interpreting Section 1534(a) have recognized only narrow  
5 exceptions to this presumption of openness, and there is no categorical exemption for  
6 information relating to an ongoing investigation. *See PSC Geothermal Svcs v. Superior*  
7 *Court*, 25 Cal. App.4<sup>th</sup> 1697, 1713 (1994) (recognizing that an ongoing investigation  
8 exception would create an impermissibly broad exemption to the Legislature’s guarantee  
9 that such material will be available to the public after a warrant has been executed).  
10 Indeed, even in the usual circumstances where certain information may properly be  
11 redacted from search warrant materials, the California Supreme Court has made clear that  
12 a court should “take whatever further action may be necessary to ensure full public  
13 disclosure of the remainder” of those records. *People v Hobbs*, 7 Cal.4<sup>th</sup> 948, 971 (1994).

14  
15 The public’s presumptive First Amendment right of access to court records also  
16 requires greater transparency here. In its seminal decision on access to judicial records,  
17 the California Supreme Court emphasized that such records may be sealed only “in the  
18 rarest circumstances.” *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court*, 20 Cal.4<sup>th</sup>  
19 1178, 1226 (1999). Under the standards announced by Court in *NBC Subsidiary*, and  
20 subsequently codified by the Judicial Council, court records cannot be maintained under  
21 seal unless a court specifically finds that: (1) there is an overriding interest that overcomes  
22 the public’s right of access; (2) there is a substantial probability that sealing will promote  
23 that interest; (3) the sealing order is narrowly tailored to serve the overriding interest; and  
24

25  
26 \_\_\_\_\_  
27 (Defense law firm -- the *same* firm that represents the *Astorga* defendants -- held liable  
28 for wrongfully accessing the plaintiff’s juvenile case file in violation of the federal  
constitution and California law).

1 (4) that there are no less restrictive alternatives to sealing. *See NBC Subsidiary*, 20 Cal.4th  
2 at 1208; Cal. R. Ct. 2.550(d), 2.550(e)(1).

3 Interveners seek to vindicate these important statutory and constitutional rights of  
4 public access to the judicial records pertaining to law enforcement's seizure and search  
5 of cell phones and other personal property taken from demonstrators at protests against  
6 police violence, in an apparent attempt to retaliate against the demonstrators and chill  
7 their First Amendment rights to free speech and assembly. These judicial records include  
8 the search warrants, any supporting probable cause affidavits, inventories, returns, and  
9 any other related records that have been filed with the Court (hereinafter, the "Warrant  
10 Materials").  
11

12 Interveners do not know when the warrants were executed. Interveners are  
13 informed and believe that warrants:

- 14 ● were issued by this Court on October 13, 2020;
- 15 ● their returns were not filed with the Court until over ten months later, on August  
16 23, 2021; and,
- 17 ● the Warrant Materials remain under seal despite the warrants having been  
18 returned to the Court following their execution. Flynn Decl., ¶12.

19  
20 The public's right of access to court records authorizing police action to search an  
21 individual's personal property is particularly important where, as here, serious questions  
22 are raised about the propriety of those actions. Here, the press and public have a powerful  
23 interest in knowing what law enforcement agencies knew, at the time the warrants were  
24 issued, about the Interveners, their status as participants in public demonstrations against  
25 police violence, and justifications made for the continued seizure of their personal  
26 property as evidence and for the search of the contents of their phones, cameras, vehicle,  
27 etc., and whether law enforcement and the Court followed proper procedures in approving  
28

1 and executing the warrants. *Riley v. California*, 573 U.S. 373, 386, 393, 395 (2014) (The  
2 “phones . . . place vast quantities of personal information literally in the hands of  
3 individuals” thereby “implicat[ing] privacy concerns far beyond those implicated by the  
4 search of a cigarette pack, a wallet, or a purse.” “[I]t is no exaggeration to say that many  
5 of the more than 90% of American adults who own a cell phone keep on their person a  
6 digital record of nearly every aspect of their lives - from the mundane to the intimate.”).

7  
8 Moreover, given that none of the Interveners have been charged with any crime,  
9 and could not as the one-year statute of limitation for failure to disperse/unlawful  
10 assembly (Cal. Penal Codes § 407, 409) and reckless driving (Cal. Vehicle Code §  
11 23102(a)) have passed, access to the Warrant Materials may be the only means by which  
12 the public can obtain needed information about the actions taken by law enforcement in  
13 this matter.

14 Because this case implicates no defendant’s fair-trial rights, or prosecutorial  
15 interests sufficient to outweigh the public’s right of access, the Warrant Materials should  
16 be unsealed. Under either Penal Code Section 1534(a) or the First Amendment, any party  
17 advocating for continued sealing cannot meet its onerous burden to justify continued  
18 restrictions on public access to the Warrant Materials. Indeed, there appears to be no  
19 publicly docketed sealing motion or any on-the-record findings justifying the continued  
20 sealing of these records after the date on which they were statutorily required to be made  
21 part of the public court record.

22  
23 **III. Penal Code § 1534(a) Mandates All Materials Related to a Returned Search**  
24 **Warrant be Made Public.**

25 California Penal Code Section 1534(a) provides that after a search warrant is  
26 executed and returned, all “documents and records of the court relating to the [search]  
27 warrant... *shall be open to the public as a judicial record.*” Cal. Penal Code § 1534(a)  
28

1 (emphasis added). The California Legislature did not impose *any* qualifications or  
2 limitations upon this right of public access to search warrant materials other than the  
3 passage of time. *See, e.g., PSC Geothermal*, 25 Cal.App.4th at 1713.

4 Although the statutory right of access to search warrant materials is not absolute,  
5 California courts have recognized only limited exceptions to this presumption of  
6 openness. The leading decision is *Hobbs*, wherein our Supreme Court considered a  
7 criminal defendant's request to unseal a search warrant affidavit. 7 Cal.4th at 954-55. As  
8 the Court explained, the case involved the "inherent tension between the public need to  
9 protect the identities of confidential informants, and a criminal defendant's right of  
10 reasonable access to information upon which to base a challenge to the legality of a search  
11 warrant." *Id.* at 957. After carefully analyzing Evidence Code Section 1041, which gives  
12 prosecutors a qualified privilege to withhold a confidential informant's identify, and  
13 Evidence Code Section 1042, which sets forth the consequences of a prosecutor's  
14 successful invocation of Section 1041, the Court declared that these privileges "together  
15 comprise an exception to the statutory requirement that the contents of a search warrant,  
16 including any supporting affidavits..., become a public record once the warrant is  
17 executed." *Id.* at 962. Nevertheless, recognizing that redaction—not wholesale sealing—is  
18 the appropriate mechanism for shielding the confidential informant's identity, the Court  
19 instructed the trial court to "take whatever further actions may be necessary to ensure *full*  
20 *disclosure of the remainder of the [search warrant] affidavit.*" *Id.* (emphasis added).

23 Soon after *Hobbs*, the Court of Appeal in *PSC Geothermal* addressed whether a  
24 prosecutor's asserted desire to protect an ongoing investigation would justify an exception  
25 to Section 1534(a)'s statutory right of public access to search warrant materials. There the  
26 subjects of an investigation moved to unseal search warrant materials to challenge the  
27 seizure of items from their environmental consultant's office. 25 Cal.App.4th at 1700-02.  
28

1 The consultant was hired by the subject's attorney. *Id.* The trial court had sealed the  
2 affidavits, ruling that before a criminal complaint is filed affidavits may be sealed if  
3 disclosure would adversely affect a criminal investigation. *Id.* at 1713. The appellate court  
4 rejected this ruling, holding "[t]here is no exception in [Penal Code § 1534(a)] for  
5 instances ... where the search [warrant] is used to further an ongoing criminal  
6 investigation." *Id.* at 1714. The court observed, however, that a prosecutor need not reveal  
7 the "identity of an informant" or "official information," where that information is  
8 necessary to prove the search is legal. *Id.* at 1714. Even under such circumstances,  
9 however, redaction of such information is warranted *only* if a "court determines, in  
10 accordance with precise statutory standards, that disclosure is *against the public interest.*"  
11 *Shepherd v. Superior Court*, 17 Cal.3d 107, 123 (1976) (emphasis added.); *overruled on*  
12 *oth. grds. People v. Holloway*, 33 Cal.4th 96, 131 (2004); *see also PSC Geothermal*, 25  
13 Cal.App.4th at 1714. This is an onerous standard. *Shepherd*, 17 Cal.3d at 123; *Torres v.*  
14 *Superior Court*, 80 Cal.App.4th 867, 873 (2000) ("[t]he official information privilege,  
15 once asserted, shouldn't be sustained unless the court is presented with a showing that the  
16 information sought to be protected is covered by the privilege.")  
17

18  
19 Importantly, *PSC Geothermal*, like *Hobbs*, emphasized the importance of  
20 "redacting the [search warrant] affidavit and sealing only the portion which might be  
21 found ... to be official information. 25 Cal.App.4th at 1714-15. Because the trial court  
22 failed to conduct the two-stage analysis of confidentiality and public interest and because  
23 sealing appeared overbroad, the court issued a writ of mandate directing the trial court to  
24 unseal the affidavit subject to a claim of privilege and further in camera review. *Id.* at  
25 1715.

26  
27 In *People v. Jackson*, 128 Cal.App.4th 1009, 1023 (2005), which involved a media  
28 request to unseal a search warrant affidavit, the appellate court unequivocally recognized

1 that the public’s constitutional right of access to court records extends to search warrant  
2 materials, and that any order sealing such materials must comply with the constitutional  
3 tests set forth in *NBC Subsidiary* and codified in Rules of Court 2.550 and 2.551. *Id.* at  
4 1022. The unique combination of the celebrity status of the defendant, Michael Jackson,  
5 the crimes alleged, and the ongoing nature of the criminal investigation, led the court to  
6 uphold the trial court’s order sealing the search warrant affidavit “until, at a minimum, the  
7 arraignment in the matter.” *Id.* at 1023-24, 1015. In doing so, the court recognized that in  
8 appropriate cases courts can seal warrant materials that would be so prejudicial as to  
9 endanger a fair trial. *Id.* at 1021. “Given the ‘graphic and detailed descriptions of  
10 Jackson’s alleged sexual misconduct with two minors, one in the present case, and one  
11 in a prior case settled 10 years ago,’” the court found the disclosure “could lead to moral  
12 judgments and public outrage, severely prejudicing Jackson’s right to a fair trial.” *Id.* at  
13 1023. Unsealing the affidavit at that time, the court found, not only would have prejudiced  
14 Mr. Jackson’s fair trial rights but also might have jeopardized the then-ongoing criminal  
15 investigation of Mr. Jackson, as evidenced by the government’s issued of 65 additional  
16 warrants soon after the indictment. *Id.* at 1024. It was the unique confluence of all these  
17 factors that led the court to uphold the trial court’s order temporarily sealing the affidavit.  
18 *Id.* at 1016, 1024 (“Here, it is the combination of celebrity status, the crimes alleged and  
19 the ongoing criminal investigation that justifies sealing.”).

22 The present situation is a far cry from the *Jackson* case. This case does not involve  
23 the privacy rights of any minor victims. Interveners -- who are the warrants’ subjects --  
24 seek disclosure. Interveners have not been charged with any crime and are not the subject  
25 of any criminal investigation; thus, there is no risk of tipping the government’s hand to  
26 imminent action, with its attendant risk of destruction of evidence. And given that the  
27 proponent of sealing must show there exists a “substantial probability” that specific harm  
28

1 will occur if the warrants are unsealed, *NBC Subsidiary*, 20 Cal.4th at 1208, no such  
2 showing can be made here. To the contrary, unsealing the warrants furthers the public  
3 interest (not to mention Interveners' due process rights in their pending civil litigation)  
4 by bringing possible police misconduct to the light of public scrutiny. Indeed, disclosure  
5 may shed light on whether the LASD's purported basis for the search and long-term  
6 seizure of their property was justified or, as Interveners contend in their pending civil  
7 lawsuit, retaliation for Interveners' participation in protests against police violence.

8  
9 Access is all the more important here given the substantial associational and free  
10 speech rights afforded by the federal and state constitutions. Law enforcement's search  
11 and seizure of cell phones and other personal property taken from those engaged in First  
12 Amendment-protected expressive activity has a serious chilling effect on those rights.  
13 *Riley v. California*, 573 U.S. 373, 386, 393, 395 (2014). It also raises serious questions  
14 as to the legality of the search and prolonged seizure of Interveners' property.

15 The public generally has a strong interest in overseeing potential police  
16 misconduct. The California Supreme Court has recognized that:

17 Law enforcement officers carry upon their shoulders the cloak of authority  
18 to enforce the laws of the state. In order to maintain public trust in its police  
19 department, the public must be kept fully informed of the activities of its  
20 peace officers... It is undisputable that law enforcement is a primary  
21 function of local government and that the public has a far greater interest  
22 in the qualifications and conduct of law enforcement officers, even at, and  
23 perhaps especially at, an 'on the street' level than in the qualifications and  
24 conduct of other comparably low-ranking government employees  
25 performing more proprietary functions. The abuse of a patrolman's office  
26 can have great potential for social harm.  
27  
28

1 *Commission on Peace Officer Standards and Training v. Superior Court*, 42 Cal.4th 278,  
2 297 (2007) (citations omitted); *see also Estate of Hearst*, 67 Cal.App.3d 777, 782 (1977)  
3 (public trials “expose corruptions, incompetence, inefficiency, prejudice and favoritism”).  
4 Clearly the salutary benefits of public scrutiny of law enforcement are at play here.

5 In sum, § 1534(a) mandates that the Warrant Materials be made public. Because  
6 none of the narrow countervailing interests identified in the above cases as grounds for  
7 restricting public access to warrant materials are at issue here, and given the particularly  
8 strong public interest in access to the sealed Warrant Materials, this Court should unseal  
9 the Warrant Materials without further delay.

11 **IV. The Strong Presumption Favoring Public Access to Judicial Proceedings and**  
12 **Records Independently Justifies Disclosure of the Search Warrant Materials.**

13 The California Supreme Court made clear that the public has a First Amendment  
14 right of access to court documents in *NBC Subsidiary*. Although *NBC Subsidiary* involved  
15 access to civil court proceedings, the Court’s sweeping, unanimous decision cited with  
16 approval numerous decisions upholding a First Amendment “presumption of access ... [for  
17 any] documents or records of ... [judicial] proceedings [that] are filed with the court or are  
18 used in a judicial proceeding. 20 Cal 4th at 1208 & n.25.

19  
20 In the wake of *NBC Subsidiary*, the Judicial Council voted to amend the California  
21 Rules of Court to reflect that “unless confidentiality is required by law, court records are  
22 presumed to be open.” Cal. R. Ct. 2.550. Under *NBC Subsidiary* and California Rule of  
23 Court 2.550, a court cannot close a judicial proceeding or seal a court record without first  
24 finding that: (1) an overriding interest that supports sealing; (2) a substantial probability  
25 exists that the interest will be prejudiced absent sealing; (3) the sealing is narrowly  
26 tailored to serve the overriding interest; and (4) no less restrictive means exist to achieve  
27 the identified overriding interest. 20 Cal.4th at 1218-19; Cal. Rule of Ct. 2.550. (Though  
28



1 California Rule of Court 2.550 outlines a five-part analysis, while *NBC Subsidiary* has a  
2 four-part analysis, the tests are essentially the same.)

3 The strict sealing test enunciated in *NBC Subsidiary* is consistent with previous  
4 decisions from other courts. *See e.g., Associated Press v. District Court*, 705 F.2d 1143,  
5 1145 (9th Cir. 1983) (public's right of access to documents filed in conjunction with  
6 criminal proceedings can be overcome *only* by an affirmative showing that the sealing of  
7 documents is "*strictly and inescapably necessary*," to promote competing interest of the  
8 highest order) (emphasis added); *Estate of Hearst*, 67 Cal.App.3d at 785 (sealing orders  
9 can be justified only in "exceptional" circumstances where sealing is necessary to promote  
10 a "compelling" interest).

12 The right of access to public records and the writings of public officials, including  
13 court records, has been expressly incorporated into the California Constitution, Article  
14 I, Section 3(b). Because Penal Code Section 1534(a) expressly defines post-execution  
15 search warrant documents as "public.. judicial record[s]" and because the search warrants  
16 and the materials related to them here were filed in Los Angeles Superior Court, the  
17 materials at issue are subject to the presumptive First Amendment right of access.  
18 Furthermore, pursuant to California Penal Code Sections 1537 and 1538, Interveners are  
19 entitled to a written inventory of the property the LASD seized from them.

21 **A. Any Sealing Request Must Comply with Rules of Court 2.550 and *NBC***  
22 ***Subsidiary*.**

23 Since the adoption of then California Rule of Court 243.2 (now Rule 2.550), any  
24 party seeking to seal court records must satisfy the strict procedural and substantive  
25 requirements endorsed by the California Supreme Court in *NBC Subsidiary*. Any party  
26 requesting that a court record be sealed "*must file a noticed motion* for an order sealing  
27 the record." Cal. Rule of Ct. 2.550 (emphasis added). The motion "must be accompanied  
28

1 by a memorandum of points and authorities and a declaration containing facts sufficient  
2 to justify the sealing.” *Id.* A “court must not permit a record to be filed under seal based  
3 solely upon the agreement or stipulation of the parties.” Cal. Rule of Ct. 2.550. These  
4 rules apply to both criminal and civil cases. *See* Advisory Committee Comment (2000)  
5 to Rule 2.550.

6 The party advocating sealing must provide *evidence* to support its argument that  
7 sealing is necessary. *Oregonian Publ. Co. v. District Court*, 920 F.2d 1462, 1467 (9th Cir.  
8 1990) (vacating trial court’s sealing order because the trial court had “no evidentiary  
9 support” for its belief that sealing documents would “serve ‘higher values’”). The court  
10 must base its sealing order on “specific, on-the-record findings” of fact. *Press-Enterprise*  
11 *v. Superior Court*, 478 U.S. 1, 13-14 (1986) (*Press-Enterprise II*). “[T]he court may not  
12 base its decision on conclusory assertions alone, but must make specific factual findings.”  
13 *Washington Post Co. v. Soussoudis*, 807 F.2d 383, 392-93, & n.9 (4th Cir. 1986). *Accord*  
14 *Oregonian*, 920 F.2d at 1467.

15  
16 While the Court’s initial sealing order at the time of issuance of the warrants was  
17 proper, Interveners believe there has never been a noticed motion to seal the materials.  
18 Nor, to Interveners’ knowledge, has there been *any* on-the-record findings of fact to  
19 support continued sealing after the time set out under Penal Code Section 1534(a) in  
20 which the materials are to be open to public inspection. Accordingly, the continued  
21 sealing of the Warrant Materials appears to violate C.R.C. 2.550 and the constitutional  
22 requirements embodied in *Press -Enterprise II*.

23  
24 **B. The Heavy Burden of Showing that Blanket Sealing is Necessary Cannot**  
25 **be Made Here.**

26 No showing has been – or could be – made justifying blanket sealing of the Warrant  
27 Materials. As explained in *Hobbs* and again in *PSC Geothermal* any legitimate interests  
28

1 in confidentiality must be addressed through redaction – not wholesale sealing – of the  
2 Warrant Materials. As explained above (see Part IV *supra*) any sealing order must be  
3 “narrowly tailored.” *NBC Subsidiary*, 20 Cal.4th at 1208; Cal. R. Ct. 2.550(d)(4). To  
4 qualify as “narrowly tailored,” a sealing order may shield from public view only the  
5 specific information that, if disclosed, would prejudice the overriding interest at issue, not  
6 the entire document. *See e.g., In re Marriage of Burkle*, 135 Cal.App.4th 1045, 1066  
7 (2006) (approving limited redactions, not sealing, of court records).

8  
9 **V. Conclusion.**

10 There is no interest here that can overcome the strong constitutional and statutory  
11 presumption that the Warrant Materials be unsealed. Interveners thus respectfully ask that  
12 this Court issue an order immediately unsealing the Warrant Materials.

13 DATED: October 2, 2021

14 **COLLEEN FLYNN**  
15 **PEDRAM ESFANDIARY**  
16 **MONIQUE ALARCON**  
17 **DONALD W. COOK**  
Attorneys for Interveners

18 By   
19 Colleen Flynn

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## DECLARATION OF COLLEEN FLYNN

I, COLLEEN FLYNN, declare:

1. I am an attorney admitted to the bar of this Court. I am one of the attorneys representing Interveners Christina Astorga, Hugo Padilla, Ryan Dodson, and Kiyoko Dodson. I make this declaration in support of Interveners' motion to unseal search warrant materials in connection with warrant numbers 21220 and 21221. The matters stated in this declaration are true and of my own personal knowledge, except those matters stated on information and belief, which matters I believe to be true.

2. Interveners are also plaintiffs in a pending federal lawsuit in which they contend they were wrongfully arrested and had their property wrongfully withheld in violation of Fourth Amendment and due process guarantees. *Astorga et al v. County of Los Angeles*, U.S.D.C. No. 2:20-cv-9805 AB (AGRx).

3. Christina Astorga and Hugo Padilla attended a September 8, 2020 protest, called "Justice for Dijon Kizzee," a young black man who was shot to death by LASD deputies in South Los Angeles on August 29, 2020.

4. Ms. Astorga attended as a member of "Wall of Vets," a group of military veterans that supports the rights of protesters. Ms. Astorga intended to provide updates about the protest via Wall of Vets' social media. Mr. Padilla also attended to document and broadcast the events. As he has done on other occasions at protests, Mr. Padilla was "livestreaming" a video with audio narration to viewers on Youtube.com so those not in attendance could observe what was happening in real time. Mr. Padilla was riding his bicycle as he livestreamed, wearing a hat which prominently displayed "PRESS."

5. The LASD shot both Ms. Astorga and Mr. Padilla with less-lethal weapons and arrested them for failure to disperse (Cal. Penal Code § 409), a low-level

1 protest-related misdemeanor charge. When the LASD released them the next day, the  
2 LASD refused to return to them their cell phones and other property, including Mr.  
3 Padilla's bicycle and bicycle helmet.

4           6. No criminal charges were ever filed against Ms. Astorga or Mr.  
5 Padilla; both of their arrests have been converted to a "detention only." Attorneys for  
6 the County have stated there is no ongoing investigation regarding Ms. Astorga or Mr.  
7 Padilla. See, attached hereto as **Exhibit A**, Ninth Circuit memorandum decision in  
8 *Astorga et. al. v. County of Los Angeles et. al.*, 21-55059 at \*4 (9th Cir., July 15,  
9 2021) (ECF 8) ("Defendants' concession at oral argument that Plaintiffs here are likely  
10 no longer suspects in an ongoing criminal investigation".)

12           7. The LASD did not return Mr. Padilla's bicycle for three months, until  
13 December 9, 2020. The LASD did not return his iPhone for nine months, until June 9,  
14 2021. The LASD never returned his second phone, a Samsung, that he used as a  
15 hotspot, which the LASD claims to never have booked, and the LASD never returned  
16 his bicycle helmet. The LASD did not return Ms. Astorga's cell phone for nine  
17 months, until about June 7, 2021, and it did not return her goggles for over a year,  
18 until September 22, 2021.

20           8. Kiyoko and Ryan Dodson are husband and wife. On September 25, 2020,  
21 they attended a "Justice for Breonna Taylor" protest in West Hollywood. While Ms.  
22 Dodson walked with the protesters, Mr. Dodson, at the request of the protest  
23 organizers, drove their truck slowly at the beginning of the march carrying water, etc.  
24 for the protesters and to keep them safe from vehicular traffic. The LASD arrested Mr.  
25 Dodson for reckless driving (Cal. Vehicle Code § 23102(a)) and unlawful assembly  
26 (Cal. Penal Code § 407). Ms. Dodson was not arrested.

27           9. No criminal charges were ever filed against Mr. or Ms. Dodson and attorneys  
28

1 for the County have stated there is no ongoing investigation regarding them. See  
2 **Exhibit A**, attached hereto.

3 10. The LASD seized the Dodson's truck and all its contents, including Ms.  
4 Dodson's wallet, camera, clothes and other personal property and Mr. Dodson's cell  
5 phone and about \$7,000 worth of his work tools. (Mr. Dodson is an electrician.) The  
6 LASD did not return the truck to the Dodsons for two months, until November 10,  
7 2020. When the Dodson's picked up their truck its contents has been tossed, the tool  
8 box was unlocked, and Mr. Dodson's phone, many of his work tools, and Ms.  
9 Dodson's California drivers licence, credit cards, cash and other personal items were  
10 missing. The LASD did not return to Ms. Dodson her ID and credit and debit cards for  
11 almost three months, until December 3, 2020. The LASD never returned the cash that  
12 had been in her wallet when it was seized. After almost nine months, on June 4, 2021,  
13 the LASD finally returned Mr. Dodson's cell phone and most, but not all of his work  
14 tools. The SIM card for his cell phone was missing. Additional property that the  
15 LASD has still not returned to Mr. Dodson includes a work fan, borescope inspection  
16 camera, voltage tester large, expensive batteries, and the cash that he kept in the  
17 truck's console. The LASD just recently found Ms. Dodson's camera which she  
18 picked up on October 26, 2021. The camera's battery, battery charger, and memory  
19 cards were not returned.  
20  
21

22 11. The LASD booked the Intervener's property as evidence and purportedly  
23 obtained the warrants at issue here to justify the ongoing seizures and to search the  
24 contents of the truck, phones, camera, etc.

25 12. On October 19, 2021, I called the Bellflower Courthouse and spoke with  
26 the criminal matters clerk. She confirmed that warrants 21220 and 21221 were issued  
27 on October 12, 2020 and informed me that the LASD did not file the returns on the  
28

1 warrants with the Court until August 23, 2021. She also confirmed the Warrant  
2 Materials remain under seal despite the warrants having been returned to the Court  
3 following their execution.

4 13. On October 29, 2021, I called the Bellflower office of the Los Angeles  
5 District Attorney ("DA") to request that the DA's office not-oppose the unsealing of  
6 the warrants. However, I was informed by the DA's clerk that the DA's office could  
7 no do so because it does not have copies of these warrants; the LASD never submitted  
8 these warrants to the DA for review.

9  
10 14. The law firm that represents the *Astorga* defendants admits it has copies of  
11 the warrants and supporting affidavits.

12 I declare under penalty of perjury under the laws of the State of California that  
13 the foregoing is true and correct, and that this declaration was executed this 29 of  
14 October, 2021, at Los Angeles, California.

15  
16   
17 Colleen Flynn

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

COUNTY OF LOS ANGELES, a municipal corporation; et al.,

Real Parties in Interest.

Petition for Writ of Mandamus

Argued and Submitted July 8, 2021  
San Francisco, California

Before: GRABER and LEE, Circuit Judges, and VRATIL,\*\* District Judge.

In Case No. 21-55059, Plaintiffs appeal the denial of a preliminary injunction ordering Defendants to return their property following the Los Angeles County Sheriff's Department's ("LASD") seizure of various items during two protests in September 2020. In Case No. 21-70845, Plaintiffs petition for a writ of mandamus ordering the district court to disclose Defendants' ex parte, in camera submission cited as the basis for that denial. Reviewing for abuse of discretion, Garcia v. Google, Inc., 786 F.3d 733, 739 (9th Cir. 2015) (en banc), we affirm the denial of the preliminary injunction.<sup>1</sup> We grant the petition for a writ.

1. The district court did not abuse its discretion in denying a preliminary injunction because Plaintiffs failed to show irreparable harm from any delay in

---

\*\* The Honorable Kathryn H. Vratil, United States District Judge for the District of Kansas, sitting by designation.

<sup>1</sup> We deny Defendants' motion to dismiss because the return of some of Plaintiffs' property does not render this appeal moot.



reclaiming their property. See Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 879 (9th Cir. 2009) (holding that "[i]n general, mandatory injunctions 'are not granted unless extreme or very serious damage will result and are not issued . . . where the injury complained of is capable of compensation in damages'" (citation omitted) (emphasis added)). Plaintiffs fail to meet that high burden because they do not claim that Defendants, in fact, deprived them of digital papers or effects that they could not otherwise access. See Riley v. California, 573 U.S. 373, 393–94 (2014) (holding that cellphones allow people to "lug around every piece of mail they have received for the past several months, every picture they have taken, or every book or article they have read"). Plaintiffs' claim that California's procedures for the return of seized property violate due process is foreclosed. See Perkins v. City of W. Covina, 113 F.3d 1004, 1011 (9th Cir. 1997) (holding that California's procedures to litigate the return of seized property satisfy due process), rev'd on other grounds, 525 U.S. 234 (1999); see also Oziel v. Superior Ct., 273 Cal. Rptr. 196, 201 (Ct. App. 1990) (holding that "[t]he same rule applies to property seized without a warrant" as applies to property seized with a warrant).

2. We grant Plaintiffs' petition for a writ of mandamus in Case No. 21-70845. The district court has two options. The court can reveal the information on which it relied in denying the preliminary injunction. See Am.-Arab Anti-

Discrimination Comm. v. Reno, 70 F.3d 1045, 1069 (9th Cir. 1995) (holding that it is "the firmly held main rule that a court may not dispose of the merits of a case on the basis of *ex parte*, *in camera* submissions" (quoting Abourezk v. Reagan, 785 F.2d 1043, 1061 (D.C. Cir. 1986))); Al Haramain Islamic Found., Inc. v. U.S. Dep't of Treasury, 686 F.3d 965, 983 (9th Cir. 2012) (holding that courts should consider the "practical reality" of disclosure on an investigation, not the government's "abstract concerns[,] and that redactions may prove to be a compromise solution). Alternatively, the district court can make appropriate findings to justify its blanket non-disclosure order, as our case law would require. See Al Haramain Islamic Found., Inc., 686 F.3d at 980 (applying the balancing test from Mathews v. Eldridge, 424 U.S. 319 (1976)); United States v. Thompson, 827 F.2d 1254, 1258–59 (9th Cir. 1987) (holding that "[a]bsent . . . compelling justification, *ex parte* proceedings are anathema in our system of justice"). The district court may wish to consider, for instance, Defendants' concession at oral argument that Plaintiffs here likely are no longer suspects in an ongoing criminal investigation.

In Case No. 21-55059, **AFFIRMED**; in Case No. 21-70845, **PETITION GRANTED**.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**DEPT : F**

Date: December 14, 2021  
Honorable: Margaret Miller Bernal  
NONE

Judge Star Wilkinson  
Bailiff Barbara King CSR 8347

Deputy Clerk  
Reporter

(Parties and Counsel checked if present)

No Case Number

DDA: Janis Johnson

IN RE APPLICATION OF  
CHRISTINA ASTORGA, HUGO  
PADILLA, KIYOKO DODSON,  
AND RYAN DODSON TO UNSEAL  
SEARCH WARRANT MATERIALS  
PERTAINING TO WARRANT  
NUMBER NW20500854

Nature of Proceedings: MOTION BY NON PARTY CHRISTINA ASTORGA ET AL TO UNSEAL SEARCH WARRANT RECORDS

There is no representative from the District Attorney's Office this date. At the hearing of December 6, 2021 they had indicated that because there has been no case filed yet, they are not involved in this hearing.

Attorney Raymond W. Sakai is present in Court representing the Los Angeles County Sheriff's Department.

Attorney Colleen Flynn and Attorney Donald Cook are each present in Court representing the Interveners Christina Astorga, Hugo Padilla, Kiyoko Dodson and Ryan Dodson.

The Court is proceeding today with the Motion by Non Partie's Christina Astorga, Hugo Padilla, Kyoko Dodson and Ryan Dodson filed on 11/1/2021.

There is no case number in this matter as of yet. This hearing is pertaining to Search Warrant Number NW20500854.

Statement to the Court is presented by Attorney Sakai, who indicates that they were never served with this motion.

Argument to Court is presented by Attorney Donald Cook.

Opposition to the Motion is presented by Attorney Raymond W. Sakai.

Argument to Court is presented by Attorney Colleen Flynn, Attorney Raymond W. Sakai and Attorney Donald Cook.

Minutes Entered  
12/14/2021  
County Clerk

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**DEPT : F**

Date: December 14, 2021  
Honorable: Margaret Miller Bernal  
NONE

Judge Star Wilkinson  
Bailiff Barbara King CSR 8347

Deputy Clerk  
Reporter

(Parties and Counsel checked if present)

No Case Number

DDA: Janis Johnson

IN RE APPLICATION OF  
CHRISTINA ASTORGA, HUGO  
PADILLA, KIYOKO DODSON,  
AND RYAN DODSON TO UNSEAL  
SEARCH WARRANT MATERIALS  
PERTAINING TO WARRANT  
NUMBER NW20500854

Pursuant to the request of Attorney Raymond W. Sakai, the Court will proceed with an In Camera Hearing.

Court recesses at 2:31 p.m. where the Court will conduct the In Camera Hearing in the presence of Court Reporter Barbara King and with Sergeant Peter Hish.

Court resumes at 3:02 P.M.

The Court indicates that an In Camera Hearing was held with Sergeant Peter Hish, from the Los Angeles County Sheriff's Department.

Court orders the warrant unsealed for the purpose of Judge Birotte or Magistrate Rosenberg to determine if there is any redacting that could protect any ongoing investigation or justify the blanket non-disclosure order as case law requires..

Attorney Raymond Sakai is to give notice as to the Federal Court.

The In Camera proceedings held with the Court this date are ordered sealed.

A copy of today's minute order shall be provided to Attorney Sakai, Attorney Colleen Flynn and Attorney Donald Cook.

Minutes Entered  
12/14/2021  
County Clerk

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 20-09805-AB (AGRx) Date January 3, 2022

Title Christina Astorga v. County of Los Angeles, et al.

Present: The Honorable Alicia G. Rosenberg, United States Magistrate Judge

K. Lozada	n/a	None
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff	Attorneys Present for Defendants	
Donald Webster Cook	Raymond Sakai	

Proceedings: TELEPHONIC IN CAMERA HEARING

Pursuant to the Order dated December 27, 2021, an In Camera Hearing is held. Sergeant Peter Hish, from the Los Angeles County Sheriff’s Department is also present.

By Order dated September 24, 2021, this court found that Plaintiffs must first file a motion to unseal the warrants and warrant applications in the Superior Court, which is the court that sealed the warrants and warrant applications in the first instance, before seeking relief in federal court. (Dkt. No. 163); *Foltz v. State Farm Mutual Auto. Ins. Co.*, 331 F.3d 1122, 1130-33 (9th Cir. 2003); *Goldstein v. Long Beach*, 603 F. Supp. 1242, 1252 (C.D. Cal. 2009); *United States v. Olson*, 2015 U.S. Dist. LEXIS 97136, \*6 & nn. 23-25 (D. Nev. July 24, 2015). This court ordered Defendants to disclose to Plaintiffs the state search warrant numbers for the executed search warrants that were the subject of Defendants’ motion for protective order so that Plaintiffs could seek such relief in state court.

The Superior Court conducted a hearing on December 14, 2021 and ordered the warrant unsealed for the purpose of this court’s determination as to redaction “that could protect any ongoing investigation or justify the blanket non-disclosure order as case law requires.” (Dkt. No. 196-1.)

This court ordered Defendant to submit the warrant materials to the court for *in camera* review. (Order dated December 27, 2021, Dkt. No. 197.) The court reviewed the materials.

The court conducted the in camera portion of the hearing with Mr. Sakai and Sergeant Hish. The court overruled Plaintiffs’ objection to the presence of Mr. Sakai.

Mr. Cook rejoined the hearing. The court ordered Mr. Sakai to submit to the court redacted documents according to the court’s instructions during the in camera portion. Specifically, Defendant is ordered to redact the name and description of the affiant, the phones not belonging to the Plaintiffs, the names of persons other than the Plaintiffs, the two possible

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 20-09805-AB (AGRx)	Date	January 3, 2022
Title	Christina Astorga v. County of Los Angeles, et al.		

crimes that may be the subject of ongoing investigations,<sup>1</sup> one sentence on page 11 that reveals sources and methods, and, in the photos, the faces and/or names of officers or persons other than the Plaintiffs.

IT IS ORDERED that, on or before January 7, 2022 at 1:00 p.m., Defendant shall submit to the court an electronic redacted version of the documents reviewed *in camera*. The court will review the submission and issue a further order.

cc: District Judge Andre Birotte Jr.

Initials of Preparer	1	:	15
	kl		

<sup>1</sup> This redaction is provisional pending an upcoming hearing on January 13, 2022 regarding a Bellflower warrant.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 20-09805-AB (AGRx)	Date	January 7, 2022
Title	Christina Astorga v. County of Los Angeles, et al.		

---

Present: The Honorable Alicia G. Rosenberg, United States Magistrate Judge

<u>K. Lozada</u>	<u>n/a</u>	<u>None</u>
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiff	Attorneys Present for Defendants	
None	None	

**Proceedings: (In Chambers) ORDER RE: IN CAMERA DOCUMENTS**

Pursuant to the Order dated January 3, 2022, Defendant submitted to the court an electronic redacted version of the documents reviewed *in camera*. The court has reviewed the submission.

IT IS ORDERED that Defendant shall produce today, in electronic format or other format mutually agreed by counsel, the redacted version of the search warrant materials for Search Warrant NW20500854 bearing bates stamp numbers COLA1000-COLA1029. Defendant may designate these materials pursuant to the protective order.

cc: District Judge Andre Birotte Jr.

	<u>0</u>	:	<u>00</u>
Initials of Preparer	<u>kl</u>		