

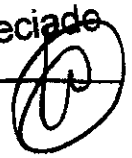
ORIGINAL

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6 Attorneys for Petitioner,
7 NATIONAL DAY LABORER ORGANIZING NETWORK.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUL 07 2009

M. Preciado


AG
JUL 07 2009

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF RIVERSIDE**

10 **NATIONAL DAY LABORER**
11 **ORGANIZING NETWORK ("NDLON")**

12 **Petitioner,**

13 **v.**

14 **RIVERSIDE POLICE DEPARTMENT;**
15 **RUSS LEACH, in his official capacity as**
16 **Chief of the Riverside Police Department; and**
17 **DOES 1-10.**

18 **Respondents.**

19) **CASE NO: RIC 530408**
20)
21) **VERIFIED PETITION FOR WRIT OF**
22) **MANDATE AND COMPLAINT FOR**
23) **DECLARATORY AND INJUNCTIVE**
24) **RELIEF PURSUANT TO THE**
25) **CALIFORNIA PUBLIC RECORDS ACT**
26)
27) **California Constitution Article I §3;**
28) **Govt. Code §6258; Cal. Code of Civil**
Proc. §1085

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INTRODUCTION

1. Petitioner National Day Laborer Organizing Network (“NDLON”) petitions this Court, pursuant to Code of Civil Procedure § 1085, Government Code § 6258 (the California Public Records Act (“CPRA”)), and Article I § 3 of the California Constitution, for a Writ of Mandate directed to Respondents Riverside Police Department (“RPD”) and Chief of Police Russ Leach (“Chief Leach”), commanding them to comply with the CPRA.

2. This case involves requests of Petitioner, NDLON, made pursuant to the CPRA for documents and records relating to Respondent RPD’s cooperation with the Department of Homeland Security, Office of Customs and Border Patrol (“CBP”).

JURISDICTION AND VENUE

3. This Court has jurisdiction under Govt. Code § 6268, Code of Civil Proc. §1085, and Article VI section 10 of the California Constitution.

4. Venue is proper in this Court: The acts and omissions complained of herein occurred in this County. Code of Civil Proc. § 393. Defendant is situated in this County. Id. § 394(a). The records in question are situated in this County. Govt. Code § 6259.

PARTIES

5. Petitioner NDLON is a national non-profit public-interest organization that works to advance the interests of day laborers. NDLON is a member of the public within the meaning of Govt. Code §§ 6252(b), (c).

6. Respondent RPD is a municipal entity as defined in the CPRA (See Cal. Govt. Code §6252(a)) with responsibility for ensuring that public documents are made available for inspection and copying in compliance with the CPRA.

7. Respondent Chief of Police Russ Leach, in his capacity as Chief of Police, is ultimately responsible for the operations of the RPD, including the RPD’s compliance with the CPRA.

8. NDLON is ignorant of the true names and capacities of respondents sued herein as DOES 1 through 10, inclusive, and therefore sues these respondents by such fictitious names. NDLON will amend this petition to allege their true names and capacities when ascertained. NDLON.is

1 informed and believes and thereon alleges that each of these fictitiously named respondents is
2 responsible in some manner for the acts and occurrences herein alleged.

3 **GENERAL ALLEGATIONS**

4 9. In January 2009, NDLOM learned of numerous officers of the RPD concentrated in the
5 area of the Riverside Home Depot where day laborers often seek work. RPD officers were
6 stopping Latino men, only, and asking for identification; some for no reason at all, others for
7 small infractions such as riding a bicycle on the sidewalk. If the person stopped could not
8 produce a driver's license or other documents proving their legal status, they were arrested. It
9 was unusual for there to be such a concentrated number of RPD officers focused on that area and
10 for them to be stopping so many men. It was highly unusual for there to be arrests based on
11 minor infractions. It was clear there was a new policing operation in progress.

12 10. On May 7, 2009, Petitioner NDLOM submitted a Public Records Act Request ("PRAR")
13 to the RPD for specific and identifiable documents and records. The PRAR sought records¹
14 specified as follows:

- 15 1. All records, documents, communications, correspondence, memoranda,
16 including but not limited to pre-operation plans, related to the "BP Alert"
17 program.
- 18 2. Any and all records, documents, communications, correspondence, memoranda
19 between the Riverside Police department, and all of its agents, and the Department
20 of Homeland Security, Office of Customs and Border Patrol for the period of
21 August 2007 until the date of this request.

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25 ¹ The PRAR defined the term "records" as "includ[ing] but is not limited to all records or
26 communications preserved in electronic or written form, including but not limited to
27 correspondence, documents, data, videotapes, audio tapes, faxes, files, e-mails, guidance,
28 guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies,
procedures, protocols, reports, rules, technical manuals, technical specifications, training
manuals, or studies." Exhibit 1.

- 1 3. Any and all records containing information regarding infractions, or state or local
2 misdemeanors, for the period from August 2007 through the date of this request,
3 including but not limited to records containing information regarding:
- 4 a. Total number of arrests for infractions or violations of local Riverside
5 ordinances from August 2007 through the date of this request:
- 6 b. Identification of individuals under paragraph (3) who were taken into
7 custody for violations, infractions or state or local misdemeanors
- 8 i. Legal basis for each arrest
- 9 ii. Location and time of arrest for each arrest
- 10 iii. Nationality of each person arrested
- 11 iv. Race of each person arrested
- 12 v. Gender of each person arrested
- 13 vi. Identify those arrested who were offered the option of promising to
14 appear at a future date pursuant to California Penal Code §
15 853.5(a)
- 16 vii. Identify those arrested who produced identification to arresting
17 officers pursuant to California Penal Code § 853.5(a)
- 18 viii. Identify those arrested who were transferred into the custody of the
19 Department of Homeland Security, Office of Customs and Border
20 Patrol
- 21 c. Identification of individuals under paragraph (3) who were cited for
22 violations of infractions or misdemeanors and were not taken into custody:
- 23 i. Identify those cited who were issued a promise to appear at a future
24 date pursuant to California Penal Code § 853.5(a)
- 25 ii. Legal basis for each citation
- 26 iii. Location and time of citation for each individual
- 27 iv. Nationality of each person cited
- 28 v. Race of each person cited

vi. Gender of each person cited

A true and correct copy of the PRAR is attached as Exhibit 1.

11. The records sought in the Petitioner NDLO's PRAR are important to furtherance of its mission of advancing the interests and improving the lives of day laborers. To further its mission, it is crucial for NDLO to stay informed of current law enforcement and immigration policies in order to assist its constituency and to meaningfully engage in the democratic process of providing input into the decisions of local government affecting the rights of day laborers.

12. On May 20, 2009, Chief Leach responded to the records request on behalf of the RPD, stating that documents responsive to the request were enclosed to the extent they exist and are not privileged. However, the only documents enclosed were a total of five pages, including a one-page report representing the number of employees in the RPD by Position, and four pages excerpted from the RPD Policy & Procedures Manual regarding arrest and detention of undocumented persons. Chief Leach did not dispute that the RPD is subject to the CPRA or that the records requested are public records. He failed to state any justification for the withholding of numerous additional documents that are unquestionably available to the public and not subject to any exemption or privilege. No such exemption or privilege was stated in the response. A true and correct copy of the RPD's response to the PRAR is attached as Exhibit 2.

13. Arrest records, and information about arrests, such as those requested in the PRAR are known to be maintained by police departments in the ordinary course of business and are required to be disclosed pursuant to the CPRA (Govt. Code §6254(f)).

14. The documents requested by NDLO are public records as defined by the CPRA (Govt. Code § 6552(e)) because they contain information relating to the conduct of the public's business by a public agency.

15. NDLO is informed and believes and thereon alleges that none of the requested public records are exempt from disclosure under the CPRA, or any other code or case authority.

16. Respondent RPD failed to respond with specific reasons for its refusal to disclose records as required by the CPRA and its response patently violated Govt. Code §6253(a) by failing to

1 disclose even segregable portions of materials that may have been exempt. *See Braun v. City of*
2 *Taft*, 154 Cal. App. 3d 332, 344 (1984).

3 17. NDLON is informed and believes and thereon alleges that access to and inspection of the
4 documents which are the subject of this petition is in furtherance of the public's interest in that
5 the public has a right under the CPRA to be informed of the actions and conduct of the RPD and
6 its officials. The public especially has the right to be informed about the handling of
7 controversial matters such as racial profiling and other policing tactics that isolate people on the
8 basis of race, ethnicity and/or national origin for separate treatment.

9 18. NDLON has no plain, speedy and adequate remedy in the ordinary course of law other
10 than the relief sought in this petition under the CPRA (Govt. Code §6258) in that there is no
11 alternative method by which NDLON can seek to compel Respondent to perform its duty of
12 allowing disclosure of the documents.

13 19. NDLON alleges on information and belief that the RPD will continue to refuse to permit
14 the public, including NDLON, to inspect or to obtain copies of the requested public records in
15 violation of the CPRA.

16 20. NDLON has incurred costs and attorneys' fees to enforce their rights under the CPRA.
17 Such fees, costs and expenses are recoverable under the CPRA (Govt. Code §6259(d)).

18 **FIRST CAUSE OF ACTION**

19 **VIOLATION OF CALIFORNIA CONSTITUTION ARTICLE I, SECTION 3(b)**

20 **Failure to Respond Properly and Provide Documents for Inspection**

21 21. Petitioner incorporates the allegations of the preceding paragraphs as though fully set
22 forth herein.

23 22. Respondent's failure to provide a proper response to Petitioner's Public Records Act.
24 Request and make public documents available for inspection violates Article I, Section 3(b) of
25 the California Constitution, providing, *inter alia*, that the people have the right of access to
26 information concerning the conduct of the people's business, and, therefore, the meetings of
27 public bodies and the writings of public officials and agencies shall be open to public scrutiny.

SECOND CAUSE OF ACTION
VIOLATION OF GOV. CODE §6250, et seq.
California Public Records Act

23. Petitioner incorporates the allegations of the preceding paragraphs as though fully set forth herein.

24. Petitioner is a member of the public and is beneficially interested in the outcome of these proceedings; it has a clear, present and substantial right to the relief sought herein. Petitioner has no plain, speedy and adequate remedy at law other than that sought herein.

25. A member of the public who believes that public records are being improperly withheld may bring suit for mandate to enforce the PRA. Govt. Code §§ 6258, 6259(a). If the Court finds that the public official's decision to refuse disclosure is not justified, it shall order the public official to make the records public. *Id.* § 6259(b).

26. Respondent's failure to provide a proper response to Petitioner's Public Records Act Request violates the California Public Records Act, which provides that "[p]ublic records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided." Gov. Code §6253(a).

27. The RPD has a legal obligation to make all public records available for inspection by any member of the public upon request. Respondent has made no claim that any of the documents sought are exempted from disclosure under any of the statutory grounds for withholding documents.

A WRIT OF MANDATE FOR DECLARATORY AND INJUNCTIVE RELIEF
IS APPROPRIATE

28. Respondents have a clear, present, ministerial duty to comply with the California Constitution, Gov. Code §6250 et seq..

29. Petitioner has performed all conditions precedent to filing this petition. There are no administrative exhaustion requirements under Gov. Code §§6250, et seq.

1 30. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law other
2 than the relief sought in this petition.

3 **WHEREFORE, PETITIONER PRAYS AS FOLLOWS:**

4 1. That the court issue a peremptory writ of mandate directing Respondents to make all
5 requested documents available for inspection within 10 days of this Court's order directing that
6 they do so; or

7 2. In the alternative, that the court issue an order to show cause why the court should not
8 issue such writ and thereafter issue a peremptory writ compelling Respondents to perform their
9 public duty as set forth above;

10 3. For a declaration pursuant to Gov. Code §6259 that Respondents have violated
11 Petitioner's rights under the California Constitution Article I, sec. 3, and Gov. Code §§6250, *et*
12 *seq.*, by failing to produce the requested documents.

13 4. For costs and attorneys' fees pursuant to Gov. Code §6259(d).

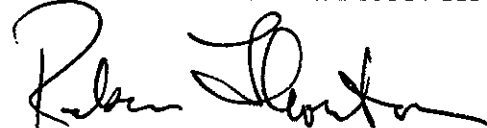
14 5. For such other relief as this Court deems just and proper.

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16 Dated: July 6, 2009

Respectfully submitted,

LAW OFFICE OF REBECCA F. THORNTON



By: REBECCA F. THORNTON
Attorneys for Petitioner NDLO

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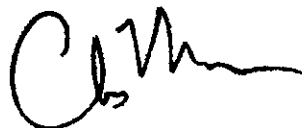
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VERIFICATION

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I, CHRIS NEWMAN, am the Legal Programs Director for NDLO, the Petitioner in this action, and I am authorized to make this Verification on its behalf. I have read the foregoing Petition for Writ of Mandate and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I also believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 6 day of July, 2009 at Los Angeles, California.



CHRIS NEWMAN

ORIGINAL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
REBECCA F. THORNTON, SBN 231128
LAW OFFICE OF REBECCA F. THORNTON
429 SANTA MONICA BLVD., SUITE 550
SANTA MONICA, CA 90401
 TELEPHONE NO.: (310) 393-3055 FAX NO.: (866) 499-5162
 ATTORNEY FOR (Name): **Plaintiff, National Day Laborer Organizing Network**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
 STREET ADDRESS: **4050 MAIN STREET**
 MAILING ADDRESS: **P.O. BOX 431**
 CITY AND ZIP CODE: **RIVERSIDE, CA 92501**
 BRANCH NAME: **RIVERSIDE HISTORIC COURTHOUSE**

CASE NAME:
National Day Laborer Organizing Network v. Riverside Police Dept.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **530408**
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other P/IPD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/IPD/W/D (23) <p>Non-P/IPD/W/D (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practices (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/IPD/W/D tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): **2**

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **July 7, 2009**
REBECCA F. THORNTON
 (TYPE OR PRINT NAME)

[Signature]
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Superior Court of California
COUNTY OF RIVERSIDE
4050 Main Street - 2nd Floor
Riverside, CA 92501
www.riverside.courts.ca.gov

STATUS HEARING

LAW OFFICES OF REBECCA F THORNTON
429 SANTA MONICA BOULEVARD
STE 550
SANTA MONICA CA 90401

PLAINTIFF: NATIONAL DAY LABORER ORGANIZING NETWORK
VS.
DEFENDANT: RIVERSIDE POLICE DEPARTMENT

Case Number: RIC530408

You are hereby notified a Status Hearing has been set for 07/13/09,
at 8:30, in Department 10, to inform the court of the
progress toward disposition. If judgment or dismissal is entered
before then, there need be no appearance.

CLERK'S CERTIFICATE OF MAILING

I, Clerk of the above entitled court, do hereby certify I am not a
party to the within action or proceeding; that on the date below
indicated, I served a copy of the attached NOTICE by depositing
said copy enclosed in a sealed envelope with postage thereon fully
prepaid in the mail at Riverside, California, addressed as indicated
above.

CLERK OF THE COURT

Dated: 07/07/09

By: 
Deputy