S292529

IN THE SUPREME COURT OF CALIFORNIA

ARTURO GUTIERREZ *Petitioner*, vs. THE CALIFORNIA DEPARTMENT OF JUSTICE *Respondent*.	Case No. Court of Appeal Case No. B347433 Superior Court Case No. 25STCV07287 Petition for a Peremptory Writ of Mandamus, in the First Instance. Code of Civil Procedure § 1088, Government Code § 7923.000

PETITION FOR A PEREMPTORY WRIT OF MANDAMUS IN THE FIRST INSTANCE

Honorable Holly Fujie,
Judge of the Superior Court of Los Angeles County

ORIGINAL PROCEEDING

Rules of Court, Rule 8.486(a)(1)

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Petitioner appearing *in propria persona*

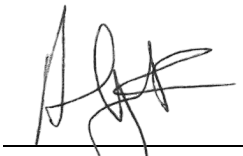
DISCLOSURE STATEMENT

As is apparent from the cover, **Justice Evans** should be made aware that although the instant controversy began in 2024, it spans a period from 1984 to 2024 and concerns the Department's present withholding of public records they maintain, relating to:

- Data — Non-Individual Specific
- Statistics — Race-Based:
  - Prosecutions
  - Imprisonment
- Documentation of Gross Racial Abuses Targeting Black Californians

If the prior employment was unrelated to records, then Petitioner sees no cause for recusal. Moreover, the breadth of the underlying issue is what actually matters here.

Otherwise, Petitioner is aware of no interested entities or persons that must be listed as required by California Rules of Court, rule 8.208.



Arturo Gutierrez
Petitioner

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TO THE CHIEF JUSTICE AND
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INTRODUCTION

Upon receiving Respondent's extension notice—invoking "consult with multiple components"—proof was provided as to why the records were requested. Five months later, the same notifier was the sole signatory on the non-responsive denial letter—issued 27-days after the lawsuit was filed.

The right to relief under the Public Records Act (PRA) is clear. What makes this case urgent is not merely that the records must be disclosed, but *why* their release is being blocked. That "why" moves this matter beyond just a PRA procedural issue and into that narrow territory compelling this Court's original jurisdiction.

Three cases—never overruled—still stand in California as valid precedent: non-White races are inferior species barred from testifying against Whites, and California tolerates slavery. The controlling Supreme Court precedent holds those decisions to be incidents of slavery. This case presents direct legal cause to finally overrule those decisions.

Petitioner seeks this Court decision as necessary to end the ongoing constitutional animus and resulting widespread harm by compelling the Department of Justice to produce the withheld public record information through issuance of a peremptory writ in the first instance.

QUESTIONS PRESENTED FOR THIS COURT'S DETERMINATION

Along with the underlying issues, this case presents two issues of statewide importance requiring clarification:

1. **Mandamus Procedure.**
   When statutory schemes designate mandate as the remedy, do the general mandamus statutes control except where the scheme provides an alternate or narrower procedure?

2. **Purpose of the Public Records Act.**
   May an agency refuse to comply with the Public Records Act because compliance would expose ongoing systemic constitutional violations, or does such a refusal violate the separation of powers, as exposing such violations is the very purpose of the Act?

GROUNDS TO HEAR THE CASE

It appears no California court has ever addressed Question Two, and the above questions fall squarely within this Court's role in settling important questions of law.

While these questions provide a focused path for this Court's opinion, there is much more at stake. The constitutional violations Petitioner has been made to suffer stem from far graver constitutional implications — the records expose facts of profound public importance because they **reveal systemic constitutional violations currently being concealed**.

Regarding an issue that is absolutely barred by the federal constitution.

VERIFIED PETITION

By this verified petition, it is shown:

THE PARTIES

1. Petitioner, Arturo Gutierrez, is a resident of Ventura County, California.

2. Respondent is the California Department of Justice ("DOJ"), a public agency within the meaning of the PRA.

THE REQUESTED PUBLIC RECORDS

3. On November 4, 2024, Petitioner submitted a plainly worded PRA request to the DOJ. (1Ex.1-2,pp.51-52)

4. The DOJ responded on November 14, 2024, desiring "to consult with multiple components of the Department with substantial interest in the records requested," and stating: "this office is extending the date for responding to your request to December 2, 2024." (1Ex.1-4,p.57)

5. Petitioner replied the same evening, explaining the constitutional gravity behind the request. (1Ex.1-6,pp.62-68) Upon learning its purpose, the DOJ severed all communications.

6. The DOJ failed to respond by the promised date of December 2, 2024. Petitioner followed up on December 10, 2024, and January 6, 2025, the DOJ did not reply. (1Exs.1-7; 1-8,pp.70-73)

7. Petitioner had been investigating racial disparities in incarceration practices. Believing the Department of Justice would share alarm at the findings, Petitioner arranged for his father—a retired Superior Court Judge—to sign and transmit the responsive letter of Nov. 14th. (1Ex.1-6,p.68)

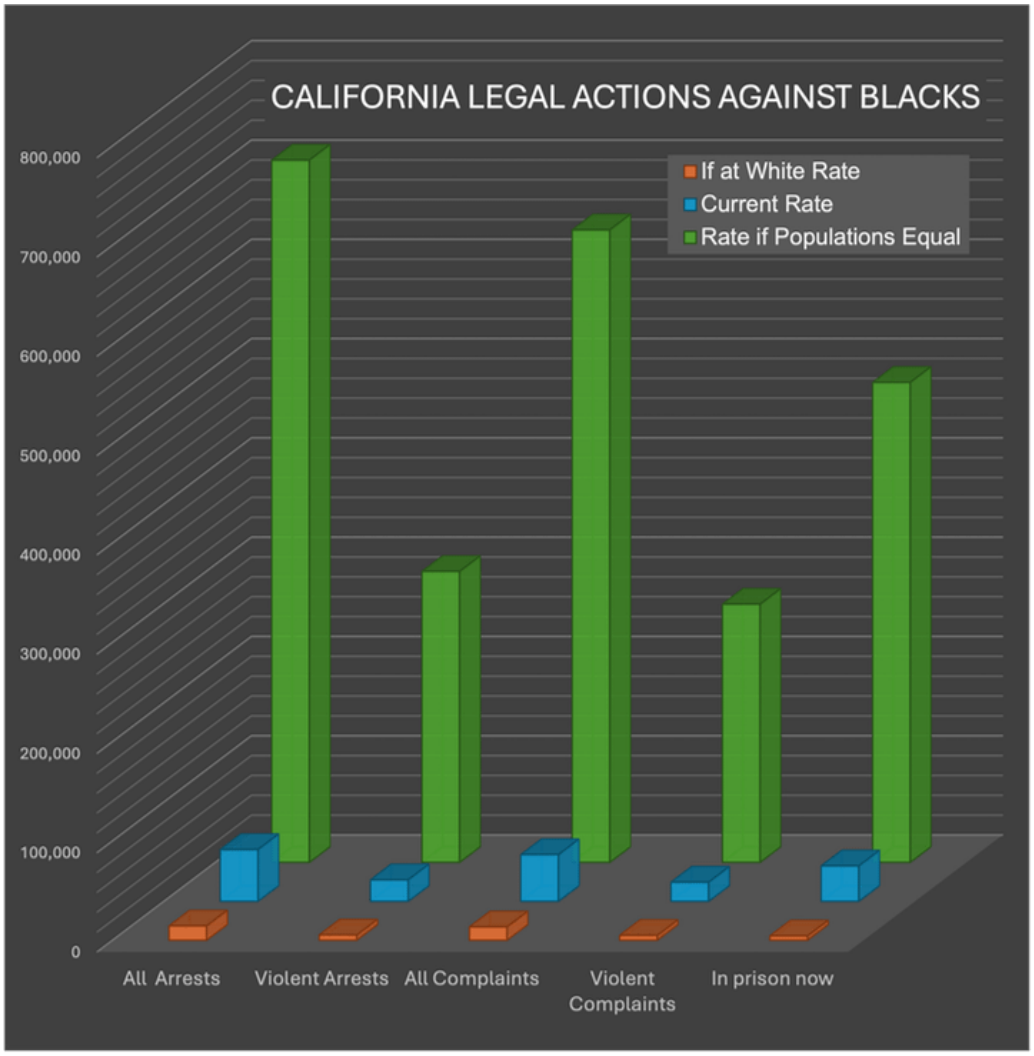
8. The letter's conclusion conveyed the matter most plainly:

> The **purpose** of this request is **to end the incidents of slavery** that are in effect in California by imprisoning Blacks at a grossly disproportionate rate.
>
> "Severer punishments for crimes were imposed on the slave than on free persons guilty of the same offences."
>
> **483,285 Blacks in prison** vs. 56,659 Whites in prison right now. Yet if the rate of White incarceration was applied to the Blacks, then the 35,532 **Blacks in prison should be 4,161**. (1Ex.1-6,p.68) (Full math laid out in detail in Sec. VIII. B.)

9. The above numbers were calculated using the common denominator method as a means of comparing imperfect data. First by making the Black population equal to the White population and applying the rates of legal actions taken against Blacks when equal in population; and then applying the White rate of legal action to the current Black rate.

10. This was the result of the very math we were all taught in school —the numbers were transformed into a bar graph.

11. The construct is the dangerous thought fully formed that caused the need for this petition before the Court.

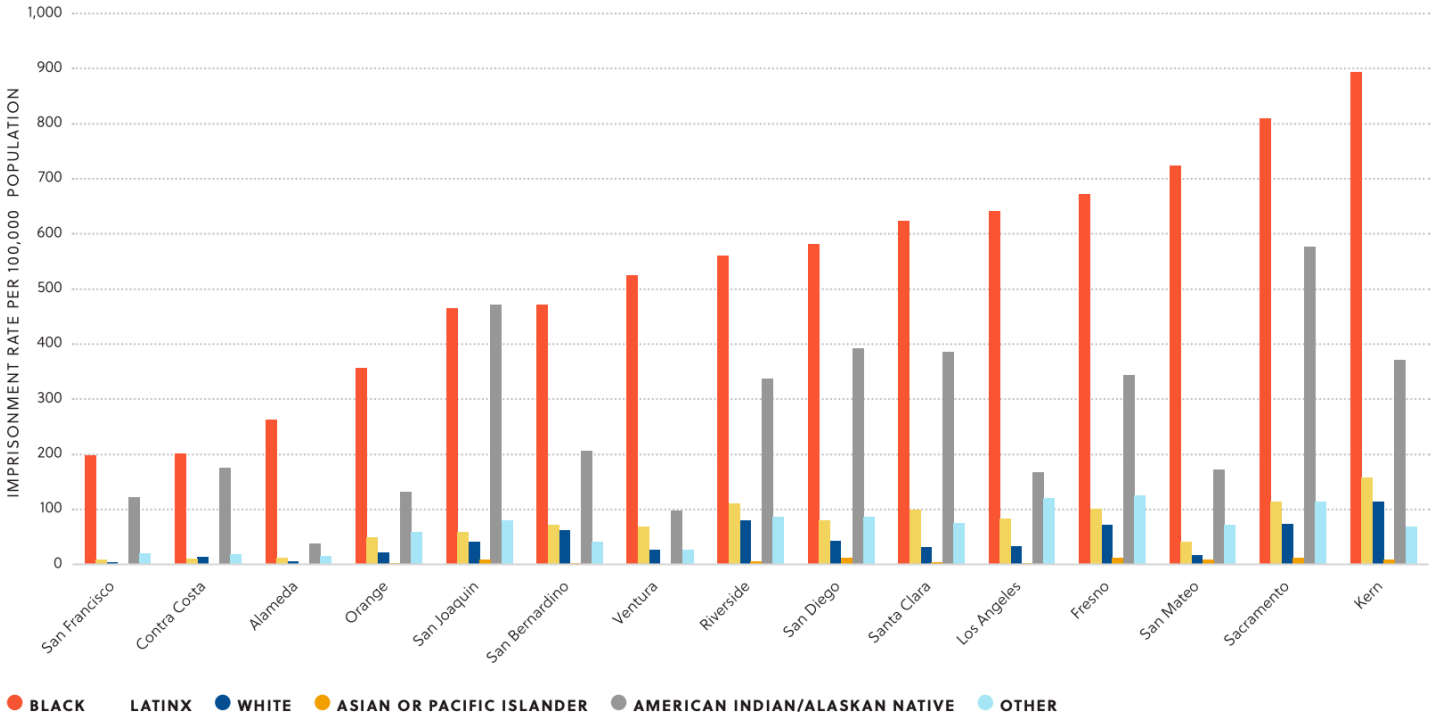


(1Ex.1,p.11)

12. "The long existence of African slavery in this country gave us very distinct notions of what it was, and what were its necessary incidents. … Severer punishments for crimes were imposed on the slave than on free persons guilty of the same offences." These are "the necessary incidents of slavery, constituting its substance and visible form;" violating "the essential distinction between freedom and slavery." (*Civil Rights Cases*, (1883) 109 U.S. 3, 22)

13. The California Commission to Revise the Penal Code, p.45, identified the issue in 2021 and recommended three strikes repeal, though *lacking* the correct legal framing and thus unaware of the true significance under the Thirteenth Amendment.

FIGURE 22: INCARCERATION RATES FOR PEOPLE SENTENCED UNDER THE THREE STRIKES LAW — 15 LARGEST COUNTIES



Source: Analysis of data provided by CDCR Office of Research and includes both people whose sentence was doubled by a prior strike and people sentenced as Third Strikers. Population data is ACS 2019.

14. "Severer punishments for crimes were imposed on the slave than on free persons guilty of the same offences."

15. FBI national statistics reflect similarly high rates for Black and Native American populations, but California's disparity far exceeds national figures.

16. Commencing with AB 3121 (2020), the DOJ assisted researching and drafting *The California Reparations Report* and completed it on June 29, 2023.

17. In Chapter 40 Federal Civil Rights Cases, at p. 1052, the DOJ summarized *the Civil Rights Cases* by claiming that "after the decision", the Supreme Court "**adopted a highly restrictive interpretation of the 'badges and incidents of slavery**,'" citing *Plessy v. Ferguson* (1896) 163 U.S. 537, 542 — a case that **never once used the term "incident."**

18. The actual standard, that "severer punishments for crimes were imposed on the slave than on free persons guilty of the same offences," directly applies to modern California. Respondent concealed the law and is actively concealing the facts that prove California is presently violating the Thirteenth Amendment.

19. Effective 1/1/2025: "The State of California affirms its role in **protecting** the descendants of enslaved people and **all Black Californians**… and acknowledges and affirms its responsibility **to end ongoing harm**" (Gov. Code §8301.2(b)) from "slavery and the enduring legacy of ***ongoing*** badges and ***incidents*** from which the systemic structures of discrimination have come to exist." (*Id*., (a))

20. The historical legal standard these facts establish, provide the essential context for understanding the procedural events of this case that followed.

STATEMENT OF THE CASE

21. On March 14, 2025, Petitioner filed a verified petition for writ of mandate in Los Angeles Superior Court. (1Ex.1,p.6) The trial court took no substantive action, scheduling only a case management conference for August 1, 2025. (2Ex.23,p.413)

22. On April 9, 2025—five months late—Respondent issued a denial letter signed solely by the original extension notifier. (1Ex.4,pp.132-35) This denial was legally deficient: it was non-responsive, not grounded in law, failed to list all persons responsible, thus violating Gov. Code §7922.540.

23. Respondent filed an unverified answer on April 11, 2025, it did not raise the new matter of its five-month late denial. (1Ex.5,p.148)

24. With nothing put in issue—the matter stands uncontested as a matter of law—Petitioner moved for peremptory writ issuance and requested an in chambers ruling. (1Ex.6,p.151-201) The trial court took no action. The motion stands uncontested.

25. Petitioner then filed a motion to shorten time to place the matter on calendar for a ruling on said motion. (1Ex.9,pp.231-243) The DOJ opposed, asserting an intent to seek reclassification, without filing any such motion—and the case standing uncontested. (1Ex.11,pp.269-274)

26. Though present, Judge Fujie denied the motion to shorten time and took the matter off calendar, without a hearing. (2Ex.16,p.343) Saying nothing about Petitioner's motion for peremptory writ. Instead declared the motion to shorten time

should be filed in another department, in violation of Local Rule 3.3(i) (case assignment is for all purposes, only the presiding judge may reassign) and CCP §1006 (transfer permitted if assigned judge unavailable).

27. On July 7, 2025, Petitioner filed a petition for writ of mandate in the Second Appellate District, *Arturo Gutierrez vs. The California Department of Justice and the Superior Court of Los Angeles County*, case no. B347433. (2Ex.21,p.362)

28. The petition repeatedly identified the DOJ as the primary Respondent to be ordered to comply. Citing Gov. Code §7923.000 ("Any person may institute a proceeding… for a writ of mandate, in *any* court of competent jurisdiction, to enforce that person's right") as legal basis for an original filing. Gov. Code §7923.005 ("In a proceeding under Section 7923.000, the court shall set the times for hearings and responsive pleadings with the object of securing a decision as to the matters **at issue** at the earliest possible time.")

29. ¶3. "Named in a nominal capacity, the *other* respondent is the Superior Court of Los Angeles County". (2Ex.21,p.373)

30. ¶74. "Naming the trial court as the sole respondent would serve to further delay relief and thus reward the DOJ's very designed intention. By naming the DOJ as a respondent as well, that opens up options for this Court to deliver justice expeditiously". (2Ex.21,p.390)

31. "Part I. As to the Department of Justice, it is respectfully **prayed** that:" "Part II. As to the Superior Court of Los Angeles, it is respectfully **prayed** that:" (2Ex.21,pp.390-91)

32. On July 10, 2025, the Court of Appeal ordered: "The petition is denied. (See *Los Angeles Gay & Lesbian Center v. Superior Court* (2011) 194 Cal.App.4th 288, 299–300; *Whitney's at the Beach v. Superior Court* (1970) 3 Cal.App.3d 258, 266.)" (2Ex.22,p.411)

33. The passages communicated: "Conditions prerequisite to the [*300] issuance of a writ are a showing there is no adequate remedy at law (in this case, no right to an immediate appeal) and the petitioner will suffer an irreparable injury if the writ is not granted." (*Gay & Lesbian Center, supra.*) "If there is no such triable issue and the court errs in denying the motion, the ruling is an error in law and automatically is an abuse of discretion. Under these circumstances the more liberal use of the extraordinary writs may be proper." (*Whitney's, supra.*)

34. By *sua sponte* disjoining the DOJ as respondent, demoting it to a real party in interest, disregarding the pleadings, and summarily denying while disregarding Gov. Code §§7923.000, 7923.005, rendering impossible a rehearing to solicit a ruling as to the target DOJ, the appellate court thus foreclosed review under Rule 8.500.

35. Moreover, because this Court ruled there is "a clear legislative intent that the determination of the obligation to disclose records requested from a public agency be made

expeditiously" (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 427) pursuing direct review would prejudice Petitioner as it would reward the DOJ by allowing a prolonged delay.

36. That aspect combined with an upcoming case management conference set for Aug. 1, 2025 left Petitioner in an untenable position, weighing the evils to endure, the scales were tipped in favor of being able to aver the result of the trial court's conference.

37. On July 28, 2025, Judge Fujie advanced the hearing and despite no disputed issue before it, set a trial date for October 26, 2026—**14 months out**—without identifying any triable issue as required by CCP §1090 and in contravention of "the object of securing a decision as to the **matters at issue** at the ***earliest possible time.***" (Gov. Code §7923.005) (2Ex.26,p.447)

38. Normally, a litigant is precluded from submitting a renewed petition to the appellate court absent new incidents at the trial court level. (*Hagan v. Superior Court* (1962) 57 Cal.2d 767.) But here, returning with a new issue that *Whitney's* directly applies to—where "no such triable issue" exists and denial "is an error in law and automatically is an abuse of discretion" (*Whitney's, supra*)—falls within the principle that "it appears that the [second] demand would have been futile." (*Phelan v. Superior Court* (1950) 35 Cal.2d 363, 372.) Such circumstances compel this Court's intervention.

PROCEDURAL RED FLAG

39. Respondent is the same party in both this petition and the trial set without any issue pending. However, this petition presents differing issues. Where the issues differ, no plea in abatement will permit dilatory justice, *Perry v. Jordan* (1949) 34 Cal.2d 87, 90.

40. Here, Petitioner seeks not only enforcement of the Public Records Act, but also relief from First Amendment retaliation, as well as protection under the Fourteenth Amendment's due process and equal protection clauses.

41. The refusal to abide state procedure with aim of denying a right is a federal due process violation, *Castle Rock v. Gonzales* (2005) 545 U.S. 748, 756-57.

42. In June, the DOJ transmitted a malware-embedded Word document under the guise of a stipulation. Enabling live surveillance and interference with Petitioner's litigation. This conduct is ongoing and constitutes both state and federal felonies; 18 U.S.C. §1030 (transmitting malicious code or software to intentionally cause damage or gain unauthorized access to another's system), Penal Code §502 (knowingly accessing or causing access to a computer, system, or data without permission.) (See accompanying Declaration for full technical details, separated not to undermine the harm, but to keep focus on where it is needed).

43. Allowing such criminal victimization to persist is the precise type of urgent harm mandamus is intended to address.

44. The lower courts are effectively unable to act given the gravity of the matter. This Court is the only remaining forum with the authority, resolve, and independence to protect Petitioner—and any citizen—when the agency headed by "the chief law officer of the State" (Cal. Const., art. V §13) is engaging in criminal conduct—at this very moment—that deprives constitutional protections.

45. "The Attorney General is head of the Department of Justice." (Gov. Code, §12510)

46. Respondent defended this misconduct by declaring it did not *attempt* to send malicious code. Which is true, attempt is the failure to complete a crime. (Pen. Code §§21a, 664) Respondent successfully sent malicious code, a fact it does not deny.

47. "The Department did not and has not ***attempted* to send** Petitioner malware." (1Ex.11,p.271:23)

48. "In the application, Petitioner alleged that our office ***attempted* to send** him malware through transmission of the stipulation for reclassification." (1Ex.12,p.278:13-14)

49. Petitioner is not alleging that Respondent tried to commit a crime. Rather, he has proven that they *did*.

50. "'And **even if** Petitioner's system **were infected with malware**, it is not clear how an expedited briefing and hearing schedule—for a motion with no scheduled hearing date—would ***prevent*** any alleged ***irreparable*** harm." (1Ex.11,p.272:24-27)

51. DOJ email: "I am unavailable on June 25, 2025 at 8:30 am. Based on my unavailability, I would ask that you set it to a

different day." (2Ex.12,p.311) Affidavit describing that email: "I am unavailable on June 25, 2025, due to a *prescheduled medical appointment that conflicts* with that time." (1Ex.12,p.278:17-18)

52. It is hard to imagine a judge that would find the actual bald statement as good cause, and hard to imagine an opponent that would not accommodate the claimed statement. The sworn statement does not match the proof offered for it.

THE DOJ'S ONLY APPARENT CONCERN IN THIS CASE IS RECLASSIFICATION

53. The DOJ has persisted in demanding that this matter be reclassified to a limited civil action as "the proper *resolution* here" (2Ex.19p.353)

54. Petitioner requested a sanction sufficient to ensure the DOJ would provide truthful and accurate records. Given the DOJ's ongoing obfuscation, serious doubts remain whether it would honestly comply with a writ.

55. Because the matter involves the confinement of 31,000 people in violation of the Thirteenth Amendment, the annual cost of incarcerating them—contrary to the will of the people of California—was presented as a basis to encourage obedience.

56. If compliance were ever the DOJ's aim, we would not be here. Obeying a judicial order and litigating the merits should be simple. Yet once a sanction proportionate to the harm was proposed, the DOJ became singularly fixated on reclassification—an outcome that would shrink a $4 billion sanction for defying the writ (1Ex.6,p.200:7) into a token $35,000.

57. If the DOJ intends to honor a judicial order, then any amount of money would be of no concern.

58. The merits of the DOJ's motion speak plainly on the matter: hearing set for January 22, 2026, because "On March 14, 2025, Petitioner filed a 'Petition for Writ of Mandamus and Statutory Mandate'" (2Ex.27p.452:8-10) Therefore the DOJ "will and hereby does move for an order to reclassify this unlimited civil case to a Petition for Writ of Mandate." (*Id.*,p.451:5-6) "The Legislature has been clear in noting that such actions are to be filed as petition for writ of mandate (Gov. Code, § 7923.000)" (*id.*,p.452:21-22) "Pursuant to Government Code section 7923.000, actions for writ of mandate to enforce the PRA—such as this matter—are to be filed in a 'court of competent jurisdiction.' This Court's Writ Department is the proper court for this matter." (*Id.*,p.451:9-11)

59. The DOJ is either filing frivolous claims or is unaware of the nature of a court. "The division into departments is purely imaginary, and for the conveniences of business and of designation. Transferring a cause for trial or disposition from one of those departments to another does not effect a change or transfer of the jurisdiction of that cause; that remains at all times in the court as a single entity." (*White v. Superior Court* (1895) 110 Cal. 60, 67)

60. Finally, the DOJ expressly admitted the motion was untimely, citing to CCP§403.040(a). (2Ex.27,p.454:12-14) Yet entirely failed to comply at all with the second mandatory prong, "moving party shows good cause for not seeking reclassification

earlier." (CCP§403.040(b)) Nor its other prong, must be "incorrectly classified", which a PRA case can never be limited civil, Gov. Code §7923.500(a) cites CCP "Section 904.1" and "appeal, other than in a limited civil case" (CCP§904.1(a)) "is to the court of appeal." (*Ibid.*))

61. The DOJ asked the trial court to rule on its untimely and unsupported motion to reclassify at the case management conference, as noticed in the order of matters that may be considered "an order reclassifying the case" (2Ex.23,p.413). The court did not, instead allowed the Jan. 2026 hearing to remain and defied "to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code,§ 68600 et seq.)" (*Id.*) when setting the uncontested case for trial, fourteen months out. No findings were made to support that length of time. Nor could questions be asked, because the trial court advanced and vacated the matter. (2Ex.26,p.447).

ORIGINAL JURISDICTION IS PROPERLY INVOKED AS THE ORDINARY COURSE OF MANDAMUS RELIEF IS BEING WITHHELD

62. Petitioner has expeditiously pursued every available avenue of relief before presenting this cause (CCP§1086)—always destined for this Court to hear. The Department of Justice and the courts of California are resisting adherence to law and procedure. The turbulent legal landscape is caused solely by the driving force of this case: "The purpose of this request is to end the incidents of slavery that are in effect in California by imprisoning Blacks at a grossly disproportionate rate." (1Ex.1-7,p.68).

63. "This division does not allow limitations on access to a public record *based upon the* ***purpose*** for which the record is being requested" (Gov. Code §7921.300)

64. Petitioner has endured additional injury from the DOJ's efforts to block this message from reaching the Court.

65. The facts meet the definition written by history, and the conclusion is what the record compels. The Legislature has already declared this history to require "a formal apology on behalf of the people of California for the perpetration of gross human rights violations and crimes against humanity on African slaves and their descendants, and how California laws and policies that *continue* to *disproportionately* and negatively affect African Americans as a group and *perpetuate* the **lingering** material and psychosocial effects of **slavery** can be **eliminated**." (Gov. Code §8301.1(a)(1).)

66. That declaration compels corrective action—beginning with production of the data. All involved understand where that first step will lead, yet Petitioner stands alone against an agency of considerable power.

67. The charge requires intervention by the authority with resolve to act when lower courts have failed to order the healing process to begin, after California "affirm[ed] its responsibility to end *ongoing* harm." (*Id*., §8301.2(b).)

68. When the Legislature required the State's formal apology for slavery be preserved "in perpetuity" under the Great Seal of California, bearing the signatures of, *inter alia*, the Chief Justice of California, it affirmed that breaking away from past

bad behavior starts with leadership. "The State of California commits to restore and repair affected peoples with ***actions*** beyond this apology." (*Id.*, §§8301.4; 8301.2(b).)

69. Even if those words are considered directory, the Thirteenth Amendment makes this case mandatory. "Actions" begin with ordering production of the withheld data—because without that first step, the State's apology remains mere insincere words on paper. This Court has the resolve and independence necessary to compel that process to begin.

70. The reason this Court was always correct is fully supported by facts.

71. From the letter of Nov. 14, 2024 quoted above in ¶8, the conclusion was prefaced with:

72. "It is hoped that when consulting 'with multiple components of the Department with substantial interest in the records requested', they consider the gravity and weight of 31,000 slaves that have a substantial federal interest in being subject to like punishment, and to no other. 42 U.S.C. § 1981(a)

73. "Mr. Justice Douglas made an immensely profound point: 'The true curse of slavery is not what it did to the black man, but what it has done to the white man. For the existence of the institution produced the notion that the white man was of superior character, intelligence, and morality.' (*Jones v. Mayer Co.* (1968) 392 U.S. 409, 445, Douglas, J., concurring.)" (1Ex.1-7,p.68).

74. The injustice suffered at the hands of the Department of Justice for petitioning for grievances and seeking

to reveal the truth is injurious. Yet this pales in comparison to the centuries of "the perpetration of gross human rights violations and crimes against humanity on African slaves and their descendants." (Gov. Code §8301.1(a)(1))

75. Petitioner presents the true state of the Republic of California. The facts are now fully before the Court for judgment in accordance with the law.

76. This Court's jurisdiction is properly invoked, presenting issues of unusual importance necessitating immediate relief. The facts are not in dispute. Peremptory issuance in the first instance is proper.

PRAYER

WHEREFORE, Petitioner has presented a petition for writ of mandate in proper form, correctly invoking this Court's jurisdiction, and stands in need of the Court's protection. Therefore, it is respectfully prayed that:

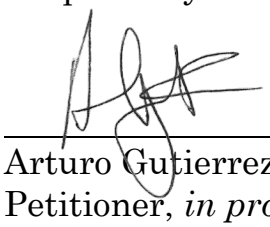
1. This Court solicit opposition and then "[i]ssue an order or decision calling for issuance of the" peremptory writ of mandate in the first instance, (*Palma v. U. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 176) directing and compelling the Department of Justice to provide true, accurate, and complete records to Petitioner as prayed (1Ex.1,pp.19-20), with sanctions as requested for non-compliance (1Ex.6,p.200), and to cease its litigation sabotage and make Petitioner whole; or
2. Issue an alternative writ, without first requesting the filing of opposition, directing and compelling the Department of

Justice to act in the manner set forth above in ¶ 1 or, in the alternative, to show cause before the Court, on a date certain as determined by the Court, justifying its refusal to afford the relief as prayed for (Code Civ. Proc., § 1087), then issue the peremptory writ commanding the Department of Justice to act in the manner set forth above in ¶ 1; or

3. Directly issue the order to show cause to prevent this matter from becoming moot, so that the Court may issue an opinion addressing the issues raised herein that are of importance to the profession and to the lower courts; and
4. Award costs and fees (Gov. Code §7923.115), and
5. For such other and further relief as the Court deems just and proper, because the law is fulfilled only when the maxim holds true Civ. Code, § 3548:
   "The law has been obeyed."

It is so prayed.

Respectfully submitted,



Aug. 19, 2025

Arturo Gutierrez
Petitioner, *in propria persona*

VERIFICATION

Arturo Gutierrez, declares as follows:

1. I am the petitioner in the underlying action and in the present proceeding and make this verification because the facts contained in the foregoing are within my personal knowledge.

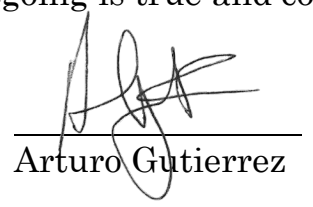
2. I have read the foregoing petition and the exhibits attached hereto and lodged with this Court and know the representations as to the contents thereof to be true based upon my personal experience as the petitioner.

3. As to those matters that are not within my personal knowledge, these are asserted on information or belief and as to those matters I believe them to be true.

4. Each exhibit offered in support of the petition, is a true and correct copy of the original and is what it claims to be; some highlight may have been added to various exhibits but have not materially altered the contents otherwise. Caveats: 1) when applying Bates Stamps, it appears some shift occurred more notably on some pages than others; 2) the exhibits to Ex.27 were omitted as duplicates to exhibits to Ex.12 & Ex.16; 3) the exhibits to Ex.21 were placed in front of it to maintain chronology.

5. The exhibits and concurrently filed declaration are incorporated by reference as if fully set forth herein.

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



Arturo Gutierrez

Aug. 19, 2025

MEMORANDUM OF LAW

This Memorandum sets forth the legal grounds for this Court's exercise of original jurisdiction and the relief sought. The issues presented involve urgent matters of statewide importance: (1) enforcing the PRA against the agency headed by the State's chief law enforcement officer; (2) ending ongoing constitutional violations; and (3) correcting historical precedent that perpetuates racial subjugation.

Peremptory issuance in the first instance is proper as all petition facts regarding the Public Records Request are uncontested. The DOJ forfeited any defense by failing to issue a denial letter for five months, then forfeited again by filing an unverified answer.

The DOJ's only focus is challenging the courtroom assignment—yet admits it failed to move timely under CCP §403.040(a) or challenge under *id*., §170.6. Its delays are intentional, not in good faith.

The trial court is willfully withholding relief that is lawfully due. Setting an uncontested matter for trial fourteen months out is "an error in law and automatically… an abuse of discretion." (*Whitney's, supra*). There is no lawful reason for the courts to impose such delays.

The issue is simple, but the *why*—institutional reluctance to confront systemic harm—prevents due process. Lower courts cannot simply look away. That must end. The time is now to dismantle the remaining vestiges of slavery's incidents. "Discrimination on the basis of race or color is contrary to the

public policy of the United States and of this state." (*Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463, 471.)

Because of the "definite national policy against discrimination" (*ibid.*) the "State of California affirms its role in **protecting** the descendants of enslaved people and **all Black Californians**… and affirms its *responsibility* **to end ongoing harm**" (Gov. Code §8301.2(b)).[1]

I. STANDARD OF REVIEW

This proceeding presents pure questions of law about (1) the California Public Records Act (PRA) and (2) its procedural relation to mandamus.

"Mandamus… is the traditional remedy for the failure of a public official to perform a legal duty." (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 442.)

"Since the issue involves the application of the CPRA to a given set of facts, it is a question of law subject to de novo appellate review." (*Associated Chino Teachers v. Chino Valley Unified School Dist.* (2018) 30 Cal.App.5th 530, 536.)

Questions of statutory construction under the PRA are reviewed de novo (*Gascón v. Logan* (2023) 94 Cal.App.5th 352, 366).

"[A] trial court abuses its discretion when factual findings critical to its decision are not supported by substantial evidence." (*Sukumar v. City of San Diego* (2017) 14 Cal.App.5th 451, 464.)

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[1] All statutes herein referred to are to the Government Code, unless noted otherwise.

II. FIRST IT IS NECESSARY TO ADDRESS THAT HISPANIC IS PART OF THE WHITE RACE UNDER CALIFORNIA LAW

Respondent's classification scheme obscures racial disparities by counting Hispanics separately from Whites—(1Ex.1,pp.39-40) contrary to California's own constitutional and legal history.

California's first Constitution was explicit. Article II, Section 1 (1849) granted suffrage to "every white male citizen of the United States, and every white male citizen of Mexico…."

Debates from that convention confirm the intended meaning:

"We do not debar the Spanish, or the French, or the Italians from voting by the use of this word. They are darker than the Anglo-Saxon race, but they are white men. [Advocating for] 'every white male citizen,'" (Debates on Constitutional Convention of 1849, p. 72, ¶ 2.) (1Ex.1,p.38)

Even *People v. Hall* (1854) acknowledged upon "examination of the constitutional debates, it will be found… to exclude all inferior races."

Nearly a century later, *Perez v. Sharp* (1948) 32 Cal.2d 711 struck down California's anti-miscegenation law when Petitioner Andrea Perez, a Hispanic woman, was legally the "white person" seeking to marry "a Negro." Respondent defended the law as a safeguard to "prevent the Caucasian race from being contaminated by races whose members are by nature physically and mentally inferior to Caucasians." (*Id.*, at 722.)

Confusion began with the Census in 1930, introducing "Mexican" as a racial category, replacing the prior classification of Mexicans as White. The label was removed, then reintroduced in 1970. This confused national origin with race. Hispanic is not a race—it is an ethnicity encompassing all races.

If biological terms were honest, the descriptors would be "melanin-rich" and "melanin-depleted." Yet, history shows the melanin-depleted White race would never accept the lesser name.

III. ORIGINAL JURISDICTION IS WARRANTED HERE AND NO PROCEDURAL BAR PRECLUDES IT

A. THE INSTANT CASE QUALIFIES FOR THIS COURT TO HEAR IT AS AN ORIGINAL PROCEEDING

This Court has long exercised original jurisdiction in cases of "public importance requiring prompt resolution." (*California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 580) "Mandamus is also appropriate for challenging … official acts." (*Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565, 570, fn. 2)

Both decisions relied on *San Francisco Unified Sch. Dist. v. Johnson* (1971) 3 Cal.3d 937, 943 ["the preservation of racial imbalance. It therefore violates constitutional imperatives."].)

Even the State's most infamous precedents underscore the danger of delay. *In re Perkins* (1852) 2 Cal. 424, 436 warned that slavery had become "so important an element of political discord, as to endanger the safety of our Republic … threatening the integrity and permanence of the Union itself." *In re Archy* (1858) 9 Cal. 147, 162 called such questions "of great delicacy." Three years later, Fort Sumter fell.

This is the modern analogue: the State's top law enforcement agency has categorically refused to comply with the Public Records Act. That refusal leaves tens of thousands of Black Californians to ongoing unconstitutional discrimination (§11135(a)). The matter is of unusual importance and urgency, fully warranting this Court's original jurisdiction.

This Court has already spoken with clarity on the principle at stake: "discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society." (*Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537, 548 (*Hi-Voltage*))

B. NO PLEA IN ABATEMENT WILL PERMIT DILATORY JUSTICE

"A plea of another action pending is merely dilatory" (*Lincoln v. Superior Court of Los Angeles County* (1943) 22 Cal.2d 304, 308) especially here, where the ordinary course of law demands "the determination of the obligation to disclose… be made expeditiously" (*Filarsky, supra,*) yet the uncontested matter set for trial fourteen months from now in Los Angeles Superior Court involves no legally contestable issue and no factual dispute. The cause was purely the PRA remedy—disclosure.

> The pendency of another action, however, is no defense unless it is "between the same parties for the same cause." [Citations.] Assuming that the various technical requisites are present for a plea in abatement because of another action pending, it should be observed that such plea is dilatory in nature and not favored by the courts [citations] and in the instant case there are circumstances which we believe require this court to make a determination in this proceeding, to deny the plea in abatement, and to call for the exercise by this court of its original jurisdiction.
> *Perry v. Jordan* (1949) 34 Cal.2d 87, 90

Here, **the causes extend** to constitutional violations—due process, equal protection, and First Amendment retaliation—all arose *only because* Petitioner sought judicial relief. They did not exist when the earlier petition was filed and thus could not have been raised there. The ordinary course of law has become the due process violation as a cause for action.

"'[T]he label given a petition, action or other pleading is not determinative; rather, the true nature of a petition or cause of action is based on the facts alleged and remedy sought.'" (*People v. Picklesimer* (2010) 48 Cal.4th 330, 340.)

These constitutional claims are addressed in Section VII.

C. *HAGAN* IS NO BAR IN THIS MATTER

The Court of Appeal improperly precluded review of the DOJ's ministerial duty by refusing to rule and altering the pleadings.

At the time of *Hagan*, original writ proceedings were directly connected to review: "In the absence of **unusual or changed circumstances**, courts should not permit reconsideration of determinations… The losing party is required to petition this court for **a hearing** after the original denial. If he does not, this court will not, **normally**, consider the *original application filed with* ***it***." (*Hagan v. Superior Court of Los Angeles County* (1962) 57 Cal.2d 767, 769–770.)

That procedural premise was eliminated "in 1966, when the previous article VI was repealed" (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 93) by constitutional revision.

Under the 1962 Constitution:

"The Supreme Court shall have appellate jurisdiction… in all cases, matters and **proceedings pending** before a district court of appeal… The said court shall also have power to issue writs… **necessary or proper to the complete exercise of its appellate jurisdiction**." (Art. VI, §4 (1962).) Review then occurred only before finality and joined with the writ petition; the 1966 revision separated original from appellate jurisdiction. (See Art. VI, §§10, 11.)

Unlike in *Hagan*, Petitioner does not seek "reconsideration" of the June 26th failure to rule, and also unlike *Hagan* there was another event in the lower court causing harm from the void trial setting order mailed July 28, 2025, triggering the statutory deadline: "[u]pon entry of *any order* pursuant to this chapter… obtain[ing] review of the order" is available if filed within 20 days after service, plus five days for mailing. (§§7923.500(b), (c).) Consistent with that spirit, this petition was timely filed.

IV. REMEDY

The purpose of the courts is to provide a remedy. (CCP§20)

"'Remedy' is a more extensive term and refers to the method by which the action is effectuated. (*Frost v. Witter*, 132 Cal. 421.) 'Remedy' is not redress or relief, but is the ***means*** by which a wrong is redressed and relief obtained." *Painter v. Berglund* (1939) 31 Cal.App.2d 63, 69-70, emphasis added.)

The trial and appellate courts have acted in excess of jurisdiction by permitting an uncontested case to remain unresolved. (§§7923.000, 7923.005) Appellate review was not withheld to make the matter final, it "is not a final judgment or order" precisely because it "shall be immediately reviewable by

petition" (§7923.500(a)) and therefore "'it would be an abuse of discretion to refuse it.'" (*Dowell v. Superior Court* (1956) 47 Cal.2d 483, 486-487)

"For every wrong there is a remedy." (Civ. Code §3523.)

"As the People concede, every right must have a remedy. (See [citation] ['[A] right but no expeditious and adequate remedy … is an unconscionable situation which a court of justice cannot tolerate.'].)" (*Picklesimer* at 339)

The lower courts have denied the statutory right to rapid relief, despite being unconscionable those courts have tolerated it, denying relief and forcing a messenger to endure crime and constitutional violations… simply because of the constitutional gravity of the message; "an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters." (*Powers* at 114)

The record shows Petitioner has been diligent in seeking to compel DOJ compliance. Yet when dilatory justice prevails, urgency—not locality—controls. This is precisely when this Court's original jurisdiction *becomes the proper remedy* after all lower courts have failed to act according to law— particularly when ongoing incidents of slavery endure and the DOJ's disregard of its ministerial duty survives.

That is the subject of the following sections.

V. ASCERTAINING WHICH PROCEDURAL SCHEME GOVERNS PRA IS IMPORTANT — YET HERE RESPONDENT FAILED ALL THREE

The PRA prescribes mandamus but offers minimal procedural detail—notably there is no trial provision. Any person may initiate a writ proceeding to enforce the right to receive public records "in any court of competent jurisdiction" (§7923.000). A public record includes any retained writing containing information (§§7920.530(a), 7920.545).

"The definition is broad and ""intended to cover every conceivable kind of record that is involved in the governmental process."""" (*Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001, 1006)

The court's duty is to set hearing and pleading schedules to secure "a decision as to the matters at issue at the earliest possible time" (§7923.005). The verified petition triggers an alternative writ if records appear to be withheld (§7923.100).[2]

Here the verified petition showed no response had been made after the 14-day extension notice of Nov. 14, 2024.

No California case addresses this precise situation, but logic dictates: a court cannot find an agency's justification when none exists at the time of filing. DOJ forfeited its right to the alternative writ and to seek review of any justification by failing to issue one.

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[2] The case management setting is the first action "except for orders to show cause." (Rule 3.722(a)) The trial court only issued the former. (2Ex.23,p.413)

"If the court finds unjustified the public agency's decision to refuse disclosure under either section 7922.000 or 7920.505, it must order disclosure. (§ 7923.110, subd. (a).)" (*Gascón v. Logan* (2023) 94 Cal.App.5th 352, 366).[3]

"To further the statutory right of access,... the PRA requires prompt disclosure... unless... (§7922.000; see §§ 7922.530, subd.(a), 7921.300.) The agency must make this determination within 10 days from receipt of the request and must provide prompt notification of its determination and any reasons therefor. (See §7922.535, subd.(a).)" (*Gascón* at 366.)

Gascón interprets the extension beyond 10 days as a declaration of intended compliance.

Statutes must be construed harmoniously, observing all the words employed as a whole, (*People v. Hull* (1991) 1 Cal.4th 266, 272; *Merrill v. DMV* (1969) 71 Cal.2d 907, 918). Terms like "institute a proceeding," "writ of mandate," and "verified petition" reflect mandamus origins. (§§7923.000, 7923.100) "Responsive pleadings" are on court-set schedules, not civil timelines. (§7923.005) "Show cause," "examine papers," and discretionary "oral argument" (§§7923.100, 7923.105) align with CCP §1094 and *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1268.

Respondent cannot show cause when failing to deny. Justifying seeking a peremptory writ (CCP §§1085, 1088.5).[4]

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[3] When a respondent does issue a timely denial, the court may then conduct in camera review, only if necessary, (§7923.105).

[4] Logically, where procedure is not specified in the PRA, CCP §§1085–1109 govern. In *Wilder v. Superior Court* (1998) 66

Compounding the forfeiture, Respondent failed to file a "verified answer" (*id.*, §§1089, 1109), or allege new matters, leaving facts uncontested and admitted (*id.*, §§431.20, 431.30; this has always been the result, *Piercy v. Sabin* (1857) 10 Cal. 22, 27; *Blankman v. Vallejo* (1860) 15 Cal. 638, 644).

Petitioner noticed a motion for peremptory writ (§1094).

The court should have ruled on the uncontested papers (CCP§1088) in chambers as moved (*id.*, §§166(a)(1),(3), 1107-1108), rather than delaying or declaring the matter should be heard elsewhere, contrary to *id.*, §§1006, 170 and Local Rule 3.3(i).

Ultimately, setting a 14-month "trial" date without an issue of fact (CCP §590) nor question (*id.*, §1090) contravened the command for the earliest possible resolution. (§7923.000) Under either a Civil action, the PRA or mandamus, no trial was permissible. As *County of San Benito v. Superior Court* (2023) 96 Cal.App.5th 243, 263 confirms, the PRA "does not leave a plaintiff at the mercy of a public agency that is unreasonably or indefinitely delaying its production." —nor a court.

These delays are harming Petitioner. The injury from a delayed right to speedy release of records is compounded by setting a cause with no issue for trial, fourteen months from now.

Cal.App.4th 77, 82, the court rejected a ruling that the PRA invalidated ordinary mandamus, emphasizing the statutory objectives of the earliest possible review. Procedural references are few: in camera review under Evid. Code § 915 and the alternative writ (CCP §1087). The matter is not a limited civil action (§7923.500(a)), and review is by writ (§7923.500(b)).

VI. PENAL CODE §745 REQUIRES THIS DATA BE RELEASED, THE DOJ CANNOT INVOKE INVIDIOUS DISCRIMINATION TO EVADE ITS MINISTERIAL DUTY

"An agency's actual or constructive possession of records is relevant in determining whether it has an obligation to search for, collect, and disclose the material requested." (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 623 (*City of San Jose*)

A. THE DOJ'S MINISTERIAL DUTY TO PROVIDE THE RECORDS

This harm stems from DOJ's statutory ministerial duty §11160 —"an obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists, without regard to any personal judgment as to the propriety of the act." (*Picklesimer*, at 340.)

Failing that duty here is especially serious: secreting this information is a felony under §§6200, 6201; and see §§7, 7.6(a),(c), and §§11161, 11162 ("Every State officer, deputy and employee is subject to the same penalties, civil or criminal, for any offense…")

1. The Time Limits are Mandatory not Directory.

The basics of statutory construction focus on the Legislature's intent to effectuate the law's purpose, looking at its plain language, but in the context of the whole to harmonize it, absurd consequences are avoided, and we give effect to every word, sentence and the whole body. (*City of San Jose at* 616–617.)

Timing is critical; §7923.110(a) directs that if a refusal to disclose is unjustified, "the court shall order the public official to make the record public."

Section 7922.535(a) requires agencies to "determine" within 10 days whether requested records are disclosable and promptly

notify the requester. If disclosable, the agency must state when the records will be made available. Extensions are permitted only as reasonably necessary for compliance, and no notice may extend more than 14 days (§7922.535(b)).

DOJ's interpretation—that merely giving notice avoids time constraints—undermines the statute. Their notice specified a date of Dec. 2, 2024.[5] Then without a single effort to communicate or justify, delayed for 147 days before issuing a nonresponsive denial. (1Ex.4,p.131)

Still waiting 27 days after the petition was filed, when their maximum from the start was 24 days. (1Exs.1,p.6;4,p.131)

The statutory theme—"not delay or obstruct" (§7922.500), "faster, more efficient" (§7922.505), "promptly available" (§ 7922.530), "all practicable speed" (§7922.535(c)(3))—confirms urgency. Treating the deadline as directory would gut the scheme, inviting indefinite delay. Treating it as mandatory invalidates the late denial—the statute's only subject—thus preserving the law's authority and the people's right.

2. Components of a Valid Denial Demonstrate Its Invalidity

Section 7922.540 requires a written denial specifying whether the request is denied in whole or part, justifying any withholding per §7922.000, and listing the names and titles of each person responsible.

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[5] No issue is taken with the 14th day falling on Thanksgiving (Nov. 28, 2024). But it could also mean compliance was due by Nov. 27. Either way, the denial's invalidity is the same.

Here, the DOJ's April 9, 2025 denial—signed only by the same employee who issued the extension—failed to meet those requirements. (1Exs.1-4,p.58;4,p.135) Declaring "multiple components" were consulted but providing only one signature indicates internal agreement that disclosure was required.

B. FACTS OF THE REQUEST AND DOJ'S JUSTIFICATION

Under *City of San Jose* at 616 and *Di Lauro v. City of Burbank* (2025) 110 Cal.App.5th 969, 980, CPRA "creates 'a presumptive right of access to any" public records, shifting the burden to the agency to justify withholding. The DOJ failed to meet that burden.

The statutes cited in the request were Penal Code §§11103, 11104. (1Ex.1-2,p.51)

To start, a sample of Respondent's idea of good faith:

> Section 11104 provides direction to the Department to create a "complete and systematic record" and **obliges** the Department to **maintain records** *within its systems*. To the extent that you are seeking a record relating to this data storage provision, the Department has **no records** responsive to such a request. (1Ex.4,p.133¶2)

"No records" for a decades-long cataloged dataset that it admitted to possessing in its 14-day extension that did not claim needing to search, collect or compile data (§§7922.535(c)(1),(2),(4)); only "consult with **multiple components** of the Department with substantial interest ***in the* records requested.**" (1Ex.1-4,p.57)

Examples provided to the DOJ clarified the request:

Folsom 2/1/1983 Asian 204; Black 5,971; White 8,121[6]

April 2010 Robbery Ventura Black 73M, 4F White 16M, 0F Asian 7M, 1F;[7] (1Ex.1-2,p.51)

The request was very clear on one point:

"The above is subject to the **limitation that no other personal identifying information is to be provided** other than as noted above." (*Id.*)

"your request is seeking **individual**-level criminal history and **personally identifiable** data" (1Ex.4,p.134)

Their justification centered on: "*contained* in the Automated Criminal History System (ACHS)"—yet that appears nowhere in any exemption statute, because it is an internal reference point, not a law. Under §7922.000, an agency must justify withholding by citing "**express** provisions of *this division*".

"you are seeking **individual**-level criminal history data maintained **within ACHS**, the Department must deny your request." (1Ex.4,p.134)

"subcategories you have identified—including convictions and offense type—are *maintained* **within ACHS**," (*id.*)

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[6] "that lists by each and every penal institution, the total number of persons confined therein to be grouped by race, i.e., Asian, white, black (or any term used that conveys race to that general effect). e.g., [as above]
a. After 1993, include status as 2nd or 3rd striker by race

[DOJ denied possessing "third strike pursuant to this *offense*." (1Ex.4,p.134) Explained to the trial court, that is a sentencing enhancement not an offense.(1Ex.6,p.172)]

[7] "that lists by each and every county, the convictions as cataloged in e.g., *Crime in California* (2023) at page 41, 43-48 & 49-55; identifying the race, gender, crime convicted, e.g., [as above]; divided further into juvenile and adult
iii. please include, separate from Bii or combined therein the dispositions as listed on e.g., *id.*, pages 56-59

"this request for data similarly categorized is once again seeking **confidential ACHS** conviction data and must therefore be denied" (*id.*)

They admit the information exists —"*contained* in" "*maintained* within ACHS" — which proves they can be queried from a non-exempt database. That admission negates any 'not in our possession' defense. Plus, easy to access, "shall make a complete and systematic record and index, providing a method of *convenience*, consultation, and *comparison*." (Pen. Code §11104)

If the DOJ released the specific data required by *id.*, §745, the request would never have been made. Every item necessary is in *"The Crime in California* publication" except for the by county aspect, which it provides as to complaints on its website OpenJustice but not the required results of the complaints sought.

Regarding data from *"The Crime in California* publication" "the Department completed a reasonable search, including checking with knowledgeable persons and in logical places, and did not locate any records that are responsive to your request." (1Ex.4,p.134)

DOJ's own language admits the categories exist and are maintained, proving they can be queried and undermining any claim of impossibility.[8]

Ultimately the DOJ believes that if any data could be declared as located in some privileged document somewhere, then they are exempt.

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[8] For a more detailed discussion about ACHS, see Ex.14,pp.165-166, 210.

Thus as to "confidential ACHS conviction data" "if a state or local agency discloses to a member of the public a public record that is otherwise exempt from this division, this disclosure constitutes a waiver of the exemptions specified in: (1) The provisions listed in Section 7920.505." (§7921.505(b)) And §7920.505(a)(23) "Section 7927.705" was the provision invoked.

"Access to record-level (i.e., **individual level**) criminal offender record information (CORI) is restricted to agencies that are statutorily authorized to receive such information (Pen. Code, §§ 11076, 11105), and those statutory restrictions are incorporated into the PRA. (Gov. Code, § 7927.705.)" (1Ex.4,p.133)

Why not cite the actual express incorporating provision?

§7930.200 "State summary criminal history information, confidentiality of information, Sections 11105,… Penal Code."

§7930.130 "Criminal offender record information, access to, Sections 11076… Penal Code."

Because each provision began with "The following provisions ***may*** operate to exempt certain records, ***or portions thereof***, from disclosure pursuant to this division:" and that relates to §7930.000 ("a statute that **exempts any information contained in** a public record from disclosure pursuant to Section 7927.705 shall be listed and described in Chapter 2 (commencing with Section 7930.100)") but also advises "may operate to exempt certain records, *or portions thereof*, from disclosure." And most important of all, being listed "does **not** itself create an exemption."

§7922.525 (b) "Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law."

Each provision invoked was not applicable, Pen. Code §11105(g) exempts if "the *identity* of the subject of the record is not disclosed." And *id*., §11076 is defined in §11075(a) "for purposes of *identifying* criminal offenders" even then still permitted, *id*., §11080 does not "affect the right of access of any person" "to ***individual*** criminal offender record information that is authorized by any other provision of law."
"the Department does not categorize ACHS data… in the manner you are seeking." (1Ex.4,p.134)

"[T]he rule does not mean that an agency may disregard a request for government information simply because the information must first be retrieved and then exported into a separate record before the information can be released." (*National Lawyers Guild v. City of Hayward* (2020) 9 Cal.5th 488, 502) "[T]he PRA does not relieve agencies of the obligation to retrieve data to construct disclosable records" (*id.*, at 503).

The petition below quoted Respondent's public guidelines:

> As the Legislature stated in enacting the California Public Records Act, "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." The Department's guidelines for access to public records rest on that principle. (1Ex.1-11,p.95)

The ministerial duty is clear.

C. THE LEGISLATURE'S MANDATE IN PENAL CODE § 745 ELIMINATES ANY CLAIM OF CONFIDENTIALITY

Because the Legislature required Penal Code §745 data to be used in court, it cannot be confidential—a statute that commands courtroom use cannot simultaneously shield the same data from public view.

The DOJ's assertion of "confidential ACHS conviction data" collapses under this mandate. All information requested from Penal Code §745 is discoverable, *Young v. The Superior Court* (2022) 79 Cal.App.5th 138, 144. The statute cannot function unless the public has access to the very records meant to protect their rights.

In re Jenkins (2023) 14 Cal.5th 493 confirmed *Brady* applies to evidence in the Attorney General's "actual or constructive possession" (*id.* at 512 fn.11), including "state summary criminal history information" held as the state's repository (*id.* at 523 fn.29). The DOJ even conceded: "We did not fulfill our duty to assist the habeas tribunal to understand what facts were actually at issue in this case." (*Id.* at 528 fn.35.)

Courts are required to weigh "whether systemic and institutional racial bias … may have … impacted the availability of data overall." (Penal Code §745(h)(1).) Yet the DOJ claimed it searched and found nothing responsive—even though *id.*, §13125 mandates five pages of fields track arrests through every disposition since at least 1998, and the DOJ admitted these fields "are maintained within ACHS."[9]

The DOJ told the Legislature in 2021 it would take 67 personnel-years to process one year of Racial Justice Act claims.

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[9] Also collected per Pen. Code §§ 11103, 11104, 13010, 13020, 13011, 13012, 13100–13104, 13200, 13305(a) and Chapter 1, Department Of Justice, Title 3 Criminal Statistics, of Part 4 of the Penal Code. (1Ex.1,p.29)

By 2022, after being named sole repository of all racial justice data (Pen. Code §13370), that number fell to 8—an 85% drop.[10]

That was no accident: when Petitioner requested the same data, the DOJ first invoked the 14-day extension, then when told it was for the benefit of Blacks went silent, then denied. This pattern is not mere concealment—it is intentional discrimination.

Equal protection forbids such conduct, "from the inception of the Fourteenth Amendment," courts have held it "safeguards individuals from invidiously discriminatory acts of *all* branches of government, including the executive." (*Murgia v. Municipal Court* (1975) 15 Cal.3d 286, 294) And violated upon showing '"intentional or purposeful discrimination."' (*Id.*, at 297, quoting *Snowden v. Hughes* (1944) 321 U.S. 1, 8.)

Intentionally concealing data the Legislature mandated for racial justice petitions, solely because it would aid Black petitioners, is purposeful discrimination. "'For a State to place its authority behind discriminatory treatment based solely on color is indubitably a denial … of equal protection of the laws.'" (*Hi-Voltage* at 556, quoting *Mulkey v. Reitman* (1966) 64 Cal.2d 529, 541, aff'd *Reitman v. Mulkey* (1967) 387 U.S. 369, 381.)

The DOJ knows the data proves systemic constitutional violations, but because it is against Blacks, it chose concealment.

The DOJ is thus exposed: willfully disregarding *Brady* and *Jenkins*, violating *Murgia* and *Snowden*, and weaponizing confidentiality claims to deny equal protection and perpetuate

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[10] Full Legislative citations and additional estimation reductions at 1Ex.1,pp.42-43.

incidents of slavery barred by the Thirteenth Amendment and 42 U.S.C. §1981.

VII. RETALIATION FOR EXPOSING THE DOJ'S INVIDIOUS DISCRIMINATION ADMITS GUILT; DUE PROCESS DEMANDS THE REMEDY—RELEASE THE DATA

Living under State surveillance by an agency committing felonies—violating the First, Fourth & Fourteenth Amendment is irreparable harm requiring immediate relief.

"Equal protection of the laws is not achieved through indiscriminate imposition of inequalities." (*Shelley v. Kraemer* (1948) 334 U.S. 1, 22.)

A. THIS FIRST AMENDMENT RETALIATION STRIKES AT THE HEART OF THE RIGHT

Both the federal and California constitutions guarantee the right to petition the government for redress (Cal. Const., art. I, § 3). "The right to petition is 'among the most precious of the liberties safeguarded by the Bill of Rights.'" (*United Mine Workers v. Illinois Bar Assn.* (1967) 389 U.S. 217, 222.)

Petitioner exercised that right by suing to expose State concealment of systemic racial oppression.

"There is no question that speech critical of the exercise of the State's power lies at the very center of the First Amendment... for history shows that speech is suppressed when either the speaker or the message is critical of those who enforce the law." (*Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030, 1034, 1051.)

"[E]vidence implicating a government official in criminal activity goes to the very core of matters of public concern." (*Id.*, at 1036.)

In retaliation, the DOJ:

- Withheld public records,
- Served its filings embedded with malware
- Sent spyware-laden documents,
- Obstructed judicial review,
- Are conducting digital surveillance to sabotage litigation,
- Making it costly for petitioning the courts.

These acts weaponize litigation to silence oversight — a direct assault on democratic accountability. "Official reprisal for protected speech 'offends the Constitution [because] it threatens to inhibit exercise of the protected right.'" (*Hartman v. Moore* (2006) 547 U.S. 250, 256.)

The DOJ's criminal tactics confirm it has something to hide.

Within Div. 3, Part 6, "The Department of Justice," §15151 states: "The maintenance of law and order is, and always has been, a primary function of government and is so recognized in both Federal and State Constitutions."

This Court's intervention is necessary because Respondent's constitutional violations and criminal conduct persist. "California's victims of crime are largely dependent upon the proper functioning of government... and upon the expeditious enforcement of the rights of victims of crime" (Cal. Const., art. I § 28(a)(2)).

B. THE DISREGARD OF STATE PROCEDURES IS A FEDERAL VIOLATION OF DUE PROCESS OF LAW

Federal due process applies if a petitioner can show a property interest created under state law is being denied. (*Castle Rock v. Gonzales* (2005) 545 U.S. 748, 756–757.)

California defines property to include statutory rights. (Civ. Code §§ 654–655.) The Legislature declared: "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§7921.000.)

The Constitution further guarantees inalienable rights to property, privacy, instruct representatives, petition for redress of grievances, and protection from unreasonable searches and seizures. (Cal. Const., art. I, §§ 1, 3, 13.) Victims' rights provisions mandate protection, respect, and dignity for crime victims. (*Id.*,§ 28.)

These rights are mandatory and prohibitory. (*Id.*, § 26.) Denying them is not discretionary—it is a violation of federal due process.

C. THERE IS ONLY ONE REMEDY AVAILABLE TO STOP ALL OF THESE CONSTITUTIONAL VIOLATIONS—DISCLOSURE

Mandamus is a special proceeding separate from a civil action and does not bar subsequent 42 U.S.C. §1983 claims, *Mata v. City of Los Angeles* (1993) 20 Cal.App.4th 141, 150. Congress did not intend state procedural mechanisms to delay or obstruct §1983 plaintiffs, noting the "dominant characteristic of civil rights actions" is that "they belong in court" and are "judicially enforceable in the first instance." (*Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 339–340)

Respondent's ongoing refusal to comply with state law is an active First and Fourteenth Amendment violation—impairing court access during litigation and weaponizing delay as retaliation. This is not a historical wrong cured by later damages; it is a present, daily harm that will endure without immediate judicial action.

Mandamus is the only remedy capable of stopping this constitutional injury now—compelling compliance with state law, and leaving intact the separate federal remedy for damages.

Because stopping to litigate those violations requires the present violation to persist.

In short, the injury is clear: federal due process violations continue when state law is disregarded—and the only cure can be compliance with the law.

VIII. PROOF OF INCIDENTS OF SLAVERY IN CALIFORNIA

Some passages are lengthy to provide full context to "abolish the institution of African slavery as it had existed in the United States at the time of the Civil War" (*United States v. Kozminski* (1988) 487 U.S. 931, 942)

A. THE LEGAL HISTORICAL BACKGROUND RELEVANT TO THE ISSUE OF INCIDENTS AND CRIMINAL LAW

The "**very distinct** notions of… its **necessary incidents**." (*Civil Rights Cases, supra.*) Related to separate and not equal standards of imprisonment, "their application to specific **types of the human species**." (*People v. Hall*, (1854) 4 Cal. 399)

> [T]he laws of the present slaveholding States. Their statute books are full of provisions in relation to this … inferior class, and to subject them to strict police regulations, … and legislating in relation to *them* … nor supposed to possess any political rights which the dominant race might not withhold or grant at their pleasure.
> *Dred Scott v. Sandford* (1856) 60 U.S. 393, 412

Respondent's refusal to comply with the law was in furtherance of its belief that it knows better the will of the people, following still valid case law, *Hall* at 405:

> This is not a speculation which exists in the excited and over-heated imagination of the patriot and statesman, but it is *an actual and present danger*.
> The **anomalous spectacle of a distinct people, living in <u>our</u> community**, … a race of people whom **nature has marked as inferior,** and who are incapable of progress or intellectual development beyond a certain point, … **between whom and ourselves nature has placed an impassable difference**, is now presented, and for them is claimed, not only the right to swear away the life of a citizen, but the further privilege of **participating with us** in administering the affairs of **our Government**.

"The evident intention of the Act was to throw around the citizen a protection for life and property, which could only be secured by removing him above the corrupting influences of degraded castes." (*Hall* at 403) Noting the difficulty of granting equality before the law, to "persons of the negro race, … unless they committed some violation of law for which a white man would be punished; … endangering the peace and safety of the State." (*Dred Scott* at 417) "[E]xempt from the laws and police of the State in relation to a person of that description,… such laws were deemed by it absolutely essential to its own safety." (*Id.*, at 425)

Different laws were on the books for Blacks, as a well-recognized incident of slavery. Yet it was the effect of longer punishment that was noted. That same structural disparity—disguised under modern forms—persists today.

When this Court reaffirmed that a half-Black could not testify against a White, the opinion declared "crime may go unpunished. If this be so, it is only matter for the consideration of the Legislature. With the policy, wisdom, or consequences of legislation, when constitutional, we have nothing to do." (*People v. Howard* (1860) 17 Cal. 63, 64)

In California, prosecutors have been targeting Blacks at an alarming rate, prompting the Legislature to add by Stats. 2022, Ch. 806, Sec. 2, Penal Code §741(a): "Beginning January 1, 2024, the Department of Justice shall develop, issue, and publish 'Race-Blind Charging' guidelines for a process whereby all prosecution agencies" are shielded from knowing race.

Unfortunately, the Legislature was unaware of who they asked and, as is about to be shown, that will not solve anything.

B. The Number of Blacks in Prison using the Common Denominator Approach Establish Incidents of Slavery

The math shown to the DOJ in the Nov. 14, 2024 letter (1Ex.1-6,pp.63-65) with some paragraphs omitted:

1. Scaling Black Arrests to Match the White Population Size

To establish a common denominator in terms of population, we can scale the Black population (2,237,044) up to equal the White population (30,426,953) in 2020 (US Census). This allows us to see what the number of Black arrests would look like if Blacks were arrested at their current rate but had the same population size as Whites.

- 2020 Black Population: 2,237,044
- 2020 Black All Felony Arrests: 52,000
- 2020 Black Violent Arrests: 21,537
- Population Multiplier: 30,426,953 / 2,237,044 ≈ 13.6

Using this multiplier:

52,000 × 13.6 ≈ **707,200**

21,537 × 13.6 ≈ **292,903**

3. Scaling Black Arrests Down to Match the White Arrest Rate

Alternatively, we can use the White arrest rate as a common denominator and apply it to the actual Black population,

to see what the number of Black arrests would be if both groups were arrested at the same rate.

- White arrest rate: 194,081 / 30,426,953 ≈ 0.00638 (or .64%)
- Expected Black arrests at White rate: 2,237,044 × 0.00638 ≈ **14,272**
- White Violent Charges Rate: 64,142 / 30,426,953 ≈ 0.0021 (or .21%)
- Expected Black Violent Charges Rate: 2,237,044 x 0.0021 ≈ **4,716**

4. Summary of Results

Black population equal to Whites and same rates continued:

707,200	Black felony arrests (scaled)
194,081	White felony arrests (actual)
292,903	Black violent arrests (scaled)
70,064	White violent arrests (actual)
636,942	Black all felony complaints sought (scaled)
180,409	White all felony complaints sought (actual)
259,882	Black violent complaints sought (scaled)
64,142	White violent complaints sought (actual)

Blacks charged at same rate as Whites:

14,272	Black all felony arrests (@ White rate)
52,000	Actual Black all felony arrests
4,716	Black violent complaints sought (@ White rate)
19,109	Actual Black violent complaints sought

5. The Number of Blacks in Prison using the Common Denominator Approach

… Now we apply it to view the true scale of the number of Blacks in prison.

> **"Racial Composition of Strikers.** African Americans make up the largest group of second and third strikers (37 percent), followed by Hispanics (33 percent), and whites (26 percent). This racial composition is similar to that in the total prison population. However, African Americans make up 45 percent of the third striker population, which is 15 percent higher than in the total prison population." *A Primer: Three Strikes - The Impact After More Than a Decade*, Legislative Analysists Office (Oct. 2005)

The Jan. 2024 CDCR Population Projection report showed a population of 96,033 humans, 92,271 men and 3,762 women.

Therefore of the 96,033 prisoners, if 37% are Black then they number 35,532 and because Hispanics and whites are the same, then 59% reveal that their number is 56,659, with the difference accounting for Asians and Other.

We apply our multiplier of 13.6 to reveal the current incarceration of Blacks, if the populations were equal and the rate of imprisonment remained constant.

For the 56,659 Whites in prison right now,

there would have to be 483,285 Blacks in prison. Compare actual 35,532

The DOJ severed all communication after the above was shown to them, which was then followed with the applicable laws.

But that was 20 years ago. Have things changed?

"Three Strikes sentencing also disproportionately impacts African Americans. Specifically, 37 percent of those sentenced

under Three Strikes are Black, although Black individuals comprise only five percent of California." (*The California Reparations Report* Chapter 28 Policies Addressing the Unjust Legal System, p.754) The link is to Respondent's website.

The natural question is: Are Blacks more violent? Or do prosecutors make them so?

Snapshot summary of violent crimes complaints respectively by percent of that year:

	1995	2004	2013	2022	
Blacks:	21.5% —	20.6% —	21.8% —	22.1%	Average 21.5%
Whites:	34.7% —	32.1% —	31.5% —	26.4%	Average 31.2%
Hispanics:	38.5% —	41.1% —	40.5% —	44.3%	Average 41.1%

(race/all=%) (Compiled from OpenJustice)

Blacks, as 5.56% of the state population, are 21.5% of the state's violent crime complaints, yet comprise 37% of the second and third strike population and 45% of the third strike population. Meanwhile, as to filed complaints, 10 points higher is the Whites, and nearly double is the other Whites.

Complaints Sought:		Custody as 2nd & 3rd Strikers		Factor Difference[11]	
B Average	21.5%	37%	increased	+72.09%	
W Average	31.2%	26%	decreased	- 16.67%	
H Average	41.1%	33%	decreased	- 19.78%	

The average of the above decreasing percentages is -18.23%. The above shows that not only will Blacks be charged-up by

[11] The formula is:

$$\text{Percentage Change} = \left\{ \frac{\text{New Value} - \text{Old Value}}{\text{Old Value}} \right\} \times 100$$

prosecutors, but also charge down or reduce charges for the Whites on average about 18% of the time. Thus 1 in 5 are let off, or charges reduced and not considered violent. Whereas with the Blacks, not only will every single one not receive any dismissal or benefit, but **they will drag a non-violent Black defendant in and label him or her violent** to meet that 2 out of 5 consistent ratio.

"More than 33,000 people in prison are serving a sentence lengthened by the Three Strikes law — including more than 7,400 people whose current conviction is neither serious nor violent." (Committee on Revision of the Penal Code (2021), p.41)

Black as 37% of the strike population comes to 12,210 Blacks serving a strike sentence. Now we apply the common denominator method to see if that is disproportional when compared to the 24,420 Whites.

Applying 13.6 to attain an equal population, the result would be **166,056** Blacks serving strike offenses.

The math words the other way too:

White Strikers 24,420 / 30,426,953 = 0.0008

Blacks at White Rate 2,237,044 x 0.0008 = 1,795

If Blacks were sentenced on strike offenses at the White rate there would be 1,795 not 12,210; and if our populations were equal, at the current Black rate would result in **166,056.**

"**Severer punishments for crimes** were imposed on the slave than on free persons **guilty of the same offences**."

Respondent is the entity that knows the true numbers— State law ensures Petitioner's right to confirm his work.

C. THESE VIOLATIONS ESTABLISH SYSTEMIC FEDERAL CRIMES THAT NEGATES THE JUSTIFICATION OF STATE CRIME

Our DOJ is violating the Enforcement Acts of 1870 & 1871 "also known as the Ku Klux Klan acts, designed to enforce the Fourteenth Amendment and the Civil Rights Act of 1866."[12]

Clarifying that the "Thirteenth, Fourteenth and Fifteenth Amendments" (*United States v. Price* (1966) 383 U.S. 787, 805) are "protected by § 241. [*Price*] The primary purpose of the Amendment was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War" (*Kozminski, supra*).

The record proves a refusal, involving "multiple components of the Department with a substantial interest in the records" prohibited by "the Ku Klux Klan acts" with penalties from imprisonment to capital:

- **18 U.S.C. § 241** criminalizes conspiracies to "injure, oppress, threaten, or intimidate" any person in the free exercise of constitutional rights, or for having exercised them.
- **18 U.S.C. § 242** criminalizes subjecting under color of law, to "deprivation of any rights… protected by the Constitution or laws of the United States, or to different punishments… by reason of his color, or race, than are prescribed for the punishment of citizens"
- **42 U.S.C. § 1981(a)** guarantees "[a]ll persons… shall have the same right in every State… as is enjoyed by white citizens, and shall be subject to like punishment,… of every kind, and to no other."

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12 https://www.senate.gov/artandhistory/history/common/generic/EnforcementActs.htm

This exposes the State's flawed reasoning: that persistent racism is excusable so long as there was a crime and conviction.

Yet Penal Code §681 precludes punishment unless lawfully convicted; *id.*, §15 defines a crime as requiring both an act and lawful punishment. When the aspects necessary for a crime have become a federal crime, it cannot be lawful.

The math proves the aggregate whole has been unlawful for years—and the DOJ clearly knew it.

When the very agency charged with prevention is the perpetrator of federal crimes, the urgent need for this Court's intervention is undeniable.

Especially when this Court's binding precedent impedes social progress: "There is no provision there for emancipation." (*Perkins* at 455.)

Absent intervention, California still lives by slavery's logic—despite its newly enacted laws to the contrary.

IX. THE SEPARATION OF POWERS PROHIBIT CONCEALING CONTROLLING PRECEDENT AND RELEVANT DATA BY THE DEPARTMENT OF JUSTICE

The Legislature enacted statutes such as the Public Records Act and Penal Code §745 to identify and remedy racial disparities in the criminal justice system. The Judicial Branch is constitutionally tasked with applying law to facts presented. The Executive Branch, through the DOJ, was entrusted with executing these statutes and producing the records necessary for courts to perform their duty.

As noted in ¶17, the DOJ declared "after" the *Civil Rights Cases* the high court "**adopted a highly restrictive interpretation of the 'badges and incidents of slavery,'"** citing *Plessy,* without ever using the word "incident."

The *Civil Rights Cases* overturned a different law, "the objectionable features before referred to, are different also from the law ordinarily called the 'Civil Rights Bill,' originally passed April 9th, 1866" (*id.*, at 16.) Further making Respondent's claimed 'highly restrictive' for incidents of slavery absurd.

Justice Bradley authored that opinion as well as the dissent in *Blyew v. United States* (1871) 80 U.S. 581, 601:

> The power to enforce the amendment by appropriate legislation must be a power to do away with the incidents and consequences of slavery, and to instate the freedmen in the full enjoyment of that civil liberty and equality which the abolition of slavery meant.

When the Department of Justice buried the operative law in a report that any advocate against racism would be reading, while concealing the pivotal facts, they have prevented courts

from being presented both. Not only denying the courts their constitutional function of weighing the facts in light of controlling precedent, but violating "Persons charged with the exercise of one power ***may not exercise*** either of the others except as permitted by this Constitution." (Cal. Const. art. III §3)

By misrepresenting precedent and withholding data, the DOJ effectively exercised a legislative veto over laws duly enacted, and an appellate veto over cases because they can never be heard. Such conduct is a direct assault on the separation of powers and nullifies the Judiciary's ability to safeguard constitutional rights.

X. THE DEPARTMENT OF JUSTICE ACTED WITHOUT SOVEREIGN AUTHORITY, VIOLATING ITS CONSTITUTIONAL OATH

Directly applicable to Question Two:

> Public access laws serve a crucial function. "Openness in government is essential to the functioning of a democracy. 'Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process.'"
> *City of San Jose* at 615

"All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require." (Cal. Const., art. II, § 1.)

As the Code Commissioners explained in 1872, "Law is a solemn expression of the will of the supreme power of the state"

— that "supreme power" being "the will of the people, the source of all political power—as expressed through their representatives". "The will of the supreme power is expressed: 1. By the Constitution; 2. By the Statutes." (Pol. Code, §§ 4466–4467, annotated [now Civ. Code, §§ 22, 22.1].) (1Ex.1-9,pp.77-78) Gov. Code §100 further affirms that "The sovereignty of the state resides in the people thereof," and prosecutions shall be "by *their authority*."

The Department of Justice is not sovereign. It operates only under the authority of the sovereign people of California, whose Legislature enacted laws expressly directing state actors to take action to repair racial injustice, including Penal Code §745. By concealing controlling precedent and withholding the very records those laws require be produced, the DOJ has not only denied the other branches the ability to perform their constitutional functions — it has acted outside the sovereign's authority entirely.

Such conduct directly violates the DOJ's constitutional oath "to support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic" (Cal. Const., art. XX, § 3) and disregards California's declared responsibility to end ongoing harm from slavery and its incidents. (See *Moss v. Superior Court* (1998) 17 Cal.4th 396, 413 ["The plain intention was to abolish slavery of whatever name and form and all its badges and incidents."].)

The enduring legacy of these "necessary incidents of slavery" as "Severer punishments… constituting its substance and visible form" as "the essential distinction between freedom and slavery." (*Civil Rights Cases, supra*.)

By burying both the law and the data proving these incidents persist, the DOJ has repudiated the very sovereignty under which it is permitted to act.

"The State of California affirms its role in **protecting** the descendants of enslaved people and **all Black Californians**… and acknowledges and affirms its responsibility **to end ongoing harm**" (§8301.2(b)) from "slavery and the enduring legacy of **ongoing** badges and **incidents** from which the systemic structures of discrimination have come to exist." (*Id*., (a))

The concealed records establish the DOJ is aware of California's violation of the absolute prohibition on slavery and incidents thereof, *Griffin v. Breckenridge*, (1971) 403 U.S. 88, 105.

XI. THE COURT IS REQUESTED TO OVERRULE RACISM—SUCH BINDING PRECEDENT HAS NO PLACE IN CALIFORNIA

"[N]egroes are merchandize. [¶] These words may shock the sensibilities of many enlightened men" (*Perkins* at 451.) "Slaves are recognized by the Constitution of the United States as property." (*Id.* at 452.) "It must be concluded that, where slavery exists, the right of property of the master in the slave must follow as a necessary incident." (*Archy* at 162.)

When relevant data is buried, history is forgotten. The Task Force was unaware of vital history when drafting §8301.1. Specifically, the rebellion to split California and create a slave state in the south. As recounted from an earlier publication in *The Pacific* (Jan. 3, 1901, pp.7–8):

"In 1852 a plot to divide the state and make the southern part of it a slave state, developed with some determination and strength. Then, as some declared, 'chivalry had a bill of sale of California.' The Pacific of February 20, 1852, with fine nerve, asked, 'Shall a convention be held to strike out freedom from the constitution and insert slavery?' It exposed the scheme, fought it, until the Legislature closed its four months' session, and the plot was dead." (1Ex.1-10,pp.92-93.)

The word "freedom" appeared only once in the California Constitution of 1849 (amended in 1856). That use survives today: "We, the people of California, grateful to Almighty God for our

freedom, in order to secure *its* blessings, do establish this Constitution."[13]

"Article I, section 6 of the California Constitution provides that '[s]lavery is prohibited.'" (*Ruelas v. County of Alameda* (2024) 15 Cal.5th 968, 980 fn.5.) Conflicting with other holdings, "There is no provision there for emancipation." (*Perkins* at 455.)

After citing *Dred Scott* and *People v. Hall*, the Court has already acknowledged: "In legitimating this pernicious concept, the court set the stage not only for the cataclysm of the Civil War but for the contentiousness that continues to this day over government's proper role with respect to race." (*Hi-Voltage* at 546.)

Yet these cases are still binding law; not one has been noted as overruled:

- *Perkins*, see: *In re Clark* (1993) 5 Cal.4th 750, 773; *Gonzales v. Cal. Dep't of Corr.* (9th Cir. 2014) 739 F.3d 1226, 1231.

- *Archy*, see: "(Cf., e.g., *Ex parte Archy* (1858) 9 Cal. 147, 171 [applying clarification of choice-of-law rule prospectively].)" (*Kearney v. Salomon Smith Barney, Inc.* (2006) 39 Cal.4th 95, 130) and *United States v. Hougen* (9th Cir. 2023) 76 F.4th 805, 820.

- *Hall*, see: *In re Chang* (2015) 60 Cal.4th 1169, 1172 and *Henderson v. Thompson*, (Wash. 2022) 518 P.3d 1011, 1021 n.4 (the opinion contains an excellent discussion on race)

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[13] See

http://www.dircost.unito.it/cs/pdf/18490000UsaCaliforniaeng.pdf

Inside the full quote stated many times herein, was "to be a witness against a white person… were the inseparable incidents of the institution. Severer punishments for crimes were imposed on the slave than on free persons guilty of the same offences," (*Civil Rights Cases, supra*.) Yet *Hall*, applied to half-Blacks in *People v. Howard* (1860) 17 Cal. 63, 64, and *Archy* as well as *Perkins* remain valid precedent.

That validity defies the right to testify and having like punishment being protected by 42 U.S.C. § 1981(a) and their denial criminalized in 18 U.S.C. §§241, 242. "This Constitution, and the Laws of the United States… shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby," (U.S. Const. Art. VI, cl.2) Acknowledged in Cal. Const. art. III § 1.

The Supreme Court has recognized that it is never too late to overrule. "*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—has no place in law under the Constitution." (*Trump v. Hawaii* (2018) 585 U.S. 667, 710.)

Leaving precedent standing without declaring it overruled results in a confusing message to the lower courts, the DOJ, and harms the people they effect.

An apology without correction is hollow. Absent these cases being expressly overruled, they will stand as an equal but separate monument alongside California's formal apology "in perpetuity."

XII. THE SOURCE OF SECURITY FROM CRIME IS DUE PROCESS OF LAW

The simple way of seeing the issues for society is through a simple analogy:

Anyone sitting at a poker table and observing cheating would not want to continue to play. If forced to play under rules applied selectively—against them but not for them—resentment and a deep sense of injustice are inevitable.

A fascinating study occurred, looking for the cause for crime in society, conducted by The National Academies Division of Behavioral and Social Sciences and Education. They went back hundreds of years looking at every sort of influence and in the end the direct correlation they found was not alcohol or drugs or anything else, it was directly tied to trust in government.[14]

More trust decreased crime. Less trust increased crime.

Expedient justice may sound practical—just as once thought by the Star Chamber.

John Adams, in closing argument defending the British soldiers in the Boston Massacre trial, explained why the maxim *better ten guilty persons escape than one innocent suffer* is foundational:

"[W]e are to look upon it as more beneficial, that many guilty persons should escape unpunished, than one innocent person should suffer… when innocence itself, is brought to the bar and condemned… the subject will exclaim, it is immaterial to

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[14] See pages 18-23. Note a PDF will automatically download: https://sites.nationalacademies.org/cs/groups/dbassesite/documents/webpage/dbasse_083892.pdf

me whether I behave well or ill, for virtue itself is no security. And if such a sentiment… were to take hold... that would be the end of all security whatsoever." Wemms, W., *The trial of the British soldiers,* (1770)

"Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." (*Olmstead v. United States*, (1928) 277 U.S. 438, 485, Brandeis, J., dissenting)

The notion that crime is reduced by alleviating due process is the very cause of increased crime. "California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system" (Cal. Const. art. I, § 28(a)(2)) then following the law and affording persons equal protection and due process is the best possible means to obtain it.

"Constitutional guarantees are not arbitrary pronouncements adopted to protect the guilty, and to make it difficult for sincere hardworking prosecutors. They are the result of hundreds of years of struggle in fighting governmental oppression. They are necessary to protect the innocent." (*People v. Talle*, (1952) 111 Cal.App.2d 650, 678)

"The ends in our system do *not* justify the means. Our Constitution does not promise every criminal will go to jail, it promises due process of law." (*Northern Mariana Islands v. Bowie*, (9th Cir. 2001) 243 F.3d 1109, 1124)

The greatest protection that society secured for itself was the courts. Laws matter little if the courts do not enforce them. Disregard of concepts like the Thirteenth Amendment, Penal

Code §745, due process in favor of sentencing laws that oppress while simultaneously not investing in the ghettos we contain the poor in, is the cause of danger to society.

"And when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery." (*Jones,* 392 U.S. at 442-43)

Instead of spending $4.6B annually to incarcerate, investing in equality—in education, nutrition, and opportunity—would reduce fear and build mutual respect.

We will not know peace in California until we cease the over three-decade violation of the Geneva Slavery Convention; 18 U.S.C. §§241, 242; 42 U.S.C. §1981. Because "slavery… shall [not] exist within the United States," (U.S. Const. amend. XIII) "the Civil War Amendments were unquestionably designed to condemn and forbid every distinction, however trifling, on account of race." (*Oregon v. Mitchell* (1970) 400 U.S. 112, 127) By "preventing State Legislatures from enslaving, under any pretense, those whom the first clause declared should be free." (*Jones* at 431, fn. 48)

Petitioner did not seek this fight, it was stumbled into when investigating a case. But once the information was known, good conscience cannot ignore it, rather it commands action.

XIII. SUMMATION

The executive's plan was concealment—hoping the judiciary would ignore the truth—denying the people's will to "end ongoing harm" (§8301.2(b))—condemning them to their shame by withholding the hope of an emancipation long overdue.

And so, the bondage endures.

The apology was apparently nullified before it was even made, for no person can accept an apology while suffering continuing harm. The DOJ resolved, before enactment, to conceal that which the data promised to inevitably reveal.

Our data belongs to the people of California, not to the DOJ. The people have declared we no longer wish to harm Black Californians. The DOJ insists on forcing that harm to persist.

How should anyone rightly feel living in a state where valid precedent declares them property—and their judiciary treats them accordingly? That is the question now squarely before this Court.

A civilized society does not exist where its leaders disregard the law. The courts of California still cling to the precedent from *Perkins* and *Archy*—treating the Thirteenth Amendment as a matter of discretion rather than duty.

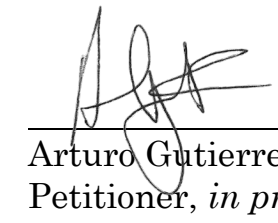
Leadership is what we need. Leadership is what this Court can provide to begin true healing and restore the people's trust.

All change ever required, was a small group of people leading by actually doing it.

XIV. CONCLUSION

The Court should grant the relief as prayed—for us all.

Humbly submitted,

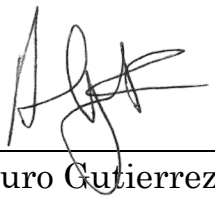


Aug. 19, 2025

Arturo Gutierrez
Petitioner, *in propria persona*

CERTIFICATE OF COMPLIANCE

Petitioner hereby certifies that pursuant to Rule 8.204(c)(1) and Rule 8.486(a)(6) of the California Rules of Court, the enclosed brief of Petitioner is produced using 13-point Roman type including footnotes and contains approximately 13,904 words, excluding exempted portions, which is less than the 14,000 total words permitted by the rules of court. Petitioner relies on the word count of the computer program used to prepare this brief.



Aug. 19, 2025

Arturo Gutierrez
Petitioner, *in propria persona*

PROOF OF SERVICE

1. I, Edward Lasseville, am over the age of 18 years and am not party to this cause. I am a resident of or employed in the county where the service occurred.
   a. My business address is:
      b. 6040 Sante Fe Avenue Huntington Park, CA 90255
      c. Lasseville@yahoo.com
2. I served the following documents:

Petition For Writ Of Peremptory Mandate; Declaration Of Arturo Gutierrez In Support Of Petition For Writ Of Mandate Regarding First Amendment Retaliation; Exhibits Volumes I & II

3. The manner of service per party served is indicated next to each party name below by either:
   a. **Email**: Attaching an electronic version of the document(s) in 2, to an email using the email address(es) listed next to each party's name and causing them to be sent electronically.
   b. **Postal**: Enclosing a copy of the document(s) in 2 in an envelope, addressed to the party as shown next to each name and depositing the sealed envelope with the U.S. Postal Service, postage fully prepaid.
   c. **Electronic Service**: "a party may effectuate service not only by the electronic transmission of a document, but also by providing electronic notification of where a document served electronically may be located and downloaded." (Rule of Court 2.250 Advisory Committee Comment citing Code Civ. Proc. § 1010.6)
4. I served the documents in 2 on the following persons in the manner indicated below:

The manner in 3.a.
Respondent: The Department of Justice of California
2550 Mariposa Mall Ste 5090
Fresno, CA 93720
(559) 705-2356
kelsey.kook@doj.ca.gov

The manner in 3.b.
Hon. Holly Fujie, Judge
c/o Clerk of the Los Angeles Superior Court
111 N. Hill St. Dept. 56
Los Angeles, CA 90012

On 8/20/2025, from Los Angeles County, I caused the documents in 2 to be served in the manner described in 3, identified as to the persons and their listed addresses stated in 4.

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

August 20, 2025 Edward Lasseville