IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

DIANA MARIA TERAN,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent.

THE PEOPLE,

Real Party in Interest.

Court of Appeal No. B341644

(Super. Ct. No. 24CJCF02649)

On a Petition for Writ of Prohibition (Penal Code, § 999a)
Los Angeles County Superior Court
Hon Sam Ohta, Magistrate

REPLY IN RESPONSE TO
RETURN TO ORDER TO SHOW CAUSE

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INTRODUCTION

Petitioner Diana Maria Teran is charged with six counts of violating Penal Code section 502, subdivision (c)(2), which makes it a public offense when a person "[k]nowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network."[1] The Attorney General ("AG") argues that Ms. Teran is liable because she "impermissibly shared *LASD's data*—including *confidential peace officer personnel information*—with a person outside LASD." (Return, p. 13 (emphasis added).)

The material facts are not disputed. On April 26, 2021, Ms. Teran was employed by the Los Angeles County District Attorney's Office (LADA), where she advised that office's Discovery Compliance Unit (DCU), among her other responsibilities. Consistent with LADA criminal discovery policies that had been in place for years, she emailed copies of unsealed, public judicial decisions to Pamela Revel, a Deputy District Attorney in the Discovery Compliance Unit, and asked Ms. Revel to review the decisions to determine whether any information in them should be placed in the LADA's confidential *Brady* or ORWITS databases. Ms. Teran had obtained the judicial decisions more than three years earlier while employed at the LASD as a Constitutional Policing Advisor to the Sheriff.

The data Ms. Teran is alleged to have used in violation of section 502(c)(2) are PDF copies of the judicial decisions she shared with Ms. Revel on April 26, 2021. The AG alleged and argued that Ms. Teran used them without LASD permission, but the decisions were public court records. They did not belong to the LASD, nor were they confidential peace officer

[1] Unless otherwise indicated, all statutory references are to the Penal Code and all emphasis in quotations has been added.

personnel records protected by section 832.7. Sharing those public records is not proscribed by section 502(c)(2).

The AG's theory of guilt at the preliminary hearing changed several times during the preliminary hearing, but three things remained constant: (1) the AG agreed that any use of data before April 26, 2021, was barred by the statute of limitations; (2) the AG based its theory that Ms. Teran used data "without permission" on the claim that the data belonged to the LASD; and (3) the AG conceded that the data Ms. Teran used were the court records in the "Writ Discipline Decisions" folder that she shared with Ms. Revel on April 26, 2021, nothing else.

In its return, however, the AG presents new theories of liability that differ substantially from what it argued below. According to the AG's new "curation" theory, Ms. Teran used information from confidential personnel records to select and name the PDFs she shared with Ms. Revel. The AG also now argues that, to prove Ms. Teran used LASD data "without permission," it is enough to show the LADA owned the computer network from which she obtained the writ decisions and not the decisions themselves. But when the preliminary hearing ended, so too did the AG's right to change theories of liability. The AG is now bound by the record developed at the preliminary hearing. Holding otherwise would prejudice Ms. Teran because she has no opportunity to rebut the new arguments with evidence. Regardless, the AG's "curation" theory necessarily relies on acts falling outside the three-year statute of limitations and is barred for that reason.

Separate from the question of data use is the question of Ms. Teran's affirmative defense under section 502(h). Liability under section 502(c)(2) requires two separate acts—accessing a computer and using data from that computer without permission—but section 502(h) excludes "*any* acts which are committed by a person within the scope of lawful employment." Although the parties agree that Ms. Teran's access to LASD's computer network was within the scope of her employment by the LASD, the parties dispute whether the affirmative defense applies if the alleged use of the data fell within the scope of her employment at the LADA. This issue arose because the AG chose to charge a use of data at one public agency that occurred more than two years after the alleged access to a computer at another. Because it is undisputed that Ms. Teran acted within the scope of her lawful employment at both agencies, and the AG is separating access from use by more than two years, Ms. Teran should receive the benefit of the affirmative defense the legislature clearly intended.

The AG is using a computer crime statute to prosecute a career civil servant for conscientiously doing her job without ever suspecting the AG would accuse her of crime for sharing PDFs of court records. As the magistrate recognized, this case is "unprecedented," and the legislature likely never intended section 502(c)(2) to be used in the manner the AG is using it here to prosecute a prosecutor for fulfilling her duty to her employer and her duty to comply with her own *Brady* obligations. No reasonable person would foresee the AG's interpretation of the statute, and for that reason the statute is void for vagueness as applied to the facts of this case.

For all these reasons, Ms. Teran respectfully requests that the Court grant the petition and issue a writ of prohibition vacating the order denying her section 995 motion and directing Respondent the Los Angeles County Superior Court to enter a new order granting the motion.

ARGUMENT

I. MS. TERAN WAS COMMITTED WITHOUT PROBABLE CAUSE

A. Ms. Teran is Charged With Using Data "Belonging To" the LASD

Section 502(c)(2) has a three year statue of limitations, and "[t]he People admit that petitioner's taking of data without LASD's permission in

2018 falls outside the governing statute of limitations." (Return, p.10.) As the magistrate found, "[b]ased on the statute of limitation under section 801, the People are limited to the 'made use of data' part of element 2." (Appx. Vol. 5, 852, RT 686:10-12.) The amended complaint alleges the unlawful use of data on April 26, 2021. (Appx., Vol. 1, 30-31.) The Complaint was filed on April 24, 2024. Therefore, any act occurring before April 25, 2021 would fall outside the statute of limitations.

The preliminary hearing established that the data Ms. Teran is alleged to have used on April 26, 2021, was in a folder she shared by email with Ms. Revel titled "Writ Discipline Decisions" and contained the PDF files of court records. (Appx., Vol. 7, p. 1377 [Ex. FF].) On cross-examination, the case agent overseeing the investigation, Special Agent Daniel Ibarra, confirmed that the AG's theory of guilt was based solely on the Revel email and the files in the "Writ Decisions Folder":

> Q That e-mail was the "use" that you investigated; right?
>
> A Yes. But I'm basing it off of the file that was in the e-mail.
>
> Q I understand. The theory is that she "used" the files in the e-mail by sending them to Pamela Revel.
>
> A Yes. …
>
> A Right. *There's no other "use" at issue in this case other than the e-mail to Pamela Revel; right?*
>
> A *Correct.*

(Appx. Vol. 4, 622, RT 544:5-7.)

As discussed in more detail below, the AG's return alleges new uses of data that the AG never presented below and offered no evidence to support. However, any use of data other than the April 26, 2021, email to Ms.

Revel is foreclosed by the three-year statute of limitations because this case was filed on April 24, 2024—almost three years to the day from the date of the email. Consequently, no acts occurring *before* April 25, 2021, can support the charges.

There is no dispute over what files from the "Writ Discipline Decisions" folder are at issue. While all the files in that folder were copies of either court records or other publicly available documents, only nine of the files are relevant because only nine concerned the Deputy Does identified in Counts 1, 2, 3, 7, 8, and 9—the counts to which Ms. Teran was held to answer. (Accord Return, p.19, fn. 6 ["The People will not address the evidence presented regarding Deputy Does 3 and 5 (counts 3 and 5) because the magistrate did not hold petitioner to answer on those counts."].) Those nine documents are identified in **Exhibit A** to this reply. All are court records from administrative mandamus proceedings in the Los Angeles County Superior Court: two judgments, one peremptory writ of mandate, one notice of ruling attaching a tentative ruling that was adopted by the court, and five tentative orders. The AG has already conceded that the only relevant files in this case "consisted of documents from Los Angeles County Superior Court writ proceedings." (AG Prelim. Opp., p. 10.)

The AG's theory has consistently been that Ms. Teran violated section 502(c)(2) because she used the nine writ documents without LASD permission, and that LASD permission was required to use the documents because they belonged to LASD. The amended complaint specifically alleges that Ms. Teran used data "belonging to the Los Angeles County Sheriff's Department." (Appx., Vol. 1, 30-31.) And during the preliminary hearing, the AG repeatedly confirmed that its theory Ms. Teran used data "without permission" was dependent on the fact that "[t]he Los Angeles Sheriff's Department is the *owner* of the Sheriff's Data Network [i.e., the computer system accessed] *and the data* that resides on the network." (Appx. Vol. 4, 731, RT 653:17–24; see also Appx., Vol. 4, 743-744 [AG's Closing Brief arguing same].)

The question presented by Ms. Teran's petition is whether Ms. Teran required permission from the LASD to share the nine court records with Ms. Revel on April 26, 2021. The answer to that question is no.

B. Court Records Do Not Belong to LASD

Ms. Teran should not have been held to answer the charges because she did not use data "without permission" "belonging to the LASD." Only the owner of data can require permission to use it, but the only data Ms. Teran used on April 26, 2021, were court records. Those documents belong to the public, not the LASD, and because the court records did not belong to the LASD, the LASD had no right to require permission for their use.

1. The factual prerequisite for the right to require permission is ownership of the data used.

To prove that Ms. Teran used the writ decisions "without permission," as required by section 502(c)(2), the AG had to establish that the documents belonged to the LASD.

This is clear from the plain language of the statute itself. Section 502 does not define "permission," but the word's usual and ordinary meaning is "formal consent." (Merriam Webster's Collegiate Dict. (10th ed. 1997) p. 866; see also Black's Law Dict. (12th ed. 2024) ["permission" is "the official act of allowing someone to do something"]; *Green v. State of California* (2007) 42 Cal.4th 254, 260 [when interpreting a statute, courts "must look to the statute's words and give them their usual and ordinary meaning"].) Only a property's owner can require and give formal consent for its use. (See Civ. Code, § 654 ["The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this Code, the thing of which there may be ownership is called property."].) Thus, under section 502(c)(2), permission to use data can be legally required only from a person or entity with a proprietary interest in the data.

Indeed, to prevail on a civil claim under section 502(c)(2), a plaintiff must prove an "*ownership* interest" in the data used. (*Garrabrants v. Erhart* (2023) 98 Cal. App. 5th 486, 508; see also § 502(e)(1) [permitting "the owner or lessee" of data who suffers damages by reason of a violation of section 502(c)(2) to bring a civil action].) This explicit requirement for a civil cause of action under section 502(c)(2) indicates the legislature's intent that, in a criminal prosecution under the same statute, the prosecution must prove the victim (and potential civil plaintiff) owned the data taken, copied, or used in order to establish that it was taken, copied, or used "without permission."

With an understanding of this burden, the AG alleged in the amended complaint that Ms. Teran used data "belonging to" the LASD *and* later argued at the preliminary hearing that it must prove that fact to prevail on the charges. (See Appx., Vol. 1, 30-31 & Vol. 4, RT 653:17–24; see also Black's Law Dict. (12th ed. 2024) ["belong" means "[t]o be the property of a person or thing"].)

2. The data used by Ms. Teran does not belong to LASD.

The court records used by Ms. Teran do not "belong" to the LASD. All nine writ documents Ms. Teran shared with Ms. Revel in her April 26, 2021, email were court records: judgments, writs, notices of ruling, and tentative orders from public writ proceedings in the Los Angeles Superior Court. (AG Return, p. 10 [documents were "copies of court documents that LASD received as party to the litigation"]; see also AG Prelim. Opp., at p. 10 "The files consisted of documents from Los Angeles County Superior Court writ proceedings … addressing challenges to the Los Angeles County Civil Service Commission's decisions on disciplinary matters."].)[2]

As the magistrate found, these writ documents are records in the public domain and, therefore, do not belong to LASD. (Appx., Vol. 5, 878, RT 712:15-18.) Court records belong to the public, not to the litigants who appear before the court. (Cal. Rules of Court, rule 2.400(a).) Unless ordered sealed, court records are "presumed to be open" to the public. (Cal. Rules of Court, rule 2.550(c).) "'[I]t is a first principle that the people have the right to know what is done in their courts.'" (*Copley Press, Inc. v. Superior Ct. (M.P.R.)* (1998) 63 Cal.App.4th 367, 373 [quoting *In re Shortridge* (1893) 99 Cal. 526, 530].) "'Filed' documents in the official record are open and available to the public, in accordance with California's 'long standing tradition of open civil proceedings.'" (*In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1102–1103 [quoting *In re Marriage of Nicholas* (2010) 186 Cal.App.4th 1566, 1568].) "Court records are available to the public in general, including news reporters, unless a specific exception makes specific records nonpublic." (*M.P.R.*, 63 Cal.App.4th at 373 [citing *Estate of Hearst* (1977) 67 Cal.App.3d 777, 782]; see also *Hibernia Savings and Loan Society v. Boyd* (1909) 155 Cal. 193, 200 ["A judicial record is a public writing ...."].) "To implement these principles of public access, the court rules require court

[2] While the AG repeatedly describes the tentative orders as "unsigned" (Return, pp. 18, 22, 45, 50) and claims that its paralegal could not find them on the Superior Court's online docket (*id.* at p.45), it concedes, as it must, that the tentative rulings are court records. Judges in administrative mandamus proceedings are required to issue tentative decisions before ruling, although the unsigned decision are not always filed. (*See* Cal. Rules of Court, rule 3.1590(a) ["On the trial of a question of fact by the court, the court must announce its tentative decision by an oral statement, entered in the minutes, or by a written statement filed with the clerk."]; *Giuffre v. Sparks* (1999) 76 Cal.App.4th 1322, 1326 ["A hearing on a petition for writ of administrative mandamus is a trial of a question of fact for purposes of Code of Civil Procedure section 632 and requires a statement of decision."].).

records to be 'public' and available for inspection to the public at a court facility or in electronic form. (Rule 2.400 et seq.) Rule 2.550(c), for example, requires 'court records' to be presumptively 'open to inspection by the public,' unless a court makes express factual findings to seal them." (*In re Marriage of Mosley*, 190 Cal.App.4th at p.1103.)

3. Proving LASD owned the computer network on which the data was accessed is not enough.

Despite specifically alleging in the Amended Complaint that Ms. Teran used *data* "belonging to" the LASD and then arguing at the preliminary hearing that it must prove that fact, the AG now argues that it need only prove that the LASD owned the *computer* accessed, not the *data* used. (Return, p. 50.) The statute's plain language refutes this argument.

The *actus reus* of a section 502(c)(2) crime is defined by the independent clause "and without permission … makes use of any data." Thus, to violate section 502(c)(2), a person must both (1) access a computer and (2) make use of data from the computer. This plain meaning clearly emerges with the addition of appropriate punctuation: "Knowingly accesses—and without permission takes, copies, or makes use of any data from—a computer, computer system, or computer network." In other words, "[w]hat makes th[e] access unlawful is that the person 'without permission' takes, copies, or makes use of' data on the computer." (*United States v. Christensen* (9th Cir. 2015) 828 F.3d 763, 789.)

Interpreting the statute as the AG now argues would turn section 502(c)(2) into an unlawful access crime, making the provision superfluous because section 502(c)(7) already proscribes unlawful access. Section 502(c)(2) must mean something different. (See § 502(c)(7) [making it a crime if a person "[k]nowingly and without permission accesses or causes to be accessed any computer, computer system, or computer network"].)

"[I]nterpretations which render any part of a statute superfluous are to be avoided." (*Wells v. One2One Learning Found.* (2006) 39 Cal. 4th 1164, 1207.) Furthermore, it is undisputed that Ms. Teran legally accessed LASD's computer system as part of her job at LASD.

The AG's reliance on two jury instructions to support its new argument that it need not prove ownership of the data is misplaced. (See Reply, p. 50.) CALJIC 14.48.2 provides:

> In order to prove this crime, each of the following elements must be proved:
>
> 1. A person knowingly accessed and [took, copied, or made use of any *data* from a computer, computer system, or computer network] [, or] [took or copied any supporting documentation, whether existing or residing internal or external to a computer, computer system or computer network]; and
>
> 2. The person did so without permission.

The prohibited act is taking, copying, or making use of *data* from a computer without permission, not accessing the computer without permission, so this instruction does not support the AG's new argument.

The AG next cites CACI No. 1812, which provides a general framework for all civil violations of section 502. The instruction's Directions for Use refute the AG's new claim because they describe how to modify the instruction to conform to the requirements of section 502(c)(2), including citation to *Garrabrants* for the ownership of the *data* requirement: "Whether plaintiff owned the *data* in defendant's possession was a question of fact for the jury to decide." (*Garrabrants*, 98 Cal.App.5th at 509 [reversing a section 502(c)(2) verdict because the trial court failed to instruct the jury that it must find "the foundational and necessary question of whether [the defendant] actually 'owned' the data at issue."].)

The AG's new computer-ownership argument is also inconsistent with its opposition to Ms. Teran's section 502(h) defense. In responding to Ms. Teran's claim that sharing the court records with Pamela Revel was within the course and scope of Ms. Teran's employment, the AG argues that "'scope of employment' logically means the scope of employment with LASD—the entity that could authorize the use of Sheriff's Data Network *data* through one's employment there." (Return, p. 56.) The only distinction between the LADA and the LASD that could be consistent with the AG's opposition to the "course and scope of employment" defense is a theory that the LASD owns the data used, which would disqualify the LADA from defining a course and scope of employment for Ms. Teran that permitted her to share public court records with Ms. Revel during Ms. Teran's LADA employment. Unless the AG proves an LASD ownership interest in the court records, Ms. Teran's course and scope of employment defense under section 502(h) would be a complete defense to the charges.

The AG had to prove at the preliminary hearing that the LADA owned the data Ms. Teran is alleged to have used, not just the computer on which the data at one time resided. The AG failed to do so.

C. The Magistrate Misinterpreted Case Law and Made Internally Inconsistent Findings

The theory on which the magistrate held Ms. Teran to answer was based on misinterpretations of case law, was unsupported by the evidence, and was undermined by internally inconsistent findings.

Although the magistrate expressly found that the writ decisions "are in the public domain" (Appx., Vol. 5, 878, RT 712:15-18), he sidestepped the clear implications of that ruling by finding that the data used was not the writ decisions but the deputies' names (Appx., Vol. 5, 852, 686:19-21). According to the magistrate, if Ms. Teran obtained the names of disciplined deputies by accessing their disciplinary records in PRMS, sending the writ documents to Revel would then "link" the names to those records.

> The specific issue in this case … is not ownership of the document. Rather, it is whether the defendant accessed the protected computer network owned and maintained by the Sheriff … and obtained the names linked to their personnel files as enumerated in the various counts.

(Appx., Vol. 5, 852-53, 686:24–687:2.) The magistrate found, correctly, that the "protected computer network owned and maintained by the Sheriff" described above was PRMS, where the LASD's confidential personnel files were stored. (Appx., Vol. 5, 853-54, 687:17–688:12.) The magistrate then defined his "linkage" theory of liability as follows:

> [T]he evidence must show the defendant accessed the computer network, the PMRS, and obtained the protected information—the name of the Deputy Doe on a specific personnel record issue challenged by the writ process—which she allegedly improperly *revealed* by providing the writ document on the same subject [to Revel].

(Appx., Vol. 5, 854, 688:18–27.) This "linkage" theory fails for the following reasons.

First, as argued in the petition, this theory is based on a misreading of *Comm. on Peace Officer Standards & Training v. Super. Ct.* (2007) 42 Cal.4th 278, 291 ("*POST*") and *Long Beach Police Officers Assoc. v. City of Long Beach* (2014) 59 Cal.4th 59 ("*Long Beach*"), the two cases on which the magistrate relied. Under those decisions, the "linkage" theory is viable *only* if, under the circumstances, revealing a deputy's name implies the deputy was disciplined *and that fact is not publicly known*. (Teran Pet., pp. 29-31.) That is not the case here because the deputies' discipline was publicly known from the administrative mandamus proceedings and resulting decisions. The writ decisions themselves, not Ms. Teran, publicly "linked" the deputies' names to their discipline.

Second, the theory is based on the premise that Ms. Teran obtained the deputies' names only by accessing their confidential personnel files in PRMS, which is refuted by the evidence. The deputies' names appear on the face of the writ decisions themselves as well as the subject lines and bodies of the emails received by Ms. Teran. (See Appx., Vol. 7, 1244, 1246, 1248, 1251, 1275, 1283, 1302, 1305, 1317-19, 1321, 1324, 1336.) This makes the magistrate's theory internally inconsistent. As the magistrate found, the writ decisions were in the public domain, so too were the deputies' names , which means they were not protected by section 832.7(a). In addition, the magistrate found that receiving court records via email was insufficient to establish the "access" element of a section 502(c)(2) offense. (Appx., Vol. 5, 856, RT 690:12-22 ["This Court cannot conceive such receipt of writ documents in PDF format from outside the Sheriff's [Data] Network constitutes access as defined in section 502(b)(1) …."].) Because Ms. Teran obtained the deputies' names from the emails and the names also appeared on the face of each writ document, the act of sharing the writ documents with Ms. Revel on April 26, 2021, could not be a violation of section 502(c)(2).

D. The AG's New "Curation" Theory Is Based on Acts Outside the Statute of Limitations.

Contrary to its representations to the magistrate below, and contrary to the testimony of its case agent, Daniel Ibarra, the AG now argues that the "data" Ms. Teran allegedly used extends beyond the nine writ decisions and includes all "electronic documents and emails from petitioner's LASD employment pertaining to Deputy Does 1, 2, 3, 7, 8, and 9." (Return, p. 26.) According to the AG:

> The electronic documents are the tracker database, internal reports and memoranda, and pdf documents from the Sheriff's Data Network that were created and/or maintained by LASD employees in the course of their official duties. The emails are communications to and from petitioner with other LASD employees, including LASD's Advocacy Unit, as well as with LASD's counsel, the Los Angeles County Counsel's Office.

(Return, p. 26.) The AG devotes nearly six pages of the return to describing this data. (See *id.* at pp. 26-32.) None of it is relevant because Ms. Teran's access to it was *both* authorized *and* outside the statute of limitations.

Ms. Teran does not dispute that she *accessed* the data described by the AG when she worked as the Sheriff's Constitutional Policing Advisor. Her job required it, and accessing data as part of one's lawful employment cannot be a violation of section 502(c)(2). "What makes th[e] access unlawful is that the person 'without permission takes, copies, or makes use of' data on the computer." (*Christensen*, 828 F.3d at p. 789.) As Constitutional Policing Advisor, Ms. Teran was indisputably authorized to *access* the data pertaining to the Deputy Does as described by the AG. But the AG offered no evidence that Ms. Teran *used* that data on April 26, 2021. There is no evidence at all that she shared or otherwise used the tracker database, internal reports and memoranda, emails, or any other documents from the LASD. The only data that Ms. Teran used on April 26, 2021, were the nine court documents identified in Appendix A.[3]

[3] The AG also alleges, without citation to the record, that of the files in the "Writ Discipline Decisions" folder, "42 were copies of court documents that LASD received as a party to the litigation, 7 were copies of confidential records from the Los Angeles County Civil Service Commission, and 1 was a LASD letter." (Return, p. 10.) These allegations lack merit and are unsupported by any evidence. Review on a section 999a petition "is restricted

The AG's presentation of a new "curation" theory, never argued at the preliminary hearing, was waived. According to this new theory, Ms. Teran used LASD data to select which documents to include in the folder she shared with Ms. Revel. (See Return, pp. 32-33, 35-37.) Not only is the new theory inconsistent with the allegations in the amended complaint, it is also unsupported by evidence from the preliminary hearing and foreclosed by the statute of limitations.

The amended complaint alleged that Ms. Teran used data "concerning" the Deputy Does and "belonging" to LASD on April 26, 2021. (See Appx., Vol. 1, 30.) However, in the return, the AG argues that Ms. Teran used LASD data at various "steps" leading up to her email to Ms. Revel—including by "identifying the deputies from data on the Sheriff's Data Network, selecting documents pertaining to each, titling those documents so that they revealed the deputies' names, and sending the curated group of names and documents to Revel." (Return, p. 33.) The AG claims that the email to Ms. Revel on April 26, 2021, was just "the culmination of her efforts to share discipline-related data from the Sheriff's Data Network in order to add sheriff's deputies to LADA's *Brady* databases." (*Id.* at p. 36.) The AG offered no evidence to support this new claim, and alleges these acts occurred before the April 26, 2021, email—the use specifically charged in the amended complaint. Arguing that the Revel email was the "culmination of [Ms. Teran's] efforts" necessarily means the uses of data occurred *before* the email was sent. (See also *id.* at p.37 ["*Following* these efforts, petitioner sent

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to 'evidence actually offered and received by the magistrate....' The record may not be supplemented by additional evidence." (*Higgason v. Super. Ct.* (1985) 170 Cal.App.3d 929, 945–46 [quoting *Buck v. Superior Ct*. (1966) 245 Cal.App.2d 431, 433].) Moreover, the only relevant documents are those concerning the six counts to which Ms. Teran was held to answer. The Court should reject the AG's improper attempt to expand the record from the preliminary hearing.

the April 26, 2021, email[.]”].) The AG’s new theory—which seeks to hold Ms. Teran accountable for conduct occurring *before* April 26, 2021—is barred by the statute of limitations.

Because it also seeks to hold Ms. Teran accountable for uses of data that occurred on a different date from the one charged in the amended complaint, the “curation” theory would be an improper constructive amendment of the charging document. (See *People v. Graff* (2009) 170 Cal. App. 4th 345, 362.) The amendment is prejudicial because the AG’s newly alleged uses of data are foreclosed by the three-year statute of limitations. (See § 801.)[4]

Citing *People v. Quiroz* (2013) 215 Cal.App.4th 65, 70-71, for its holding that the “prosecution may notify defense of a new theory before or during trial as long as it is sufficiently in advance of closing argument,” the AG argues that it “is not limited by the theories or evidence presented at the preliminary hearing.” (Return, p.52, fn. 18.) The AG skipped the preceding sentence in *Quiroz*, which emphasizes that notice is based on “evidence presented at the preliminary hearing,” as well as the sentence that follows, which admonishes that “due process will not tolerate … the People affirmatively misleading or ambushing the defense with its theory.” (*Quiroz*, 215 Cal. App. 4th at 70.) The AG failed to present its new theory at the preliminary hearing, and presenting it now is an ambush.

Moreover, the AG’s argument that it can change theories at *trial* is not true for a section 999a petition. (Return at p.52, fn.18.) As already noted, review on a section 999a petition is restricted to evidence adduced at the preliminary hearing. (*Higgason*, 170 Cal.App.3d at pp. 945–46.) Arguing

[4] Section 801.7, which provides that the prosecution of a felony offense under section 502 must be commenced within three years after discovery of the offense, went into effect on January 1, 2022, after the offense charged in this case, and thus does not apply.

new theories in response to a section 999a petition violates due process because, while the charging document "tells a defendant what kinds of offenses" are being charged, "the time, place, and circumstances of charged offenses are left to the preliminary hearing transcript. This is the touchstone of due process notice to a defendant." (*People v. Jeff* (1988) 204 Cal.App.3d 309, 342; see also *People v. Jenkins* (2000) 22 Cal.4th 900, 950 [a defendant obtains adequate notice of the prosecution's theory of the case from the testimony presented at the preliminary hearing]; *People v. Calhoun* (2019) 38 Cal.App.5th 275, 305 ["[I]t is not the complaint but the totality of the evidence produced at the preliminary hearing which notifies the defendant of the potential charges he may have to face in the superior court"]; *People v. Jennings* (1991) 53 Cal.3d 334, 358 ["Under modern pleading procedures, notice of the particular circumstances of an alleged crime is provided by the evidence presented ... at the preliminary examination, not by a factually detailed information"].) Allowing the AG in these section 999a proceedings to argue "time, place, and circumstances" of the offenses that differ from the "time, place, and circumstances" presented at the preliminary hearing would deprive Ms. Teran of the opportunity to rebut the new theories with evidence and argument and, in so doing, would deprive her of due process.

For all these reasons, this Court should not allow the AG to change the theory it alleged in the amended complaint and presented at the preliminary hearing.

E. The AG's "Without Permission" Theories Lack Merit

In its return, the AG argues that Ms. Teran required but lacked LASD permission to use the writ documents for three reasons: (1) LASD's computer use policies prohibited disclosing LASD's "official business"; (2) sharing the writ documents with Ms. Revel unlawfully "linked" the deputies' names with confidential information in their personnel records, i.e., the fact that they had been disciplined; and (3) rule 16(e) of the Rules of Professional Conduct ("rule 16(e)")—which requires an attorney, upon termination of a representation, to release client materials and property—gave LASD an exclusive proprietary interest in the writ decisions. All three arguments lack merit.

1. LASD's acceptable use policies do not transform public court records into personnel records maintained by the LASD.

The AG's main argument is that, because Ms. Teran obtained copies of the writ documents from her LASD emails, LASD "policies governing the acceptable use of computer data" prohibited her from disclosing them. (Return, p. 40.) This argument fails for at least three reasons.

First, the magistrate rejected the same argument at the preliminary hearing. The evidence showed, and the magistrate found, that Ms. Teran obtained the writ documents for Deputy Does 1, 2, 4, and 7 from her LASD emails. (The AG offered no evidence of how Ms. Teran obtained the writ documents for Deputy Does 8 and 9.) Ruling that "'[s]ection 502 defines "access" in terms redolent of "hacking" or breaking into a computer,'" the magistrate found that merely downloading documents from one's work email did not constitute "access" under section 502(c)(2). (Appx. Vol. 5, 855, RT 689 [quoting *Chrisman v. City of Los Angeles* (2007) 155 Cal.App.4th 29, 34 (holding that "'accessing' a computer's 'logical, arithmetical, or memory function' is different from the ordinary, everyday use of a computer to which people are accustomed when they speak of 'using' a computer")].) The magistrate explained:

> These documents did not originate in Deputy Does' personnel records. They are court records. This Court cannot conceive such receipt of writ documents in PDF format from outside the Sheriff's Data Network constitutes access as

> defined in section 502(b)(1), which is gaining entry to, instructing, causing input to, causing output from, causing data processing with, or communicating with the logical arithmetical, or memory function resources of a computer, computer system, or computer network, as required to be shown in violation of section 502(c)(2).

(Appx. Vol. 5, 856, RT 690:12-22.) The AG's return does not address the magistrate's findings, which were all well supported.

Second, regardless of what the LASD policies say, no acceptable use policy can transform public court records into confidential or personnel records. And the Supreme Court has made clear the characterization of documents is based on their content, not where they are stored, and "rejected an interpretation that made confidentiality turn on the type of file in which records are located." (*City of San Jose v. Super. Ct.* (2017) 2 Cal. 5th 608, 624 [holding that CPRA does not allow public officials to shield communications about official business by directing them through personal email accounts]; *POST*, 42 Cal.4th at 291 ["We consider it unlikely the Legislature intended to render documents confidential based on their location, rather than their content."].) These holdings make clear that LASD's "acceptable use" policies do not reclassify public domain court records into property belonging to the LASD. As the magistrate found: "These documents did not originate in Deputy Does' personnel records. They are court records." (Appx. Vol. 5, 856, RT 690:12-13.) "The writ documents are in the public domain. That's where they live. They've always lived there. They began there. They were born [there]. They still live there." (Appx., Vol. 5, 878, RT 712:15-18.) LASD's acceptable computer use policies, whatever they say, do not transform public records into private property.

Third, the provisions of LASD's Manual of Policy and Procedures ("MPP") cited by the AG do not cover the writ documents:

MPP 3-01/040.95, titled “Confidential Information,” states that “[t]he official business of the Department is confidential” and limits when and to whom “official information” may be divulged. (AG Exs., Vol. 1, p. 9 [Ex. B].) The MPP does not define “official business.” Relevant statutes and local ordinances provide that the official business of the LASD is to preserve the peace, investigate public offenses, execute health orders, run the county jail, transfer prisoners, provide security services to all County departments and facilities, enforce Vehicle Code violations on county highways, serve process, act as court crier, supply ambulance services, and search for and rescue missing persons. (See Gov. Code, §§ 26600-26616, 26639.2, 26776; Los Angeles County Code, §§ 2.34.015, 2.34.030, 2.34.040.)

The documents Ms. Teran shared with Ms. Revel were created by judges in public proceedings; they were not created by the LASD. Litigating writ proceedings in the superior court is *not* the “official business” of the LASD. All litigation is handled by County Counsel, which has “*exclusive charge and control* of all civil actions and proceedings in which the County or any officer thereof, is concerned or is a party.” (Los Angeles County Charter, art. VI, § 21.) Moreover, the MPP’s language makes clear that the policy applies only to internal policing directives, criminal records, and other “official” information maintained by LASD. The policy does not apply to PDF copies of judicial decisions simply because those documents were attached to work emails.

MPP 3-02/020.10, titled “Personnel Folders,” states that certain records in “the official employee personnel folder,” including “[d]isciplinary actions” and “[f]ounded complaints,” are “restricted.” (AG Exs., Vol. 1, p. 11 [Exh. CC].) This policy does not apply to the PDFs Ms. Teran shared because they are not personnel records and there is no evidence or accusation that Ms. Teran used records from any deputy’s personnel folder. Furthermore, the writ documents, which are court-generated documents, are not disciplinary actions or founded complaints, which are Department-generated records. The AG admits that it has no evidence that the writ documents were even filed in the deputies' confidential personnel files. (Return, p. 10; see also Appx., Vol. 3, 541, RT 474:15-25 [no evidence documents were stored in PRMS[.) Even if they were, placing a non-confidential document in a deputy's confidential personnel file does not make the document confidential. (*POST*, 42 Cal.4th at p. 291 ["We consider it unlikely the Legislature intended to render documents confidential based on their location, rather than their content."].)

MPP 3-07/220.00, titled "Prohibitions," provides that "[a]uthorized persons shall not add, alter, copy, damage, delete, move, modify, tamper with or otherwise use any data or software, computer, computer system, or computer network in order to" commit any of four crimes listed, including to devise or execute a fraud; to wrongfully control or obtain money, property, or data; to disrupt or deny access to a computer system; and to provide unauthorized persons access to any data, software, programs, or computer system or network. (AG Exs., Vol. 1, p. 13 [Ex. DD].) This policy prevents using authorized access to a computer or data to commit a *contemporaneous* offense. Ms. Teran is charged with accessing data and, three years later, using it without permission. That conduct is not contemplated by this policy. The policy's additional provision that authorized persons shall not, "without required authorization," access stored electronic communications or data, access files belonging to another for nonbusiness purposes, or use electronic communications to transmit proprietary or confidential information also does not apply. There is no allegation or evidence that Ms. Teran accessed any LASD computer database without required authorization.

MPP 3-09/090 states that government officials seeking "information from official records" must "submit a written request to the Records and Identification Bureau (RIB) or Station desk officer." (AG Exs., Vol. 1, p. 16 [Exh. EE].) This provision clearly does not apply because, as already discussed, public court records are not the official records of the LASD or deputy "personnel records," as the AG argues. (Return, p. 42, fn. 14.) This provision also does not even appear to apply to *Pitchess* requests, as the AG argues (Return, pp. 41–42), because the evidence established that *Pitchess* requests are handled by LASD's Risk Management Bureau, not the Records and Identification Bureau or Station desk officer. (Appx., Vol. 1, 176, RT 120:3-15.)

The AG's argument that Ms. Teran acted "without permission" because she violated LASD's vague computer-use policies also raises grave due process concerns. The United States Supreme Court faced a similar question under the federal Computer Fraud and Abuse Act in *Van Buren v. United States* (2021) 593 U.S. 374. That case involved a police officer who violated department policy restricting the running of a license-plate search for an improper purpose. (*Id.* at pp. 379-80.) The officer was prosecuted under 18 U.S.C. § 1030(a)(2), which subjects to criminal liability anyone who "intentionally … exceeds authorized access" to a computer and thereby obtains computer information. (*Id.* at p. 380.) The government argued that a violation of the department's policy against using the database for "any personal use" was sufficient to prove that the officer had "exceed[ed] authorized access" to a computer under section 1030(a)(2). (*Ibid.*) In reversing the officer's conviction, the Court rejected the government's interpretation of the statute in part because it "would attach criminal penalties to a breathtaking amount of commonplace computer activity." (*Id.* at p. 393.)

The *Van Buren* concerns are all present here, where the AG argues, first, for an expansive interpretation of LASD's computer-use policies and, second, for an interpretation of section 502(c)(2) that would allow those vague policies to define the scope of authorized use under a criminal statute. Adopting the AG's argument would lead to absurd results, such as the determination that an employee violated LASD's policies, and thus section

502(c)(2), by using a Ralph's grocery coupon received on the employee's LASD email account. Other courts, like *Van Buren*, have also recognized the due process implications of allowing private computer-use policies arbitrarily to determine the scope of criminal statutes. (See, e.g., *United States v. Nosal* (2012) 676 F.3d 854, 860 ["Employer-employee and company-consumer relationships are traditionally governed by tort and contract law; the government's proposed interpretation of the CFAA allows private parties to manipulate their computer-use and personnel policies so as to turn these relationships into ones policed by the criminal law."]; *Craigslist Inc. v. 3Taps Inc.* (2013) 964 F.Supp.2d 1178, 1184 ["[W]here a computer user has some legitimate access to the protected computer in the first place ... criminalizing violations of private use policies ... presents serious notice concerns."].)

In addition to arguments based on the MPP, the AG also argues that Ms. Teran acted "without permission" based on a computer "splash screen" warning before accessing PRMS and automated confidentiality notices in emails she received. (Return, p. 42.) Neither argument has merit. Whether Ms. Teran ever saw the splash screen warning is irrelevant because, as the AG concedes, there is no evidence that the writ documents were ever stored in PRMS. (*Id.* at p. 10; see also Appx., Vol. 3, 541, RT 474:15-25.) Some emails Ms. Teran received about Deputy Doe writ proceedings contained standard automated confidentiality notices warning that the emails and attachments were intended for their recipients and "may be" privileged and confidential. (E.g., Appx., Vol. 7, 1246 [Ex. G].) But Ms. Teran, LASD's Constitutional Policing Advisor, was an intended recipient of the emails; she did not share the emails with Ms. Revel; and, like LASD's computer-use policies, vaguely worded automated confidentiality notices on emails cannot convert documents from the public domain into private property.

Finally, the AG argues that the LASD has the right to require permission to use the writ documents because "the data includes confidential peace officer information protected under section 832.7." (Return, p. 42). This argument fails because the deputies waived the right to maintain the confidentiality of disciplinary information in public filings without seeking an order to seal what was confidential. (See *Berkeley Police Assn. v. City of Berkeley* (2008) 167 Cal.App.4th 385, 406, fn. 22 ["The officer … may, of course, choose to waive the confidentiality protection of section 832.7."]). In addition, the writ documents were generated by judges in public court proceedings, not the parties in confidential administrative proceedings. As the magistrate ruled and the AG conceded, "[I]nformation in the public domain does not become confidential because it relates to a matter that is also in the confidential personnel files." (Appx., Vol. 5, 891-892, RT 725:21–726:11 [citing *Pasadena Police Officers Assn. v. Super. Ct.* (2015) 240 Cal.App.4th 268, 294]; see also *id.*, Vol. 5, 879, RT 713:9–15 ["THE COURT: [T]here's no rule that says if you take a writ and the writ proceedings disclosed … what happened in the discipline, that all that information is confidential. … There's no law that says that. [¶] MR. CHUNG: That is correct."].) Having conceded this point below, the AG should not be allowed to take a contrary position in these proceedings. (See *Saville v. Sierra College* (2005) 133 Cal.App.4th 857, 873.)

2. The writ decisions, not Ms. Teran, publicly "linked" the deputies' names to their discipline.

Conceding, as they must, that the writ documents are public court records, the AG argues that the data Ms. Teran used was not, in fact, the *documents* themselves but the deputies' *names*, which impermissibly "linked" the deputies to information that was confidential under section 832.7, namely, the fact of their discipline. (Return, p. 44.) According to the

AG, using the deputies' names in the titles of the PDF files "connected the deputies to discipline, without reference to the content of the files." (*Ibid*.) For the reasons given above, this argument fails. (See *ante*, § I.C, pp. 18-20.)

Furthermore, when emailing the writ decisions, Ms. Teran asked DDA Revel to research the cases and determine for herself whether the information should be included in the *Brady* or ORWITS databases. (Appx., Vol. 4, 597, 625-627, RT 519, 547–49.) Ms. Teran did not suggest to Ms. Revel that the deputies were subject to discipline *other* than what was disclosed in the writ documents she asked her to review. Indeed, it is undisputed that Ms. Teran sent Ms. Revel only the writ documents *and nothing else*—no personnel records, no litigation tracker spreadsheets, and no other information compiled from PRMS. Thus, the AG is simply wrong to argue that sending the files—whatever they were titled—connected the deputies to discipline "without reference to the content of the files." The whole point in sending the files to Ms. Revel in the Discovery Compliance Unit was for her to read the files' contents and determine if information should be included in the databases consistent with LADA policies.

The AG is also clearly wrong when it argues that Ms. Teran "learned that the Deputy Does were the subjects of disciplinary matters *solely* from her access to their confidential files at LASD." (Return, p. 44.) As already pointed out, the deputies' names were on the writ decisions and in the emails to which the writ decisions were attached. (See *ante*, § I.C, p. 20.) The argument also assumes, without any evidence and contrary to common sense, that Ms. Teran never opened the files. The title of the folder in which she had saved the documents, "Writ *Discipline* Decisions," clearly refutes that assumption. The writ decisions are not confidential. "Because such records are not confidential, information 'obtained from' those records is not confidential." (*Assn. for Los Angeles Deputy Sheriffs v. Super. Ct.* (2019) 8 Cal.5th 28, 44 (*ALADS*).)

Because the deputies' names were already publicly linked to their discipline before Ms. Teran shared the writ decisions with Ms. Revel, the AG's lengthy discussion about whether litigating disciplinary decisions in administrative mandamus proceedings waives the section 832.7 privilege is beside the point. (See Return, pp. 45-50.) The AG sums up its argument as follows: "That a peace officer's personnel *information* 'may be found in an unprotected source does not impact the confidentiality of the personnel *records* themselves' under the *Pitchess* statutes." (Return, p. 49.) True, but irrelevant. In e-mailing the writ decisions to Ms. Revel, Ms. Teran sent her the publicly available *information* about the discipline, not the confidential personnel *records*. Even if a *Pitchess* motion were required to obtain the deputy's disciplinary records, none would be needed to consider information about the discipline already in unsealed court records. (*Pasadena Police Officers Assn. v. Super. Ct.* (2015) 240 Cal.App.4th 268, 293 [holding that excerpts from officer's deposition transcript filed in support of summary judgment motion were public court records].) "'Court records are public records, available to the public in general ....'" (*Ibid.* [quoting *Hurvitz v. Hoefflin* (2000) 84 Cal.App.4th 1232, 1246].)

For similar reasons, the AG's argument that, even if the deputies waived the section 832.7 privilege, the LASD "still has the right to assert privilege as to the information from that deputy's personnel file" also fails. (Return, p. 49.) The LASD did *not* assert the privilege in the mandamus proceedings, and did not request a protective order or file a motion to seal. As a result, the administrative record and judicial rulings that openly discuss deputy discipline were filed publicly. Under these circumstances, the LASD waived any objection to disclosure of the information in the records of those proceedings, including the writ decisions themselves. At the very least, the AG cannot now claim that Ms. Teran knowingly made us of the writ decisions without the LASD's permission based on a right to assert a privilege that the LASD never exercised.

3. Rule 1.16(e) of the Rules of Professional Conduct does not give LASD an exclusive property interest in the writ documents.

Citing rule 3-700(D) of the California Rule of Professional Conduct and *Eddy v. Fields* (2004) 121 Cal.App.4th 1543, the AG argues for the first time in the return that LASD had a property interest in the writ documents because they were LASD's own legal papers. (Return, pp. 50–51.) This argument fails for several reasons.[5]

Rule 3-700(D) was replaced in 2018 by Rule 1.16, which provides in relevant part:

> (e) Upon the termination of a representation for any reason:
>
> (1) subject to any applicable protective order, non-disclosure agreement, statute or regulation, the lawyer promptly shall release to the client, at the request of the client, all client materials and property. "Client materials and property" includes correspondence, pleadings, deposition transcripts, experts' reports and other writings,* exhibits, and physical evidence, whether in tangible, electronic or other form, and other items reasonably* necessary to the client's representation, whether the client has paid for them or not[.]

(Rules Prof. Conduct, rule 1.16(e).)

[5] For the due process reasons discussed above, the Court should disregard this argument, which was never presented at the preliminary hearing. (See *ante*, § I.D, pp. 23-24.)

Rule 1.16(e) does not apply here because it imposes an obligation on a client's former attorney, and Ms. Teran was never the LASD's attorney. (See *post*, § III, pp. 46-47.)

The AG's argument also fails because rule 1.16(e) does not create an exclusive property interest in all documents that happen to be in an attorney's case file, as the AG now argues. Under the rule, the client's right to assert ownership over litigation documents extends only to the right to demand copies of pleadings and other documents in the case file so that the client can continue to pursue the matter without interruption. The rule does not give a client the right to prevent an attorney from using public court records that were part of the client's case. In fact, the rule does not even apply to court orders or tentative rulings, which are not identified in the rule's list of "client materials and property." While "pleadings" are mentioned the rule, pleadings in civil actions include only "complaints, demurrers, answers, and cross-complaints," not court orders. (Cal. Civ. Proc. Code, § 422.10.)

Unsurprisingly, *Eddy*—which held only that an attorney's work-product objection to releasing documents under former rule 1.16(e) was waived (121 Cal.App.4th at p. 1548–49)—does not support the AG's expansive reading of the rule.

II. 502(h) BARS THIS PROSECUTION

Section 502(h)(1)'s plain language excludes a person from liability under section 502(c) for "any acts which are committed by a person within the scope of lawful employment." To prevail on the alleged violations of section 502(c)(2), the AG must prove two acts: (1) Ms. Teran accessed a LASD computer and (2) she "made use of" data from that computer "without permission." There is no dispute that Ms. Teran accessed LASD computers in her role as Constitutional Policing Advisor for Los Angeles County at the LASD, and the AG concedes she acted within the scope of her lawful employment in doing so. (Appx, Vol. 4, 691, 613:15-19.) When Ms. Teran allegedly used the data in April 2021, she was still employed by the County as a Deputy District Attorney and Special Advisor to the District Attorney tasked with advising the LADA concerning, among other things, compliance with prosecutors' *Brady* obligations. As argued below, sharing the writ decisions was within the lawful scope of that job. Thus, under the plain language of section 502(h)(1), Ms. Teran cannot be liable for either of the two acts—accessing data or using data—that the AG must establish for a violation of 502(c)(2).

A. Section 502(h)(1) Immunizes Ms. Teran's Conduct at *Both* LASD *and* the LADA

The AG argues, as it did in its preliminary opposition, that the employment exclusion in section 502(h)(1) "logically refers to the 'the scope of the employment' by the entity whose data was breached." (Return, p. 55.) Ms. Teran's reply in support of her petition provided detailed argument about section 502(h)'s plain language and legislative history that refutes this argument. (Teran Reply, pp. 10–13.)

B. Ms. Teran's Conduct Was Reasonably Necessary To Carry Out Her Duties at the LADA

The AG argues that section 502(h) does not apply because Ms. Teran was not acting within the scope of her lawful employment because sharing the writ decisions with LADA's Discovery Compliance Unit was not "reasonably necessary to the performance of [her] work assignment" under section 502(h)(1). The AG is wrong. To explain why requires the Court to consider both the LADA's discovery policies in effect at the time as well as the broader legal landscape when Ms. Teran was hired by the LADA.

Ms. Teran was hired in February 2021 as a Special Advisor to the District Attorney, George Gascón. (Appx., Vol. 4, 604, RT 526:14–19.) One of her duties was to supervise the Discovery Compliance Unit. (*Ibid.*) The

Discovery Compliance Unit maintained LADA's *Brady* and Officer and Recurrent Witness Information Tracking System (ORWITS) databases.[6] (Appx., Vol. 6, 1194.) The *Brady* database contains exculpatory or impeaching information of recurrent witnesses, including some felony and misdemeanor convictions or other misconduct pertinent to on an officer's credibility. (*Ibid.*) The ORWITS database is similar but includes a broader set of information based on "information likely to lead to potential impeachment information." (*Ibid.*) Information in the ORWITS database comes from a wide variety of sources, including "*court records if known*." (Appx., Vol. 6, 1194–95.)

LADA's discovery policies in effect in April 2021 were admitted into evidence at the hearing. (Appx., Vol. 6, 1048–1107.) These policies require all LADA DDAs "to strictly adhere" to *Brady*'s obligations, "to comply with the law regarding disclosure obligations[,] and to follow the policies and procedures set forth in this Chapter." (*Id.* at pp. 1048-49.) They remind DDAs that "[c]onstitutional disclosure requirements 'apply to a prosecutor even when the knowledge of exculpatory evidence is in the hands of another prosecutor.'" (*Id.* at 1060.) The policies state that, to ensure potential *Brady*

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[6] Prosecutors' offices routinely facilitate compliance with *Brady* by maintaining an archive of potentially exculpatory and impeachment material for officers who participated in investigations or may serve as witnesses. In large prosecutor's offices like the LADA, it is often necessary to maintain a *Brady* database because any information known by one prosecutor is attributed to all others. To comply with discovery obligations, a prosecutor who learns that his or her office's *Brady* bank has potential exculpatory or impeachment material about an officer who is a participant in a pending case may disclose non-confidential information to the defense and, if the records are confidential, the officer's name and the fact that it appears in the office's *Brady* bank. (*Johnson*, 61 Cal.4th at p.716.) In the latter situation, the defense would then have to file a *Pitchess* motion to obtain in camera review of confidential personnel records for any *Brady* information that may appear there. (*ALADS*, 8 Cal.5th at pp. 36-37.)

information that "comes to the attention of the LADA can be made known to all DDAs," the ORWITS database was created. (*Ibid*.) The Discovery Compliance Unit (DCU) was responsible for maintaining ORWITS, which included "maintain[ing] files containing the underlying documents for each ORWITS entry, which are available for DDA review upon request." (*Id.* at pp. 1059-60.) "The DCU's conclusions, reflected in the form of ORWITS summaries, are privileged work product … made available to DDAs to assist them in the discharge of their constitutional and statutory obligations [but] are not discoverable via Penal Code section 1054 or via California Public Records Act (CPRA) requests." (*Id.* at pp. 1060-61.) The policies advised prosecutors that "DCU DDAs are available for consultation regarding this policy, as well as impeachment-related issues involving recurrent People's witnesses." (*Id.* at p. 1060.) Finally, and importantly, the policies also informed prosecutors to consult the Discovery Compliance System Manual (DCSM), which specifically directed that "*publicly available information* (e.g., JSID declinations, media stories, *court records*, etc.) included in ORWITS, should be disclosed to the defense immediately and without a protective order." (*Id.* at p. 1098.)[7]

The section 832.7 legal landscape in 2021 is also of critical importance. While in *Long Beach*, the Supreme Court suggested that publicly disclosing the names of police officers could violate section 832.7 if it would imply they had been disciplined, in 2019 the Supreme Court held in *ALADS* that precisely that sort of disclosure was authorized when it occurred between law enforcement agencies and prosecutors' offices. In *ALADS*, the LASD

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[7] The version of the DCSM admitted at the hearing was from December 2021. (See Appx., Vol. 1, 1074–1105.) The mandate to produce court records, however, was also in the April 2020 DCSM, the version in effect at the time of the charged conduct. (See LADA, Discovery Compliance System Manual (rev. Apr. 2020), § VI.D, pp. 19–20, https://da.lacounty.gov/sites/default/files/policies/Discovery-Compliance-System-Manual-2020.pdf.)

deputies' union sued to prevent the LASD from giving the LADA a *Brady* list. (*ALADS*, 8 Cal.5th at p. 47.) Though the list contained information obtained from the deputies' confidential personnel records, the Supreme Court held that there was no violation of section 832.7. The Court ruled that section 832.7, like any confidentiality provision, creates insiders and outsiders, but concluded that the statute "does not clearly indicate that prosecutors are outsiders." (*Id.* at p. 50.) The Court also recognized that "interpreting the *Pitchess* statutes to prohibit *Brady* alerts would pose a substantial threat to *Brady* compliance." (*Id.* at p. 52.) Ruling that the term "confidential" in section 832.7 must be interpreted "[w]ith *Brady* in mind" (*id.* at p. 53), the Court concluded that, though the statute shields the fact that an officer has been disciplined from disclosure to the public, disclosure to prosecutors does not raise the same privacy concerns (*id.* at p. 55). Accordingly, the Court held that law enforcement agencies may give prosecutors *Brady* alerts without violating section 832.7. (*Id.* at pp. 51, 56.)

Equally important for Ms. Teran's section 502(h) defense, *ALADS* recognized that a prosecutor's prior knowledge of potential *Brady* information may trigger *Brady* obligations. The deputies' union had argued that, when maintaining police officer's personnel files, law enforcement agencies were not members of the "prosecution team" for *Brady* purposes. (*Id.* at p. 52.) After concluding that the law did not support that position, the Court also noted that it rested on a logical error because disclosure would be required if other members of the prosecution team are "aware of the existence and content of those records," including prosecutors who "may know from a prior *Pitchess* motion that a confidential file contains *Brady* information regarding an officer involved in a pending prosecution." (*Id.* at p. 53.) The Court also rejected the union's argument that the *Brady* obligation applied only to information obtained during an investigation of the defendant's criminal matter:

> This, too, is mistaken. *What matters for Brady purposes is what the prosecution team knows, not how the prosecution team knows it*. Suppose, for example, that a prosecutor is personally aware (based on an earlier case) that a key witness in a pending prosecution is a habitual liar who has been repeatedly convicted of perjury. To say that the prosecutor need not disclose that information merely because it was not "obtained during" investigation of the defendant's case would be irreconcilable with the right to a fair trial underlying *Brady*; it would "cast[ ] the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice."

(*Id.* at p. 53.) Thus, in *ALADS*, the Supreme Court affirmed that, once in possession of potential *Brady* information, a prosecutors' office is obligated to disclose it, regardless of "*how* the prosecution team knows it." (*Ibid*.)

Finally, when discussing confidential personnel records, the Supreme Court has held that prosecutors satisfy their *Brady* obligations if they inform defendants that potential *Brady* information about witnesses exists. (*Johnson*, 61 Cal.4th at p. 859 ["[T]he prosecution fulfills its *Brady* obligation if it shares with the defendant *any information it has* regarding whether the personnel records contain *Brady* material, and then lets the defense decide for itself whether to file a *Pitchess* motion."].)

Seen in the context of this factual and legal background, Ms. Teran's email to Ms. Revel was not just "reasonably necessary to the performance of [her] work assignment" (§ 502(h)(1)), it was required by her work assignment. The LADA's discovery compliance policy applied to all DDAs, required strict compliance with *Brady*, and applied "'*even when the knowledge of exculpatory evidence is in the hands of another prosecutor*.'" (Appx., Vol. 6, 1060.) With the writ decisions, Ms. Teran held in her hands public court records with information that could reflect adversely on the credibility of the deputies involved. Relevant case law informed her that "[w]hat matters for *Brady* purposes is what the prosecution team knows, not how the prosecution team knows it" (*ALADS*, 8 Cal.5th at p. 53) and that, when considering section 832.7's "confidentiality" protections "[w]ith *Brady* in mind," prosecutors are deemed insiders, not outsiders, and therefore may maintain otherwise confidential peace officer information to facilitate *Brady* compliance. (*Id.* at pp. 51, 56.) Ms. Teran knew that ORWITS was created to ensure that potential *Brady* information that "comes to the attention of the LADA can be made known to all DDAs." (Appx., Vol. 6, 1160.) She knew that the Discovery Compliance Unit was responsible for maintaining ORWITS. (*Id.* at p. 1059.) She knew that ORWITS, and the Discovery Compliance Unit's conclusions about whether information in the database required disclosure, was privileged work product and not subject to disclosure in discovery or under the CPRA. (*Id.* at pp. 1060-61.) LADA's discovery policy directed her to consult with Discovery Compliance Unit about the policy and any "impeachment-related issues." (*Id.* at p. 1060.) And, crucially, she knew that the LADA did not consider "publicly available information" such as "court records" to be confidential. (*Id.* at p. 1098.)

Given these policy directives and judicial holdings, it was without doubt "reasonably necessary" to the performance of her job for Ms. Teran to send the public court records to a member of the Discovery Compliance Unit to seek that unit's determination about whether the information in the court records warranted including the deputies named there in ORWITS.

III. SECTION 502(C)(2) IS UNCONSTITUTIONAL AS APPLIED IN MS. TERAN'S CASE

Section 502(c)(2) is unconstitutional as applied to the conduct charged in this case because the statute does not give adequate notice that a person could be criminally liable for using public court documents merely because she originally accessed them on her employer's computer network.

It is a well-settled principle of constitutional law that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (*Connally v. General Construction Co.* (1926) 269 U.S. 385, 391.) Both the United States and California Supreme Courts have held:

> Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

(*Grayned v. City of Rockford* (1972) 408 U.S. 104, 108–109; see also *Cranston v. City of Richmond* (1985) 40 Cal.3d 755, 763.)

For these reasons, "[t]he void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that 'ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.'" (*People v. Hsu* (2000) 82 Cal.App.4th 976, 991 [quoting *Kolender v. Lawson* (1983) 461 U.S. 352, 357].) "The constitutional interest implicated in questions of statutory vagueness is that no person be deprived of 'life, liberty, or property without due process of law,' as assured by both the federal Constitution (U.S.

Const., Amends. V, XIV) and the California Constitution (Cal. Const., art. I, § 7).” (*Williams v. Garcetti* (1993) 5 Cal.4th 561, 567.) “To satisfy the constitutional command, a statute must meet two basic requirements: (1) the statute must be sufficiently definite to provide adequate notice of the conduct proscribed; and (2) the statute must provide sufficiently definite guidelines for the police in order to prevent arbitrary and discriminatory enforcement.” (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1106–1107.)

The magistrate who presided over the preliminary hearing recognized that section 502(c)(2) failed to give sufficient notice that the facts in this case could be unlawful. The magistrate called this “a case of first impression” and an “unprecedented” use of a “not very well written” statute. (Appx., Vol. 1, 68, RT 12:15 & 87, RT 31:4; *id.*, Vol. 3, 433, RT 366:11–16; *id.*, Vol. 5, 832-33, RT 666:28–667:3.) Like the magistrate, the LADA recognizes both that “cases addressing section 502 are few and far between” and that “this case presents novel issues” under the statute. (LADA Amicus Br. at p. 8.) The AG argues that it is just applying the plain meaning of section 502(c)(2)’s text to the conduct alleged, but the magistrate reasonably rejected that argument: “You’re attempting to put something into the statute, which I’m not sure the legislature had thought about that scenario when they crafted the statute.” (Appx., Vol. 1, 69, RT 13:1–4.)

The AG has struggled throughout this case to articulate its theory about how and when Ms. Teran used LASD data “without permission.” It has argued that the writ documents were themselves confidential personnel records under section 832.7; that the writ documents were not confidential but that Ms. Teran “laundered” confidential information by sharing them; that they do not need to prove that the writ decisions were confidential under section 832.7; that Ms. Teran used confidential data to curate which writ decisions to share; that the writ decisions belonged to LASD because they were saved on the Sheriff’s Data Network; that they do not need to prove that the writ decision belonged to the LASD only that the Sheriff's Data Network belonged to the LASD; and that the writ decisions actually did belong to the LASD because they were part of the LASD's attorney case file from the writ proceedings. The AG's ever-shifting positions, and the fact that some of these theories are being presented for the first time in its return, more than justify the magistrate's confusion.

This Court must "look not only at the language of the statute but also to legislative history and California decisions construing the statute." (*People v. Bamba* (1997) 58 Cal.App.4th 1113, 1120.) Neither indicates that section 502(c)(2) was intended to cover the conduct charged in this case. To the contrary, appellate decisions, supported by section 502's legislative history, hold that the statute was intended to address computer hacking and malicious tampering. (See Teran Reply, pp. 10–13.) The magistrate recognized this when he found that the AG could not prove "access" under section 502(c)(2) solely based on evidence that Ms. Teran obtained the writ documents by opening attachments to emails sent to her LASD email account. (Appx., Vol. 5, 855-856, RT 689:6–690:22.) No reasonable person could have foreseen the AG's application of section 502(c)(2)—criminalizing the use of public court records to assist prosecutors in fulfilling their constitutional, statutory, and ethical duties to provide exculpatory information to defendants. Accordingly, the statute is void for vagueness, and Ms. Teran's case should be dismissed.

The AG argues that no reasonable person would have believed that sharing the writ decisions with Ms. Revel was lawful under section 502(c)(2) because of the PRMS splash screen, LASD's computer use policies, the automated confidentiality notices in the emails to which the writ decisions were attached, and section 832.7 case law. (Return, p. 59.) These arguments fail for the reasons already discussed. (See *ante*, § I.E.1, pp. 25-30.)

The AG also argues that the Los Angeles County "Inspector General's Office warned petitioner against keeping the data she took from LASD." (Return, p. 59.) This is a disturbingly false characterization of the Inspector General's actual testimony at the preliminary hearing, which was that he had had many conversations with Ms. Teran about whether public court records were protected by section 832.7, that they both believed section 832.7 did not cover public court records, and that his understanding of the law was that "documents that are not confidential do not become confidential when they are placed in a peace officer's personnel record." (Appx., Vol. 3, 457-460, RT 390:3–393:9.) The AG's attempts to attach a nefarious intent to Ms. Teran's accessing files in PRMS in the last days of her employment at LASD are also highly misleading. (See Return, pp. 20, 59.) The Inspector General testified that she was given permission from the Sheriff on November 29, 2018, to provide the Inspector General with confidential files he was entitled to possess and had formally requested. (Appx., Vol. 3, 474-75, RT 406:10–408:14.)

The AG argues that Ms. Teran would have been on notice that her conduct was illegal based on a 2014 incident when, at the LASD's Headquarters in Monterey Park, Ms. Teran asked Jason Lustig, Deputy-in-Charge of LADA's Discovery Compliance Unit at the time, to accept a list of deputies' names so that the LADA could request their files. (Return, pp. 20, 36, 61.) Mr. Lustig said he could not accept the deputies' names under section 832.7; Ms. Teran said she could not turn over files without a request. (Appx., Vol. 2, 274-275, RT 217-218.) Far from putting Ms. Teran on notice that her conduct was unlawful, this meeting reflected the uncertainty in the law that existed at the time. In fact, when discussing the matter with Mr. Lustig, Ms. Teran was not acting as a rogue employee, as the AG suggests, but pursuant to a directive from the Sheriff that, ultimately, resulted in the years-long *ALADS* litigation, in which the Supreme Court held that law enforcement agencies can give prosecutor's offices *Brady* alerts without violating confidentiality. (8 Cal.5th at p. 51.) In short, Ms. Teran's view of the law was affirmed.

Similarly, no reasonable person would have understood that it was unlawful under section 502(c)(2) to send the writ decisions to the LADA's Discovery Compliance Unit so that those attorneys could independently evaluate whether the information should be included in ORWITS. To the contrary, doing this was precisely what the LADA's discovery compliance policy required. (See *ante*, § II.B, at pp. 37-38.) The magistrate found as much: "I don't see this case as a case where someone is trying to do something wrong. … I see this case as someone who is trying to comply with the mandates of the due process clause." (Appx., Vol. 3, 478, RT 411:21-27.)

The AG also argues for the first time in this case that any reasonable attorney would have known that the charged conduct was prohibited by an attorney's duty of loyalty and confidentiality as an attorney. (Return, pp. 59-62.) This argument has no merit. Each of the Rules of Professional Conduct relied on by the AG for this argument—rule 1.6, 1.9, and 1.11—applies to a lawyer representing clients. Rule 1.6(a) prohibits lawyers from revealing client "secrets." Rule 1.9(c)(1)-(2) prohibits a lawyer "who has formerly represented a client in a matter" from revealing or using client secrets to the disadvantage of the former client. Rule 1.11(a)(2) provides that government lawyers are subject to rule 1.9(c) and without permission "shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public official or employee." But none of these rules applies to Ms. Teran because she was never the Deputy Does' or the LASD's attorney. The AG does not claim Ms. Teran represented the Deputy Does in their proceedings, and the writ decisions themselves show she did not. Ms. Teran also did not represent the LASD or the County in those matters. Because the Deputy Does' writ proceedings were civil actions involving either the County or an officer of the County, County Counsel had "*exclusive charge and control*" of the County's representation in those matters. (Los Angeles County Charter, art. VI, § 21 [providing that County Counsel has "exclusive charge and control of all civil actions and proceedings in which the County or any officer thereof, is concerned or is a party".)

Ms. Teran was an employee of the LASD, not its lawyer. She was hired to be a Constitutional Policing Advisor to the Sheriff. Had the AG argued at the preliminary hearing that Ms. Teran represented LASD, Ms. Teran would have rebutted it with additional evidence, including a LASD proposed structure/job description for the CPA position stating that "CPAs will not represent the Sheriff in court on any matters pertaining to civil actions and will instead advise and provide internal oversight on policies and procedures, internal investigations, and custody and/or patrol operations to enhance accountability and adherence to best law enforcement practices."

Section 502's plain language and legislative history make clear that it was not designed to impose criminal liability on the kind of conduct alleged in this case. The AG's use of the statute was never anticipated or intended by the legislature, and therefore no reasonable person could have understood that the conduct charged here was a violation of the statute. The statute is therefore unconstitutional as applied in this case.

CONCLUSION

For the foregoing reasons, Ms. Teran respectfully asks the Court to grant her petition and to issue a writ of prohibition vacating the order denying her section 995 motion and directing Respondent the Los Angeles County Superior Court to enter a new order granting the motion.

DATED: March 10, 2025

Respectfully submitted,

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Attorneys for Petitioner
DIANA MARIA TERAN

Diana Maria Teran v. Superior Court, **No. B341644**

Attachment A:

Relevant Writ Decisions

(Citations are to volume and page number)

Doe	Name	Ex.	Document Type	Pet. Appx.	AG Exs.
1	Carbajal	LL	Tentative Order	7:1389	1:17
2	Levy	NN	Peremptory Writ	7:1403	1:31
2	Levy	PP	Judgment	7:1430	1:56
2	Levy	RR	Tentative Order	7:1438	2:62
4	Jackson	VV	Notice of Ruling	8:1462	2:79
7	Kennedy	ZZ	Tentative Decision	8:1495	2:94
8	Jordan	BBB	Tentative Decision	8:1507	2:104
9	Serrata	DDD	Judgment	8:1526	2:120
9	Serrata	FFF	Tentative Decision	8:1532	2:125

RULE 8.204(c)(1) CERTIFICATION

Pursuant to rules 8.485(a) and 8.204(c)(1) of the California Rules of Court, I hereby certify that this brief contains 12,520 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By ______________________________
James W. Spertus

PROOF OF SERVICE

Petitioner Diana Teran v. Superior Court of the State of California, County of Los Angeles, Respondent;

People of the State of California, Real Party in Interest.

Case No: B341644

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1990 South Bundy Dr., Suite 705, Los Angeles, CA 90025. My email address is jcorbin@spertuslaw.com. On the date indicated below, I caused to be served the foregoing document described as:

REPLY IN RESPONSE TO RETURN TO ORDER TO SHOW CAUSE

on the interested parties in this action by causing a true and correct copy of the above-described document(s) to be transmitted from an Electronic Filing Service Provider (EFSP) on the date listed below:

California Attorney General's Office
Charles Chung (charles.chung@doj.ca.gov)
William N. Frank (william.frank@doj.ca.gov)
Christopher Sanchez (christopher.sanchez@doj.ca.gov)
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I further caused the same the foregoing document(s) to be placed in the United States mail, with postage thereon fully prepaid, for delivery by the United States Postal Service to the following recipients:

Hon. Sam Ohta
Department 108
Clara Shortridge Foltz Criminal
Justice Center
210 West Temple Street
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 10, 2025, at Los Angeles, California.

Julia R Corbin

Julia R. Corbin