Case No. S227106

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA and ELECTRONIC FRONTIER FOUNDATION,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES,

Respondent.

COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, CITY OF LOS ANGELES, LOS ANGELES POLICE DEPARTMENT,

Real Parties in Interest

After a Decision by the Court of Appeal,
Second District, Division Three, Case No. B259392
Los Angeles County Superior Court, Case No. BS143004
Hon. James C. Chalfont, Judge Presiding

ANSWER BRIEF ON THE MERITS OF REAL PARTY IN INTEREST CITY OF LOS ANGELES

MICHAEL N. FEUER, City Attorney
AMY JO FIELD, Assistant City Attorney
*LISA S. BERGER, Deputy City Attorney
State Bar No. 108223
200 North Main Street, Sixth Floor
Los Angeles, California 90012
Telephone: (213) 978-6956
Facsimile: (213) 978-0763

Attorneys for Real Party in Interest
CITY OF LOS ANGELES

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SUMMARY OF ARGUMENT

This Court is asked once again to examine the California Public Records Act ["CPRA"] exemption for law enforcement records of investigation provided by Government Code[1] section 6254, subdivision (f) ["§ 6254(f)"]. Not at issue is whether the random recording of individuals' license plates violates the Fourth Amendment, which all authority shows it does not. Also not before this Court is whether it is good public policy for law enforcement agencies to collect and store the data obtained by Automatic License Plate Reader ["ALPR"] systems. That is a debate for the Legislature.

The simple issue presented here is whether ALPR plate scan data are exempt from disclosure under § 6254(f) because they are records of investigations. The Court of Appeal concluded they were because each scan is immediately compared to a list of license plate numbers connected to specific crimes or individuals to determine if further investigation into the vehicle is warranted. Petitioners do not dispute the data are used for this purpose. Instead, they attempt to distinguish plate scan data from traditional records of investigation

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[1] Unless otherwise indicated, all statutory references are to the Government Code.

because of the "mass scale" of their collection and their "prolonged retention." Neither case law nor statutory interpretation supports the distinctions petitioners have put forward.

While petitioners argue "investigation" cannot—or should not—be interpreted to include ALPR plate scan data, they provide no feasible alternative. Former United States Supreme Court Justice Potter Stewart once famously stated he would not attempt to define the kinds of materials embraced within the description "hard-core pornography," but he knew it when he saw it. (*Jacobellis v. Ohio* (1964) 378 U.S. 184, 197; conc. opn. of Stewart, J.) In the ensuing fifty years, courts have "traveled a twisting, rocky road . . . in [an] attempt to enunciate both a coherent explanation for, and the proper limits on, government suppression of obscene and sexually explicit speech." (*Balboa Island Village Inn, Inc. v. Lemen* (2007) 40 Cal.4th 1141, 1175 (dis. opn. of Werdegar, J.)) Petitioners would leave "investigation" similarly undefined and, like Justice Stewart, rely on the courts to know it when they see it. Such an uncertain outcome would leave the public and the government with no standard for applying § 6254(f).

Petitioners argue plate scan data are not exempt because of the "mass surveillance capabilities of ALPRs," but they do not

propose a means for determining when a surveillance method results in too much data to be considered an investigation. They assert ALPR scans are not an investigation because of their untargeted and indiscriminate nature. But if that criteria were applied in other law enforcement contexts, records created by computer programs looking for child pornography would have to be disclosed. (See e.g., *State v. Combest* (Or. Ct. App. 2015) 350 P.3d 222, 231-232 & fn. 15.) Petitioners' insinuation that data obtained with technology cannot be records of investigation would lead to disclosure of information gathered by surveillance cameras, wiretaps, radar guns and red light cameras. It would be untenable to define "investigation" so that any records collected by automation rather than human effort would have to be disclosed.

Petitioners argue only a fraction of ALPR plate scans result in a match. But an investigation cannot be defined by how many innocent people are excluded before a perpetrator is identified. There is still an investigation when police take the fingerprints of individuals who might legitimately have been at a crime scene for elimination purposes, irrespective of how many there are. Nor does the retention and accessibility of plate scan data for future investigations mean they are not records of investigation. DNA, fingerprints and mug shots

are also retained in databases for future use, yet they remain exempt from disclosure.

Relying on *United States v. Jones* (2012) 132 S.Ct. 945 and the line of authority following it, petitioners argue advances in technology are changing the legal ramifications of law enforcement's use of equipment like ALPR. Each of those cases explored whether evidence obtained through technology without a warrant must be suppressed. The question whether there had been an investigation was never at issue. Moreover, data collected through the use of a GPS or through cell phone records are very different from plate scan data. While the former may allow for continuous, pinpoint tracking of an individual, ALPR systems merely take random snapshots of a vehicle at times when it is in public view. *Jones* would not support a Fourth Amendment claim against the collection of ALPR plate scan data and it is not authority for redefining "investigation."

Contrary to petitioners' contentions, the 2004 passage of Proposition 59, amending the California Constitution to incorporate the CPRA's broad right of access to government information, did not create a new interpretative rule for exemptions. Rather, it enshrined the long-standing principle that the provisions of the CPRA should be applied in favor of disclosure, and its exemptions narrowly

construed. Petitioners' arguments that the Court of Appeal erred by relying on the interpretation of § 6254(f) this Court established in *Williams v. Superior Court* (1993) 5 Cal.4th 337 ["*Williams*"] and *Haynie v. Superior Court* (2001) 26 Cal.4th 1061 ["*Haynie*"], or that those holdings should be reconsidered, are without merit,

BACKGROUND

Real Parties City and County of Los Angeles utilize ALPR technology that consists of: 1) cameras mounted to patrol cars or stationary structures that scan all license plates in their immediate vicinity; 2) software that translates the scanned images into readable data and compares them to "hot lists" of known license plate numbers associated with events such as auto thefts, AMBER Alerts and outstanding warrants; and 3) servers that store the data and make them accessible for future investigations. (Court of Appeal Slip Opinion ["Opn."] at p. 2; see also Exhibits to Petition for Writ of Mandate ["Exhs."] at Vol. 2, p. 427, ¶ 11.) Anecdotal evidence from throughout the county establishes plate scan data are used every day to generate investigative leads that help law enforcement solve

serious felonies, recover abducted children, find stolen vehicles, apprehend fugitives and support terrorism investigations.[2]

The system is designed so that if a mobile ALPR unit detects a license plate number that matches one on the hot list, officers are notified by an audible alert and notation on their patrol car's computer screen.[3] (*Ibid.*) Fixed ALPR units similarly notify a central dispatch when a match is detected. These alerts permit officers to further investigate and determine whether the driver of the identified vehicle is implicated in the event that put the plate number on the list. This "active" use of the data permits a greater number of vehicles

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[2] There are myriad examples of how ALPR data have assisted law enforcement in identifying, locating, and apprehending suspects. One well-publicized incident occurred when a Virginia state trooper entered into her ALPR a license plate number associated with the man who had shot and killed a reporter and cameraman on live television. The reader showed the suspect's car had passed the trooper only a few minutes earlier. (Mary-Ann Russon, *Virginia Shooting: Police Tracked Bryce Williams Within Minutes Using License Plate-Reading Technology*, Int'l. Business Times (Aug. 28, 2015), at http://www. ibtimes.co.uk/virginia-shooting-police-tracked-bryce-williams-within-minutes-using-licence-plate-reading-1517472; see also Matthew Heller, *License Plate Readers: Another Step Toward "Big Brother" Surveillance?*, MintPress News (April 30, 2014), at http://www. mintpressnews.com/license-plate-readers-another-step-toward-big-brother-surveillance/189826/ [highway sniper identified using ALPR data]; *State v. Wilson* (La.App. 2015) 169 So.3d 574, 575-576 [ALPR used to apprehend armed robber].)

[3] See David Downs, *Dragnet, Reinvented* (March 2006), at archive.wired.com/wired/archive/14.03/lapd.html, for an account of how this process works in real time.

to be checked while freeing officers to respond to other problems. (Rand Corp., *License Plate Readers for Law Enforcement: Opportunities and Obstacles* (July 2, 2014), p. 13.)[4]

Real parties each collect data from more than one million ALPR plate scans per week, and retain that data for two to five years. (Opn. at p. 4.) This "historic" data may be queried in subsequent investigations, with access strictly limited to authorized law enforcement personnel acting for legitimate law enforcement purposes. (Exhs. at Vol. 2, pp. 427-428, ¶ 6.)

This case arose from petitioners' CPRA requests seeking records related to real parties' use of ALPR technology, including "all ALPR data collected or generated" during a one-week period in August 2012, consisting of, "at a minimum, the license plate number, date, time, and location information for each license plate recorded." (Exhs. at Vol. 1, pp. 2-5.) While real parties produced records responsive to petitioners' requests for policies, guidelines, and training materials concerning the use, access, and retention of ALPR plate scan data, they refused to disclose the plate scan data, arguing they were records of investigation. (*Ibid.*) The Superior Court denied petitioners' petition for writ of mandate to compel production,

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[4] Http://www.rand.org/pubs/research_reports/RR467.html.

agreeing § 6254(f) applied. That decision was affirmed by the Court of Appeal, which held the ALPR system was deployed "to assist in law enforcement investigations involving an identified automobile's license plate number." (Opn., p. 10.)

ARGUMENT

I

THE COURT OF APPEAL CORRECTLY FOUND ALPR DATA ARE RECORDS OF INVESTIGATION EXEMPT UNDER § 6254(f) AND PETITIONERS' ATTEMPT TO REDEFINE THE TERM SHOULD BE REJECTED

A. Petitioners' Arguments Against the Interpretation of § 6254(f) Developed in *Williams* and *Haynie* Have No Support in the Law and Would Result in Confusion and Uncertainty for the Public, the Government, and the Courts

i. Rules of Statutory Construction Support the Court of Appeal's Common Sense Interpretation of "Investigation"

Petitioners ask this Court to reinterpret "investigation," as used in § 6254(f), so as to exclude ALPR plate scan data by reading into the statutory language a requirement that

an investigation be "targeted" or based on "some level of suspicion." Recognized principles of statutory construction do not permit such an intrusion into the Legislature's province. (See *In re A.M., supra,* 225 Cal.App.4th at p. 1083.)

When interpreting a statute, a court looks first to its words, giving them their usual and ordinary meaning, while construing them in light of the statute as a whole and its purpose. (*In re Ethan C.* (2012) 54 Cal.4th 610, 627.) When specific terms are not defined, courts generally look to the common knowledge and understanding of members of the particular vocation or profession to which the statute applies for the meaning of those terms. (*Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 575.)

"Investigation" has a commonly understood meaning that is not circumscribed as petitioners propose. Dictionary definitions include "to make a systematic examination, *especially*: to conduct an official inquiry"[5] and "a careful examination or search in order to discover facts or gain information."[6]

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[5] Merriam-Webster Dictionary 2015, at http://www.merriam-webster.com/dictionary/investigate; italics in original.

[6] Amer. Heritage Dict. of the English Language, 5th ed. (2013), at https://www.ahdictionary.com/word/search.html?q=investigation&submit.x=38&submit.y=15.

"Black's Law Dictionary defines 'investigation' as '[t]he activity of trying to find out the truth about something, such as a crime, accident, or historical issue.' (Black's Law Dict. (10th ed. 2014) p. 953, col. 2.)" (*People v. Superior Court (Johnson)* (2015) 61 Cal.4th 696, 714; see also *Pullin v. Superior Court* (2000) 81 Cal.App.4th 1161, 1164 ["Black's Law Dictionary defines 'investigate' this way: 'To inquire into (a matter) systematically . . .'"].)

The comparable exemption under the federal Freedom of Information Act ["FOIA"] applies to "records or information compiled for law enforcement purposes" where disclosure would meet one of six specified conditions. (5 U.S.C. § 552(b)(7)(E).) While this Court has cautioned against reading FOIA language into the CPRA (*Williams, supra,* 5 Cal.4th at pp. 351-352), it remains true the two enactments have similar policy objectives. (*Regents of University of California v. Superior Court* (2013) 222 Cal.App.4th 383, 400.) As California courts do with the CPRA, federal courts construe the FOIA exemptions narrowly in favor of disclosure. (See *John Doe Agency v. John Doe Corp.* (1989) 493 U.S. 146, 152.) Yet federal courts require only a "rational nexus" between an agency's

law enforcement duties and the document claimed to be exempt for § 552(b)(7)(E) to apply. (*MacPherson v. IRS* (9th Cir. 1986) 803 F.2d 479, 482 [broad reading of exemption serves intent to prevent disclosure of sensitive information about innocent individuals].)

For example, in *Chivers v. United States Dept. of Homeland Sec.* (S.D. N.Y. 2014) 45 F.Supp.3d 380, a district court found exempt records from a database maintained by U.S. Customs and Border Protection containing details about individuals traveling to and from the United States. The database was designed to collect, maintain and screen information to augment an individual officer's decision-making process about whether a traveler or crew member should receive additional screening. (*Id.* at pp. 384, 388.) The district court concluded the data was exempt because disclosure would reveal law enforcement techniques that could enable potential violators to circumvent the examination procedures. (*Id.* at pp. 388-390.)

In arguing for a narrower construction of § 6254(f), petitioners cite to the dissent in *Gen. Dynamics Land Sys. v. Cline* (2004) 540 U.S. 581, and assert the lack of a modifier before "investigation" supports their position. (Merits Brief at p. 33.) However, *Gen. Dynamics* actually supports the Court of Appeal decision.

The United States Supreme Court differentiated "general terms that in every day usage require modifiers to indicate any relatively *narrow* application" from those where the textual setting makes a narrower reading the more natural one. (*Id.* at pp. 597-598; italics added.) Petitioners appear to concede "investigation" is a general term that would require a modifier to indicate a narrow application. The lack of a modifier in § 6254(f) supports the broad construction adopted by the Court of Appeal.

Petitioners contend "indiscriminately collected data . . . through automated surveillance technology, without suspicion of wrongdoing and without any human targeting at all" may lead to a parade of horribles that requires public monitoring. (Merits Brief at p. 36.)[7] Speculation about possible misuse is not a factor to be considered when determining the validity or scope of a statute. (See, e.g., *United States v. Diaz-Castaneda* (9th Cir. 2007) 494 F.3d 1146, 1152

[7] As an example of how data may be abused, petitioners point to a Washington, D.C. police officer who pleaded guilty in 1998 to extortion after looking up the license plate numbers of vehicles he observed near a gay bar and blackmailing the owners. (Merits Brief at pp. 37-38.) What they fail to mention is the officer was not using ALPR technology but was manually checking each number. The data obtained by that officer would not be records of investigation because they were obtained for his own use and not for law enforcement reasons. It is the purpose for the creation of the records that determines if the exemption applies, not the means of collecting the data.

[possibilities of database error and police officer abuse do not create legitimate expectation of privacy].) Records do not lose their exemption simply because they *might* be gathered improperly. The solution to potential misuse lies with the Legislature, which may enact protective measures such as strict data access controls, mandatory auditing, and regular reporting.[8]

The meaning of the words in a statute cannot vary with the public policy concerns of any particular application. And not all statutory interpretations are equally reasonable: "[T]he mere fact that one may make a theoretical and unsupported argument to broaden

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[8] State legislatures, including California's, have proposed or adopted a number of different regulatory schemes, most of which focus on the use and retention of ALPR data. In 2015, the California Legislature addressed its concern about the privacy of personal data collected by ALPR technology by enacting the Reader Privacy Act (Civil Code § 1798.90 et seq.), which imposes a variety of security, privacy and public hearing requirements on the use of ALPR systems and retention of the resulting data. Making that same data easily accessible through the CPRA by narrowly defining "investigation" would seem contrary to the Legislature's intent.

No state has entirely banned ALPR systems. New Hampshire has the strictest law, prohibiting the use of cameras on the roads for determining the ownership of a vehicle or identity its occupants. However, the statute includes an exemption for certain investigatory, traffic and security purposes. (RSA § 236:130.) In 2013, Utah banned the use of ALPRs but exempted law enforcement agencies "protecting public safety, conducting criminal investigations, or ensuring compliance with local, state, and federal laws." (Utah Code Ann., § 41-6a-2003(2)(a).) Attempts to ban the technology have failed in several states, including Missouri (SB 196 (2015)) and Montana (HB 344 (2015)).

the scope of the statute or to narrow its exceptions does not necessarily mean the language at issue is legitimately susceptible of that interpretation." (*Kelly v. Methodist Hospital of So. California* (2000) 22 Cal.4th 1108, 1114.)

Petitioners contend the Legislature could not have intended § 6245(f) to apply to "suspicionless and untargeted mass surveillance" because disclosure of ALPR data does not implicate the exemption's concerns about "protect[ing] 'the very sensitive investigative stages of determining whether a crime has been committed or who has committed it.' *Haynie*, 26 Cal.4th at 1070." (Merits Brief at p. 18.) A similar restriction was suggested in *Williams* through a test that would "exempt [documents] from disclosure only if '1) they directly pertain to specific, concrete and definite investigation of possible violations of the criminal law; or 2) their disclosure would impair the ability of law enforcement agencies to conduct criminal investigations by disclosing confidential informants, threatening the safety of police agents, victims, or witnesses, or revealing investigative techniques.'" (*Williams, supra,* 5 Cal.4th at p. 354.) This Court found no statutory support for such an interpretation, noting the Legislature had "expressly imposed several precise limitations on the confidentiality of law enforcement investigatory records . . . [and] was capable

of articulating additional limitations if that is what it had intended to do." (*Ibid.*)

Petitioners assert the ability of ALPRs to scan license plates exponentially faster than human officers should be taken into consideration when interpreting "investigation." The Court of Appeal disagreed, holding "that distinction is irrelevant to the question of whether the ALPR system's core function is to 'uncover[] information surrounding the commission of the violation [of law] and its agency' — i.e., to investigate suspected crimes. (*Haynie, supra*, 26 Cal.4th at p. 1071.)" (Opn. at p. 13.) There is no authority for the premise police work ceases to be an investigation simply because officers have increased their effectiveness by augmenting their sensory faculties with technology. (See *United States v. Knotts* (1983) 460 U.S. 276, 282, 284.)

Petitioners claim "[d]ictionary definitions of the word 'investigate' suggest targeted or focused inquiry." (Merits Brief at p. 13.) This contention is not unlike the one rejected by this Court in *Haynie* that records of investigation should not be deemed to include routine or everyday police activity. This Court held the "proposed limitation finds no support in the statute." (*Haynie, supra,*

26 Cal.4th at p. 1070.) Petitioners' effort "to graft a requirement of need onto the statute" should be rejected as these similar arguments have been in the past. (*Id.* at p. 1071, citing *Williams, supra*, 5 Cal.4th at p. 354.)

The common usage of "investigation" makes no distinction between inquiries into a specific complaint and observation of a public place for the presence of persons or vehicles involved in multiple incidents.[9] When patrol officers are given a list of stolen vehicles to look for while driving or walking their beat, their observations are part of the investigation into each offense. By the same reasoning,

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[9] Other states with similar public record exemptions do not define the term as narrowly as petitioners propose. For example, North Carolina, which exempts "records of criminal investigations" from disclosure, defines the term as "all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements." (N.C. Gen. Stat. § 132-1.4(b)(1) (2003).) Vermont's ALPR law declares both active and historical data "shall be considered collected for a legitimate law enforcement purpose." (23 V.S.A., § 1607(A)(1).) Massachusetts limits the investigative material exemption of its Public Records Act to records "the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest." (G.L. ch. 4, § 7(26)(f).) Yet a recent bill, which stalled in the Massachusetts House, would have designated ALPR data as "personal information" not to be disclosed. (HB 4098, § 14 (2014).)

a system of hardware and software that scans license plates for that purpose is contributing to those investigations.

Moreover, ALPR scanning *is* a targeted investigation. Petitioners' arguments rest on the proposition that the perpetrator defines what is an investigation, not the crime. They repeatedly protest the Court of Appeal's application of § 6254(f) to ALPR plate scan data "lead[s] to the absurd conclusion that all drivers in Los Angeles are constantly under investigation." (E.g., Merits Brief, p. 15.) It is the crimes associated with the plate numbers on the hot list that are being investigated; ALPR use is simply a step in the investigation that helps locate vehicles on the list and possibly thereby identify a suspect. "It follows that the records the ALPR system generates in the course of attempting to detect and locate these automobiles are records of those investigations." (Slip Opn. at p. 10.)

The Court of Appeal accepted real parties' representations that ALPR plate scan data "'would not exist were the County or the City not investigating specific crimes in an attempt to locate persons who are suspected of having committed crimes.'" (Opn. at p. 10; see also Exhs. at Vol. 1, 27:21-24, 41:8-14, 65:10-15, 68:20-22.) Factual findings which are supported by substantial evidence will be upheld by this Court. (*Los Angeles Unified School Dist. v. Superior Court*

(2014) 228 Cal.App.4th 222, 237.) ALPR scanning of all license plates in the vicinity of the camera is no different from other means of gathering evidence, such as taking all the fingerprints in a hotel room crime scene even though the majority will be of no use in identifying the perpetrator.

Petitioners' objection that the Court of Appeal decision blocks public access to information about police surveillance and data collection "and stifles informed debate about the balance of privacy and security" (Merits Brief at p. 36) is an argument for the Legislature, not this Court.[10] A court may not, "under the guise of construction,

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[10] Petitioners contend they "seek access to public records so that the legal and policy implications of the government's use of ALPRs to collect vast amounts of information on almost exclusively law-abiding Angelenos may be fully and fairly debated." (Merits Brief at p. 6.) Their reason for requesting the records is irrelevant to the application of the CPRA exemptions. (§ 6257.5.) And noble goals are not a basis to "judicially repeal, under the guise of statutory interpretation, the exemptions provided by the PRA." (*Northern Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116, 121.) However, it is notable petitioners have never explained why the plate scan data they requested are necessary to accomplish the policy debate they seek. As of July 2013, the ACLU had made public record requests to local, state, and federal agencies that produced over 26,000 pages of documents about the policies, procedures and practices for the use of ALPRs. (See ACLU, *You Are Being Tracked, How License Plate Readers are Being Used to Record Americans' Movements* (July 2013) at p. 3, at https://www.aclu.org/feature/you-are-being-tracked.)

Petitioners analogize the collection of plate scan data to NSA surveillance programs that captured bulk telephony metadata, and contend it was only when the facts of such programs became

rewrite the law or give the words an effect different from the plain and direct import of the terms used." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349.) The wisdom of providing a broad exemption for law enforcement records without regard for changes in technology is a matter for legislative determination.[11] This Court may not substitute its judgment (or petitioners') for that of the Legislature unless it "'is clearly and palpably wrong and the error appears beyond a reasonable doubt

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known that there could be debate and policy change. (Merits Brief at p. 6.) But that debate and policy change did not require public disclosure of the metadata itself. Similarly, in a July 2013 report, the ACLU described its "success" in raising awareness of ALPR technology in Brookline, Massachusetts using information found on the internet and in public records. (*Id.* at pp. 23-24.) Plate scan data were unnecessary.

[11] While many states have passed legislation addressing ALPR technology, none has made the resulting data available to the public. (See e.g., Ar. Codes Ann., § 12-12-1803; Me. Rev. Stats., § 2117-A.) Examples provided by petitioners do not support their case. After the release of ALPR data showed where the Minneapolis mayor's vehicle had been on multiple occasions (see Merits Brief at p. 37), Minnesota passed legislation that, among other things, designated the data as private. (Minn. Stat. § 13.824(2)(b).) Boston police suspended the use of ALPRs in 2013 after their inadvertent release of data caused concerns about the reliability of their security. (Merits Brief at p. 40.) The Massachusetts Legislature then made several attempts to enact legislation regulating the use of ALPRs and designating the data as "personal information" exempt from disclosure under the state's Public Records Act. (See Senate Doc. No. 2141.) The predominate commonality of the legislative actions taken by other jurisdictions is a concern for the security of the data resulting from the use of ALPRs.

from facts or evidence which cannot be controverted, and of which the courts may properly take notice.'" (*Lockard v. City of Los Angeles* (1949) 33 Cal.2d 453, 461.)

ii. Nothing Included in or Omitted From the Language of § 6254 Raises an Inference the Legislature Intended to or Would Exclude ALPR Data

Petitioners assert the application of § 6254(f) "to ALPR technology yields an extraordinary result unintended by the Legislature." (Merits Brief at p. 4.) When interpreting a statute, however, courts do not assume the Legislature would not have included matters not then contemplated.[12] Legislation framed in general terms and designed for prospective operation should be construed to apply to subjects falling within its general terms even though they come into existence later.

> "Fidelity to legislative intent does not 'make it impossible to apply a legal text to technologies that did not exist when the text was created. . . . Drafters of every era know

[12] Equally inappropriate is petitioners' suggestion this Court should diverge from its earlier rulings because it "could not have contemplated an application of § 6254(f) that would cover such a vast collection of data" when it interpreted the exemption in *Williams* and *Haynie*." (Merits Brief at p. 28.)

that technological advances will proceed apace and that the rules they create will one day apply to all sorts of circumstances they could not possibly envision.'" (*Apple Inc. v. Superior Court* (2013) 56 Cal.4th 128, 137.)[13]

This Court has held, for purposes of interpreting statutes, "it matters not whether the drafters, voters or legislators consciously considered all the effects . . . of the provisions they wrote and enacted." (*People v. Garcia* (1999) 21 Cal.4th 1, 14.) "Old laws apply to changed situations. The reach of [an] act is not sustained or opposed by the fact that it is sought to bring new situations under its terms. . . ." (*Browder v. United States* (1941) 312 U.S. 335, 339-340; fns. omitted.) Petitioners' speculation "the Legislature did not expressly intend the exemption for records of law enforcement investigations to extend to records generated from the automated and suspicionless logging of the license plates of millions of law-abiding

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[13] In *Apple*, this Court concluded the Credit Card Act did not apply to online music downloads. However, this was not because such new technology had not been contemplated by the Legislature but because the Act's safeguards against fraud were not available to online retailers selling electronically downloaded product. (*Id.* at pp. 139-140.)

Los Angeles drivers" (Merits Brief at p. 5) is an insufficient basis for this Court to read their proposed restrictions into the statute.

There is no principle of statutory interpretation whereby a court would decline to apply a statute to a situation its language concededly covers on the belief that, if the Legislature had foreseen modern circumstances, it would have adopted an exception. Rather, if the Legislature chose language which fairly brings ALPR data within the exemption, "it is unimportant that the particular application may not have been contemplated by the legislators." (*Barr v. United States* (1945) 324 U.S. 83, 90.) It is for the Legislature, not the courts, to enact a differently worded law if unforeseen developments make it necessary.

The language of § 6254(f) shows a legislative intent to create the "broad" investigation exemption described by this Court in *Williams*. (*Williams, supra,* 5 Cal.4th at p. 349.) The first part of the statute covers any local or state police agency, the Department of Justice and the Attorney General's office, and exempts from disclosure complaints to, investigations conducted by, or records of intelligence information or security procedures of those agencies. The latter part of the section grants a complete exemption for any

other state or local agency's investigatory or security files created for correctional, law enforcement or licensing purposes.

The expansiveness of this language contradicts Petitioners' claim § 6254(f)'s limited disclosure requirements indicate a legislative intent to restrict the exemption to targeted inquiries. They argue the disclosures "would result from targeted investigations into particular individuals or suspected criminal acts, not from indiscriminate collection of information on law-abiding civilians." (Merits Brief at pp. 13-14.) This is a logical fallacy. First, as noted, every scan is part of each investigation represented by the numbers on the hot list and, as such, related incident and victim information may have to be disclosed. Second, petitioners' conclusion conflicts with their characterization of the ALPR procedure. If a match between a random ALPR plate scan and an entry on the hot list results in an arrest, the required disclosures would have resulted from the "indiscriminate collection of information on law-abiding civilians." It is only because § 6254(f) does not require disclosure of evidence collected in the search for a perpetrator that most plate scan data would not be released. It is not because there has been no investigation.

Petitioners read too much into the disclosure requirements. This Court looked at them in *Williams* and concluded the Legislature intended to require the release of information derived from investigative records while preserving the exemption for the records themselves. (*Williams, supra,* 5 Cal.4th at p. 353; see also *Haynie, supra*, 26 Cal.4th at p. 1068.) The disclosure requirements "represent the Legislature's judgment, set out in exceptionally careful detail, about what items of information should be disclosed and to whom. Unless that judgment runs afoul of the Constitution it is not our province to declare that the statutorily required disclosures are inadequate or that the statutory exemption from disclosure is too broad." (*Id.* at p. 361; accord, *Haynie, ibid.*)

iii. Cases Like Haynie *and* Williams *May Not Be Distinguished Simply Because They Arose From Targeted Investigations*

Petitioners argue the Court of Appeal erred in relying on existing case law interpreting § 6254(f) because each decision involved a narrow inquiry into a specific incident. (Merits Brief at pp. 16-19.) The results of those cases did not hinge on, or even take into consideration, whether the investigation was "targeted." Precedent does not lose its value in determining related issues merely

because it is not "on all fours." (See, e.g., *The MEGA Life & Health Ins. Co. v. Superior* court (2009) 172 Cal.App.4th 1522, 1529, fn. 7.) Nothing in the reasoning or results of *Haynie* or any other case cited by petitioners suggests the "targeted" nature of the underlying investigation deprives them of their precedential value when cited in support of applying § 6254(f) to ALPR plate scan data.

Using the facts of *Haynie* to illustrate their point, petitioners note that case "involved an investigation targeted from its inception at responding to a specific report of possible criminal activity." (Merits Brief at pp. 16-17.) In *Haynie*, a CPRA request was made for citizen reports and police radio calls following the police stop of an African-American motorist based on the mere suspicion of criminal conduct. The call that prompted the stop did not necessarily describe a crime and no arrests were made after the motorist was detained. (*Haynie, supra,* 26 Cal.4th at p. 1065.) This Court applied § 6254(f) to the records, holding:

> "Limiting the section 6254(f) exemption only to records of investigations where the likelihood of enforcement has ripened into something concrete and definite would expose to the public the very sensitive investigative

stages of determining whether a crime has been committed or who has committed it." (*Id.* at p. 1070.)

By petitioners' logic, the civilian tip regarding a *possible* crime in *Haynie* resulted in an investigation but the *actual* report of a stolen vehicle or AMBER Alert that results in a license plate number being on the hot list does not. In other words, an investigation may occur when police are not certain a crime has been committed but not when there is a known crime and the only suspect information is a license plate number. Petitioners show the fallacy of this proposed distinction when they simultaneously acknowledge plate scan data are used for "ongoing" investigations but assert they are not "a record of an inquiry 'undertaken for determining whether a violation of law may occur or has occurred' under *Haynie*." (Merits Brief at p. 22.)

In *Haynie*, this Court provided a distinction that is both logical and workable:

"[B]y including 'routine' and 'everyday' within the ambit of 'investigations' in section 6254(f), we do not mean to shield everything law enforcement officers do from disclosure. [Citation.] Often, officers make inquiries of citizens for purposes related to crime prevention and public safety that are unrelated to either civil

> or criminal investigations. The records of investigation exempted under section 6254(f) encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred. If a violation or potential violation is detected, the exemption also extends to records of investigations conducted for the purpose of uncovering information surrounding the commission of the violation and its agency. Here, the investigation included the decision to stop Haynie and the stop itself was for the purpose of discovering whether a violation of law had occurred and, if so, the circumstances of its commission. Records relating to that investigation are exempt from disclosure by section 6254(f)." (*Id.* at p. 1071.)

This distinction may be simply and consistently applied, even to license plate data. The Department of Motor Vehicles registration database is not a record of investigation because the plate numbers were collected for administrative purposes, even if it has been accessed by police during an investigation. On the other hand, ALPR plate scan data *are* exempt because, as the trial court recognized, they exist only as a product of the system's use

as an investigative tool. (Exhs. at Vol. 1, 25:9-13 ["[D]ata is used solely for criminal investigations. It is not used for crime prevention. It is not used for public safety."]) Petitioners do not dispute this. (See Merits Brief at p. 18 ["ALPR plate scans . . . are *only* precipitated by the nonspecific goal of collecting data on thousands of license plates each hour that *may be helpful in locating known stolen or wanted vehicles.*"; italics added; see also ACLU, *You Are Being Tracked, supra,* at p.5 [law enforcement use of ALPRs is to check hot lists of stolen vehicles, vehicles used in commission of a crime, subjects of AMBER Alerts or felony arrest warrants, and people required to register as sex offenders or on supervised release].)

The comparison of license plates on the street to those on the hot list is part of an investigation, whether done manually by an officer or automatically by the ALPR system. The plate scan data are created for that purpose and are therefore exempt under § 6254(f).

iv. *Acceptance of Petitioners' Arguments Would Leave the Public, the Government, and the Courts Without a Workable Definition of Investigation, Creating Confusion and Uncertainty*

Like all CPRA exemptions, § 6254(f) represents a balancing of competing interests: 1) providing the public full access

to information regarding the working of government; 2) protecting the privacy of people named in government records; and 3) preventing and prosecuting criminal activity. (*Rackauckas v. Superior Court, supra,* 104 Cal.App.4th at p. 173.) This makes it imperative that the parameters of the exemption be clear to government, the courts, and the public. Adopting petitioners' proposed restrictions on what an investigation is would lead to confusion and uncertainty in applying the exemption. Petitioners point to features they say distinguish ALPR data from records of investigation, but they do not address how the exemption should apply to other records with similar characteristics.

Petitioners' primary contention is that ALPR data are not records of investigation because plate scans are indiscriminate rather than targeted. (E.g., Merits Brief at p. 13.) To the extent they advocate widespread data collection can never be an investigation, there is no supporting authority. (Compare *In re FBI for an Order Requiring the Prod. Of Tangible Things* (For. Intel. Surv. Ct. June 19, 2014) 2014 U.S. Dist. LEXIS 157864, *14[14] [reasonable grounds to believe bulk telephony metadata relevant to NSA investigations].)

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[14] California Rules of Court do not prohibit the citation of unpublished federal cases as persuasive authority. (*Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP* (2010) 183 Cal.App.4th 238, 251, fn. 6.)

Further, petitioners do not explain how their proposed distinction could be applied consistently. ALPR cameras scan all license plates within their range. However, they do so as part of multiple targeted investigations, as shown by the data's comparison to license plates numbers believed to be connected to specific criminal offenses or offenders. A patrol officer must do the same, looking at all license plates in the vicinity, at least momentarily, to eliminate those that are not on a list of wanted vehicles. There is no logical reason the latter data are exempt, while the former are not.

Petitioners argue human limitations require an officer to exercise some level of discretion in choosing which license plate numbers to enter into the system, making the inquiry "targeted" even if it is based on nothing more than "mere suspicion or a hunch." (Merits Brief at p. 28.) They appear to accept data collected by such an inquiry is exempt under § 6254(f). But an officer's license plate check may be every bit as random as ALPR scanning. (See e.g., *United States v. Rodgers* (9th Cir. 2011) 656 F.3d 1023, 1024-1025; see also *United States v. Montalvo-Rangel* (W.D. Tex. Apr. 5, 2010) 2010 U.S. Dist. LEXIS 33384, *1-2 [officer routinely and randomly checks about fifty plates a shift].)

Federal courts have long held that computer checks of license plate numbers, regardless of whether supported by reasonable suspicion or probable cause, do not violate the Fourth Amendment. (See e.g., *United States v. Diaz-Castaneda, supra,* 494 F.3d at p. 1151-1152; *United States v. Ellison* (6th Cir. 2006) 462 F.3d 557, 563 [collecting cases].) If the data resulting from such inquiries are records of investigation, similar data collected by an automated system should be as well. On the other hand, if a random check can *never* be an investigation, public entities would be unable to apply the exemption because there would be no way to segregate data produced by pure happenstance from that collected on the basis of probable cause, reasonable suspicion, or "a hunch."

Petitioners attempt to carve out an exception to § 6254(f) for records generated by "new technology." They argue "[a]pplying *Williams* and *Haynie* to the facts of this case, without recognizing the impact new technologies such as ALPRs have on how courts should interpret § 6254(f), fails to ensure the underlying values supported by the PRA are preserved in an era of increasing technological change." (Merits Brief at p. 27.) They contend the use of such technology is "fundamentally different from observations

or searches police traditionally use to gather . . . information." (Merits Brief at p. 30.)

Petitioners do not state data collected through the use of technology can never be exempt, and such a blanket exclusion cannot reasonably be grafted onto § 6254(f).[15] And while petitioners make reference to the use of closed circuit camera feeds, facial recognition and behavior detection technology, mobile biometrics devices, drones and data analytic tools (Merits Brief at p. 42), they offer no standard by which the government, the public, or the courts would be able to determine whether data collected by such mechanisms would be exempt as records of investigation. It is unreasonable and impractical to require a case-by-case analysis of any record created with the use of technology. But a wholesale exception for such data would require disclosure of recordings made by surveillance cameras, wiretaps or red light cameras; as well as

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[15] Petitioners do seem to suggest "data compiled to promote police accountability, including the footage from police body cameras," should never be exempt from disclosure. (Merits Brief at p. 36.) It is unclear how this would be defined, particularly since it is unlikely any such records would exist exclusively for the purpose of promoting accountability. For example, body camera footage taken while executing a search warrant or in pursuit of a drunk driver would be both a record of investigation and a means of holding police and civilians responsible for their actions.

information retrieved from databases for fingerprints, DNA and other similar data.

Another distinction offered by petitioners is that "ALPR systems are able to capture vastly more data than an officer ever could record by hand, even if he or she were to devote an entire shift to writing down and checking license plates of as many passing vehicles as possible." (Merits Brief at p. 27.) If recording a license plate number is an investigation, it does not become less so as the number of license plates being recorded increases. Petitioners do not provide a standard for determining at what point data collection becomes large enough to cease being an investigation. If officers run the license plate number of every car they see while on a stake-out—or while passing time at the proverbial doughnut shop—the public entity would have no way of gauging when, or whether, the records of their activity had ceased to be exempt. Nor would it know whether records of investigation had been created by the review of footage from security cameras that captured the faces of every person who entered a nightclub or concert venue where a crime had been committed.

Characterizing ALPR systems as "data collection machines," petitioners argue plate scan data do not become records of investigation either by "the prompt comparison of scanned plates

against a 'hot list' of plate numbers that may be associated with criminal activity or the search of stored plate data, months or years after its collection, to link a plate to a crime that had not yet been committed when the data were first collected." (Merits Brief at p. 20.) They provide no analysis of how this would apply to other types of "data collection."

Much of the work done in an investigation is data collection, whether gathering forensic evidence or interviewing witnesses. The logical consequence of petitioners' reasoning would be the disclosure of every fingerprint gathered at a crime scene, the personal information of every neighbor asked for information about what was seen or heard at a particular time, and all digital recording of what actions were taken at the location. There is a "mass collection" of evidence during the early stages of any investigation because law enforcement does not know what will ultimately turn out to be relevant to a determination of the facts. That conclusion comes only after scientific analysis, visual comparison or application of the human capacity to connect disparate bits of data into a pattern that helps solve the puzzle.

Petitioners' focus on the "prolonged retention" of ALPR data does not translate into a guideline for applying § 6254(f). Many types

of identifying information are retained by law enforcement, a practice that repeatedly has been held constitutional. For example, the collection of DNA from persons arrested, charged and convicted of crimes has been upheld many times by the courts, and the creation and use of databases containing DNA information has similarly been approved.

One such case is *Maryland v. King* (2013) 133 S.Ct. 1958, in which the United States Supreme Court expressly recognized the value of the federal Combined DNA Index System ["CODIS"][16] database for multiple purposes, including the immediate identification of an arrestee, the investigation of prior offenses and the possible exoneration of a person wrongly convicted. (*Id.* at pp. 1971-1975; see also *United States v. Kriesel* (9th Cir. 2013) 720 F.3d 1137, 1146-1147.) One of Congress' express intentions for CODIS was to assist law enforcement agencies by matching DNA samples from convicted offenders to samples from crime scenes where there are no suspects. (See *Vore v. United States DOJ* (D. Ariz. 2003)

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[16] CODIS is "a massive centrally-managed database linking DNA profiles culled from federal, state, and territorial DNA collection programs, as well as profiles drawn from crime-scene evidence, unidentified remains, and genetic samples voluntarily provided by relatives of missing persons." (*United States v. Kinkaid* (9th Cir. 2004) 379 F.3d 813, 819-820.)

281 F.Supp.2d 1129, 1136-1137; 146 Cong. Rec. H8572-01, at *H8575.)

DNA collection is not "indiscriminate" in the way ALPR scanning is, although it is done in a uniform, non-discretionary manner. (*Id.* at p. 1136.) However, a DNA database bears many similarities to the retention of plate scan data. Neither the taking of DNA nor the checking of a license plate violates the Fourth Amendment. Neither DNA nor a license plate number, on its own, is evidence of a crime; they have only the potential to link a person to an offense. Both databases may be used to solve crimes that have not yet occurred, or crimes that have occurred but are not specifically being looked at when the data is obtained. If ALPR data are not records of investigation because they are retained and accessible for future investigations, then DNA results are not records of investigation either and would not be exempt under § 6254(f).

Fingerprint and mug shot collections would also have to be disclosed. (See *People v. McInnis* (1972) 6 Cal.3d 821, 826 ["thousands of persons ultimately found to be entirely innocent undoubtedly have their photographs, as well as fingerprints, on record with law enforcement agencies"]; *Sterling v. Oakland* (1962) 208 Cal.App.2d 1, 3-8 [no cause of action for return or destruction

of photograph and fingerprints after dismissal of misdemeanor charge]; *United States v. Thomas* (1st Cir. 2013) 736 F.3d 54, 63 [fingerprints and other personal records routinely maintained in law enforcement files once taken].) All such records should be exempt under § 6254(f). (See 86 Ops. Cal. Atty. Gen. 132, 135 ["We have no hesitation in finding that mug shots fall within the 'records of investigation' exemption of section 6254, subdivision (f)."])

Petitioners contend "record of investigation" has never been defined broadly enough to encompass "data that may be useful in an investigation." (Merits Brief, p. 15.) They do not, however, explain how this novel distinction would apply to anything other than ALPR data. Fingerprints lifted at a crime scene are "data that may be useful in an investigation," as are the elimination prints taken from individuals legitimately at the location. None are of use to the investigation without additional analysis. Yet all are records of investigation. Each print comparison, like each comparison of plate scan data against the hot list, is simply one of many avenues every investigation must follow before a fruitful one, hopefully, is found.

When interpreting a statute, courts apply "'"reason, practicality, and common sense to the language at hand."'" (*In re A.M.* (2014) 225 Cal.App.4th 1075, 1082.)

"'[I]t is the role of the judiciary to simply ascertain and declare what is in terms or in substance contained in the statute, not to insert what has been omitted or omit what has been included.'" (*Id.* at p. 1083.)

Unlike the FOIA, the CPRA does not require a public entity to justify its refusal to disclose records on a case-by-case basis. (Compare *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 174, and *MacPherson v. IRS, supra,* 803 F.2d at p. 484.) This makes it imperative that "investigation" have a consistent, common-sense meaning. To accept petitioners' arguments and still achieve such consistency would require this Court to interpret § 6254(f) to exclude any records 1) created through the use of technology; 2) involving individuals who were eliminated as suspects; 3) created before identification of a specific crime and suspect; or 4) containing data about more than an unspecified number of innocent individuals. Applying such an exemption would be unfeasible.

Interpretation of the CPRA presents questions of law, not of public policy. What § 6254(f) is intended to do is not in question; only the meaning of "investigation" and how it applies to records created with ALPR technology. It is for the Legislature to debate

whether the exemption is too broad in light of advancing technology, and to determine any appropriate restrictions.

It is insufficient to state in conclusory fashion that plate scan data are not records of investigation or to suggest "investigation" should be reinterpreted. Petitioners must show there is a way for this Court to change the way it has applied § 6254(f) while also setting reasonable standards that will provide guidance to governmental entities, the courts, and the public. They have failed to do so.

v. *To the Extent There is a Temporal Gap Between ALPR Scans and Hot List Comparison, It Has No Effect on the Definition of "Investigation"*

Petitioners essentially argue plate scan data are not records of investigation because they either are gathered too late—because "[t]he 'hot lists' represent the fruits of *prior* investigations that have identified certain vehicles as connected with particular crimes"; or too early—because they may be used in a "search of stored plate data, months or years after its collection, to link a plate to a crime that had not yet been committed when the data were first collected." (Merits Brief at pp. 20-21; italics in original.) Attempts to temporally separate ALPR scans from investigations have no merit.

Acknowledging the ALPR system is used for "the prompt comparison of scanned plates against a 'hot list' of plate numbers that may be associated with criminal activity," petitioners contend this is insufficient to make the data exempt because the scanning and the comparison are not simultaneous. (Merits Brief at p. 20.) The scan must be transmitted and translated before the comparison is made, a process petitioners concede occurs "almost instantly," "[a]t virtually the same time" as the plate scan. (Merits Brief, pp. 20-21.) The Court of Appeal rejected this claim.

> "This argument ignores that the plate scan is an integral part of the ALPR system's process for locating automobiles on the hot list. Just as an officer cannot investigate whether an automobile has been associated with a suspected crime without visually observing and reading its license plate number, so too the ALPR system cannot determine whether a license plate number is on the hot list without scanning the plate. The collection of plate data and hot list check are part and parcel of the same investigative process—without the plate scan there can be no investigation." (Opn. at p. 11, fn. 5.)

Forensic evidence collected at a crime scene is not instantaneous analyzed or compared. Under petitioners' logic, financial records obtained in an embezzlement investigation would have to be disclosed because it is unknown whether the documents will evidence a crime until a forensic accountant has reviewed them. Photographs of the scene of a crime would not be exempt, both because they were created with technology and because someone must look at them to determine if they provide useful information.

Petitioners' reasoning seems to be there is no investigation until a match is made between a scanned plate and a hot list entry. (See Exhs. at Vol. 1, 29:25-27.) This interpretation of "investigation" would render superfluous the inclusion in § 6254(f) of both "records of investigation" and "investigatory files." If data must be connected to a concrete offense—and thus part of an investigatory file—before § 6254(f) applies, there would no need for a separate exemption for records of investigation.

In interpreting a statute, courts strive to avoid a construction that would render terms surplusage. (*City of South San Francisco v. Board of Equalization* (2014) 232 Cal.App.4th 707, 721.) "Instead, we seek to give every word some significance, leaving no part useless or devoid of meaning." (*Breslin v. City and County of San Francisco*

(2007) 146 Cal.App.4th 1064, 1081; see also *Kelly v. Methodist Hospital of So. California* (2000) 22 Cal.4th 1108, 1120-1121.)

Petitioners' limitation also conflicts with this Court's holdings that independently exempt information is not subject to the requirement that it relate to a concrete and definite prospect of enforcement proceedings, as investigative files are. (*Haynie, supra,* 26 Cal.4th at p. 1069; see also *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 449, fn. 10 ["*Deukmejian*"].) The interpretation of § 6254(f) adopted by the Court of Appeal (and the Superior Court) recognized plate scan data as independently exempt investigative records notwithstanding many will never be connected to a specific incident.

Petitioners stated below they were not asking for plate data where "there's a stolen vehicle that law enforcement is investigating, an Amber Alert, murder, some other drug felony." Rather, they sought only "plate data that's not linked to any of that." (Exhs. at Vol. 1, 30:24-28.) But law enforcement may not be aware license plate data are linked to an ongoing investigation for days, weeks, months or even years after both the crime and the scan. A witness who noted the license plate of a car in the vicinity of a crime may not come forward immediately. The discovery of a body may turn a years-old

missing person case into a murder investigation leading to a broader search for useful information.

In *Haynie*, this Court observed there is no "way to predict, at the outset, what might result in a lengthy or important investigation." (*Haynie, supra,* 26 Cal.4th at p. 1070.) In the same way, there is no way to predict, at the outset, what data may be connected to an ongoing or future investigation. Once disclosed, plate scan data cannot be "undisclosed" when they are subsequently linked to a specific investigation.

B. The Question of Whether Fourth Amendment Protections Evolve with Changes in Technology Has No Bearing on the Meaning of the Word "Investigation"

Undoubtedly, Fourth Amendment jurisprudence involving GPS, cell phones and related technology is evolving. There is no authority, however, for the proposition § 6254(f)'s use of "investigation" similarly is, or should be, changing. The cases on which petitioners rely, such as *United States v. Jones, supra,* 132 S.Ct. 945 and *Riley v. California* (2014) 134 S.Ct. 2473 (see Merits Brief at p. 4), have no bearing on the issue before this Court. As noted, there is no expectation of privacy in a vehicle's license plate, and no Fourth Amendment implication in its being scanned. Even were that to change someday,

there is no reason to believe the use of technology will affect whether there has been an investigation.

In *Jones*, police attached a GPS to a suspect's vehicle without a warrant and tracked its movements for twenty-eight days. Associate Justice Antonin Scalia wrote the majority opinion, joined by four other Justices, finding a Fourth Amendment violation because law enforcement committed a physical trespass when placing the device.[17] In dicta, the Court affirmed its prior cases holding "'[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." (*Jones, supra,* 132 S.Ct. at p. 922-923.) By this reasoning, plate scan data are no different from other information exposed to the public, such as telephone numbers an individual calls, the to/from addresses of email messages, or IP addresses of websites visited, all of which have been found not to be the subject of a Fourth Amendment search. (See e.g., *United States v. Reed* (9th Cir. 2009) 575 F.3d 900, 914 [no expectation of privacy in number dialed or length and time of call]; *United States v. Forrester* (9th Cir. 2008)

[17] Mr. Jones subsequently pleaded guilty to conspiracy to distribute five kilograms or more of cocaine. (*United States v. Jones* (D. D.C. July 14, 2014) 2014 U.S. Dist. LEXIS 95395, *3.)

512 F.3d 500, 510 [no expectation of privacy in to/from addresses of email messages or IP addresses of websites visited].)

In *Jones*' two concurrences, five Justices suggested "longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy." (*Jones, supra,* 132 S.Ct. at p. 955, conc. opn. of Sotomayor, J.; *id.* at p. 964, conc. opn. of Alito, J.) Petitioners emphasize these opinions, particularly Associate Justice Sonia Sotomayor's concern about the ability to record an individual's movements and aggregate the information "in a manner that enables the Government to ascertain" private facts about the individual, such as her "political and religious beliefs, sexual habits, and so on." (Merits Brief at p. 37, citing *Jones, id.* at p. 956, conc. opn. of Sotomayor, J.)

It is possible aspects of a person's life may be gleaned from numbers collected by a pen register, or from reading "snail mail," email or IP addresses, yet the analysis under the Fourth Amendment remains the same. (See *Graf v. Zynga Game Network, Inc.* (9th Cir. 2014) 750 F.3d 1098, 1107-1109; see also *United States v. Graham* (4th Dist. 2015) 796 F.3d 332, 386, conc. and dis. opn. of Motz, J. ["all routing information 'tracks' some form of activity when aggregated over time"].) The meaning of "investigation" should remain similarly

unaffected by the remote and speculative possibility personal details may be learned from plate scan data.

Using a GPS to continuously track a vehicle or cell phone data to map a person's movements over days or weeks is vastly different from collecting phone numbers or IP addresses, as well as from ALPR cameras capturing a vehicle license plate number at a particular moment in time. In his *Jones* concurrence, joined by three other Justices, Associate Justice Samuel Alito stated, "[R]elatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable." (*Jones, supra,* 132 S.Ct. at p. 934, conc. opn. of Alito, J.) He declined to "identify with precision the point at which the tracking of [Jones'] vehicle became a search," but concluded "the line was surely crossed before the 4-week mark." (*Ibid.*)

Cases since *Jones* have asked whether the use of technology was "prolonged" or "relentless" when determining whether the Fourth Amendment was implicated. (Compare *People v. Weaver* (N.Y. 2009) 909 N.E.2d 1195, 1202-1203 [use of GPS for sixty-five days] with *People v. Wells* (N.Y. Sup. Ct. 2014) 991 N.Y.S.2d 743, 745-746 ["pinging" of cell phone to obtain one-time location information].) Citing *United States v. Knotts, supra,* 460 U.S. at pp. 283-284, many

courts have inquired whether an extended use of technology has risen to the level of "dragnet type law-enforcement."

In *Jones*, the twenty-eight days the vehicle was monitored played an important role in the concurrences. Similarly, the 221 days of electronic data in *United States v. Graham, supra,* 796 F.3d 332—also relied on by petitioners (Merits Brief at p. 31)—was a central feature of that analysis. (*Id.* at pp. 344-345, 347; see also *Commonwealth v. Tewolde* (Mass. App. Ct. 2015) 38 N.E.3d 1027, 1038-1039 ["The duration of the search or surveillance is an important factor in determining an individual's reasonable expectation of privacy in cell phone tower monitoring cases."])

Surveillance by a GPS can be virtually uninterrupted because the device stays with the vehicle and is tracked by multiple global positioning satellites. The collection of historic cell phone data raises similar concerns because of the ubiquitous use of mobile phones.[18] Plate scan data, on the other hand, are captures of moments in time which are of necessity intermittent and constrained by the number

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[18] *Riley v. California, supra,* 134 S.Ct. 2473, cited by petitioners (Merits Brief at p. 29), dealt not with using technology to track someone but with the search of an arrestee's lawfully seized mobile phone. The United States Supreme Court concluded there should have been a warrant because of the extent of personal information found on modern smart phones. (*Id.* at pp. 2489-2491.

of devices and image collection points. ALPR data disclosed by other agencies have shown most vehicles are scanned, if at all, only once or twice in a given year. (See Julia Angwin, *How the Wall Street Journal Obtained the License Plate Data*, Wall Street Journal (Sept. 28, 2012)[19] [one to three times over two years]; see also Jeremy Gillula and Dave Maass, *What You Can Learn From Oakland's Raw ALPR Data*, EFF (Jan. 21, 2015)[20] [average of 1.3 scans].) Contrary to petitioners' unsupported assertion that ALPR systems collect data "on every member of a community" (Merits Brief at p. 16), many vehicles are never scanned.

The wealth of information that may be garnered from prolonged GPS tracking or historic cell phone data might permit law enforcement to construct a mosaic of a person's life, as Justice Sotomayor suggested. (*Jones, supra,* 132 S.Ct. at p. 956, conc. opn. of Sotomayor, J.) Capturing sufficient ALPR data to do the same would be highly improbable. Even with the sort of targeted effort petitioners simultaneously fear and protest is lacking, it is unlikely law enforcement could gather anywhere near the sort of aggregate

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[19] Http://blogs.wsj.com/digits/2012/09/28/how-the-wall-street-journal-obtained-the-license-plate-data/.

[20] Https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data

information needed to raise privacy concerns. Moreover, while that might implicate the Fourth Amendment, it would also make ALPR use even more clearly an investigation as petitioners have defined it.

Blurring these distinctions, petitioners contend the way in which "technologies like ALPRs can track a person's location information over time" make them fundamentally different from traditional law enforcement techniques used to gather information. (Merits Brief at p. 30.) They argued below they needed the plate scan data because it would "reveal whether police seem to be targeting political demonstrations to help identify protestors, or other locations such as mosques, doctors' offices or gay bars that might yield highly personal information." (Exhs. at Vol. 1, 207:14-16.)[21] At no time have they explained how these policy concerns redefine "investigation."

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[21] The Superior Court noted the inconsistency between petitioners' claim the data are not exempt because they result from the indiscriminate, non-targeted use of ALPRs, and their goal of proving ALPR technology is improperly used to target certain groups or neighborhoods. (Exhs. at Vol. 1, p. 13.) Perhaps more troubling, petitioners display a lack of concern about the opportunity for plate scan data to be misused should they be made available to any individual or business that requests them. (See *Deukmejian, supra,* 32 Cal.3d at p. 451.) "If not properly secured, license plate reader databases open the door to abusive tracking, enabling anyone with access to pry into the lives of his boss, his ex-wife, or his romantic, political, or workplace rivals." (ACLU, *You Are Being Tracked, supra,* at pp. 2, 9.) If plate scan data are not records of investigation exempt from disclosure under § 6254(f), they cannot be "properly secured."

Even if a person may have a reasonable expectation of privacy in his location and movement *over time*, he has no such expectation in his license plate when on a public street. A random, suspicionless check of a license plate is not a Fourth Amendment search. "[L]icense plates are located on a vehicle's exterior, in plain view of all passersby, and are specifically intended to convey information about a vehicle to law enforcement authorities, among others." (*United States v. Diaz-Castaneda, supra,* 494 F.3d at p. 1151.)

All an ALPR system does is enhance the ability of human officers to search for license plates connected to crimes under investigation. In *United States v. Knotts, supra,* 460 U.S. 276, the United States Supreme Court stated:

> "Nothing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology afforded them in this case. . . . Insofar as [the defendant's] complaint appears to be simply that scientific devices such as the beeper enabled the police to be more effective in detecting crime, it simply has no constitutional foundation. We have never

equated police efficiency with unconstitutionality, and we decline to do so now." (*Id.* at pp. 282, 284.)

Like the beeper in *Knotts*, ALPR cameras detect only what could be observed by law enforcement or the public without technological assistance. As such, they are unlike the GPS in *Jones*. (See also *Dow Chemical Co. v. United States* (1986) 476 U.S. 227, 238 [aerial mapping camera in airplane]; *United States v. Vankesteren* (4th Cir. 2009) 553 F.3d 286, 287-288, 291 [fixed-range, motion-activated video camera set up in appellant's open fields].) Justice Alito commented in his *Jones* concurrence that duplicating GPS surveillance "would have required a large team of agents, multiple vehicles, and perhaps aerial assistance." (*Id.* at p. 963, conc. opn. of Alito, J.) Thus, the GPS did more than increase the information law enforcement could have collected utilizing non-technological means. In contrast, a single officer could easily record an individual's license plate several times in a given year while on his regular patrol, just as the ALPR camera on his car does.

Acknowledging the changing landscape of law enforcement capabilities, Justice Alito observed, "In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative." (*Jones, supra*, 132 S.Ct. at p. 964, conc. opn.

of Alito, J.) If § 6254(f) needs to be amended to reflect scientific advances, it should be left to the Legislature to do so.

C. Proposition 59 Simply Codified Existing Standards for Applying CPRA Exemptions and Did Not Undermine *Williams* or *Haynie*

In *Williams*, this Court described § 6254(f) as "a broad exemption from disclosure for law enforcement investigatory records." (*Williams, supra*, 5 Cal.4th at p. 349; see also *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661, 669 [exemption is "broad and all-encompassing"].) Petitioners argue these cases no longer have precedential value because the 2004 passage of Proposition 59 "create[d] a new interpretive rule" recognized by this Court and the Courts of Appeal. (Merits Brief, pp. 23-24.) Their authority does not support their conclusion.

For many years, court have observed that "all public records are subject to disclosure unless the Legislature has expressly provided to the contrary" (see, e.g., *Williams*, 5 Cal.4th at p. 346), and "[s]tatutory exemptions from compelled disclosure are narrowly construed" (see, e.g, *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 831; *Rogers v. Superior*

Court (1993) 19 Cal.App.4th 469, 476). Proposition 59 simply wrote those principles into the state Constitution.

In *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, this Court said Proposition 59 *enshrined* the CPRA's principle of a public right of access to government business in the Constitution. (*Id.* at p. 164.) That language does not signify "recognition" that Proposition 59 created a new standard for interpreting the CPRA or its exemptions. Courts of Appeal have agreed. Applying the principles of construction used when interpreting statutes, the court in *Sutter's Place, Inc. v. Superior Court* (2008) 161 Cal.App.4th 1370 held, "Proposition 59 is simply a constitutionalization of the CPRA. As such, the proposition did not change existing law except as can be gleaned from its language." (*Id.* at p. 1382.) And in *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, the Third District Court of Appeal observed:

> "By its own terms . . . [Proposition 59] has little impact on our construction of the Public Records Act as that statute applies in this case. The amendment requires the Public Record Act to 'be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. (Cal. Const., art. I, § 3, subd. (b),

par. (2).) *Such was the law prior to the amendment's enactment.*" (*Id.* at p. 750; italics added.)

Each case cited by petitioners did indeed refer to Article I, section 3(b)(2), as authority for the principle that CPRA exemptions should be narrowly construed. Many also cited pre-Proposition 59 precedent for the same proposition. No case held "the express purpose of Proposition 59 was to create a *new* interpretive rule for courts," and no court changed the existing interpretation of a CPRA exemption as petitioners ask this Court to do.

Petitioners concede Proposition 59 stated it was not intended to "repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records . . . that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement . . . records." (Merits Brief at p. 24, citing Cal. Const. Art. I, § 3(b)(5).) Yet they make the circular argument that section (3)(b)(5) does not mean what it says because "it does not change the new constitutional requirement that exemptions must be construed narrowly." (Merits Brief at pp. 24-25.) Since section (3)(b)(5) evidences a *lack* of intent to change the way exemptions have been interpreted, it can hardly be nullified by such a "new constitutional requirement."

This Court has said the CPRA's exemptions reflect circumstances where the Legislature determined the public's interest in disclosure is outweighed by public or private interests. (*International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 329, fn. 2.) Subsection 3(b)(5) establishes the initiative was not meant to undermine that legislative purpose where it is evident. Rather, it "demonstrate[s] a clear intent to maintain existing law . . . ." (*Sutter's Place Inc. v. Superior Court, supra,* 161 Cal.App.4th at p. 1382; *Sacramento County Employees' Retirement System v. Superior Court* (2011) 195 Cal.App.4th 440, 454.)

Petitioners also assert section (3)(b)(5) does not refer to judicial applications of the CPRA, leaving the courts free to "reconsider prior case law *interpreting* those statutory exemptions in light of the amendment's new interpretive rule." (Merits Brief, p. 25; italics in original.) Again, there is no such "new interpretive rule." Further, section 3(b)(3) states, "Nothing in this subdivision . . . affects the construction of any statute, court rule, or *other authority* to the extent that it protects the right to privacy." (Italics added.) Many CPRA exemptions protect the privacy of persons whose data or documents come into government possession. (See, e.g., *Copley Press, Inc.*

v. Superior Court (2006) 39 Cal.4th 1272, 1282.) And it is undisputed ALPR data implicates the privacy rights of the individuals whose plates were scanned. (Merits Brief at p. 36 ["ALPRs pose significant risks to privacy and civil liberties."]) Read as a whole, Proposition 59 makes clear the intent was to *memorialize* the CPRA as was then understood and not to impose new requirements.

Petitioners assert "no court has yet addressed the application of Art. I, § 3 to the investigative records exemption within § 6254(f)," but note several opinions have "dealt with other aspects of that provision." (Merits Brief at p. 24 & fn. 29.) It is disingenuous to dismiss post-Proposition 59 cases because they address, for example, "investigatory files" rather than "records of investigation." (Merits Brief at p. 24, fn. 29, citing *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271)

In *Dixon*, the Third Appellate District Court of Appeal concluded coroner and autopsy reports were exempt as part of an investigatory file. The court found that § 6254(f) embodies "'a strong government interest in preventing and prosecuting criminal activity . . . [and] protects witnesses, victims, and investigators, secures evidence and investigative techniques, encourages candor, recognizes the rawness and sensitivity of information in criminal investigations,

and in effect makes such investigations possible." (*Id.* at p. 1276.) This overarching aim is the same for records of investigation as it is for investigative files.

Irrespective of whether Proposition 59 created a "new interpretive rule," the requirement to narrowly construe § 6254(f) does not inevitably result in petitioners' conclusion the Court of Appeal failed to properly interpret the exemption. Other than asserting ALPR data are not records of investigation, petitioners are unable to proffer any narrower interpretation of "investigation" that is reasonable, understandable, and workable. Because it is not possible to interpret § 6254(f) more narrowly than this Court has done in *Williams* and *Haynie* and still provide reasonable guidance to the public, governmental entities, and the courts, the constitutional mandate of Proposition 59 has been met.

II

THE QUESTION WHETHER THE § 6254(F) EXEMPTION SURVIVES BEYOND THE SPECIFIC INVESTIGATION WAS NOT RAISED BELOW OR IN THE PETITION FOR REVIEW AND IS NOT PROPERLY BEFORE THIS COURT

In *Williams*, this Court held the exemption provided by § 6254(f) does not terminate when the investigation has concluded. (*Williams, supra,* 5 Cal.4th at pp. 354-355.) For the first time, petitioners request this Court to reconsider that holding. (Merits Brief at pp. 32-36.) This issue was not addressed in the trial court or Court of Appeal, and was not raised in the petition for review. Generally, this Court will not decide arguments not made in the petition, although it has discretion to do so. (Cal. Rules of Court, rule 8.516(b); *People v. McCullough* (2013) 56 Cal.4th 589, 591, fn. 1; *Pearson v. Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665, 682.) By their failure to raise this contention earlier, petitioners have waived it. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094, fn. 3.)

Even were it properly before this Court, however, petitioners have provided no reason for reconsideration. In *Trope v. Katz* (1995) 11 Cal.4th 274, this Court was asked to overrule prior decisions

appellant claimed "were 'not supported by logic or policy.'" In declining to do so, this Court stated:

> "[W]e stress that although the doctrine of stare decisis does not prevent us from reexamining and, if need be, overruling our prior decisions, 'It is . . . a fundamental jurisprudential policy that prior applicable precedent usually must be followed even though the cases, if considered anew, might be decided differently by the current justices. This policy . . . "is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law."' [Citation.] Accordingly, a party urging us to overrule a precedent faces a rightly onerous task, the difficulty of which is roughly proportional to a number of factors, including the age of the precedent, the nature and extent of the public and private reliance on it, and its consistency or inconsistency with other related rules of law." (*Id.* at p. 288.)

Petitioners' attempt to accomplish this "onerous task" consists of their disagreement with this Court's reasoning and their belief Proposition 59 mandates reconsideration. They allow that this Court's reading of § 6254(f) in *Williams* was "perhaps reasonable at the time . . . [but it] cannot survive Proposition 59's new constitutional rule of construction in favor of disclosure." (Merits Brief at pp. 32-33.) As argued above, Proposition 59 did not create a "new constitutional rule"; it merely codified a well-established policy in favor of disclosure under the CPRA.

It is worth noting the Legislature has amended § 6254 almost every year since *Williams*, including several changes that directly affected subsection (f). (See e.g., Stats. 1995, ch. 438, § 1 (AB 985); Stats. 1996, ch. 1075, § 11 (SB 1444); Stats. 2000, ch. 184, § 1 (AB 1349); Stats. 2004, ch. 8, § 1 (AB 1209); Stats. 2006, ch. 538, § 232 (SB 1852); Stats. 2015, ch. 303, § 183 (AB 731).) It expressly acknowledged Proposition 59 when enacting some of the later amendments, noting the proposed change "imposes a limitation on the public's right of access . . . within the meaning of Section 3 of Article I of the California Constitution." (See Stats. 2008, ch. 372, § 53; Stats. 2010, ch. 32, § 4; Stats. 2013, ch. 23, § 78; Stats. 2014, ch. 31, § 99.) Yet it has never acted to change, much less overrule,

this Court's holding that the exemption continues beyond completion of the investigation.

> "[W]hen as here '"a statute has been construed by judicial decision, and that construction is not altered by subsequent legislation, it must be presumed that the Legislature is aware of the judicial construction and approves of it." [Citations.] "There is a strong presumption that when the Legislature reenacts a statute which has been judicially construed it adopts the construction placed on the statute by the courts."' [Citation.]" (*People v. Meloney* (2003) 30 Cal.4th 1145, 1161; see also *People v. Ledesma* (1997) 16 Cal.4th 90, 100-101.)

This presumption of endorsement is not conclusive but where, as here, there is more than mere silence, "'"acquiescence is elevated into a species of implied legislation . . . ."'" (*People v. Preston* (2015) 239 Cal.App.4th 415, 426, fn. 8.) The repeated amendment of § 6254, and specifically subsection (f), since *Williams* indicates legislative approval of this Court's opinion. (See *Rackauckas v. Superior Court, supra,* 104 Cal.App.4th at p. 175, citing *Rivero v. Superior Court* (1997)

54 Cal.App.4th 1048, 1059.) References to Proposition 59 in later amendments only strengthen that inference.

As this Court noted in *Williams*, "If the Legislature had wished to limit the exemption to files that were 'related to pending investigations,' words to achieve that result were available." (*Williams, supra,* 5 Cal.4th at p. 357.)[22] Each time the Legislature amends § 6254(f) without the Legislature overturning *Williams,* that statement is further validated.

The Legislature has been aware of ALPR technology at least since 2011, when Vehicle Code section 2413 was enacted to address the retention and use of plate scan data by the California Highway Patrol. The Legislature's 2015 enactment of the Reader Privacy Act (Civ. Code, § 1798.90 et seq.) indicates Sacramento's concern with the use of such systems is in the security of the data. Legislative actions taken since *Williams* are irreconcilable with petitioners' claim

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[22] Compare *Rutland Herald v. Vt. State Police* (Vt. 2012) 49 A.3d 91, 95-99 [finding exemption for "dealing with the detection and investigation of crime" in 1 V.S.A. § 317(c)(5) does not end when investigation is complete], with *United Gov't v. Athens Newspapers, LLC* (Ga. 2008) 663 S.E.2d 248, 249-252 [because exemption in OCGA § 50-18-72(a)(4) is explicitly for records of "pending investigation," it ends once investigation "is concluded and the file closed"].)

the Legislature could not have intended the exemption to continue after the end of the investigation.

CONCLUSION

Courts have consistently described § 6254(f) as a "broad" exemption and none of petitioners' arguments show a need to change that interpretation. ALPR plate scan data is collected for the purpose of searching for cars involved in crimes, connected to AMBER Alerts or associated with wanted felons, as well as other law enforcement purposes. They are as much records of investigation as any other memorialization of the steps taken to solve a crime. Using technology does not change the meaning of "investigation." Nor does the number of plate scans the system is capable of acquiring. Nothing in the statute or in any case interpreting it supports petitioners' claim there can be no "untargeted" investigation."

Statutes must be interpreted in a common sense way, providing certainty and consistency to those who rely on them. Governments, courts, and the public need reasonable standards by which to apply § 6254(f). Petitioners raise many objections to ALPR technology but

they do not suggest a feasible definition of "investigation." If § 6254(f) were read in a way that would satisfy their protests, public entities would have to disclose fingerprint and DNA databases, mug shots, forensic evidence collected at crime scenes, and information obtained from residents of neighborhoods where crimes have occurred. Alternatively, there would be constant litigation over what constitutes a record of investigation.

Proposition 59 did no more than enshrine the policies behind the CPRA into the California Constitution; its provisions do not require a reconsideration of this or any other court's prior holdings. The rule of interpretation written into the Constitution is not new; it has been the standard by which courts have interpreted CPRA exemptions for many years. And the application of § 6254(f) that has developed over years of judicial decisions, while broad, is as narrow as it can be.

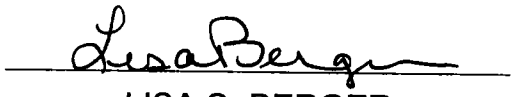
Concerns about long-term surveillance using developing technologies may someday necessitate reevaluation of search and seizure law, but they have no bearing on the issue presented here. ALPR technology does not implicate the Fourth Amendment, and concerns about an individual's privacy being invaded by prolonged surveillance are not implicated by ALPR cameras that only occasionally scan a particular license plate. That scan may show

where a person was at a particular point in time—and thereby imply something about that person's personal life—but this is no more than could be observed by a patrol officer or passer-by. Speculation about the misuse of plate scan data (or of ALPR systems) does not justify carving out an arbitrary exception from § 6254(f). Petitioners' public policy arguments should be put to the Legislature; they do not belong in the courts.

For the above reasons, respondent City of Los Angeles respectfully requests this Court affirm the Opinion of the Second District Court of Appeal.

DATED: January 25, 2016

MICHAEL N. FEUER, City Attorney
AMY JO FIELD, Assistant City Attorney

By 
LISA S. BERGER
Deputy City Attorney

Attorneys for Real Party in Interest
CITY OF LOS ANGELES

CERTIFICATE OF LENGTH

Pursuant to Rule 8.204, subdivision (c)(1), of the California Rules of Court, real party in interest City of Los Angeles hereby certifies the attached Answer Brief on the Merits of Real Party In Interest City Of Los Angeles is proportionately spaced, has a type-face of 13 points, and contains 13,271 words.

DATED: January 25, 2016

MICHAEL N. FEUER, City Attorney
AMY JO FIELD, Supervising City Attorney

By _____
LISA S. BERGER
Deputy City Attorney

Attorneys for Real Party in Interest
CITY OF LOS ANGELES

PROOF OF SERVICE BY VARIOUS METHODS

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 200 N. Main Street, City Hall East Room 600, Los Angeles, CA 90012.

On **January 25, 2016**, I served the foregoing document described as:

ANSWER BRIEF ON THE MERITS OF REAL PARTY IN INTEREST CITY OF LOS ANGELES

on all interested parties by transmitting a copy addressed as follows:

SEE ATTACHED SERVICE LIST

[X] BY MAIL – I am readily familiar with the practice of the Los Angeles City Attorney's Office for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is placed for collection and mailing. On the date referenced above, I placed a true copy of the above documents(s) in a sealed envelope and placed it for collection in the proper place in our office at Los Angeles, California.

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

Dated: January 25, 2016

ASHLEY ESCOBEDO

SERVICE LIST

American Civil Liberties Union Foundation of Southern California

v.

Superior Court (County of Los Angeles)

Case No. S227106

VIA OVERNIGHT MAIL

Clerk of the Supreme Court
Earl Warren Building
350 McAllister Street
San Francisco, CA 94102

VIA U.S. MAIL

Clerk of the Court of Appeal
2nd Appellant District
Division Three
Ronald Reagan State Building
300 South Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013-1213

Hon. James C. Chalfant
Superior Court of Los Angeles County
111 North Hill Street, Dept. 85
Los Angeles, CA 90012

Frederick Bennett
Superior court of Los Angeles County
111 North Hill Street, Room 546
Los Angeles, CA 90012

Attorney for Respondent:

Tomas A. Guterres, Esq.
Eric C. Brown, Esq.
MUIR & STEWART LLP
1100 El Centro Street
South Pasadena, CA 91030
ebrown@ccmslaw.com

Attorneys for Real Party in Interest:
County of Los Angeles

Peter Bibring, Esq.
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West Eight Street
Los Angeles, CA 90017
Tel. (213) 977-9500; Fax (213) 977-5299
pbibring@aclu-sc.org

Attorney for Petitioner:
ACLU Foundation of Southern California

Jennifer Lynch, Esq.
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94109
Tel. (415) 436-9333; Fax (415) 436-9993
jlynch@eff.org

Attorney for Petitioner: Electronic Frontier Foundation

Martin J. Mayer, Esq.
Jones & Mayer
3777 N. Harbor Blvd.
Fullerton, CA 92835

Attorney for Amicus Curiae: California State Sheriff's Association, et al.

James R. Wheaton
Cherokee D.M. Melton
FIRST AMENDMENT PROJECT
1736 Franklin Street, 9th Floor
Oakland, CA 94612
wheaton@thefirstamendment.org
cmelton@thefirstamendment.org

Attorney for Amicus Curiae: Northern California Chapter of Society of Professional Journalists

Katielynn Boyd Towsend
Reporters Committee for Freedom of The Press
1156 15th Street NW, Suite 1250
Washington, DC 20005
Tel. (202) 795-9303

Attorneys for Amicus Curiae: Reporters Committee for Freedom of the Press and Media Organizations