

1 SADMIRA RAMIC, ESQ. (15984)
2 CHRISTOPHER M. PETERSON, ESQ. (13932)
3 **AMERICAN CIVIL LIBERTIES**
4 **UNION OF NEVADA**
5 4362 W. Cheyenne Ave.
6 North Las Vegas, NV 89032
7 Telephone: (702) 366-1226
8 Facsimile: (702) 718-3213
9 Emails: peterson@aclunv.org
10 ramic@aclunv.org
11 *Attorneys for Petitioners*

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D. ORTIZ

8 **FIRST JUDICIAL DISTRICT COURT**

9 **CARSON CITY, NEVADA**

10 AMERICAN CIVIL LIBERTIES UNION OF
11 NEVADA, a domestic nonprofit organization;

12 Petitioner,

13 vs.

14 THE STATE OF NEVADA, DEPARTMENT OF
15 MOTOR VEHICLES, a governmental entity,

16 Respondent.

Case No. 25 EW00026 1B

Dept. No. 2

**ACLU OF NEVADA'S REPLY IN
SUPPORT OF PETITION FOR
WRIT OF MANDAMUS**

17 Petitioner, American Civil Liberties Union of Nevada ("ACLU of Nevada"), by and
18 through counsel Sadmira Ramic, Esq. and Christopher M. Peterson, Esq. of the American Civil
19 Liberties Union of Nevada, hereby submits this Reply in Support of Petition for Writ of
20 Mandamus.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. INTRODUCTION**

23 The Nevada Department of Motor Vehicles ("DMV") violated the Nevada Public Records
24 Act ("NPRA") when it unduly delayed the production of any records for months and subsequently

1 produced redacted records without citing to applicable legal authority under Nevada law that
2 justified the redactions. The DMV continues to violate the NPRA by refusing to provide ACLU
3 of Nevada with responsive records, including records previously identified in emails of DMV's
4 employees, that are subject to disclosure under the NPRA. ACLU of Nevada attempted to resolve
5 the insufficiencies in the DMV's responses to its public record requests for several months and
6 repeatedly reminded the DMV of its obligations under the NPRA, including through a demand
7 letter prior to filing this writ of mandamus. The DMV's repeated refusals to comply with its
8 statutory obligations under the NPRA, even up to the date of this filing, are willful violations that
9 warrant civil penalties being levied. Therefore, a writ of mandamus is appropriate, and ACLU of
10 Nevada's petition should be granted.

11

12 **II. MANDAMUS RELIEF IS APPROPRIATE BECAUSE THE DMV FAILED TO
COMPLY WITH ITS STATUTORY DUTIES UNDER THE NPRA.**

13 The NPRA requires governmental entities to keep all public records within their legal
14 custody or control open to inspection by any person unless they are declared by law to be
15 confidential. NRS 239.010. This requirement must be liberally construed, and any exception to the
16 open records requirement must be narrowly construed. NRS 239.001. A governmental entity may
17 not deny a request to inspect a public record that contains confidential information unless that
18 information cannot be redacted or separated from the record. NRS 239.010(3). Where a
19 governmental entity denies a request due to confidentiality, the governmental entity bears the
20 burden of "proving by a preponderance of the evidence that the public... record, or a part thereof,
21 is confidential." NRS 239.0113(2); *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 879 (2011).
22 If the entity denies a request, it must provide "a citation to the specific statute or other legal
23 authority that makes the public book or record, or a part thereof, confidential." NRS
24 239.0107(1)(d). When a request is denied or the release of records is unreasonably delayed, the

1 requester may petition the district court for a writ of mandamus ordering the entity to release the
2 records. NRS 239.011; *Dep’t of Emp., Training & Rehab., Emp. Sec. Div. v. Sierra Nat’l Corp.*,
3 136 Nev. 98, 100, 460 P.3d 18, 21 (2020).

4 **A. The DMV Has Not Met Its Evidentiary Burden to Withhold Responsive Records.**

5 **i. The NPRA does not exempt public records maintained on private devices
or servers from disclosure.**

6 In its February 11 Request, ACLU of Nevada requested “any communications with
7 ICE between January 1, 2024, to present relating to an individual’s immigration status” and “any
8 communications with ICE between January 1, 2024, to present relating to verifying information
9 against a file or record including, but not limited to, current and previous address of an individual,
10 names of family members, and license plate numbers.” (Pet., at 5-6.) During a telephonic
11 conference on June 16, 2025, ACLU of Nevada’s counsel narrowed the requests to “all email
12 communications between DMV employees and email addresses ending in ‘@ice.dhs.gov’ for the
13 time period January 1, 2024, to the date the DMV records team runs an email search” to receive
14 responsive records as expeditiously as possible. (Pet. Ex. 28, p. 1.) However, when ACLU of
15 Nevada received some of the email correspondences from the DMV, it became evident that other
16 forms of communication existed including faxes and Signal messages. On July 29, 2025, ACLU
17 of Nevada counsel emailed DMV’s counsel and informed them that considering the information
18 in the disclosed documents, ACLU of Nevada was requesting the faxes and Signal group messages.
19 (Pet. Ex. 37, p. 1.) After originally instructing ACLU of Nevada to submit a separate request on
20 its portal, the DMV stated that it conducted a review of its records and concluded that “Signal is
21 not a DMV-managed application and one of which our agency has never had access to, therefore
22 no additional communications would be stored there.” (Pet. Ex. 41, p. 1.)

23 The DMV asserts in its Opposition that Signal messages are not public records within the
24 DMV’s custody or control because they are private messages on private devices, and the DMV

1 does not conduct official business on Signal. (Opp'n at 8). First, DMV's assertion that it does not
2 conduct official business on Signal is directly at odds with the information shared between DMV
3 employees and presumably ICE officials.¹ (Pet. Ex. 43, p. 1.) In the email sent to the *official DMV*
4 *email address of the DMV employee*, the ICE official introduces a new member of their team and
5 asks the DMV employee to add her to Signal groups. *Id.*

6 Second, despite the DMV's contention otherwise, public records are not limited to those
7 maintained in government offices or on government servers. This is reflected in Nevada case law,
8 *See Comstock Residents Ass'n v. Lyon Cty. Bd. Of Comm'rs*, 134 Nev. 142, 144-45, 414 P.3d 318,
9 320-21 (2018), and the NPRA itself. *See* NRS 239.001(4) ("[t]he use of private entities in the
10 provision of public services must not deprive members of the public access to inspect... records
11 relating to the provision of those services."). To say otherwise would allow government entities to
12 circumvent the NPRA by conducting any business it does not want disclosed to the public on non-
13 government devices. Under *Comstock*, communications on private devices or private accounts are
14 public records if "they concern the provision of ... a service rendered in the public interest." 134
15 Nev. at 146 (internal citations and quotation marks omitted). Here, the request to add an ICE
16 official to Signal groups was sent to official government emails. And, the DMV employees are
17 privy to the information they share with ICE only because such information is provided to the
18 DMV when people use DMV's public services. Therefore, these communications are public
19 records subject to disclosure.

20 Further, privately stored records are not beyond the DMV's control. The *Comstock* court
21 held that records are not beyond an agency's control simply because they are not stored on
22

23 ¹ The identity of the sender and recipient of the email is unclear because the information was
24 redacted by the DMV. However, the email indicates that it originated outside the state of Nevada
and the email was given in response to ACLU of Nevada's request for emails between DMV
employees and ICE.

1 government devices. *Id.* at 147-48. Instead, whether an agency has control over such records is a
2 question of fact determined by the court. *Id.* at 148. Here, the released emails indicate government
3 employees can be added to Signal messages upon request. That these messages are sent by
4 governmental employees and are presumably related to information gained in such employment
5 suggests that the DMV has some degree of control over these communications. (Pet. Ex. 36, p.
6 13.)

7 **ii. Documents received via DMV's fax machines are public records within the
DMV's custody and control.**

8 DMV fax machines are not private devices as the DMV maintains a fax number.² When it
9 refused to turn over fax communications, the DMV stated, “our investigations team does not use
10 fax, so it cannot be considered a source of normal DHS communications.” (Pet. Ex. 41, p. 1.)
11 However, ACLU of Nevada’s request was not restricted to devices used by the DMV’s
12 “investigations team,” and the DMV has provided no legal authority to support its implication that
13 only “normal communications” are considered public records within the DMV’s custody or
14 control. Rather, the DMV argues the information regarding faxes came from federal officials and
15 “it doesn’t conduct official business via fax.” (Opp’n at 8:23-24.) The source of these
16 communications is irrelevant, but more importantly, the deportation officer who sent the email to
17 the DMV employee has clearly sent faxes to the DMV previously, intends on sending faxes in the
18 future, and the DMV did not produce an email in which the DMV employee informed the
19 deportation officer that they do not use fax machines. If the DMV received fax communications
20 from federal officials, those communications are within the DMV’s custody and control and must
21 be released.

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² See Nev. Dep’t of Motor Vehicles, *Office Locations*, <https://dmv.nv.gov/locat.htm> (last accessed October 10, 2025).

1 **B. The DMV Violated the NPRA When It Redacted Records Without Providing**
2 **Adequate Legal Justification.**

3 The DMV has failed to cite applicable legal authority to support its claims that it properly
4 redacted records based on confidentiality and privacy concerns.

5 **i. NRS 481.063(11) and NRS 289.025 are not applicable.**

6 The DMV repeatedly cites to NRS 481.063(11), which prohibits the agency from releasing
7 personal information “relating to a license, identification card or title or registration of a vehicle,”
8 (not immigration, nationality, and citizenship information as DMV incorrectly claims) “for any
9 purpose relating to the enforcement of immigration laws.” NRS 481.063(11); (**Opp’n** at 7:16). As
10 outlined in its petition and in multiple email correspondences between the DMV and ACLU of
11 Nevada, NRS 481.063(11) does not apply to ACLU of Nevada’s requests. First, the requests do
12 not seek personal information. *See* NRS 481.063(14)(a) (personal information is “[i]nformation
13 that reveals the identity of a person, including, without limitation, his or her photograph, social
14 security number, individual taxpayer identification number, driver’s license number, identification
15 card number, name, address, telephone number or information regarding a medical condition or
16 disability.”) Although personal information encompasses the identity of a person, NRS
17 481.063(11) requires that the personal information be related to a license, identification card or
18 title or registration of a vehicle. The redactions of names of government officials therefore do not
19 fall within the scope of NRS 481.063(11). Nor has ACLU of Nevada requested records for the
20 purpose of immigration enforcement. Despite repeated requests for an appropriate legal
 justification, the DMV has failed to provide one. (**Pet. Ex. 24. 37-40.**)

21 Likewise, NRS 289.025 is inapplicable because it makes confidential home addresses and
22 photographs of peace officers not names, email addresses, and other identifying information
23 redacted by the DMV. Although the DMV’s claims this statute justifies redaction of the names of
24 its Compliance Enforcement Division officers, other redacted emails include the names, work

1 addresses, and contact information of other officers. *See, e.g.*, (Pet. Ex. 36, p. 5.) The DMV’s
2 selective disclosure of this “confidential” information further calls into question the DMV’s
3 assertion of privacy and safety interests.

4 **ii. The DMV has not met its heavy burden of showing that nontrivial personal
5 privacy interests in the information contained in the records outweigh the
public’s presumptive right of access to the records.**

6 The DMV erroneously shifts the burden to ACLU of Nevada to “demonstrate that the
7 statute or balance of interests weighs in favor of disclosure.” (Opp’n at 8:1-3.) A government
8 agency must prove the confidentiality of records by a preponderance of the evidence. NRS
9 239.0113(2). If a governmental entity seeks to withhold or redact a public record in its control
10 under the balancing test, it must first prove by a preponderance of the evidence that the record or
11 portion thereof that it seeks to redact is of a type that entitles the governmental entity to a balancing
12 test. *See* Nev. Rev. Stat. § 239.0113; *see also Gibbons*, 127 Nev. at 880, 266 P.3d at 629; *accord*
13 *Nevada Policy Research Inst., Inc. v. Clark Cty. Sch. Dist.*, No. 64040, 2015 WL 3489473, at *2
14 (D. Nev. May 29, 2015). Even if the governmental entity meets this initial burden of showing that
15 a balancing test applies, the entity must then establish that the interest in withholding records or
16 portions thereof in question “clearly outweighs the public’s right to access.” *Gibbons*, 127 Nev. at
17 880, 266 P.3d at 628 (citation omitted) *see also id.* at 127 Nev. 873, 879, 266 P.3d 623, 627
18 (holding there is, under the NPRA, a “general policy in favor of open government”); *Pub.*
19 *Employees’ Ret. Sys. of Nevada v. Nevada Policy Research Inst., Inc.*, 134 Nev. 669, 676, 429 P.3d
20 280, 286 (2018) (noting “the strong presumption in favor of disclosure” of public records in
21 Nevada).

22 The only support provided by the DMV for its assertion that privacy interests prevent it
23 from disclosing the public information is one sentence in its opposition which states “[t]he DMV
24 further explained that public policy interests required the DMV to withhold identifying

1 information from investigators who need to protect their identity to perform sting operations.”
2 (Opp’n at 7:20-22.) If this was enough to overcome the high burden favoring disclosure, the name
3 of every officer in every law enforcement agency could be withheld. This is simply not what is
4 mandated by the NPRA.

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6 **iii. The Freedom of Information Act and 18 U.S.C. § 2721 do not apply to**
7 **requests made to state entities under the Nevada Public Records Act.**

8 To support its position that the DMV is not required to disclose identifying information of
9 officers and DMV employees, the DMV cites to the Freedom of Information Act (“FOIA”) and 18
10 U.S.C. § 2721. (Opp’n at 8:18-20; 7:17-20.) However, FOIA does not apply to requests made to
11 state entities under the Nevada Public Records Act, and the Nevada Supreme Court has rejected
12 such arguments in relation to privacy interests. *See Las Vegas Review-Journal, Inc. v. Las Vegas*
13 *Metro. Police Dep’t*, 526 P.3d 724, 739 n.7 (Nev. 2023) (“We also reject any suggestion
14 in Bradshaw that the balancing test is “virtually identical” to FOIA’s Exemption 7 [...] because, as
15 discussed already, the Legislature’s subsequent amendments to the NPRA altered the balancing
test as originally conceived in *Bradshaw*.”)

16 18 U.S.C. § 2721 similarly cannot be used to withhold records in the possession and control
17 of Nevada governmental entities. Even if it could be applied to requests made to state entities under
18 Nevada law, it is nonetheless inapplicable. 18 U.S.C. § 2721 prohibits disclosure of personal
19 information obtained in connection with a motor vehicle record. This includes photographs, social
20 security numbers, license numbers, names, addresses, phone numbers, or medical information
21 obtained in connection with a vehicle operator’s permit, title, registration, or identification card.
22 This does not apply to any of the information the DMV redacted, which includes names and email
23 addresses of DMV and ICE employees. (Pet. Ex. 36, 43.)

24 /

1 **C. The DMV violated the NPRA when it failed to respond timely.**

2 The DMV's failure to comply with the time limits in Nev. Rev. Stat. § 239.0107(1)
3 constitutes a violation of the NPRA. The five-business-day- response requirement is mandatory.
4 *Markowitz v. Saxon Special Servicing*, 129 Nev. 660,664,310 P.3d 569,572 (2013) (quoting *Leven*
5 *v. Frey*, 123 Nev. 399, 407 n. 27, 408, 168 P.3d 712, 717 n. 27 (2007)); *see also Einhorn v. BAC*
6 *Home Loans Servicing, LP*, 128 Nev. 689,696,290 P.3d 249,254 (2012) ("In general, 'time and
7 manner' requirements are strictly construed"). The DMV violated the NPRA by waiting until July
8 10, 2025 – nearly five months after ACLU of Nevada submitted its first request for records – to
9 produce an unrelated two-page policy titled "Media Access." (**Pet. Ex. 42**, p. 1.) It wasn't until
10 July 23, 2025, that the DMV provided some redacted emails between ICE and DMV employees.
11 (**Pet. Ex. 35**.) Notwithstanding DMV's position that redactions were appropriate, it does not
12 explain why it delayed producing records or why ACLU of Nevada had to repeatedly contact the
13 DMV to remind it of its statutory obligations under the NPRA.

14 Additionally, when ACLU of Nevada reviewed the redacted documents, it became clear
15 that group email communications existed between the DMV and ICE which were not turned over
16 to ACLU of Nevada. Counsel for ACLU of Nevada requested these documents via email on July
17 29, 2025. (**Pet. Ex. 37**, p. 1.) To date, including in its response to the petition, the DMV has not
18 disclosed whether it has these documents in its possession, it has not explained with specificity
19 each document it was withholding, and it did not state whether privileges applied to the withheld
20 documents. The DMV was required to do so within five business days. Nev. Rev. Stat. §
21 239.0107(1)(d).

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1 **III. THE DMV'S NONCOMPLIANCE WITH THE NPRA WAS WILLFUL AND A
2 CIVIL PENALTY IS WARRANTED**

3 As discussed above, ACLU of Nevada made every effort to remind the DMV of its
4 statutory obligations. To date, no applicable legal authority has been provided to justify
5 withholding and redacting responsive documents, including in its Opposition to the Writ of
6 Mandamus where the DMV failed to address ACLU of Nevada's previous concerns about the
7 inapplicability of the legal authority relied on by the DMV. Additionally, records known to be in
8 possession of the DMV remain undisclosed. The DMV's continued violation of the NPRA follows
9 significant delays by the DMV at the outset of ACLU of Nevada's requests when the DMV refused
to turn over even the most basic documents such as DMV policies and procedures. (Pet., p. 5.)

10 If the Court finds that these violations are willful, this Court "must impose on" the DMV
11 civil penalties required by the NPRA. For the first violation, it should fine Metro \$1,000.00. Nev.
12 Rev. Stat, § 239.340(a)(1). For the second, \$5,000.00 Nev. Rev. Stat, § 239.340(a)(2). And for the
13 third through seventh violations set forth above, the Court must impose \$10,000.00 for each
14 violation. Nev. Rev. Stat, § 239.340(a)(3).

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16 Dated October 24, 2025.

17 Respectfully Submitted:

18 **AMERICAN CIVIL LIBERTIES
19 UNION OF NEVADA**

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21 SADMIRA RAMIC, ESQ. (15984)
22 4362 W. Cheyenne Ave.
23 North Las Vegas, NV 89032
24 Telephone: (702) 366-1226
Facsimile: (702) 718-3213
Emails: ramic@aclunv.org
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2025, I deposited for mailing in the United States Mail, first-class postage prepaid, a true and correct copy of the forgoing REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS addressed to the following:

Jessica E. Whelan
Abigail L. Pace
State of Nevada Office of the Attorney General
1 State of Nevada Way, Suite 100
Las Vegas, NV 89119

Attorneys for State of Nevada Department of Motor Vehicles

- CM/ECF
- Electronic mail; or
- US Mail or Carrier Service

Suzanne Lara
SUZANNE LARA
An employee of the ACLU of Nevada