

1 Peter Bibring (SBN 223981)
pbibring@aclu-sc.org
2 ACLU FOUNDATION OF
SOUTHERN CALIFORNIA
3 1313 West Eighth Street
Los Angeles, California 90017
4 Telephone: (213) 977-9500
Facsimile: (213) 977-5297
5

6 L. Rachel Lerman (SBN 193080)
rlerman@akingump.com
7 Felix Lebron (SBN 232984)
flebron@akingump.com
8 Sarah Gettings (SBN 260436)
sgettings@akingump.com
9 AKIN GUMP STRAUSS HAUER &
FELD LLP
10 2029 Century Park East, Suite 2400
Los Angeles, California 90067
11 Telephone: (310) 229-1020
Facsimile: (310) 229-1001
12

Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 SHAWN NEE; GREGGORY MOORE;
16 SHANE QUENTIN; and THE
17 NATIONAL PHOTOGRAPHERS'
RIGHTS ORGANIZATION,

18 Plaintiffs,

19 v.

20 COUNTY OF LOS ANGELES; LOS
21 ANGELES COUNTY SHERIFF'S
DEPARTMENT; SERGEANT
22 MAURICE HILL, in his individual
capacity; DEPUTY RICHARD
23 GYLFIE, in his individual capacity;
DEPUTY BAYES, in his individual
24 capacity; and DOES 1 through 30,
inclusive,
25

26 Defendants.

CASE NO.:

**COMPLAINT FOR INJUNCTIVE,
RELIEF, DECLARATORY
RELIEF, AND DAMAGES.**

JURY TRIAL DEMANDED

1 **JURISDICTION AND VENUE**

2 1. This Court has subject matter jurisdiction over Plaintiffs' claims
3 pursuant to 28 U.S.C. § 1331 (in that they arise under the Constitution of the
4 United States), § 1343(a)(3) (in that they are brought to redress deprivations, under
5 color of state authority, of rights, privileges, and immunities secured by the United
6 States Constitution), § 1343(a)(4) (in that they seek to secure equitable relief under
7 42 U.S.C. § 1983), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and
8 2202.

9 2. Venue is proper in the Central District of California under 28 U.S.C.
10 § 1391(b) because a substantial part of the events or omissions giving rise to the
11 claims herein occurred in this District.

12 3. This Court has the authority to grant damages, declaratory and
13 injunctive relief, and any other appropriate relief pursuant to 28 U.S.C. § 1331; 28
14 U.S.C. § 1343; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

15 **INTRODUCTION**¹

16 4. Photography is not a crime; it is a means of artistic expression. In
17 public spaces, on public streets and from public sidewalks, no law bars Los
18 Angeles residents and visitors from photographing the world around them, from
19 documenting their own lives or using their lenses to find the sublime in the
20 commonplace.

21 5. The Los Angeles Sheriff's Department ("LASD") has taken a
22 different, and erroneous, view of photography. LASD deputies have repeatedly
23 subjected the three Plaintiffs in this action, and others, to detention, search, and
24 interrogation simply because they took pictures from public streets. LASD
25 deputies have also ordered some Plaintiffs, and others, not to photograph at all

26 _____
27 ¹ The allegations of this complaint are based on information and belief, unless
28 otherwise specified.

1 from public places where photography is not prohibited. These acts plainly violate
2 Plaintiffs' First Amendment right to free expression and their Fourth Amendment
3 right to be free of unjustified searches and seizures.

4 6. For as long as human society has existed, we have turned our creative
5 attentions to exploring not only the fantastic and the grand, but also daily life
6 around us. From early cave paintings that depict hunting and farming, scenes of
7 peasant life in illustrated manuscripts, the "genre painting" works of 17th Century
8 Dutch and Flemish painters, the Impressionists such as Monet who broke with the
9 establishment's preference for pastoral landscapes or classical themes in favor of
10 the industrial scenes or depictions of workers and artists, to 20th century American
11 artists like Edward Hopper (who painted city life in works like *Nighthawks*) –
12 painters have captured beauty and humanity in everyday subjects.

13 7. Photographers, too, have used their talents and skills to mine daily life
14 for their art. Through its Artists Project, the Works Progress Administration in the
15 1930s sent photographers forth to document America and the WPA, a mission that
16 guided photographers like Dorothea Lange and Walker Evans into careers that
17 blended documentary and artistic styles and shaped art photography for decades to
18 come. Some of the 20th century's best-known photographers captured urban street
19 life, transit, and industrial scenes: photographs of the New York subways by
20 Walker Evans, Bruce Davidson, and William Claxton,² trains and stations by
21 O. Winston Link,³ industrial equipment by Bernd and Hilda Becher,⁴ images of

22
23 ² See, e.g., Bruce Davidson and Arthur Ollman, *SUBWAY* (Aperture 1986); Walker
24 Evans, *MANY ARE CALLED* (Houghton Mifflin 1966); Charles Hagen, *What Walker*
25 *Evans Saw on His Subway Rides*, N.Y. Times (Dec. 31, 1991), available at
[http://www.nytimes.com/1991/12/31/arts/review-photography-what-walker-evans-](http://www.nytimes.com/1991/12/31/arts/review-photography-what-walker-evans-saw-on-his-subway-rides.html)
26 [saw-on-his-subway-rides.html](http://www.nytimes.com/1991/12/31/arts/review-photography-what-walker-evans-saw-on-his-subway-rides.html).

27 ³ See generally Website of the Link Museum at <http://www.linkmuseum.org>.

28 ⁴ See, e.g., Blake Stimson, *The Photographic Comportment of Bernd and Hilla*
Becher, Tate Papers (Tate Museum 2004), available at <http://www.tate.org.uk/>
(cont'd)

1 urban New York in Jacob Riis's *How The Other Half Lives*⁵ and Andy Warhol's
2 *Street Diaries*,⁶ or the romance of the Paris street in Robert Doisneau's iconic *Le*
3 *Baiser De L'Hôtel De Ville*.⁷

4 8. With digital cameras now inexpensive and ubiquitous, and capable of
5 taking thousands of photographs with no developing costs, photography today is
6 no longer practiced only by dedicated artists and professionals, but has become a
7 widely used mode of expression. One photo-sharing website, Flickr, reportedly
8 stored 5 billion photos as of September 2010, while, at the time, social-networking
9 site Facebook reported its users uploaded half that number (2.5 billion) every
10 month.⁸

11 9. Plaintiffs also photograph the world around them. But LASD
12 deputies detained and searched Plaintiff Shawn Nee for photographing turnstiles
13 on the Los Angeles Metro, asking if he planned to sell the photos to Al Qaeda and
14 threatening to put his name on the FBI's "hit list." LASD deputies detained and
15 searched Plaintiff Moore while he was photographing drivers for a news story,
16 accusing him of "suspicious activity." LASD deputies detained and searched
17 Plaintiff Quentin while he was photographing the brilliantly lit refineries in South
18 Los Angeles at night, placing him in the back of a squad car for about forty-five
19

20 research/tateresearch/tatepapers/04spring/stimson_paper.htm.

21 ⁵ Jacob A. Riis, *How the Other Half Lives: Studies Among the Tenements of New*
York, (Charles Scribner's Sons 1890).

22 ⁶ See Jonas Mekas, *Andy Warhol's Street Diary: Photographs 1981-86*, ' essay
23 from exhibition catalog (Deborah Bell Photographs 2010), available at
<http://jonasmekasfilms.com/diary/?p=687>.

24 ⁷ See, e.g. *Classic Kiss Shot Sold at Auction*, B.B.C. News (Apr. 25, 2005)
25 (reporting on the 2005 sale of an original print for 155,000 Euros), available at
<http://news.bbc.co.uk/2/hi/entertainment/4481789.stm>.

26 ⁸ John D. Sutter, *5 billionth photo uploaded to Flickr*, CNN (Sept. 20, 2010),
27 available at [http://articles.cnn.com/2010-09-20/tech/flickr.5.billion_1_photo-](http://articles.cnn.com/2010-09-20/tech/flickr.5.billion_1_photo-sharing-site-flickr-facebook)
28 [sharing-site-flickr-facebook](http://articles.cnn.com/2010-09-20/tech/flickr.5.billion_1_photo-sharing-site-flickr-facebook).

1 minutes before releasing him. On separate occasions, LASD deputies have ordered
2 Nee and Quentin not to photograph from public sidewalks. And others besides
3 plaintiffs have suffered similar treatment at the hands of LASD.

4 10. The LASD's policy and practices of targeting photographers did not
5 develop spontaneously. Over the past several years, law enforcement agencies
6 across the country have implemented "suspicious activity reporting" programs,
7 under which officers are trained to report certain categories of behavior believed to
8 be potential indicators of terrorism. Many departments include photography as one
9 such "suspicious activity" that should be reported. LASD's policy and practice of
10 subjecting photographers to search and detention, and of ordering people not to
11 photograph in public places where photography is generally allowed, results from a
12 deliberate extension of, or improper training on, these "suspicious activity
13 reporting" programs.

14 11. In the face of the long tradition of photographic art, and the wide
15 embrace of photography today, LASD's custom and practice of detaining,
16 searching, and interrogating people simply for lawfully taking photographs in
17 public not only violates the First and Fourth Amendment, but it also serves no
18 legitimate purpose. LASD's custom and practice of allowing its officers to
19 prohibit photography that is perfectly lawful violates the First Amendment and
20 does not make the public safer.

21 12. By this action, Plaintiffs seek to put an end to LASD harassment of
22 photographers and to obtain a ruling from this Court that photography alone cannot
23 be a basis for criminal suspicion, detention and search.

24 **PARTIES**

25 13. Plaintiff Shawn Nee is a Los Angeles-based award-winning
26 photographer and aspiring professional photojournalist. His primary interests are
27 in documentary photography, particularly in capturing poverty and street life in the
28 Hollywood area, as well as other images of urban public life. Much of Nee's work

1 focuses on street photographs of various Hollywood communities, but he also
2 photographs in downtown Los Angeles, including capturing the homeless in Los
3 Angeles' skid row. His photography has appeared on NBC, National Public Radio,
4 The New Yorker, The Atlantic, the Stranger, LAist.com, and The Advocate, and
5 has been exhibited at various galleries in Los Angeles. Nee is a founder and
6 member of the National Photographers' Rights Organization.

7 14. Plaintiff Gregory Moore is a reporter from Long Beach, California,
8 who works for the Long Beach Post. Moore does not consider himself a serious
9 photographer, but he is generally required to take any photographs that run
10 alongside his stories. Due to the nature of his job and news coverage, Moore
11 intends to continue taking pictures of newsworthy events, including pictures of
12 public facilities in the Los Angeles area, including courthouses, subways, and other
13 public buildings.

14 15. Plaintiff Shane Quentin is an art photographer and part-time freelance
15 photographer based in Los Angeles, California. Quentin received a B.F.A. in
16 Sculpture/New Genres from OTIS College of Art and Design, and an M.F.A. in
17 Studio Art from U.C. Irvine, where he focused primarily on photography and video
18 work. His photographs have been exhibited at art galleries in Los Angeles.
19 Quentin also sells photographs commercially through stock photography services.
20 Quentin's interests include photographing industrial areas, often at night, and
21 Quentin's commercial photography primarily involves industrial subjects.

22 16. Plaintiff National Photographers' Rights Organization ("NPRO") is an
23 advocacy organization founded to educate photographers about their rights and to
24 support photographers who have been wrongfully detained in the course of taking
25 photographs or prevented from taking photographs in public places. The group has
26 a membership of several hundred nationwide, including about thirty in Los
27 Angeles, and has conducted events and actions aimed at educating photographers
28 and law enforcement about photographers' rights.

1 17. Defendant County of Los Angeles (“the County”) is a county of the
2 State of California duly organized under the laws of the State of California.
3 Defendant County is charged by law with the administration and operation of
4 LASD and charged with the employment, control, supervision, discipline, training
5 and practices of its personnel and employees and with the formulation of its
6 policies, practices, and customs of its personnel and its employees.

7 18. Defendant LASD is a municipal corporation that provides law
8 enforcement services within the County. As part of its mandate, LASD polices the
9 Los Angeles County Metro Rail (“Metro Rail”), the rapid transit rail system
10 serving Los Angeles County, via contract with the Los Angeles County
11 Metropolitan Transportation Authority (“MTA”). LASD is responsible for the
12 assignment, training, supervision and discipline of deputy sheriffs assigned to the
13 Metro Rail, just as they are for any other deputy sheriff within LASD.

14 19. Defendant Richard Gylfie is, and at all times material herein was, a
15 duly appointed deputy and agent of Defendants LASD and the County, acting
16 within the scope of his employment with LASD and the County and under color of
17 state law. Deputy Gylfie is sued in his individual capacity.

18 20. Defendant Officer Bayes is, and at all times material herein was, a
19 duly appointed deputy and agent of Defendants LASD and the County, acting
20 within the scope of his employment with LASD and the County and under color of
21 state law. Deputy Bayes is sued in his individual capacity.

22 21. Defendant Maurice Hill is, and at all times material herein was, a duly
23 appointed sergeant and agent of Defendants LASD and County, acting within the
24 scope of his employment with LASD and the County and under color of state law.
25 Sergeant Hill is sued in his individual capacity.

26 22. The true names and capacities of Defendants sued as Does 1 through
27 30 are unknown to Plaintiffs who therefore sue these Defendants by fictitious
28 names. Doe Defendants include the supervisors at LASD and County who directly

1 approved the acts, policies and training described herein, as well as agents,
2 officers, and employees of LASD and County who are liable in connection with
3 one or more of the claims sued upon here and are responsible in some manner for
4 the wrongful acts and conduct alleged herein. Plaintiffs will amend this Complaint
5 to show Doe Defendants' true names and capacities when they have been
6 ascertained. Plaintiffs are informed and believe, and herein allege, that such Doe
7 Defendants are residents of California.

8 FACTUAL ALLEGATIONS

9 **I. First Incident: Defendants' Unlawful Detention of Nee on the LA Metro**

10 23. On the afternoon of Saturday, October 31, 2009, Nee bought a valid
11 ticket for the Metro Rail in order to ride home after a day of photographing.

12 24. When Nee arrived at his stop at the Hollywood and Western Metro
13 Rail station, he got off the train. He then walked toward the turnstiles and stopped
14 just inside the exit to examine the newly installed turnstiles. Nee was aware that
15 the new turnstile machines were highly controversial and the subject of contentious
16 debate in Los Angeles. Nee decided to snap a few quick photographs before he
17 left the station.

18 25. As Nee was photographing the turnstiles, Defendants LASD Deputies
19 Gylfie and Bayes approached him and asked why he was taking pictures.⁹ Nee
20 asked Gylfie if he was being detained. Gylfie responded that Nee was being
21 detained because Gylfie wanted to know why Nee was taking pictures in the
22 subway.

23 26. When Nee protested that he wasn't doing anything wrong, Gylfie told
24 Nee that the subway station was a terrorist target, and that MTA rules prohibit
25 photography.

26 _____
27 ⁹ Nee captured the events on video, which he subsequently posted at
28 <http://www.youtube.com/watch?v=yY2cCPW3H7g>.

1 27. When Nee again protested that MTA rules did not prohibit
2 photography, Gylfie asked for his identification and told him: “I want to know
3 who you are, and I want to know why you’re taking pictures of the subway system.
4 Al Qaeda would love to buy your pictures, so I want to know if you are in cahoots
5 with Al Qaeda to sell these pictures to them for terrorist purposes. That’s, that’s a
6 crime. You understand?” When Nee again said he was committing no crime,
7 Gylfie told Nee he was “being detained until I have determined that you have not
8 committed a crime.”

9 28. When Nee continued to protest his innocence of any wrongdoing,
10 Gylfie said, “maybe I should just arrest you.” He then grabbed Nee and pushed
11 him up to a nearby wall and ordered him to put his hands behind his back, interlace
12 his fingers, and spread his legs. Gylfie then held Nee’s hands behind his back
13 while he patted Nee down and searched through his pockets. Defendant Bayes
14 witnessed and participated in the incident and assisted in Nee’s detention. Gylfie
15 neither asked for, nor received, Nee’s consent to conduct the search.

16 29. During the search, Gylfie removed the contents of Nee’s back left
17 pocket (including his money, identification, phone, marker and various papers and
18 receipts) and placed them on the ground. Gylfie and Bayes then scanned Nee’s
19 driver’s license to conduct a warrant check.

20 30. Gylfie continued to question Nee, telling him, “I want to determine
21 whether you’re committing a crime or not. If you’re down here taking pictures and
22 selling them to Al Qaeda so they can blow up our subway system, I’ve got a
23 problem with that. That’s a crime. Is that clear to you or not? ... For the safety of
24 the public, riding the trains.” Gylfie then proceeded to lecture Nee about
25 worldwide terrorist attacks.

26 31. Several minutes into the detention, Nee informed Gylfie that he was
27 exercising his right to remain silent. In response, Gylfie told him, “You know, I’ll
28 just submit your name to T.L.O. [terrorism liaison officer]. Every time your

1 driver's license gets scanned, every time you take a plane, any time you go on any
2 type of public transit system where they look at your identification, you're going to
3 be stopped. You will be detained. You'll be searched. You will be on the F.B.I.'s
4 hit list. Is that what you want? ... Every time you move, you will be stopped and
5 detained and searched. And delayed."

6 32. Gylfie then again asked Nee what he was taking pictures of. As Nee
7 remained silent, Gylfie continued: "Okay, so you're taking pictures of the
8 infrastructure of the subway system, possibly to, uh, plant a bomb or something?"
9 Gylfie told Nee that his silence raised more suspicion and again said that he would
10 put Nee's name on "the hit list."

11 33. Gylfie's and Bayes' unlawful and unreasonable detention,
12 interrogation, and search of Nee continued for nearly 30 minutes, during which
13 time Deputies Gylfie and Bayes made clear to Nee that he was not free to leave.
14 Gylfie and Bayes released Nee without issuing a citation and told him to leave the
15 Metro Rail Station.

16 34. Nee subsequently filed a complaint with LASD, providing them with
17 a link to the video footage. On about June 13, 2011, Nee received a letter signed
18 by Capt. Daniel S. Cruz, of LASD's Transit Services North Bureau, about his
19 complaint, which stated, "Based on thorough investigation by Internal Affairs and
20 a review of the audio and video of the incident, they determined that the deputy did
21 not violate any department policies."

22 35. The Metro "Photography Guidelines" listed on the MTA website
23 provide that photography within the Metro Rail system is permitted with limited
24 exceptions.¹⁰ So long as the photography is not for commercial purposes, no
25

26 ¹⁰ The Metro photography guidelines are available at
27 <http://www.metro.net/about/filming-metro/metro-filming-photography-guidelines/>.
28 In addition to the posted guidelines, the MTA has clarified no permit is necessary
(cont'd)

1 permit is required if the photographic equipment is hand held, no tripods or flash
2 are used, and the images are not taken inside moving trains. Nee complied with all
3 of these limitations, and was not taking these photographs for commercial
4 purposes. Nee followed MTA rules and was otherwise engaged in lawful,
5 protected activity when Gylfie and Bayes detained him and accused him of
6 conspiring with terrorists.

7 36. As a result of his unlawful and unreasonable detention, Nee now
8 experiences extreme anxiety over riding the Metro Rail and photographing on
9 MTA property and seldom rides the subway anymore.

10 **II. Second Incident: Defendants Unlawfully Prevented Nee From**
11 **Photographing on Hollywood Boulevard**

12 37. On Sunday, May 1, 2011, Nee was photographing people walking on
13 the street along Hollywood Boulevard in Hollywood, California, as part of a long-
14 running project to build a book of photographs on the street life of Hollywood.

15 38. While he was photographing, Nee became aware of a commotion on
16 Hollywood near Vine, in front of the entrance to the Hollywood / Vine Metro
17 Station that is in the base of the W Hotel. Nee approached and saw four to five
18 LASD cars and an ambulance pulled over on the street. About ten officers huddled
19 around the cars, including a senior officer who was videotaping the scene. The
20 incident attracted a number of curious observers, many of whom stopped on the
21 sidewalk as they walked down Hollywood Boulevard.

22 39. Nee began to take pictures of the scene from the public sidewalk in
23 front of the W Hotel and Metro entrance. The sidewalk where Nee stood is wide
24 compared with many in the area, and, as part of the Hollywood Star Walk, is a
25 tourist attraction in its own right. Nee was standing on the Hollywood Star Walk
26

27 to take photographs for noncommercial purposes.
28

1 while he photographed, near the star for Shania Twain. Nee photographed while
2 some pedestrians walked past and others stood looking at the incident. The
3 deputies had not closed the sidewalk, nor were Nee or other onlookers blocking the
4 free passage of pedestrians.

5 40. Shortly after he began photographing, an LASD deputy approached
6 Nee.¹¹ The deputy told Nee that he was standing “between the W [Hotel] building
7 and MTA property” and that “they don’t allow any photography between the W
8 building and MTA property.” The deputy also told him that a person at the scene
9 was receiving medical treatment and could sue Nee if Nee took his picture. The
10 deputy told Nee that if he wanted to take photographs, he would ask Nee to move
11 from his current location to the other side of the W Hotel, nearly half a block away.

12 41. Nee protested that he was not doing anything unlawful, and asked if
13 the sidewalk was still open, to which the deputy said that public access was
14 limited. Nee asked the deputy if he could merely stand and take photographs
15 where other individuals were standing watching the scene, but the deputy told him
16 he could not and again directed Nee to relocate behind the W Hotel, indicating that
17 he was giving Nee a “lawful order.” During this exchange, Nee asked to speak to a
18 supervisor, and the deputy responded that it was his supervisor who had instructed
19 him to tell Nee to move.

20 42. Nee moved to the property line and continued taking photographs,
21 though his view at this point was obscured. Nee waited for about thirty minutes to
22 speak to a supervisor about not being allowed to photograph while standing next to
23 others surrounding the incident. When an officer Nee recognized as a supervisor
24 by his insignia walked by, Nee asked to speak to him. As the supervisor stopped,
25 Nee explained that one of the deputies was preventing him from photographing the

26
27 ¹¹ Nee captured the incident from this point forward on video, which he
28 subsequently posted at <http://www.youtube.com/watch?v=IQfLXmVXguw>.

1 incident from a public sidewalk. The supervisor said, "Alright, alright," and
2 walked away from Nee.

3 **III. Third Incident: Defendants' Unlawful Detention of Moore**

4 43. On June 2, 2011, Moore was working on a story for the Long Beach
5 Post about an April 2011 statewide campaign called Distracted Driving Awareness
6 Month. He left his Long Beach apartment to try to take pictures of drivers talking
7 or texting while driving to accompany his story. Moore walked from his apartment
8 to a nearby busy intersection at Ocean Boulevard and Magnolia Avenue in Long
9 Beach, and began taking pictures of drivers as they stopped at the traffic light. It
10 was early afternoon, and Moore was dressed in a T-shirt, shorts, and running shoes.

11 44. Moore had been photographing for several minutes when a group of
12 several LASD deputies approached and asked him if he was taking pictures of the
13 courthouse. Before Moore could answer fully, one of the deputies told him to step
14 away from the street. The deputies took Moore's camera, while one told him to
15 put his hands behind his back. A deputy held Moore's hands behind him while
16 another one patted him down thoroughly, including grabbing hold of the keys in
17 his pocket and manipulating them, groping the area of his groin twice, pulling up
18 his T-shirt and checking the waistband of his pants.

19 45. As they patted Moore down, the officers arranged themselves in a ring
20 around Moore, so he could not leave, and proceeded to question him. Moore
21 counted eight officers surrounding him.

22 46. One of the officers, whom Moore later identified as Sgt. Hill, asked
23 Moore again what he was doing. When Moore said he was a reporter and
24 explained the story he was working on, Sgt. Hill asked what news publication he
25 worked for.

26 47. After Moore had responded to the deputies' questions, he asked why
27 they had stopped him. Sgt. Hill told Moore that he was across the street from the
28 Long Beach Superior Court. Sgt. Hill told him that the courthouse was a "critical

1 facility” and that his apparent photography of the courthouse was “suspicious
2 activity.” When Moore asked if taking pictures of the courthouse was illegal, Sgt.
3 Hill replied that it was not, but told Moore that if his deputies get a call about
4 someone photographing the courthouse, they have to respond.

5 48. At some point, Moore asked the deputy holding his camera to return
6 it. The deputy responded that he wanted to see the photographs Moore had taken.
7 Moore showed the deputies the snapshots of drivers he had taken on the screen on
8 his digital camera. Moore believed from the officer’s response and his demeanor
9 that they would only return the camera if Moore showed them the pictures.

10 49. The LASD deputies held Moore for about fifteen to twenty minutes.
11 Before they allowed him to leave, one of the deputies demanded that Moore
12 provide his name, address, phone number, driver’s license number, name of the
13 publication he worked for, and the publisher’s name and contact information. The
14 deputies eventually released Moore without issuing him any citation.

15 50. Later that day, Moore called Sgt. Hill attempting to inquire further
16 into his detention. Hill told him: “We were detaining you because of a suspicious
17 circumstance to ascertain your intention.” Sgt. Hill invited Moore to meet in
18 person about the incident, which Moore did. At the meeting, Sgt. Hill told Moore
19 that the investigation was related to terrorism and that “taking pictures of the
20 courthouse does meet the standard for a pat-down search.”

21 51. Following the incident, the National Press Photographers Association
22 (“NPPA”) wrote to LASD on July 14, 2011, to express its concern about the
23 conduct of the LASD officers. On about August 18, 2011, NPPA received a letter
24 signed by Sheriff Baca stating that the incident had been investigated and
25 defending the deputies’ actions.

26 52. Moore followed up with another interview with LASD Captain Steven
27 M. Roller, who identified himself as “unit commander” officer over the Long
28 Beach courthouse. Capt. Roller defended the deputies’ decision to pat Moore

1 down. Roller told Moore that courthouses were potential terrorist targets, so that
2 taking pictures near a courthouse would be suspicious activity, and in investigating
3 somebody taking pictures near a courthouse who is a “potential terrorist,” deputies
4 would be entitled to pat him down. Capt. Roller said that if he had been on the
5 scene, he would have patted Moore down.

6 **IV. Fourth Incident: Defendants’ First Unlawful Detention of Quentin**

7 53. On December 31, 2009, at about 1:00 a.m., Quentin and another
8 photographer were taking photographs of a large refinery from the corner of
9 Wilmington Avenue and East 223rd Street in Carson, California.

10 54. Both Quentin and the other photographer he was with that evening
11 take pictures of industrial areas to sell through stock photo services. By using
12 long exposures and creative framing, Quentin creates dramatic and artistic
13 depictions of industrial buildings. To take pictures of industrial scenery at night,
14 Quentin uses a large, professional-quality camera and takes pictures openly, using
15 a tripod.

16 55. While Quentin and his companion were photographing from a public
17 sidewalk by the intersection, an LASD deputy pulled alongside them in her car and
18 began yelling at them aggressively, saying they had no right to be there and could
19 not take photographs. They protested that they were on a public sidewalk and were
20 violating no laws, and asked why she was telling them to leave, but the deputy
21 continued, without explanation, to yell at them and to order them repeatedly to stop
22 photographing and leave the area.

23 56. Quentin and his companion complied with the deputy’s orders and
24 stopped photographing, then walked to a nearby diner and ate a late meal. As they
25 walked out of the diner to return to their car, they began photographing the refinery
26 again. The LASD deputy that had confronted them returned and again confronted
27 them. This time, she told them that it was suspicious that they were out
28 photographing so late, and threatened to place them on the “no fly” list.

1 57. After a few minutes, another LASD officer pulled up and began
2 speaking with Quentin and his companion. The second officer took a calmer tone,
3 but told the two photographers that though he understood their frustrations, they
4 should not anger the first deputy any further and, given the late hour, should leave
5 the area. The second officer told them that their behavior looked suspicious and
6 suggested that they might be affiliated with terrorists. Quentin and the other
7 photographer again protested, politely but repeatedly, that they were breaking no
8 law. But the second officer repeatedly told the two that they could not continue
9 photographing and had to leave the area. Quentin and the other photographer
10 eventually complied, stopped taking photographs, and left. The LASD deputies
11 did not issue either Quentin or his friend a citation.

12 **V. Fifth Incident: Defendants' Second Unlawful Detention of Quentin**

13 58. On January 21, 2011, an LASD deputy stopped Quentin when he was
14 photographing another refinery by himself at about 1:25 a.m. The deputy
15 immediately ordered him to place his hands behind his back and held them there
16 while he patted him down thoroughly. The deputy removed the contents of
17 Quentin's pockets and placed them on the hood of the LASD car.

18 59. While the deputy searched Quentin, he began asking what Quentin
19 was doing there and why he was out so late. Quentin cooperated, explaining that
20 he was taking photos.

21 60. After searching Quentin, the deputy placed him in the back of the
22 LASD car and waited outside. Before doing so, however, the deputy asked
23 Quentin if his camera was recording video and told him that he had to turn it off if
24 it was.

25 61. Within a few minutes, about four more LASD officers had arrived in
26 at least two more cars. The deputies took turns questioning Quentin in the back of
27 the LASD cruiser. The deputies again asked what he was doing photographing the
28 refinery, and why he was photographing this refinery in particular. They also asked

1 Quentin what he did with the pictures he took and whether he was affiliated with
2 any terrorist organizations or a member of any street gang. They asked where he
3 lived, about his job, and where he had parked that night. They asked some
4 questions several times. After about forty-five minutes, the deputies released
5 Quentin from the car.

6 62. After they released him, Quentin asked what would happen if he kept
7 taking pictures. They responded that they would take him to jail and let a judge
8 decide what to do with him. As a result, Quentin did not take any more
9 photographs. The deputies told him that they would give him a ride to his car.
10 When Quentin said he would walk because it was only a block away, the deputies
11 told him they had to give him a ride. The deputies did not issue Quentin a citation.

12 63. As a result of these incidents, Quentin has suffered emotional distress
13 and has been reluctant to take photographs of industrial areas.

14 **VI. Additional Incidents**

15 64. The experiences of Plaintiffs Nee, Moore, and Quentin are not
16 isolated. In addition to the five incidents that have given rise to this litigation,
17 LASD has stopped and seized other photographers, as well as telling
18 photographers that they are not allowed to photograph public buildings from public
19 sidewalks or other places they are legally allowed to be.

20 65. Ted Soqui is a well-known freelance photojournalist based in Los
21 Angeles, California, where he has worked for decades. On April 28, 2011, Soqui
22 was photographing the exterior of the Los Angeles County Men's Central Jail and
23 nearby bail bonds businesses for use in a Los Angeles Weekly story on deputy
24 abuses at the jail. Standing only on public sidewalks, he took photographs openly
25 in broad daylight. As he was walking back to his car, an LASD squad car pulled
26 up to him, and a deputy got out and ordered him to come over. More deputies
27 arrived until a total of six deputies were present at his subsequent questioning.
28 Soqui told the deputies that he was taking pictures for a newspaper, but refused to

1 answer what the story was about. At that moment, the lead deputy put his hand on
2 his gun, moved uncomfortably close to Soqui, and asked to search him. Soqui
3 complied. After deputies took Soqui's license and used it to run a warrant check,
4 the officers released him, telling him that his detention was a national security
5 issue. They informed him that photography was not allowed on Bauchet Street, a
6 public street with sidewalks that run between Twin Towers Correctional Facility
7 and Los Angeles County Men's Central Jail.

8 66. Doran Barons is a photographer, radio and broadcast engineer, and
9 radio host. In about August 2008, Barons was awaiting the Metro Rail subway at
10 the North Hollywood Metro station in Hollywood, California. While waiting, he
11 began taking photographs of lights and subway trains in the station, all the while
12 remaining on the station platform in areas accessible to the public, and otherwise
13 complying with MTA rules regarding photography. Soon after he began taking
14 photos, an LASD deputy came up to him and ordered him to stop photographing,
15 telling Barons that photography was not permitted on MTA property. Barons
16 responded that photography was lawful and allowed, but the deputy demanded that
17 Barons stop photographing and asked for his driver's license. The deputy released
18 Barons without a citation. Barons thereafter became reluctant to ride the Metro
19 Rail or to photograph in the Metro Rail station.

20 67. In mid-September 2011, Catherine Dent was taking photographs of
21 the exterior and signage for Men's Central Jail from Bauchet Street for use in a
22 video project. She had been photographing openly on the publicly accessible
23 sidewalk using a large, professional-quality SLR camera, when two LASD
24 deputies driving in the opposite direction made a U-turn and pulled their car onto
25 the sidewalk near her. The two deputies got out and ordered Dent to come over to
26 them. They asked her to show them her pictures, which she refused to do. They
27 asked for her identification. She told them it was in her car, which was parked in a
28 lot some distance away. They told her to go get it. She replied that she would

1 show it to them if they accompanied her to her car, then turned and walked toward
2 her car. When she arrived at her car several minutes later, no LASD officers were
3 in sight. Dent got into her car and began to drive toward the parking lot exit, when
4 another LASD car pulled across the exit so as to block it and prevent her from
5 leaving the lot. Dent had to stop her car to avoid hitting the deputies' car. Two
6 deputies got out and approached Dent in the manner of a traffic stop and asked for
7 her identification, which she produced. They circled her car and examined her
8 license plate. They also asked her to show them the photographs she had taken,
9 which she refused to do. They asked why she was taking photographs, and she
10 replied it was for a school project. Upon further questioning, Dent told them it was
11 for an extension school class in film and video production at UCLA. The deputies
12 released her after about five minutes.

13 68. On October 19, 2011, Plaintiff Nee was standing in the
14 Wilshire/Normandie Metro station, outside the ticketed area, waiting for protestors
15 from the Occupy LA movement to arrive, when LASD deputies standing nearby
16 told him not to take pictures of them, and told him that photography was not
17 permitted in the Metro station. Nee was not taking photographs at the time, but
18 was holding his camera.

19 **VII. LASD Training and Suspicious Activity Reporting**

20 69. The incidents described above paint a clear pattern of harassment of
21 photographers at the hands of LASD. Upon information and belief, this custom
22 stems from LASD policy and training providing that photography is, without more,
23 a suspicious activity potentially indicative of terrorism. This policy and training
24 predictably leads to the unconstitutional detention of individuals taking
25 photographs in public spaces, and to the chilling of their First Amendment right to
26 take photographs.

27 70. Over the past several years, law enforcement agencies across the
28 country have begun instituting programs to get officers to investigate and report

1 information that is perceived to be potentially related to national security. To that
2 end, with the encouragement of the U.S. Department of Homeland Security and
3 Director of National Intelligence (“DNI”), many departments have instituted
4 “suspicious activity reporting” programs. These programs require that line officers
5 be trained to identify and report certain kinds of activity (including noncriminal
6 conduct) that may have potential counterterrorism value to their department’s
7 counterterrorism officers. This information can then be used and potentially
8 shared with other agencies through “fusion” centers.

9 71. “Suspicious activity reporting” was initially developed by the Los
10 Angeles Police Department (“LAPD”) under their Special Order 11, which
11 requires officers report as “suspicious activities” any number of different criminal
12 and noncriminal activity, including when an individual “[t]akes pictures or video
13 footage (with no apparent esthetic value, i.e. camera angles, security equipment,
14 security personnel, traffic lights, building entrances, etc.)” and “[e]ngages in
15 suspected pre-operational surveillance (uses binoculars or cameras, takes
16 measurements, draws diagrams, etc.)”

17 72. Based in part on Special Order 11 as a model, the DNI has issued
18 standards for “suspicious activity reporting.”¹² These standards list as a
19 “suspicious activity,” among other things, “[t]aking pictures or video of facilities,
20 buildings, or infrastructure in a manner that would arouse suspicion in a reasonable
21 person.”

22 73. Likewise, the Federal Bureau of Investigation’s (“FBI”) descriptions
23 of its eGuardian suspicious activity reporting system indicate that reportable
24

25 ¹² See, e.g., Information Sharing Environment, Functional Standard, Suspicious
26 Activity Reporting, Version 1.5 (May 2009) (“Functional Standards”), *available at*
27 [http://nsi.ncirc.gov/documents/ISE-FS-200_ISE-SAR_Functional_Standard_V1_](http://nsi.ncirc.gov/documents/ISE-FS-200_ISE-SAR_Functional_Standard_V1_5_Issued_2009.pdf)
28 [5_Issued_2009.pdf](http://nsi.ncirc.gov/documents/ISE-FS-200_ISE-SAR_Functional_Standard_V1_5_Issued_2009.pdf).

1 activities include “photography of key infrastructure facilities.”¹³

2 74. Building upon the foundation developed by LAPD and DNI, LASD
3 implemented an analogous suspicious activity reporting program. LASD policy
4 5.09/490.10, titled “Notification Process for Potential Homeland Security
5 Activity,” details the requirements of what it calls “Potential Homeland Security
6 Activity” (“PHSA”), specifically stating that “[t]he reporting of PHSA is also
7 known nationally as ‘Suspicious Activity Reporting.’” The policy emphasizes that
8 all LASD personnel understand PHSA reporting procedures. It further states that
9 personnel should be advised that PHSA “may not rise to the level of a crime” and
10 “may not have a clear nexus to terrorism.”

11 75. As part of its PHSA program, LASD’s Field Operations Directive 03-
12 03 (Apr. 23, 2003) establishes clearance code 709-“Possible Terrorism Related
13 Incident” to be employed by LASD personnel who respond to an incident related
14 to terrorist activities. The first example listed of when such a code should be used
15 is “suspicious persons videotaping public transportation, government facilities or
16 local critical facilities.”

17 76. The actions of the LASD officers described above were not the
18 unauthorized acts of rogue officers. To the contrary, the officers were acting
19 consistent with LASD policy and training. The nature of “suspicious activity
20 reporting” programs, the existence of such a program at LASD, and the pattern and
21 practice by LASD personnel of detention, harassment and prohibition of
22 photographers (and validation of that conduct by superiors who investigate
23 complaints), demonstrate that LASD has adopted, through training or custom, a
24 policy of detaining and searching photographers who photograph what government
25 buildings, infrastructure, or anything officers perceive to be a potential terrorist

26

27 ¹³ See <http://www.fbi.gov/foia/privacy-impact-assessments/eguardian-threat>.

28

1 target. LASD effectively trains its officers that such photography is prohibited, or
2 can be prohibited at the officers' discretion, even if the photographer is in a public
3 place and violating no law or rule while photographing.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **Violation of the Fourth Amendment; 42 U.S.C. § 1983**

7 **(Against All Defendants)**

8 77. Plaintiffs reallege and incorporate the foregoing paragraphs as if set
9 forth herein.

10 78. Defendants' actions described above violated Plaintiffs' rights under
11 the Fourth Amendment to the United States Constitution by subjecting Plaintiffs to
12 unreasonable warrantless searches and seizures.

13 79. The violation of Plaintiffs' Fourth Amendment rights occurred
14 pursuant to a policy, custom, or practice, maintained by LASD and the County, of
15 having LASD officers detain, search, and interrogate photographers who
16 photograph in public places where photography is legal and where officers have no
17 reasonable basis to believe the photographer is engaged in any criminal activity or
18 is armed or dangerous.

19 80. Defendants' conduct violated clearly established constitutional or
20 other rights, of which Defendants knew, or of which reasonable public officials
21 should have known, rendering Defendants liable to Plaintiffs under 42 U.S.C. §
22 1983.

23 81. As a direct and proximate result of the unlawful actions of these
24 Defendants, Plaintiffs have suffered emotional and economic harm.

25 82. Plaintiffs all intend to continue photographing, but fear further
26 detention and harassment by the LASD. That fear prevents them from
27 photographing as much as they would like or in places they would like.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CLAIM FOR RELIEF

Violation of the First Amendment; 42 U.S.C. § 1983

(Against All Defendants)

83. Plaintiffs reallege and incorporate the foregoing paragraphs as if set forth herein.

84. Defendants' actions described herein violated Plaintiffs' rights under the First Amendment to the United States Constitution by prohibiting Plaintiffs from exercising their constitutional right to free speech and expression, as well as freedom of the press, and by retaliating against Plaintiffs for attempting to exercise those same rights.

85. The violation of Plaintiffs' First Amendment rights occurred pursuant to a policy, custom, or practice, maintained by LASD and the County, of having LASD officers prohibit photographers from photographing in public places where photography is lawful, and of retaliating against photographers who exercise their First Amendment rights to photograph in such places by detaining, searching, and interrogating them.

86. Defendants' conduct violated clearly established constitutional or other rights, of which Defendants knew, or of which reasonable public officials should have known, rendering Defendants liable to Plaintiff under 42 U.S.C. § 1983.

87. As a direct and proximate result of the unlawful actions of these Defendants, Plaintiffs have suffered significant emotional and economic harm.

88. Plaintiffs all intend to continue photographing in public, but fear further detention and harassment by the LASD. That fear prevents them from photographing as much as they would like or in places they would like.

PRAYER FOR RELIEF

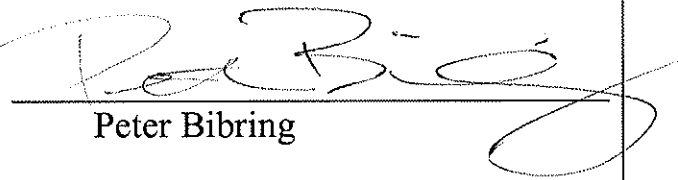
89. Plaintiffs therefore respectfully request that the Court enter a judgment including:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- a. A declaratory judgment that Defendants' actions as described herein violated the First and Fourth Amendments to the United States Constitution;
- b. To the extent the Court finds that Defendants' conduct were authorized by a policy or regulation, a declaratory judgment that those policies or regulations are unconstitutional under the First and Fourth Amendments to the United States Constitution;
- c. As to the County of Los Angeles and LASD, an injunction to prevent the unlawful detention, search, interrogation, and harassment of photographers solely based on the fact they are taking photographs, and to prevent LASD officers from prohibiting photography in public places where photography otherwise violates no law.
- d. As to all Defendants, compensatory and statutory damages for violation of the laws and Constitution of the United States and State of California, in an amount to be determined at trial;
- e. Reasonable attorneys' fees and costs; and
- f. Any other relief as may be just and proper.

Dated: October 27, 2011

Respectfully Submitted,
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
AKIN GUMP STRAUSS HAUER & FELD LLP

By: 
Peter Bibring

Attorneys for Plaintiffs