

1 MICHAEL H. DORE, SBN 227442
mdore@gibsondunn.com
2 GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
3 Los Angeles, CA 90071-3197
4 Telephone: 213.229.7000
Facsimile: 213.229.7520

5 Attorneys for JOSEPHINE HUANG

KATIE TOWNSEND, SBN 254321
ktownsend@rcfp.org
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
1156 15th St. NW, Suite 1020
Washington, D.C. 20005
Telephone: 202.795.9300
Facsimile: 202.795.9310

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 PEOPLE OF THE STATE OF
11 CALIFORNIA,

12 Plaintiff,

13 v.

14 JOSEPHINE HUANG,

15 Defendant.

Case No. _____

**PETITION FOR FINDING OF
FACTUAL INNOCENCE PURSUANT
TO CALIFORNIA PENAL CODE
851.8(b)**

LASD Case No. 920-13918-2112-145;

DA Case No. 40202847.

16
17 **INTRODUCTION**

18 Josephine Huang (“Ms. Huang”) respectfully petitions this Court for a finding of
19 factual innocence pursuant to California Penal Code § 851.8(b). On September 12,
20 2020, Ms. Huang, a reporter for KPCC/LAist, was detained by deputies of the Los
21 Angeles County Sheriff’s Department (“LASD”) and issued a citation under California
22 Penal Code § 148(a). The citation alleged that Ms. Huang—while engaged in lawful
23 newsgathering—obstructed a deputy by failing to obey an instruction to step back
24 while filming an arrest in a public place. But, as video footage showed, and as the Los
25 Angeles County District Attorney’s Office concluded in declining to pursue the
26 citation, Ms. Huang “was not given an opportunity to comply” with deputies’ request
27 that she back up. Ex. 1, Tab B. Because the statute under which Ms. Huang was cited
28 does not “criminalize[] a person’s failure to respond with alacrity to police orders,”

1 *People v. Quiroga*, 16 Cal. App. 4th 961, 966 (1993), the law is clear that “[n]o
2 reasonable officer could have thought that complying with a police order slowly could
3 be a violation of § 148,” *Mackinney v. Nielsen*, 69 F.3d 1002, 1006 (9th Cir. 1995).

4 As a result, and as further set forth below, “no reasonable cause exists to believe
5 that [Ms. Huang] committed the offense for which the arrest was made.” Cal. Penal
6 Code. § 851.8(b). She is therefore entitled to a finding of factual innocence, and Ms.
7 Huang respectfully requests that this Court grant the relief sought.

8 **JURISDICTION**

9 All prerequisites to the filing of this petition with the Court have been satisfied.
10 Ms. Huang timely filed an initial petition with “the law enforcement agency having
11 jurisdiction over the offense,” Cal. Penal Code § 851.8(a), on June 21, 2022, within
12 “two years from the date of the arrest,” *Id.* § 851.8(l); *see also* Ex. 1, Tab A. That
13 petition was deemed denied by operation of law because LASD did not respond within
14 sixty days and the relevant statute of limitations for the alleged offense had lapsed.
15 *See* Cal. Penal Code § 851.8(b); *id.* § 802(a). Because the events giving rise to Ms.
16 Huang’s petition took place within the territorial jurisdiction of the Superior Court for
17 the County of Los Angeles, this Court now has jurisdiction to hear the petition. *See id.*

18 **FACTS**

19 On the evening of September 12, 2020, in her capacity as a reporter for KPCC,
20 Ms. Huang attended a press conference held by Sheriff Alex Villanueva at St. Francis
21 Medical Center in Lynwood, California, where two LASD deputies were recovering
22 from injuries suffered in an ambush shooting. At all times that evening, Ms. Huang
23 was wearing her KPCC-issued press credentials and lanyard that clearly identified her
24 as a member of the press. *See* Ex. 2, Tab A; Press Pass Identification, Los Angeles
25 Cnty. Sheriff’s Dep’t, <https://pars.lasd.org/Viewer/Manuals/15183/Content/16295> (last
26 visited Sept. 8, 2022) (explaining that credentials “issued by the [media]
27 representative’s agency or employer” must “be honored” when interacting with press).

1 Shortly before 11:00 p.m., after the press conference concluded, Ms. Huang
2 made her way to the garage where her car was parked, intending to go home. *See Ex.*
3 *2, Tab. A.* She then heard shouting outside the garage. Going to investigate, Ms.
4 Huang encountered a handful of men gathered near the Medical Center, protesting and
5 filming deputies who had remained on the scene following the press conference. From
6 the public sidewalk, Ms. Huang began filming the group’s interactions with her phone,
7 recording a series of clips that she later shared with the public via her Twitter account.¹

8 Soon, the deputies moved to arrest one of the protesters while Ms. Huang
9 continued to film. As the District Attorney’s office later explained—based on a review
10 of “police reports, video supplied by LASD, and video posted on the internet”—
11 footage shows that “[a]nother deputy not directly involved in the arrest comes towards
12 her and tells her to back up,” but “appears to almost instantly reach for her” before Ms.
13 Huang can react. *Ex. 1, Tab B.* Ms. Huang was then “almost immediately grabbed by
14 deputies and taken to the ground giving her little if any time to comply.” *Id.*

15 In recordings of the event, Ms. Huang can be heard “screaming that she is a
16 reporter,” while a deputy can be heard responding, “Do what you’re told if you’re a
17 reporter.” *Id.* The last of Ms. Huang’s videos, recorded by her phone after it was
18 knocked out of her hand, captures a pair of deputies stepping directly on the device.
19 *See Ex. 2, Tab B.* Additional footage taken by freelance journalists present that night
20 shows an LASD deputy attempting to discourage others from recording Ms. Huang’s
21 detention by shoving an independent photojournalist from the scene away while
22 shouting “get out of here or I’ll break your fucking camera.” *ONSCENE TV, Two*
23 *LASD Deputies Shot in Ambush in Compton and NPR Reporter Arrested at Hospital*
24 *Protest*, YouTube (Sept. 13, 2020), <https://www.youtube.com/watch?v=JcDUtzQUfIc>.

25
26
27 ¹ *See Ex. 2, Tab A; @Josie_Huang, Twitter (Sept. 13, 2020, 5:47 PM),*
28 https://twitter.com/josie_huang/status/1305261859155505153 (first Tweet in a
thread collecting the videos in question). The relevant videos can also be made
available in another format for the convenience of the Court should it be helpful.

1 After her detention, Ms. Huang was cited for a violation of Cal. Penal Code §
2 148(a), alleging obstruction of a deputy. *See* Ex. 1, Tab A. But the Los Angeles
3 County District Attorney’s office declined to pursue the citation. *See* Ex. 1, Tab B. As
4 a charge evaluation worksheet released to the public explained, “Ms. Huang was in a
5 public area filming a protest,” clearly identified herself as a reporter, and was “merely
6 trying to record the occurrence”—an act that Cal. Penal Code §148(g) “explicitly
7 states” does not violate the statute. *Id.* What’s more, Ms. Huang “was not given the
8 opportunity to comply with [deputies’] demands.” *Id.* As a result, there was
9 “insufficient evidence” to conclude that she committed the offense of obstruction. *Id.*

10 This petition timely followed.

1 ARGUMENT

2 “[N]o reasonable cause exists to believe that [Ms. Huang] committed the offense
3 for which the arrest was made.” Cal. Penal Code. § 851.8(b). For one, both California
4 and federal law make clear that recording an arrest in a public place is not a crime.
5 Under Cal. Penal Code § 148(g), “[t]he fact that a person takes a photograph or makes
6 an audio or video recording of a public officer or peace officer, while the officer is in a
7 public place or the person taking the photograph or making the recording is in a place
8 he or she has the right to be, does not constitute, in and of itself, a violation of [Cal.
9 Penal Code § 148(a)], nor does it constitute reasonable suspicion to detain the person
10 or probable cause to arrest the person.” The same is true under the Constitution,
11 because “[t]he First Amendment protects the right to photograph and record matters of
12 public interest,” including “the right to record law enforcement officers engaged in the
13 exercise of their official duties in public places.” *Askins v. U.S. Dep’t of Homeland*
14 *Security*, 899 F.3d 1035, 1044 (9th Cir. 2018). The record is clear that “Ms. Huang
15 was in a public area” when recording the events in question. Ex. 1, Tab B.

16 Just as importantly, the law is clearly established that an individual cannot be
17 arrested for allegedly disobeying police orders without first being given an opportunity
18 to comply. As the leading California case explains, “it surely cannot be supposed that
19 [Cal. Penal Code § 148(a)] criminalizes a person’s failure to respond with alacrity to
20 police orders.” *Quiroga*, 16 Cal. App. 4th at 448. And for good reason: A “reasonable
21 opportunity to comply” with law-enforcement orders is required by “basic principles of
22 due process.” *United States v. Huizar*, 762 F. App’x 391, 392 (9th Cir. 2019) (citing
23 *Kolender v. Lawson*, 461 U.S. 352, 357–60 (1983)). As a result, as the U.S. Court of
24 Appeals for the Ninth Circuit has repeatedly held, “[n]o reasonable officer could have
25 thought that complying with a police order slowly could be a violation of § 148.”
26 *Mackinney*, 69 F.3d at 1006; *see also Velazquez v. City of Long Beach*, 793 F.3d 1010,
27 1019 (9th Cir. 2015). The same is true here, where the video evidence demonstrates
28 that Ms. Huang was detained “almost instantly” after being asked to back up, without

1 an “opportunity to comply.” Ex. 1, Tab B. The record is therefore clear that Ms.
2 Huang is factually innocent of the offense for which she was cited and detained.

3 **CONCLUSION**

4 For the foregoing reasons, Ms. Huang respectfully urges the Court to grant her
5 petition for a finding of factual innocence.

6 Dated: September 8, 2022

7 MICHAEL H. DORE
8 GIBSON, DUNN & CRUTCHER LLP

9 KATIE TOWNSEND
10 REPORTERS COMMITTEE FOR FREEDOM
11 OF THE PRESS

12 By: /s/ Michael H. Dore

13 Michael H. Dore

14 Attorneys for JOSEPHINE HUANG
15
16
17
18
19
20
21
22
23
24
25
26
27
28