



November 18, 2021

To: Los Angeles County Civilian Oversight Commission
Professor Priscilla Ocen, Chair, Civilian Oversight Commission
Brian Williams, Executive Director, Civilian Oversight Commission
Max Huntsman, Inspector General

Cc: Los Angeles County Board of Supervisors
Justice Deputies

Via E-Mail

RE: Check the Sheriff Coalition Recommendations Regarding the Sheriff and the Los Angeles County Sheriff's Department

The Check the Sheriff Coalition (CTS)—which includes organizations and individuals directly impacted by sheriff's deputy violence and misconduct—has worked tirelessly to bring awareness to the ongoing violence and wrongdoing perpetuated against the community by sheriff's deputies, and to advocate for legal and policy change to strengthen civilian oversight over the Los Angeles County Sheriff's Department (LASD), protect the community from deputy misconduct, remove LASD from spaces where they cause the most harm, and push for meaningful checks and balances over the sheriff. This is an important moment for the Board of Supervisors (Board) to finally take decisive actions to address the scourge of deputy gangs and the conditions that lead to unchecked hostility and violence towards communities policed by LASD, particularly Black and Latinx communities. Through its September 28, 2021 motion, titled *Measures to Eradicate Deputy Gangs and Create Stronger Civilian Oversight and Checks and Balances over the Sheriff and Sheriff's Department*, the Board affirmatively tasked the Civilian Oversight Commission (COC) with soliciting public input and developing recommendations for a holistic approach to these problems.¹ We hope that the COC will use this opportunity to propose new and necessary solutions that meaningfully change the relationship between the County, the sheriff, LASD, and the public, in order to protect the community from ongoing harms at the hands of the sheriff and LASD. We urge the COC to consider and include our key CTS recommendations as part of its report back to the Board.

¹ At this Board of Supervisor's (Board) September 28, 2021 meeting, as part of agenda item 26, the Board unanimously passed this motion read in by Supervisors Hilda Solis and Holly Mitchell. See L.A. Cnty. Bd. Supervisors, Statement of Proceedings for the Regular Meeting of the Board of Supervisors 32 (Sept. 28, 2021), http://file.lacounty.gov/SDSInter/bos/sop/1113870_092821.pdf; Motion by Supervisors Hilda L. Solis and Holly Mitchell, *Measures to Eradicate Deputy Gangs and Create Stronger Civilian Oversight and Checks and Balances over the Sheriff and Sheriff's Department* (Sept. 28, 2021), <http://file.lacounty.gov/SDSInter/bos/supdocs/162339.pdf>.

The County can no longer tinker around the edges of significant reform of LASD. Instead, the County must adopt “radical overhauls,” meaningful checks and balances, and structural changes within the County that will permanently impact the way LASD operates.² It is obvious, and indeed demonstrated through past reports, including the one most recently issued by the RAND Corporation, that LASD deputy gangs are only a symptom of a pervasive and deep-rooted culture in LASD of lawlessness, secrecy, and brutality. There is no simple fix for the harms that deputies have inflicted on the public and the lack of existing departmental or County-level structures capable of reigning in deputy misconduct.

Moreover, this effort is not just about the current sheriff. The history of sheriffs and their deputies in Los Angeles County exerting unchecked and abusive power over county residents for decades is well documented, and structural changes driven by community demands have always been necessary to address them. For instance, the COC and the Office of Inspector General (OIG) were created as oversight bodies in response to the extreme violence and other illegal conduct perpetuated against the public by LASD deputies and sanctioned by former Sheriff Baca three administrations ago. Despite claims by Baca’s successor, Sheriff McDonnell, that he supported and welcomed these oversight entities, McDonnell refused to provide information necessary for the COC to fulfill its oversight functions and necessitated the community-driven Measure R ballot measure, which granted the COC subpoena power to legally compel the production of information from LASD. The current sheriff now defies one lawful subpoena after another—in addition to violating other departmental policies, state and local law, and court orders intended to create transparency and accountability for deputy misconduct.

When placed in the context of the administrations that preceded him, Sheriff Villanueva’s hostility to oversight, transparency, and accountability, and his disinterest in stemming deputy violence and misconduct, including deputy gangs, is no outlier. The current administration is only the most recent illustration of the ways the County’s current oversight structures come up seriously short and are largely powerless when a sheriff refuses to cooperate voluntarily. The task of the Board, therefore, is not just address the specific issues particular to the current sheriff, but also, and more importantly, it is to recognize the larger weaknesses in the existing relationships between the sheriff, LASD, and the County at large and to restructure these

² See Ex. A (Dec. 18, 2020 ACLU SoCal letter re: “Report Regarding Options for Removing the Sheriff”); see also *Editorial: What do we do about sheriff gangs?*, L.A. TIMES (Sept. 14, 2021), available at <https://www.latimes.com/opinion/story/2021-09-14/what-do-we-do-about-la-county-sheriff-gangs>; *Editorial: Cyclist stops and searches show need for stronger sheriff oversight*, L.A. TIMES (Nov. 9, 2021), available at <https://www.latimes.com/opinion/story/2021-11-09/sheriffs-racist-bike-stops-unacceptable> [hereinafter “*Editorial: Cyclist stops and searches*”]; *Editorial: The Sheriff Villanueva-style tradition of service is no service to the public*, L.A. TIMES (Nov. 2, 2021), available at <https://www.latimes.com/opinion/story/2021-11-02/villanuevas-anti-vaccine-threats>; *Editorial: Alex Villanueva isn’t L.A. County’s only sheriff problem. Let’s rethink the job entirely*, L.A. TIMES (Feb. 5, 2021), available at <https://www.latimes.com/opinion/story/2021-02-05/removing-the-sheriff>; *Editorial: Midterm grade for Sheriff Villanueva: Poor*, L.A. TIMES (Dec. 4, 2020), available at <https://www.latimes.com/opinion/story/2020-12-04/sheriff-villanueva-two-years-midpoint>; *Editorial: Appoint the sheriff? Remove the sheriff? L.A. County needs to start asking questions*, L.A. TIMES (Nov. 10, 2020), available at <https://www.latimes.com/opinion/story/2020-11-10/appoint-sheriff-los-angeles-county>; *Editorial: Villanueva is the best advertisement for muscular sheriff oversight*, L.A. TIMES (Sept. 17, 2020), available at <https://www.latimes.com/opinion/story/2020-09-17/editorial-villanueva-is-the-best-advertisement-for-muscular-sheriff-oversight>.

relationships to strengthen the civilian oversight institutions. The Board should establish these bodies' ability to function independent of the cooperation of the sheriff, enhance the existing system of checks and balances, and ensure lawful operations of LASD for all sheriffs to come.

The Board has the moral and legal obligation to do everything in its power to ensure that the public is protected from LASD violence, harassment, and unequal enforcement of the law by using all means that it has available—including budget determinations, motions and ordinances, negotiations with the associations representing LASD personnel, and amendments to the Los Angeles County Charter. Through CTS and member organizations, and in coordination with partner organizations and coalitions including JusticeLA, Reform LA Jails, and Frontline Wellness Network, we have submitted many advocacy letters making important policy recommendations regarding the sheriff and LASD. These recommendations—highlighted in this letter and included in the previous letters enclosed—detail many ways in which the County can meaningfully move forward to eradicate deputy gangs and the conditions under which deputy gangs and related community harassment and violence thrive.

1. ***Create a procedure to allow impeachment and removal of the sheriff:***

While state and local laws give the Board responsibility to supervise the conduct of the sheriff, and the Board, as the County's governing body, bears the ultimate responsibility for the safety of the public, the Board currently has no meaningful ways to enforce this authority, or even to take action against a sheriff who directly violates the law.³ Further, although the state constitution requires charter counties to create a process for removal of sheriffs, the L.A. County Charter currently lacks such a provision.⁴ The threat of removal alone, even under limited circumstances that reflect a clear violation of the sheriff's oath of office, would finally create some measure of accountability for the sheriff and provide the Board with a stronger means to protect the public from serious misconduct and bring the County into compliance with state law. By adding the power to remove the sheriff for misconduct, including the repeated obstruction of oversight, the Board would help ensure sheriffs comply with existing transparency, accountability, and oversight requirements without obstruction or delay.

Therefore:

- a. *The L.A. County Charter should be amended to allow for impeachment and removal of the sheriff by a four-fifths vote of the Board for serious violations of the public trust, including serious crimes, unconstitutional conduct, and abuse of power.⁵ The*

³ California statutes establish that the board of supervisors “shall supervise the official conduct of all county officers . . . particularly insofar as the functions and duties of such county officers . . . relate to the assessing, collecting, safekeeping, management, or disbursement of public funds.” Cal. Gov. Code § 25303. The board “shall see that [county officers],” including the sheriff, “faithfully perform their duties . . .” *Id.*

⁴ For the elected sheriff, the county charter shall provide for “their election or appointment . . . terms and *removal*.” Cal. Const. art. XI § 4 (c) (emphasis added).

⁵ For a more in-depth analysis and rationale for this proposal, see Ex. A, *supra* note 2, at 2-4.

*Board should move this amendment forward by placing the measure on the ballot for the upcoming election, where voters would make the ultimate decision.*⁶

2. Establish permanent and more robust civilian oversight of LASD:

Civilian oversight bodies can only be as effective as they are provided with the authorities, resources, and independence necessary to perform their oversight duties. Currently, the COC and the OIG are creations of the Board by ordinance, meaning that this Board or a future Board can dissolve these oversight bodies by ordinance if they so choose.⁷ The COC has also lacked the resources and access to independent counsel necessary to perform its duties.

Therefore:

- a. To further the independence and permanence of the COC and the OIG, the Board should move to incorporate these oversight bodies in the L.A. County Charter.*⁸
- b. The Board should safeguard with enforcement mechanisms their subpoena power and access to LASD, including providing the COC with independent counsel and funding commensurate with its duties.*⁹
- c. As it is the case with the Los Angeles County Probation Oversight Commission, the Board should ensure community membership and inclusion in the COC of individuals directly impacted by LASD and the criminal legal system.*¹⁰

⁶ At this Board's January 26, 2021 meeting, as part of agenda item 32, County Counsel filed a confidential report and gave an oral report back, which confirmed the Board's ability to place such a measure on the ballot by motion and ordinance. See L.A. Cnty. Bd. Supervisors, Statement of Proceedings for the Regular Meeting of the Board of Supervisors 37 (Jan. 26, 2021), http://file.lacounty.gov/SDSInter/bos/sop/1102438_012621.pdf.

The last time the Board brought a Los Angeles County Charter amendment ballot measure relating to the sheriff or LASD was in March 2002. Measure A sought to amend the Charter to establish term limits for County elected officials, including the sheriff; while the measure passed, setting term limits on the sheriff was found to be unconstitutional and declared null and void. *Leroy D. Baca v. County of Los Angeles et al.* (L.A. Superior Court Case No. BC 299486) (2004). Measure C, titled "Sheriff's Department – Restructuring," sought to increase the oversight of LASD by adding one Assistant Sheriff and four Division Chiefs to the unclassified service, providing that the additional Assistant Sheriff and two Division Chiefs be appointed from outside LASD; this measure also passed. These prior measures, however, did not substantively address any of the concerns that have led us to our current crises, as demonstrated by the current sheriff's complete obstruction of oversight and the ongoing crisis of deputy gangs.

⁷ See L.A. Cnty. Code § 3.79; § 6.44.190.

⁸ For further analysis and rationale for this proposal, see Ex. A, *supra* note 2, at 11-12.

⁹ See *id.* The COC's proposed ability to retain independent counsel would augment the tools in its oversight toolbox. Instead of being limited to relying solely on a County Counsel agency that also represents LASD and that has the attorney-client privilege not with the COC but with the Board, independent counsel would allow the COC to seek independent legal analysis and affirmatively pursue all available legal means in performing its oversight duties.

¹⁰ For example, the Probation Oversight Commission must include "at least one member who is formerly justice-system involved, at least one member who is a family member of someone who is currently or formerly justice-

3. *Clarify Board and COC policy-making authority:*

The current sheriff—and sheriffs before him—have adopted and maintained policies that directly contravene local, state, and federal laws or at least violate the spirit of these laws.¹¹ Yet, the Board has the duty and authority to supervise sheriffs “in order to ensure that they faithfully perform their duties.”¹² As such, the Board should supervise sheriffs’ departmental policies to ensure sheriffs faithfully perform their duties and functions required by law, including compliance with local and state laws relating to transparency, use of force, and law enforcement gangs, among other areas.

Therefore:

- a. *Through an amendment to the L.A. County Charter, the Board should clarify the authority of the Board to oversee and set policies for LASD that do not interfere with the statutory authority of the sheriff or otherwise conflict with state law.*¹³
- b. *The Board should create a mandatory process for the COC—the County oversight body with the most expertise on LASD—to recommend policies for LASD without affirmative directions from the Board and for the Board to deliberate on these policies, proceed with any actions necessary, and approve final policies.*¹⁴ *In other words, recommendations and issues arising out of the COC should be automatically agendaized for Board meetings and should lead to meaningful action.*¹⁵

4. *Ensure real transparency:*

Sheriffs and LASD have had a history of impeding transparency and shielding deputies from accountability. Under the current sheriff’s administration, LASD has exacerbated this

involved, and at least one member who is a member of the State Bar of California with juvenile or criminal justice expertise.” L.A. Cnty. Code § 3.80.080.

¹¹ See, e.g., Letter from Inspector Gen. to L.A. Cnty. Sheriff Civilian Oversight Comm’n re Report Back on Unlawful Conduct of the Los Angeles Cnty. Sheriff’s Dep’t (Dec. 14, 2020), <https://oig.lacounty.gov/Portals/OIG/Reports/UnlawfulConductOfLASD.pdf>; Ex. B (Nov. 9, 2020 ACLU SoCal letter re: “Support for Motion: Report Regarding Options for Removing the Sheriff”); Ex. C (May 20, 2020 ACLU SoCal, BLM-LA, et al. letter re: “Changes to LASD Use of Force Proposed Policy”); *Editorial: Cyclist stops and searches*, *supra* note 2; Matt Stiles & Alene Tcheckmedyan, *L.A. County supervisors move to freeze Sheriff’s Department funding*, L.A. TIMES (Sept. 26, 2019 5:23 PM), available at <https://www.latimes.com/california/story/2019-09-26/l-a-county-supervisors-sheriff-budget-freeze>.

¹² *Dibb v. Cnty. of San Diego*, 8 Cal.4th 1200, 1208-09 (Cal. 1994); Cal. Gov. Code § 25303.

¹³ For further analysis and rationale for this proposal, see Ex. A, *supra* note 2, at 8-9.

¹⁴ See Ex. D (Oct. 14, 2020 ACLU SoCal letter re: “Office of Inspector General Analysis of Criminal Investigation of Alleged Assault by the Banditos”) at 5.

¹⁵ *Id.*

practice by refusing to comply with local, state, and federal laws and judicial orders that all compel them to disclose information about deputy misconduct and uses of force.¹⁶

Therefore:

- a. *By motion and ordinance, the Board should require County agencies employing peace officers—including LASD—to comply with SB 1421 and the Public Records Act (PRA) by:*
 - i. *Disclosing publicly-available records systematically, proactively, and immediately in an easily searchable format, once the records are disclosable;*
 - ii. *Ensuring that the names of deputies involved in shootings are published within 48 hours and autopsy reports are made available to family members or next of kin; and*
 - iii. *Taking responsibility for publishing these records, as well as responding to PRA requests, away from LASD and providing it to an agency that can be better trusted to follow the law.*¹⁷
- b. *By motion and ordinance, the Board should expand access to civilian complaints by creating an online submission process and a repository of civilian complaints housed within another County agency outside of LASD, so that they are also not treated as personnel records and may be disclosed.*¹⁸
- c. *By motion and ordinance, the Board should ensure that body-worn camera or other video footage is maintained outside of the custody and control of LASD—limiting access to LASD personnel so that it is not inappropriately edited or reviewed to interfere with investigations while granting access to the COC, OIG, the Public Defender, the Alternate Public Defender, and the District Attorney.*¹⁹

¹⁶ Ex. E (May 17, 2021 Check the Sheriff Coalition letter re: “Check the Sheriff Coalition Support for Motion for Increasing Transparency Through Access to Peace Officer Records”) at 1-3.

¹⁷ See *id.* at 4; Ex. A, *supra* note 2, at 9-11. For a more comprehensive set of recommendations, see ADRIENNA WONG, THE RIGHT TO KNOW: HOW TO FULFILL THE PUBLIC’S RIGHT OF ACCESS TO POLICE RECORDS, ACLU SOCAL (SEPT. 2019), https://www.aclusocal.org/sites/default/files/field_documents/aclu_ca_right_to_know_access_police_records.pdf.

This Board has begun the process of assessing and drafting an ordinance that accomplishes these policy proposals. On May 18, 2021, this Board passed the motion titled, “Motion for Increasing Transparency Through Access to Peace Officer Records.” See L.A. Cnty. Bd. Supervisors, Statement of Proceedings for the Regular Meeting of the Board of Supervisors 24-25 (May 18, 2021), http://file.lacounty.gov/SDSInter/bos/sop/1107452_051821.pdf.

¹⁸ See Ex. D, *supra* note 14, at 4; Ex. F (Mar. 29, 2021 Check the Sheriff Coalition letter to Supervisors Hilda Solis & Holly Mitchell).

¹⁹ See Ex. D, *supra* note 14, at 5; Ex. A, *supra* note 2, at 11. For additional recommendations on LASD’s body-worn camera policies, see Ex. G (Apr. 16, 2020 ACLU SoCal letter re: “Proposed Sheriff’s Department Policy on Body-Worn Cameras”).

This Board has begun to take steps in this area. See L.A. Cnty. Bd. Supervisors, Statement of Proceedings for the Regular Meeting of the Board of Supervisors 18-20 (July 27, 2021),

- d. *The Board should strictly prohibit the use of explicit or implied non-disclosure agreements and protective orders in settlement agreements with employee plaintiffs or lawsuits filed by members of the public regarding deputy misconduct, especially in suits alleging deputy gang-related misconduct.*²⁰

5. **Create external systems of accountability:**

Time and time again, LASD has proven the truth that the police can't police itself; LASD simply cannot be trusted to adequately investigate complaints filed with the department or appropriately impose discipline.²¹ It is long overdue for the Board to overhaul LASD's disciplinary system, which has suffered from significant structural and cultural impediments to effective discipline and meaningful accountability.²²

Therefore:

- a. *The Board should pursue any necessary actions to create a County system outside of LASD that will:*
 - i. *Receive, monitor, and investigate all allegations and complaints of misconduct, including policy violations and incidents of deputy harassment and retaliation of surviving family members, advocates, and protestors;*
 - ii. *Independently investigate use of force incidents ending in death or great bodily injury; and*
 - iii. *Adjudicate disciplinary determinations.*²³

http://file.lacounty.gov/SDSInter/bos/sop/1110950_072721.pdf; Motion by Supervisors Hilda L. Solis and Holly Mitchell, *Taking Action: Further Protections for Surviving Families From Law Enforcement Harassment and Retaliation* (July 27, 2021), <http://file.lacounty.gov/SDSInter/bos/supdocs/160300.pdf> [hereinafter "July 27, 2021 Board motion"].

²⁰ See Ex. D, *supra* note 14, at 7; Ex. F, *supra* note 18.

²¹ See Ex. D, *supra* note 14, at 4; CHECK THE SHERIFF COALITION, NO JUSTICE, NO PEACE: THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT TARGETED HARASSMENT OF GRIEVING FAMILIES 30 (MAY 2021), <https://www.checkthesheriff.com/reports> [hereinafter "CHECK THE SHERIFF REPORT"].

²² See L.A. Cnty. Off. Inspector Gen., Los Angeles County Sheriff's Department: Review and Analysis of Misconduct Investigations and Disciplinary Process (Feb. 2021), https://oig.lacounty.gov/Portals/OIG/Reports/IIPublicReport_Body2.pdf?ver=qMyIxZkcy_EwrtHn0JWrOw%3d%3d.

²³ See *id.* at 116-19; L.A. Cnty. Off. Inspector Gen., Report Back on Protecting Surviving Families from Law Enforcement Harassment and Retaliation 6-7 (July 7, 2021), https://oig.lacounty.gov/Portals/OIG/Reports/Report_on_Protecting_Surviving_Families.pdf [hereinafter "OIG Report on Protecting Surviving Families"]. The Board has already directed the Inspector General and County partners to explore a system of accountability external to LASD. See July 27, 2021 Board Motion, *supra* note 19.

- b. *The Board should leverage and bolster the roles of other County agencies already designed to provide checks to LASD:*
 - i. *The Board should adequately fund and support the Public Defender Law Enforcement Accountability Project to assist in monitoring potential misconduct, racist affiliations, or gang participation by deputies and ensuring that this information is timely provided in the context of ongoing criminal cases.*²⁴
 - ii. *The Board should ensure that complaints related to deputy misconduct that include criminal allegations are directly and immediately provided to the Los Angeles County District Attorney.*²⁵
 - iii. *The Board should require County Counsel to track issues arising out of LASD-based litigation and provide quarterly reports to the Board, COC, and OIG regarding identified issues and efforts to reduce the likelihood of deputy-related harm.*²⁶

6. ***Protect surviving families:***

With impunity, LASD deputies have systematically harassed and retaliated against surviving family members of people they have killed.²⁷

Therefore:

- a. *Besides creating an external mechanism for reporting incidents of deputy harassment and retaliation of surviving family members (see Recommendation 5), the Board should ensure by motion and ordinance the adoption and adherence to policies to prevent the harassment of families.*²⁸
- b. *By motion and ordinance, the Board should restructure, expand, and permanently establish the Family Assistance Program, which should include funding for community-based organizations that provide life-giving support and services to meet families' human needs, including vital mental health resources.*²⁹

²⁴ See Ex. D, *supra* note 14, at 6.

²⁵ Ex. F, *supra* note 18; CHECK THE SHERIFF REPORT, *supra* note 21, at 30-31. The Board has requested the District Attorney to “investigate all allegations of criminal conduct” by LASD. July 27, 2021 Board Motion, *supra* note 19.

²⁶ See Ex. D, *supra* note 14, at 7.

²⁷ See generally Check the Sheriff Report, *supra* note 21.

²⁸ See Check the Sheriff Report, *supra* note 21, at 32-33.

²⁹ See *id.* at 32; OIG Report on Protecting Surviving Families, *supra* note 23, at 7. This Board has taken initial steps to restructure, expand, and permanently establish the Family Assistance Program. See L.A. Cnty. Bd. Supervisors, Statement of Proceedings for the Regular Meeting of the Board of Supervisors 16-18 (Oct. 19, 2021), http://file.lacounty.gov/SDSInter/bos/sop/1114704_101921.pdf; Motion by Supervisor Hilda L. Solis, *Permanent Support for Families Affected by LA County Sheriff's Department: Identifying Sustainable Funding for and*

7. *Create non-law enforcement alternatives to LASD:*

Not only have LASD’s current functions in manifold areas led to disparate and devastating impacts on the county’s Black and Latinx residents but they are also antithetical to the County’s “Care First, Jails Last” approach, which the Board has adopted but is yet to make good on its commitment.³⁰ Communities across the state and country have taken significant steps to create more effective non-law enforcements alternatives.³¹ The cost of not doing so in our county has proven disastrous: Angelenos have been harmed and have even died at the hands of sheriff’s deputies purporting to perform functions they should not even be in the business of.

With respect to mental health crises, LASD continues to play an outsized role in dispatch of crisis calls, and the County relies on LASD as the primary first responder, including by directing funding that could be used instead to scale up necessary community-based and clinical responses.³² This has led to repeated instances of tragic violence carried out by deputies against community members experiencing mental health crises, including individuals with disabilities, often in front of and over the protests of family members who simply called for help.³³

LASD’s use of traffic enforcement³⁴ as justification to stop, detain, and search community members—including what the L.A. Times has described as “stop-and-frisk on a bike”—has had a disproportionate impact on Black and Latinx Angelenos.³⁵ These traffic stops

Streamlining the Family Assistance Program (Oct. 19, 2021), <http://file.lacounty.gov/SDSInter/bos/supdocs/162775.pdf>.

³⁰ See, e.g., Reimagine L.A., *\$461.5 Million Falls Short of Funding the Services Communities Need* (Nov. 1, 2021), <https://reimagine.la/461-5-million-allocated-to-l-a-countys-care-first-jails-last-vision-investments-fall-short-of-funding-the-services-communities-need/>.

³¹ See, e.g., MELVIN WASHINGTON II, *BEYOND JAILS: COMMUNITY-BASED STRATEGIES FOR PUBLIC SAFETY*, VERA INSTITUTE (NOV. 2021), <https://www.vera.org/beyond-jails-community-based-strategies-for-public-safety>; DEFUND THE POLICE, *ALTERNATIVES TO POLICE SERVICES*, <https://defundthepolice.org/alternatives-to-police-services/>.

³² See, e.g., L.A. CNTY. CIVILIAN OVERSIGHT COMM’N, *REPORT OF THE SHERIFF CIVILIAN OVERSIGHT COMMISSION REGARDING THE MENTAL EVALUATION TEAM PROGRAM OF THE LOS ANGELES COUNTY SHERIFF’S DEPARTMENT* (FEB. 15, 2018), <https://coc.lacounty.gov/LinkClick.aspx?fileticket=NOUC3DWcsps%3d&portalid=35>; Katie Daviscourt, *Seattle City Council votes unanimously to move 911 dispatch out of police control to new civilian-led center*, PM (May 24, 2021), <https://thepostmillennial.com/seattle-city-council-votes-unanimously-to-move-911-dispatch-out-of-police-control-to-new-civilian-led-center>.

³³ See, e.g., Marc Brown et al., *In LA, many mental health calls to police are ending in tragedy. Here’s what we found*, ABC7 (May 19, 2021), <https://abc7.com/use-of-force-mental-health-injuries-deaths/10657057/>.

³⁴ The term “traffic enforcement” encompasses driving, bicycling, and pedestrian law enforcement.

³⁵ See, e.g., *Editorial: Cyclist stops and searches, supra* note 2; Alene Tchekmedyan et al., *L.A. sheriff’s deputies use minor stops to search bicyclists, with Latinos hit hardest*, L.A. TIMES (Nov. 4, 2021), available at <https://www.latimes.com/projects/la-county-sheriff-bike-stops-analysis/>. In 2018, for example, nearly 70 percent of LASD stops (95,443 out of 123,281 total stops) were for traffic violations. Open Justice, *RIPA Stop Data*, <https://openjustice.doj.ca.gov/exploration/stop-data>. A significant proportion of these stops were for equipment and

have led to brutalization and death, including the killings of Paul Rea during a routine traffic stop, Dijon Kizzee and Noel Aguilar while riding a bicycle, and many more.³⁶

When it comes to the ongoing housing crisis, LASD’s so-called “outreach” team is made of uniformed deputies who “in their flack jackets, with holstered guns, Tasers and batons, surrounding the people they approach, are unqualified for this task.”³⁷ Indeed, effective outreach requires time to build trust and real services that will actually help unhoused folks—not a strategy such as LASD’s of fear and coercion that is disconnected to real services.³⁸

Finally, the fatal shooting of Nicholas Burgos at Harbor-UCLA in October 2020 only demonstrates that LASD cannot be trusted to respond to crises and that LASD’s presence in the hospitals erodes the community’s trust.³⁹ Evermore important during this pandemic, Black and brown and low-income community members who have historically lacked access to quality health care should be able to trust that their health will be taken care of at County hospitals—not their lives taken by LASD deputies.⁴⁰

Therefore:

a. The Board should exercise all its powers to separate the role of LASD from certain functions, including but not limited to:

- i. Response to mental health crises,*
- ii. Traffic enforcement, including bicycle stops,⁴¹*

non-moving violations, particularly for Black and Latinx people. *Id.* Nearly half of all traffic stops of Black drivers were for non-moving or equipment violations, compared to 30 percent of traffic stops of white drivers. *Id.*

³⁶ Besides Dijon Kizzee, the L.A. Times has reported on 15 other times when a bicycle stop led to officers shooting someone in Los Angeles County; it reported that the stops were concentrated in Black and Latinx communities in South Los Angeles and that all the shootings were of Black or Latinx bicyclists. See Nicole Santa Cruz & Alene Tchenedyian, *Deputies killed Dijon Kizzee after a bike stop. We found 15 similar law enforcement shootings, many fatal*, L.A. TIMES (Oct. 16, 2020), available at <https://www.latimes.com/california/story/2020-10-16/examining-dijon-kizzee-bike-stop-police-shootings>.

³⁷ Pete White, *Op-Ed: Villanueva’s bogus Venice ‘outreach’ is just a cover for criminalizing homelessness*, L.A. TIMES (June 28, 2020), available at <https://www.latimes.com/opinion/story/2021-06-28/homeless-venice-villanueva-tents>.

³⁸ See *id.*; Ex. H (June 17, 2021 JusticeLA, Check the Sheriff & Services Not Sweeps letter re: “Villanueva Out of Venice and the County’s Responsibility to Hold Him Accountable”).

³⁹ Alene Tchenedyian, *Questions remain following deputy shooting at Harbor-UCLA that wounded patient*, L.A. TIMES (Oct. 13, 2020), available at <https://www.latimes.com/california/story/2020-10-13/hospital-workers-protest-sheriff-violence>; Josie Huang, *Patient Shot by Sheriff’s Deputy Inside Harbor-UCLA Has Died, Family Says*, LAIST (Nov. 16, 2020), https://laist.com/2020/11/16/patient_shot_by_sheriffs_deputy_inside_harbor-ucla_has_died_family_says.php.

⁴⁰ See Ex. I (May 2021 Frontline Wellness Network letter to Sheriff Civilian Oversight Commission).

⁴¹ See Ex. J (Nov. 17, 2020 ACLU SoCal, Frontline Wellness Network, et al. letter re: “Sheriff’s Department’s role in County hospitals and traffic enforcement as part of the Sheriff Civilian Oversight Commission meeting agenda”).

- iii. *Outreach to unhoused residents,*⁴² *and*
 - iv. *Presence in care settings, especially the operation of substations in County hospitals.*⁴³
- b. *Instead, the Board should create non-LASD alternatives for these functions and truly advance the County’s “Care First, Jails Last” vision.*⁴⁴

Check the Sheriff Coalition consist of: ACLU of Southern California; American Indian Movement – Southern California; Anti-Recidivism Coalition; Bend the Arc Jewish Action – Southern California; Black Alliance for Just Immigration; Black Jewish Justice Alliance; Black Lives Matter – Los Angeles; Brothers, Sons, Selves Coalition; California Immigrant Policy Center; Central American Resource Center – Los Angeles; Centro Community Service Organization; Clergy and Laity United for Economic Justice; Creating Justice – Los Angeles; Dignity & Power Now; Essie Justice Group; Immigrant Defenders Law Center; Inner City Struggle; Khmer Girls in Action; La Defensa; Me Too Survivors’ March International; National Immigration Law Center; National Lawyers Guild – Los Angeles; Occupy ICE – Los Angeles; People’s City Council; Reform L.A. Jails; The Row Church; TransLatin@ Coalition; White People 4 Black Lives; Youth Justice Coalition; YNOT Movement. ⁴⁵

item 2.c”) at 3-6. In light of the L.A. Times article analyzing LASD bicycle stops and finding a disproportionate impact on Latinx and Black residents, the Board just began to take steps towards decriminalizing violations related to bicycling and walking, including legalizing biking on sidewalks on unincorporated nonresidential streets. *See* Alene Tchemedyan & Ben Poston, *L.A. County supervisors seek to decriminalize bike violations after Times investigation*, L.A. TIMES (Nov. 16, 2021), *available at* <https://www.latimes.com/california/story/2021-11-16/supervisors-sheriffs-bike-stops>.

More broadly, the Board should take LASD out of county ordinance enforcement through decriminalization, especially in areas susceptible to LASD abuse. For example, the Board should remove LASD from functions related to parking and towing, an area with a history of deputy misconduct. *See, e.g.,* Cindy Chang, *L.A. County sheriff’s deputies implicated in towing thefts, bribes*, L.A. TIMES (Jan. 12, 2015), *available at* <https://www.latimes.com/local/lanow/la-me-ln-sheriffs-towing-20150112-story.html>.

⁴² Ex. H, *supra* note 38.

⁴³ Ex. I, *supra* note 40.

⁴⁴ In addition, the supervisors, who are part of the Los Angeles County Metropolitan Transportation Authority (Metro) Board of Directors, should reimagine safety on public transportation and transform Metro into a sanctuary. *See* ACT-LA, METRO AS A SANCTUARY (MAR. 17, 2021), <http://allianceforcommunitytransit.org/metro-as-a-sanctuary/>.

⁴⁵ CHECK THE SHERIFF, ABOUT, <https://www.checkthesheriff.com/about>.

EXHIBIT LIST

EXHIBIT	DESCRIPTION
A	Dec. 18, 2020 ACLU SoCal letter re: “Report Regarding Options for Removing the Sheriff”
B	Nov. 19, 2020 ACLU SoCal letter re: “Support for Motion: Report Regarding Options for Removing the Sheriff”
C	May 20, 2020 ACLU SoCal, BLM-LA, et al. letter re: “Changes to LASD Use of Force Proposed Policy”
D	Oct. 14, 2020 ACLU SoCal letter re: “Office of Inspector General Analysis of Criminal Investigation of Alleged Assault by the Banditos”
E	May 17, 2021 Check the Sheriff Coalition letter re: “Check the Sheriff Coalition Support for Motion for Increasing Transparency Through Access to Peace Officer Records”
F	Mar. 29, 2021 Check the Sheriff Coalition letter to Supervisors Hilda Solis & Holy Mitchell
G	Apr. 16, 2020 ACLU SoCal letter re: “Proposed Sheriff’s Department Policy on Body-Worn Cameras”
H	June 17, 2021 JusticeLA, Check the Sheriff & Services Not Sweeps letter re: “Villanueva Out of Venice and the County’s Responsibility to Hold Him Accountable”
I	May 2021 Frontline Wellness Network letter to Sheriff Civilian Oversight Commission
J	Nov. 17, 2020 ACLU SoCal, Frontline Wellness Network, et al. letter re: “Sheriff’s Department’s role in County hospitals and traffic enforcement as part of the Sheriff Civilian Oversight Commission meeting agenda item 2.c”

Exhibit A



December 18, 2020

To: County of Los Angeles County Counsel
Liliana Campos, Assistant County Counsel, Board Liaison Division
Craig Hoetger, Senior Deputy County Counsel, Board Liaison Division
Alexandra Zuiderweg, Deputy County Counsel

Cc: County of Los Angeles Sheriff Civilian Oversight Commission
Brian Williams, Executive Director, Sheriff Civilian Oversight Commission
Max Huntsman, Inspector General, Office of the Inspector General
Justice Deputies of Supervisors Hilda Solis, Sheila Kuehl, Holly Mitchell, Janice Hahn,
and Kathryn Barger

Sent via email

Re: Report Regarding Options for Removing the Sheriff

On Nov. 10, 2020, the Board of Supervisors (“Board”) passed a motion, titled *Report Regarding Options for Removing the Sheriff*, instructing County Counsel, in conjunction with the Office of the Inspector General (“OIG”) and the Acting Chief Executive Officer (CEO), and in consultation with the Civilian Oversight Commission (“COC” or “Commission”) and justice advocates, to examine and report back on ways to check the Sheriff, including: (1) options for removing or impeaching the Sheriff; (2) removing responsibilities from the Sheriff; and (3) “[a]ny other mitigation measures that could be taken to curtail the Sheriff’s resistance to transparency, accountability, and the faithful performance of duties for the benefit of the residents of the County.” See L.A. Cnty. Bd. of Supervisors, Report Regarding Options for Removing the Sheriff (Nov. 10, 2020), available at <http://file.lacounty.gov/SDSInter/bos/supdocs/150016.pdf>.

On behalf of the Check the Sheriff coalition, we provide the following guidance and non-exhaustive set of recommendations regarding your report.

I. Background

In the two years since Los Angeles County Sheriff Alex Villanueva’s election, as set forth in detail in our prior letters and in the OIG’s most recent report, titled *Report Back on Unlawful Conduct of the Los Angeles County Sheriff’s Department*, he has repeatedly undermined transparency, accountability, and discipline within the Sheriff’s Department (“LASD”).¹ Even

¹ See, e.g., ACLU SoCal Letter to L.A. Cnty. Bd. of Supervisors re Support for Motion: Report Regarding Options for Removing Sheriff (Nov. 9, 2020) (enclosed); Letter from Inspector Gen. to L.A. Cnty. Sheriff Civilian Oversight Comm’n re Report Back on Unlawful Conduct of the Los Angeles Cnty. Sheriff’s Dep’t (Dec. 14, 2020), <https://oig.lacounty.gov/Portals/OIG/Reports/UnlawfulConductOfLASD.pdf>; Office of Inspector Gen., The Right to

EXECUTIVE DIRECTOR Hector O. Villagra

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AFFIRMATIVE ACTION OFFICER Carlos Amador **NATIONAL BOARD REPRESENTATIVE** Sharon Kyle

more troubling, the sheriff has consistently resisted and obstructed the systems of checks and balances designed to provide oversight and supervision of LASD—for example, refusing to appear at COC meetings, even when subpoenaed to do so by the Commission, withholding documents from the COC or OIG, stonewalling the OIG’s attempts at independent investigations or monitoring, ignoring federal court orders to provide information on deputy misconduct, failing to produce records on misconduct made public by California law, and litigating with the County to establish his ability to rehire deputies fired for misconduct.

As County Counsel and the Board prepare and examine this urgent report back, two important concerns frame the inquiry. First, this effort is not just about the current sheriff. The current sheriff’s egregious hostility to oversight and transparency provides important tests of how existing oversight structures function, and illustrates the ways they come up short when a sheriff refuses to cooperate voluntarily. The task of the Board, therefore, is not just to rein in the current sheriff, but also to strengthen the institutions of oversight that meaningfully address a hostile and noncooperative sheriff, enhance the existing system of checks and balances, and ensure lawful operations and civilian control of LASD for all the sheriffs to come.

Second, in navigating these options, it is important to note that the Board will likely need to chart new waters. The boundaries of authority under California’s Constitution and statutes between sheriffs, boards of supervisors, and voters in charter counties, have seldom been pushed to the point of requiring resolution by the courts. While there are cases directly addressing some important powers of boards of supervisors—for example, to remove sheriffs or to create civilian oversight bodies with subpoena power—there are other areas where no case law controls directly and where a hostile sheriff (and the litigious law enforcement unions that also vehemently oppose transparency, accountability, and oversight) are very likely to bring legal challenges, even to measures that stand on strong legal footing. County Counsel must clearly provide the Board with a comprehensive assessment of legal options that includes possibilities where there is no case law directly on point and that will likely face litigation. Indeed, it is because other boards of supervisors have previously imposed institutional restraints on sheriffs even without a case directly on point that any cases exist in California upholding the authority of boards of supervisors.

II. Impeaching and Removing the Sheriff

The Board should propose to the voters an amendment to the Los Angeles County’s charter to allow for the impeachment and removal of the sheriff, by a four-fifths vote of the Board, for specific serious violations of the public trust, including legal violations and obstruction of oversight and patterns of unconstitutional conduct.²

Know Act: Los Angeles County Sheriff’s Department Response to Police Transparency Reform (Nov. 2020), <https://oig.lacounty.gov/Portals/OIG/Reports/RighttoKnowActLASDCompliance.pdf>.

² Consistent with Government Code section 25303, cause for removal should include: (1) the knowing violation of any law related to the performance of the sheriff’s duties; (2) falsification of an official statement or document; (3) obstruction of any investigation into the conduct of the sheriff or LASD employees by the COC, OIG, or government agencies with jurisdiction to conduct such an investigation; (4) criminal conduct that would be grounds for termination of LASD employees; and (5) failure in supervision, discipline, or hiring of LASD employees that results in a pattern of violations of standards of conduct for LASD employees or the rights of members of the public, or the obstruction by such employees of any investigation into the conduct of the sheriff or LASD employees described above.

California law clearly allows the Board to establish a process to remove a sheriff for misconduct. In *Penrod v. County of San Bernardino*, 126 Cal.App.4th 185 (Cal. Ct. App. 2005), the California Court of Appeal ruled that a county charter could permit the board of supervisors to remove a sheriff for cause by a four-fifths vote—as the San Bernardino County’s charter did. The Court relied on the express authorization in section 4 of article XI of the California Constitution, on Government Code section 25303, and on a persuasive California Attorney General opinion reasoning that county charters have the authority to provide for the removal of county officers, including a sheriff, for cause.³ *Id.* at 189-193. The Court concluded that “the county has the legal right and duty to decide removal procedures for the sheriff.” *Id.* at 190.

The California Constitution establishes that a county charter will include provisions for an elected governing body and an elected sheriff. Cal. Const. art. XI § 4 (a), (c). For the elected sheriff, the county charter must provide for “their election or appointment . . . terms and removal.” *Id.* at (c). The Constitution grants county charters the authority to establish “[t]he performance of functions required by statute” and “the powers and duties of governing bodies and all other county officers . . . and for the manner of filling all vacancies occurring therein.” *Id.* at (d)-(e). The Constitution further states that the laws of an adopted county charter supersede the general laws of the Legislature on matters within the county charter’s competence. *Id.* at (g). The California Supreme Court has observed that “the structure and operation of their local government” are matters firmly within the competence of county charters. *Dibb v. Cnty. of San Diego*, 8 Cal.4th 1200, 1211 (Cal. 1994). Therefore, the procedures for electing, appointing, and removing a county sheriff are within the power of a county charter.

Further, as set forth in *Dibb*, state law establishes that the board of supervisors “shall supervise the official conduct of all county officers . . . particularly insofar as the functions and duties of such county officers . . . relate to the assessing, collecting, safekeeping, management, or disbursement of public funds.” Cal. Gov. Code § 25303. The board “shall see that [county officers],” including the sheriff, “faithfully perform their duties . . .” *Id.*

The real value of giving the Board removal power is not necessarily that the Board would actually remove a sheriff, but that the Board’s power to do so would help ensure that no sheriff flouts oversight and transparency and allows pervasive unconstitutional conduct in the first place. As the current sheriff has demonstrated, even if subpoenas and court orders ultimately require a sheriff to provide information and follow the law, a sheriff that resists and litigates each request can still undermine accountability and oversight through obstruction and delay. Indeed, this sheriff has ignored requests to appear before the COC, limiting the issues on which he will speak, despite the potential for subpoena. He has refused to provide records on deputy misconduct ordered by a federal court, resulting in a default judgment against the County as a sanction. He utterly failed for more than a year and half to produce records on misconduct that are public under SB 1421, until our office sued to require production. These examples show that the limited enforcement mechanisms to remedy for individual actions fall short of addressing systematic hostility to the laws and institutions that provide for transparency, accountability, and oversight.

By adding the power to remove the sheriff for misconduct—including the repeated obstruction of oversight—the Board would help ensure sheriffs comply with existing

³ Legality of Cnty. Charter Granting Bd. of Supervisors Removal Authority, 84 Op. Cal. Att’y. Gen. 88 (2001).

transparency, accountability, and oversight requirements without obstruction or delay. As the Board is responsible to supervise sheriffs and that they “faithfully perform their duties,” Cal. Gov. Code § 25303, it should have the appropriate powers to do so. The U.S. Congress has the duty and power to impeach and remove an elected President when necessary; even more so should the civilian Board have the power to impeach and remove an elected sheriff, a paramilitary official whose actions are not easily reviewable and thereby not easily held accountable in the ways civilian elected officials may be.⁴

Allowing for the removal of a sheriff for serious misconduct ultimately strengthens democratic accountability, not just for the current sheriff but for sheriffs to come. While sheriffs are, of course, elected, the information voters need to hold sheriffs accountable at the ballot box for misconduct is much more limited than for other officials. This is because California law allows for much greater secrecy in records related to law enforcement—including the investigation of law enforcement misconduct—than for other government functions. In part for that reason, incumbent sheriffs are rarely voted out; indeed, the current sheriff was the first sheriff to defeat an incumbent in Los Angeles County in more than a century. Sheriff Leroy Baca resigned after the public airing of a cover-up scandal for which he ultimately was convicted on federal obstruction of justice charges, before ever being defeated in an election. In this context, the power to remove sheriffs who systematically blocks oversight would help ensure that voters have the information necessary to hold future sheriffs democratically accountable. In addition, the proposed charter amendment to establish this removal power would go to the voters, who would make the ultimate decision.

In the event of impeachment and removal, the County should consider limiting the Board’s power to appoint whomever it wants as the interim sheriff, especially where that sheriff will serve a significant portion of the term. Instead, the Board could delegate to the COC the responsibility to hold public hearings and create a list of candidates, consistent with the hiring practices at large police departments, such as the Los Angeles Police Department (“LAPD”).

III. Removing Responsibilities from the Sheriff

a. Removing Traffic Enforcement

The County should explore removing traffic enforcement from the sheriff. LASD has often used traffic enforcement⁵ as its justification to stop and detain people, especially in Black and Latinx neighborhoods. In 2018, nearly 70 percent of LASD stops (95,443 out of 123,281 total stops) were for traffic violations.⁶ A significant proportion of these stops were for equipment and non-moving violations, particularly for Black and Latinx people.⁷ Nearly half of all traffic stops of Black drivers were for non-moving or equipment violations, compared to 30 percent of traffic stops of white drivers.⁸

⁴ See, e.g., The Times Editorial Board, *Editorial: Sheriffs should not be elected*, LA TIMES (Oct. 27, 2020), available at <https://www.latimes.com/opinion/story/2020-10-27/sheriffs-should-be-appointed>.

⁵ The term “traffic enforcement” herein encompasses driving, bicycling, and pedestrian law enforcement.

⁶ Open Justice, RIPA Stop Data, <https://openjustice.doj.ca.gov/exploration/stop-data>.

⁷ *Id.*

⁸ *Id.*

LASD traffic stops have led to brutalization and death. About a quarter of all uses of force by LASD deputies that caused serious bodily injury to Black or Latinx individuals followed a vehicle or pedestrian stop (rather than a call for service, response to a crime in progress, or pre-planned activity).⁹ After LASD deputies shot 34 times and killed Ryan Twyman last year while he was seated in a car, County residents provided testimony to the COC about LASD deputies' dangerous pattern and practice of reaching into cars to open doors and force people out of their vehicles during traffic stops.¹⁰ In May of this year, video captured an LASD deputy punching and trying to drag a driver out of a car, during a stop based on a tinted window and sticker violation.¹¹

In August of this year, LASD shot and killed Dijon Kizzee after stopping him for purportedly riding his bicycle on the wrong side of the street. The Los Angeles Times recently reported on 15 other times when a bicycle stop led to officers shooting someone in Los Angeles County; these stops were concentrated in Black and Latinx communities in South Los Angeles and all the shootings were of Black or Latinx bicyclists.¹² In 2012, LASD deputies shot and killed Christian Cobian after attempting to stop him, purportedly for riding a bicycle without a headlight.¹³ In 2013, an LASD deputy shot Chalino Sanchez after stopping him for “looking suspicious” while riding a bicycle.¹⁴ In 2014, LASD deputies shot and killed 23-year-old Noel Aguilar because he looked in their direction while riding a bicycle; that shooting led to a \$2.97 million settlement paid by the County to Aguilar’s family.¹⁵ A Los Angeles bicycling advocate—who herself has been stopped and questioned while on her bike—told the LA Times that in this context, “It feels like . . . telling people to get on bikes is a death sentence.”¹⁶

LASD traffic enforcement has also fueled incarceration and racial disparities in the criminal system.¹⁷ From 2013 to 2015, LASD arrested and charged nearly 20,000 individuals for driving with a suspended license; 85 percent of those arrests were of drivers of color. In the same timeframe, LASD arrested 4,391 people on traffic warrants (for failure to pay a traffic fine or to appear for a traffic court hearing); more than 87 percent of those arrests were of Black or Latinx drivers.¹⁸ Although roughly nine percent of County residents are Black, 32.5 percent of LASD traffic warrant arrests were of Black drivers.¹⁹ As a result of LASD’s traffic enforcement

⁹ Thirty-seven percent of all serious uses of force by LASD against Latinx persons followed a vehicle or pedestrian stop. Nineteen percent of all serious uses of force against Black persons followed a vehicle or pedestrian stop. *See id.*

¹⁰ *See, e.g.,* Sam Levin, *Los Angeles officers shot at Ryan Twyman 34 times. He was one of four they killed that day*, THE GUARDIAN (Aug. 15, 2019), available at <https://www.theguardian.com/us-news/2019/aug/15/police-shootings-los-angeles-sheriffs-department-ryan-twyman>.

¹¹ Anabel Munoz, *Violent confrontation between deputy, driver in Lynwood caught on video*, ABC7 (May 28, 2020), <https://abc7.com/lasd-use-of-force-sheriffs-deputy-punches-driver-lynwood/6215874/>.

¹² Nicole Santa Cruz & Alene Tchenedyian, *Deputies killed Dijon Kizzee after a bike stop. We found 15 similar law enforcement shootings, many fatal*, L.A. TIMES (Oct. 16, 2020), available at <https://www.latimes.com/california/story/2020-10-16/examining-dijon-kizzee-bike-stop-police-shootings>.

¹³ *Id.*

¹⁴ Joseph Serna, *Bicyclist shot by deputy in South Gate was unarmed, officials say*, L.A. TIMES (Apr. 22, 2013), available at <https://www.latimes.com/local/lanow/la-xpm-2013-apr-22-la-me-ln-south-gate-shooting-20130422-story.html>.

¹⁵ Santa Cruz & Alene Tchenedyian, *supra* note 12.

¹⁶ *Id.*

¹⁷ *See generally* East Bay Community Law Center, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California*, http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf.

¹⁸ *Id.*

¹⁹ *Id.*

practices, Black and Latinx drivers are more likely to face traffic citations. This reality has also led to debt burdens that cause significant harms to families as well as systemic wealth extraction from communities of color.²⁰

The systematic, disproportionate, and devastating impact of LASD’s traffic enforcement on Black and brown communities can and must stop.

As California peace officers, LASD deputies have authority over “any public offense committed or which there is probable cause to believe has been committed” within the county or in the deputy’s presence. Cal. Penal Code § 830.1. The Government Code, however, gives boards of supervisors in counties with a population of more than 3 million the power to authorize sheriffs to enforce the state Vehicle Code in unincorporated areas, and “only upon county highways.” Cal. Gov’t Code § 26613. Without board authorization, expenses incurred by a sheriff in detecting Vehicle Code misdemeanors legally are not county charges. Cal. Gov’t Code § 29601. These provisions of the Government Code suggest that LASD does not have inherent authority to enforce the Vehicle Code on county highways in unincorporated areas or is not entitled to deem expenses for such enforcement to be county charges without authorization from the Board.

Although the Board has authorized LASD to enforce the Vehicle Code several decades ago,²¹ no law appears to preclude the Board from rescinding this authorization and related access to County funds. LASD presently conducts traffic enforcement in unincorporated Los Angeles County communities pursuant to this authority granted by the Board.²² LASD shares traffic enforcement jurisdiction with the California Highway Patrol. *See* Cal. Veh. Code § 2400, *et seq.* LASD conducts traffic enforcement under both the state Vehicle Code and Los Angeles County Code.²³ Nothing, however, appears to preclude the Board from repealing or amending the criminal-traffic provisions of the County Code.

Communities across the country are increasingly recognizing that there are better ways to ensure traffic safety than preserving armed law enforcement’s current power and discretion to maintain a constant occupying presence in their streets.²⁴ Street safety advocates have

²⁰ *Id.*; *see also* East Bay Community Law Center, Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California (2015), <https://ebclc.org/in-the-news/not-just-a-ferguson-problem-how-traffic-courts-drive-inequality-in-california/>.

²¹ The County Code provides: “The board hereby accepts the provisions of section 26613 of the Government Code and authorizes and directs the sheriff to enforce the provisions of the Vehicle Code on the county highways. The expense incurred by the sheriff in the performance of such duties shall be a proper county charge.” L.A. County Code § 2.34.030.

²² For example, both Ryan Twyman and Dijon Kizzee were killed by LASD deputies in unincorporated LA County communities.

²³ Title 15 of the Los Angeles County Code includes numerous provisions that set out criminal penalties for traffic and vehicle-related code violations. *See, e.g.*, L.A. County Code § 15.76.080 (prohibiting biking on sidewalk); *see also* Los Angeles Superior Court, 2020 Bail Schedule, at 80-82, *available at* <http://www.lacourt.org/division/criminal/pdf/misd.pdf> (listing Los Angeles County traffic code provisions and associated bail amounts).

²⁴ *See, e.g.*, Transportation Alternatives, *The Case for Self-Enforcing Streets: How Reallocating a Portion of the NYPD Budget to the DOT Can Reduce the Harm of Racial Bias and Improve Safety for All New Yorkers* (June 2020), *available at* <https://www.transalt.org/press-releases/nyc-must-reimagine-traffic-enforcement>; Jordan Blair Woods, “Traffic Without the Police,” 73 *STAN. L. REV.* (forthcoming 2021), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3702680.

highlighted solutions like increasing investments in street redesign and free public transportation, shifting authority over crash investigations to departments of transportation and health, decriminalizing biking and walking, and programs that allow for people to fix equipment violations rather than punishing them.²⁵ The City of Berkeley recently moved to shift traffic enforcement from armed police to a new Department of Transportation “to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs and infrastructure,” and to “identify and implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations.”²⁶ Locally, the City of Los Angeles has been considering a motion addressing “alternative models and methods that do not rely on armed law enforcement to achieve transportation policy objectives,” including “reallocat[ing] resources to public safety strategies that are more effective than enforcement.”²⁷

b. Transferring Operation of the County Jails to a Separate County Department of Corrections

California law clearly allows a board of supervisors to strip the sheriff of responsibility for administering the county jails. While neither ACLU SoCal nor Check the Sheriff have yet taken a position on such a transfer, County Counsel should analyze this possibility as part of its comprehensive report back.

Government Code section 23013 permits a board of supervisors in any county to “by resolution, establish a department of corrections, to be headed by an officer appointed by the board, which shall have jurisdiction over all county functions, personnel, and facilities . . . relating to institutional punishment, care, treatment, and rehabilitation of prisoners, including, but not limited to, the county jail and industrial farms and road camps, their functions and personnel.” Cal. Gov. Code § 23013. The Legislature has always enjoyed plenary power to define the sheriff’s duties, and this statute has been upheld as constitutional and a valid exercise of legislative power. *See Beck v. Cnty. of Santa Clara*, 204 Cal.App.3d 789, 800 (Cal. Ct. App. 1988); *see also People v. Garcia*, 178 Cal.App.3d 887 (Cal. Ct. App. 1986); *Brandt v. Board of Supervisors*, 84 Cal.App.3d 598 (Cal. Ct. App. 1978). And the statute expressly permits counties to assume control over jail operations. *Beck*, 204 Cal. App. 3d at 802.

In *Beck*, the Santa Clara County board of supervisors had created a new department of detention, to be headed by a board-appointed county official, and transferred to it the management of county jail facilities formerly under the jurisdiction of the sheriff. *Beck*, 204 Cal.App.3d at 792. The board subsequently submitted the issue to the voters, who affirmed the board’s proposition. *Id.* at 792-93. In siding with the board, the Court reasoned that because an elected official has no personal vested right to the performance of his or her duties separate from the rights of the people who elected the official, a board of supervisors could transfer duties

²⁵ *See supra* note 24; *see also* California Bicycle Coalition, “Reduce the Role of Police in Traffic Enforcement for the Safety of Everyone” (Aug. 31, 2020), <https://www.calbike.org/reduce-police-in-traffic-enforcement/>.

²⁶ *See* Memo from Councilmembers Rigel Robinson et al. to Mayor and City Council re BerkDOT: Reimagining Transportation for a Racially Just Future (July 14, 2020), https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_18e_BerkDOT_Reimagining_Transportation_pdf.aspx.

²⁷ L.A. City Council, Ad Hoc Police Reform Committee, https://clkrep.lacity.org/onlinedocs/2020/20-0875_mot_06-30-2020.pdf. The motion recognizes that the National Association of City Transportation Officials issued a statement that “[i]t is past time to have the hard conversations about how to limit law enforcement’s role in the management of public space.”

relating to jail facilities away from the elected sheriff to a non-elected county department head where the matter was submitted to a popular vote and approved. *Id.* at 794.

Previously, two counties, Napa and Madera, had established county departments of corrections with control over the county jails pursuant to Government Code section 23013. *Id.* at 799. Additionally, an opinion of the California Attorney General had specifically affirmed a reading of section 23013 to mean that should a board of supervisors establish a department of corrections, “the chief officer of such department rather than the sheriff will have the responsibility for administering the county jail.” 52 Cal. Op.Att’y.Gen. 228 (1969).

IV. Other Mitigation Measures to Curtail the Sheriff’s Resistance to Transparency, Accountability, and the Faithful Performance of Duties

a. Clarifying the County’s Inherent Power to Set LASD Policy

County Counsel should clearly instruct the Board that it has broad inherent powers to supervise LASD, which almost certainly include the power to set LASD policy, so long as it does not impede the sheriff’s investigative functions.

Government Code section 25303 establishes that boards of supervisors have both the duty and the authority to “supervise” the sheriffs and “see that they faithfully perform their duties.”²⁸ Cal. Gov. Code § 25303. In *Dibb*, the California Supreme Court concluded that under section 25303, the board of supervisors has a statutory duty to supervise the conduct of all county officers, including the sheriff. *Dibb*, 8 Cal. 4th at 1208. Specifically, the statute permits the board of supervisors to “supervise county officers in order to ensure that they faithfully perform their duties” *Id.* at 1209 (quoting *People v. Langdon* (1976) 54 Cal.App.3d 384, 390). This supervisory authority is not constrained just to fiscal conduct, but to all official conduct. *Id.* at 1208. The authority includes the operations of the sheriff’s departments and the conduct of their employees. *Id.* at 1209. As such, boards of supervisors could supervise sheriffs’ departmental policies in order to ensure they faithfully perform their duties.

The main limitation on such supervisory actions in section 25303 is that they cannot impede “the independent and constitutionally and statutorily designated investigative . . . functions of the sheriff” Cal. Gov’t Code § 25303. Yet, although section 25303 prohibits the board from obstructing the sheriff’s investigation of crime, the board nonetheless maintains a substantial interest in the performance of the sheriff’s department, including the conduct of its officers when investigating crime. *Brewster v. Shasta Cty.*, 275 F.3d 803, 810 (9th Cir. 2001). The oversight must “‘cooperate and coordinate’ with the sheriff . . . so that all . . . may properly

²⁸ The sheriff’s statutorily mandated duties include: preservation of the peace (Gov. Code § 26600); arrest of persons who attempt to commit or commit public offenses (Gov. Code § 26601); prevention and suppression of disturbances and execution of disease prevention orders (Gov. Code § 26602), command aid of residents to execute duties (Gov. Code § 26604); sole and exclusive authority of the jails (Gov. Code § 26605); service of process (Gov. Code § 26608); the levying of writs of attachment (Code Civ. Proc., § 488.030), among others.

These are supplemented by a few limited sections of the Penal Code. *See, e.g.*, Cal. Pen. Code § 4000 (“The common jails in the several counties of this state are kept by the sheriffs of the counties in which they are respectively situated, and are used as follows. . . .”); Cal. Pen. Code § 832.5 (a)(1) (“Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.”).

discharge their responsibilities.” *Dibb*, 8 Cal. 4th at 1210 (quoting San Diego County Admin. Code, art. XCII, § 340.15).

The Board already retains policy-making authority for County departments, pursuant to Los Angeles County Ordinance 2.06.130, which specifies the powers of heads of departments “[u]nder the direction and supervision of the board of supervisors, and subject to its direction,” to “formulate departmental policy, direct its implementation and evaluate work accomplished.” L.A. County Code 2.06.130. As long as they do not obstruct the sheriff’s investigation of crime, the Board could set final policies at LASD in a host of areas that affect the conduct of deputies. Because the Board holds this power, it may also delegate its authority to the COC to set LASD policies or to empower that commission to find LASD use of force incidents, including shootings, to be in or out of policy. *See* Cal. Gov. Code § 23005 (“A county may exercise its powers only through the board of supervisors *or through agents and officers* acting under authority of the board or authority conferred by law.”) (emphasis added). The California Supreme Court has decided that the board of supervisors may entrust an oversight body, such as the COC, to investigate, on its own motion, deaths of individuals at the hands of sheriff’s deputies. *Dibb*, 8 Cal.4th at 1205; *see also Calcoa v. Cnty. of San Diego*, 72 Cal.App.4th 1209 (1999) (holding that San Diego’s civilian oversight body could legally issue reports finding deputies’ actions out of policy, even without providing deputies an opportunity to contest those findings).

Clarifying in the Los Angeles County charter that the Board retains all authority over the sheriff within the limit of the Constitution would provide the Board options for additional “mitigation measures,” by allowing the Board, and the COC as its designee, to set LASD policy directly on crucial areas, including use of force, body-worn cameras, and procedures for the investigation and discipline of deputy misconduct. Even if the Board leaves the ultimate question of what discipline to impose to the sheriff, having the COC decide whether or not particular shootings are within LASD policy helps ensure that the policy as applied matches the policy on paper. As the California Supreme Court has observed, “the [board of supervisors] might be concerned about public distrust of investigations conducted by either the sheriff or district attorney and hopeful that investigations by a group not aligned with law enforcement would restore public confidence.” *Dibb*, 8 Cal. 4th at 1209. Several large California police agencies, including LAPD and the San Francisco Police Department, have a governing civilian commission with final say on department policy, and these civilian commissions have final say over whether an individual action is within department authority.²⁹

b. Requiring Maximum Compliance with State Transparency Laws

While the recent amendments to state law enacted by the Legislature through Senate Bill 1421 (Skinner 2018) opened up law enforcement personnel files and investigative records to a degree not seen in California for decades, this change in the law has not translated into

²⁹ See, e.g. Police Commission, LAPD Website, at http://www.lapdonline.org/police_commission (“The Board of Police Commissioners serves as the head of the Los Angeles Police Department, functioning like a corporate board of directors, setting policies for the department and overseeing its operations.”); San Francisco Police Commission website, at <https://sfgov.org/policecommission/> (“The mission of the Police Commission is to set policy for the Police Department and to conduct disciplinary hearings on charges of police misconduct filed by the Chief of Police or Director of the Office of Citizen Complaints, impose discipline in such cases as warranted, and hear police officers’ appeals from discipline imposed by the Chief of Police.”).

meaningful transparency in instances of LASD misconduct or uses of force because LASD has consistently failed to fulfill its obligations under the California Public Records Act (“PRA”) and produce these records to the public in a complete and timely manner. Instead of relying on LASD to fulfill these requests, the County should adopt an ordinance requiring that County agencies that employ peace officers—including LASD—comply with SB 1421 by disclosing publicly-available records systematically, proactively, and immediately once the records are disclosable, and also shift the obligation for locating and producing records in the possession of LASD to County Counsel.³⁰

The PRA authorizes agencies to adopt requirements that “allow for faster, more efficient, or greater access to records” than the procedures set forth under state law. Cal. Gov’t Code § 6253(e). And it specifically allows agencies to meet their obligation to provide public access to records “by posting [records] on its internet website.” Cal. Gov’t Code § 6253(f).

In addition to underscoring the County’s commitment to transparency, adopting such an ordinance would significantly decrease the costs of LASD’s compliance with the PRA. Besides to the numerous legal fees the County has already incurred in the course of LASD’s refusal to provide records in response to valid requests—including the legal fees incurred by the requestor that the County will be statutorily obligated to pay³¹—this proactive approach would substantially reduce the costs of complying with the law. There is no doubt that many of the requests for records of deputies’ misconduct are duplicative. Routinely publishing the relevant records would eliminate a significant number of requests altogether.

Furthermore, LASD has responded to the requests that are subject to both the ACLU SoCal and Los Angeles Times’ lawsuits by stating that it could only produce records for deputies that the requestors identified by name—a request that would be impossible to satisfy given that the identities of deputies who commit misconduct have been withheld from the public for decades; LASD claimed that it was unable to identify the deputies whose records would be disclosable under the new law. While this was not a legally valid—or even good faith—objection, the automatic publication of records at the time they were created would establish a process for identifying and tracking deputies whose records are subject to disclosure and relieve the administrative burden of searching past files in response to each and every request. Indeed, LASD currently must manually search many deputy files to identify which records relate to conduct that satisfies the definition of misconduct made public under SB 1421. Requiring the production of these records when they are first created prevents from later having to conduct time intensive searches of deputy files that are responsive to the inevitable requests for records—

³⁰ Records that are publicly available pursuant to SB 1421 should be disclosed within 30 days after they are created. This means for records that do not become public until after a final disciplinary decision has been made or there was a determination that the complaint was not frivolous, they should be published within 30 days of becoming “public records.” For records that are automatically public—such as the records relating to an officer’s shooting of a civilian—the records should be disclosed within 30 days after they are prepared or obtained by the agency. All of these records should be automatically disclosed on a website in a manner that is easily searchable, including key categories of information, such as the date of the incident, the type of the incident, the names of the deputies involved and the victims, as appropriate, and the LASD policy violated, among other categories of information. The obligation to disclose records in this way should, at a minimum, include all records going forward that satisfy the necessary disclosure requirements and all records that have been previously-identified by the agency in response to a prior PRA request seeking disciplinary records.

³¹ See Gov. Code Sec. 6259(d) (“The court *shall* award court costs and reasonable attorney’s fees to the requester should the requester prevail in litigation”) (emphasis added).

and thus saves the employee time that would otherwise be expended in that search and the delay to the public in getting a response to their valid PRA requests.

c. Maintaining Body-worn Camera Footage Outside of the Custody and Control of LASD

Body-worn camera footage is intended to be a tool for law enforcement transparency; yet, it can only serve that purpose if it is appropriately released into the hands of those who will use it to that end, such as the public, oversight agencies, or even defense counsel. LASD has repeatedly shown—through its failure to meaningfully satisfy its obligations to produce public records in response to PRA requests, its frequent recalcitrance at responding to inter-agency requests for information, its unwillingness to comply with valid subpoenas, its refusal to produce records such as a *Brady* list even pursuant to a court order, and its initiation of criminal investigations against those authorized to perform oversight functions based upon their attempts to access necessary information—that it cannot be relied upon to make video documenting the conduct of its deputies available to those outside the agency as required by law or County policy.

Given the need for multiple County agencies to have regular and timely access to access body-worn camera footage—including the District Attorney’s Office, Office of the Public Defender, County Counsel, OIG, and COC—as well as the public’s right to access these videos under public records law, hosting body-worn camera footage in a central repository that is accessible to all those with legal access would ensure that LASD does not obstruct timely access. Moreover, conduct such as the recent invocation of the Fifth Amendment privilege against self-incrimination by deputies for their actions while investigating the LASD killing of Andres Guardado demonstrates that there is already a significant possibility of criminal misconduct occurring in the course of investigations. Allowing LASD to have sole and unchecked access to body-worn camera video creates a situation ripe for abuse. Ensuring that this video is housed in a location outside of LASD would also allow the County to impose its own policies limiting access to body-worn camera footage by deputies after it is uploaded, so that it is not inappropriately edited or reviewed to interfere with investigations into deputy conduct or criminal prosecutions.

d. Incorporating the COC and OIG into the Los Angeles County Charter

The California Constitution grants county charters the power to establish the functions required by county officers, and California state law states that the board of supervisors supervises the conduct of all county officers. *See* Cal. Const. art. XI § 4 (e); Cal. Gov. Code § 25303. The Constitution states that “[c]harter counties shall have all the powers that are provided by this Constitution or by statute for counties,” Cal. Const. art. XI § 4 (h). The California Supreme Court has affirmed that a county charter could create a civilian oversight board and could confer subpoena power to them. *Dibb*, 8 Cal.4th at 1210-11. Recently, AB 1185 has further clarified that oversight bodies, including the COC and the OIG, could be granted subpoena power. Cal. Gov. Code § 25303.7. The law also states that the exercise of powers under AB 1185 “shall not be considered to obstruct the investigative functions of the sheriff.” *Id.*

Establishing the COC and the OIG in the Los Angeles County charter would make it much harder for a future board of supervisors from easily doing away with civilian oversight by

undoing the board ordinances that created the COC and the OIG. The County should also safeguard, with enforcement mechanisms (including termination of LASD employees for failure to cooperate), the subpoena power and access to documents and places in LASD's control for both the OIG and the COC that the Board has already provided by ordinance, voters have supported through Measure R, and the Legislature has affirmed through AB 1185. The COC and OIG must have full subpoena power and seamless access to LASD and its employees. Necessary to have such full and seamless access, there must be meaningful consequences if LASD employees do not respond appropriately.

e. Providing Additional Powers and Duties to the COC and OIG

While the COC plays a crucial role in providing a space for the public to raise concerns and obtain information, it is not being used to its full potential. There are numerous changes that could be made to increase the role of the COC in overseeing LASD. Among the potential changes are:

- a. Creating a process to automatically agendaize issues on the Board agenda that arise out of the COC.
- b. Amending criteria for commissioners on the COC to permit and encourage the inclusion of system-impacted individuals; and implementing a community outreach program to ensure that community organizations are aware of upcoming openings on the COC and to recruit nominees from the community organizations that were central to the COC's creation.
- c. Requiring the sheriff to personally attend COC meetings and face the public regularly.
- d. Funding and staffing the COC commensurate with its expanded obligations.

Similarly, changes to the ways in which the OIG is incorporated into the oversight of LASD to ensure that certain information, in addition to its issuance of special reports, is regularly presented to the public can facilitate transparency and accountability. Among the potential changes are:

- a. Requiring the OIG to produce a public report, at least on a quarterly basis, setting forth all new, pending, and concluded personnel investigations and identifying the facts and circumstances of each case as allowed by law, presence of any gang allegations, rank of the deputy involved, and discipline imposed.
- b. Requiring the OIG to conduct regular audits to review the accuracy of internal stop and arrest data, and mandating that irregularities uncovered during such review result in the initiation of personnel investigations.
- c. Requiring the OIG to produce an annual report on the completion of internal affairs investigations that also identifies cases where the statute of limitations had lapsed and disciplinary action was therefore prohibited.
- d. Funding and staffing the OIG commensurate with its expanded obligations.

Sincerely,



Andrés Dae Keun Kwon
ACLU of Southern California

Exhibit B



November 9, 2020

Los Angeles County Board of Supervisors
500 West Temple Street
Los Angeles, CA 90012

Sent via email

RE: Support for Motion: Report Regarding Options for Removing the Sheriff

Honorable Members of the Board of Supervisors:

The ACLU of Southern California supports the Motion on the Board of Supervisors (“Board”)’s meeting agenda for Tuesday, November 10: Report Regarding Options for Removing the Sheriff. For decades, the Los Angeles County Sheriff’s Department (“LASD”) has been rife with corruption, abuse of power, impunity—leading, notably, to the federal conviction of former Sheriff Lee Baca and the restructuring of oversight mechanisms, including the creation of the Office of Inspector General (“OIG”) and the Sheriff’s Civilian Oversight Commission (“COC”). In the last two years under Sheriff Alex Villanueva, however, LASD has undergone a sweeping undoing of these reforms, undermining basic accountability and civilian oversight at every turn and systematically violating state transparency laws.¹

From the moment Villanueva was elected, he sought to reinstate Carl Mandoyan and other sheriff’s deputies fired for serious misconduct.² His actions have sent a clear message to

¹ See, e.g., *Editorial: Villanueva is the best advertisement for muscular sheriff oversight*, L.A. TIMES (Sept. 17, 2020 3:00 AM), available at <https://www.latimes.com/opinion/story/2020-09-17/editorial-villanueva-is-the-best-advertisement-for-muscular-sheriff-oversight>; *Editorial: L.A. County thought it was getting a progressive sheriff. Instead, like Trump, Alex Villanueva is painting political adversaries as criminals*, L.A. TIMES (Aug. 16, 2019 11:57 AM), available at <https://www.latimes.com/opinion/story/2019-08-16/amateur-moves-la-county-sheriff-alex-villanueva>; Jason McGahan, *Meet Sheriff Alex Villanueva, the Donald Trump of L.A. Law Enforcement*, L.A. MAGAZINE (July 19, 2019), available at <https://www.lamag.com/citythinkblog/sheriff-alex-villanueva-interview/>.

² Even before being sworn in, and demonstrating an utter lack of concern for sexual assault survivors whom the Sheriff’s Department is sworn to protect, Villanueva rehired Caren Carl Mandoyan, a deputy who volunteered on his campaign and had been fired for physically assaulting and strangling his ex-girlfriend, breaking down her bathroom door, attempting to break into her home on two separate occasions, sending her threatening text messages indicating he was surveilling her, and then lying about his actions. See OFFICE OF INSPECTOR GEN. CNTY. OF L.A., L.A., INITIAL IMPLEMENTATION BY THE LOS ANGELES COUNTY SHERIFF’S DEPARTMENT OF THE TRUTH AND RECONCILIATION PROCESS (JULY 2019), available at <https://oig.lacounty.gov/Portals/OIG/Reports/TruthandReconciliation.pdf?ver=2019-07-09-085916-457>. At great cost to taxpayers, the Board of Supervisors had to bring a lawsuit, and on August 19, 2019, the court overturned Mandoyan’s rehiring. See Matt Stiles & Maya Lau, *Judge overturns Sheriff Villanueva’s rehiring of a fired L.A. County deputy*, L.A. TIMES (Aug. 19, 2019 6 PM), available at <https://www.latimes.com/california/story/2019-08-19/la-me-sheriff-villanueva-supervisors-court>.

deputies that they will not face accountability for misconduct, resulting in terrible costs in deputy violence that the reforms were supposed to address. Since the horrific murder of George Floyd on May 25, LASD has killed 11 community members, including Fred Williams III this past Friday, October 16.³

Villanueva's extraordinary failure of leadership is exemplified by his stonewalling independent investigations in LASD's recent killings of 18-year-old Andres Guardado and Dijon Kizzee.⁴ After LASD Compton station deputy Michael Vega executed Andres Guardado, LASD proceeded to cover up the evidence, including by destroying security cameras and putting a "security hold" on the autopsy.⁵ The Guardado family's independent autopsy concluded that deputy Vega—who is alleged to have been a prospective Compton "Executioners" sheriff's deputy gang member and who had a history of misconduct—shot Andres Guardado five times in the back and killed him; the L.A. County Medical Examiner-Coroner confirmed this finding when he released autopsy results in an unprecedented break with LASD's "security hold."⁶ Villanueva condemned the Coroner and has brazenly refused to cooperate with an independent investigation by the OIG.⁷ To add insult to injury, Villanueva's chief of staff posted on his Facebook page that Andres Guardado "CHOSE his fate."⁸

Villanueva has also instituted "very troubling" hiring practices, including scaling back the scope of background checks and relaxing polygraph exams. See Matt Stiles & Alene Tchekmedyian, *L.A. County supervisors move to freeze Sheriff's Department funding*, L.A. TIMES (Sept. 26, 2019 5:23 PM), available at <https://www.latimes.com/california/story/2019-09-26/l-a-county-supervisors-sheriff-budget-freeze>.

³ See, e.g., Lexis-Olivier Ray, <https://twitter.com/shoton35mm/status/1308801445458669572?s=21>; *Mourners, Activists Hold Vigil in Honor of LASD Shooting Victim Fred William*, CBSLA

⁴ See, e.g., Alene Tchekmedyian, *Sheriff asks attorney general to monitor shooting while stonewalling inspector general*, L.A. TIMES (June 25, 2020 6:00 AM), available at <https://www.latimes.com/california/story/2020-06-25/sheriff-villanueva-attorney-general-shootings>; Frank Stoltze, *Sheriff's Top Watchdog Says Department Blocked Him From Kizzee Autopsy*, LAIST (Sept. 4, 2020 1:00 PM), <https://laist.com/2020/09/04/dijon-kizzee-sheriff-los-angeles-county-inspector-general.php#:~:text=L.A.%20County%20Inspector%20General%20Max,in%20South%20L.A.%20on%20Monday>.

⁵ See, e.g., Aida Chavez, *After Killing of 18-year-old Andres Guardado, LA Protesters Struggle Against the Limits of Police Reform*, THE INTERCEPT (June 25, 2020 3:03 PM), <https://theintercept.com/2020/06/25/andres-guardado-los-angeles-police/>.

⁶ See, e.g., Alene Tchekmedyian, *Coroner: Andres Guardado was shot five times in the back. Sheriff condemns disclosure*, L.A. TIMES (July 10, 2020 9:25 AM), available at <https://www.latimes.com/california/story/2020-07-10/andres-guardado-coroner-autopsy>; Alene Tchekmedyian, *Compton Executioners deputy gang lied about guns and hosted inking parties, deputy says*, L.A. TIMES (Aug. 20, 2020 5:50 PM), available at <https://www.latimes.com/california/story/2020-08-20/lasd-gangs-who-are-the-compton-executioners>; Alene Tchekmedyian, *Sheriff's deputy who fatally shot Andres Guardado faced earlier allegations*, L.A. TIMES (June 25, 2020 9:19 PM), available at <https://www.latimes.com/california/story/2020-06-25/deputy-andres-guardado-shooting-identified>.

⁷ See *supra* note 6.

⁸ Jovana Lara & Lisa Bartley, *LASD captain under fire for comments that 18-year-old shot 5 times in the back by deputy 'CHOSE his fate'*, ABC7 (July 22, 2020 9:27 AM), <https://abc7.com/andres-guardado-investigation-la-county-sheriffs-deputy-captain-john-burcher/6317554/>.

Villanueva’s mishandling of the murders of Andres Guardado and Dijon Kizzee reflects an extraordinary pattern of abuse, secrecy, and thwarted accountability that has marred his tenure. He has allowed the systematic harassment of grieving families of community members whom deputies have killed—in retaliation against their seeking the truth about their deaths and justice.⁹ In violation of LASD’s own policies, he has killed active investigations into serious misconduct involving criminal allegations such as child abuse, domestic violence, and rape of a woman in custody.¹⁰ He has initiated new investigations into serious misconduct at half the rate of the three previous administrations.¹¹ He has even tolerated sheriff’s deputy gangs, like the “Executioners” and “Banditos” in East L.A., that perpetrate violence against the community.¹²

Villanueva has sought to shroud LASD in secrecy. He has blocked previously-afforded access to the OIG and, in a truly *Trumpian* step, initiated a criminal investigation of the Inspector General for attempting to carry out his oversight duties.¹³ In response to the California Supreme Court decision allowing him to turn over to the District Attorney a “Brady list” of 300 problem deputies, he tweeted saying he will comply with the decision by not compiling such a list.¹⁴ He has completely failed to disclose records of deputy misconduct to which families and the public are entitled under state transparency laws, including SB 1421, prompting the ACLU of Southern California and the L.A. Times to bring suit against him.¹⁵ He has repeatedly defied the COC’s

⁹ See, e.g., enclosed letter; Alene Tchekmedyan, *‘It’s like torture’: Families report deputy harassment to sheriff watchdog*, L.A. TIMES (Nov. 19, 2019 6:53 PM), available at <https://www.latimes.com/california/story/2019-11-19/sheriff-deputy-harassment-investigation>; Sam Levin, *Los Angeles sheriff’s department faces a reckoning after another police shooting*, THE GUARDIAN (July 1, 2020 3:00 AM), available at <https://www.theguardian.com/us-news/2020/jul/01/los-angeles-sheriffs-department-reckoning-police-shootings>.

¹⁰ See Maya Lau, *Sheriff’s Department killing more misconduct investigations under Villanueva, report finds*, L.A. TIMES (Apr. 12, 2019 10:25 AM), available at <https://www.latimes.com/local/lanow/la-me-sheriff-internal-investigations-inactivate-20190411-story.html>; Letter from Rodrigo A. Castro-Silva, Interim Inspector General, to Board of Supervisors re Report-back on LASD Internal Administrative Investigations and Dispositions of Disciplinary Actions (Apr. 11, 2019), available at https://oig.lacounty.gov/Portals/OIG/Reports/4-11-19ReportBack_1.pdf?ver=2019-04-12-141500-803.

¹¹ See Letter from Max Huntsman, Inspector General, to Board of Supervisors re Report-back on LASD Internal Administrative Investigations and Dispositions of Disciplinary Actions for March, April and May (July 22, 2019).

¹² See Maya Lau & Joel Rubin, *FBI investigating tattooed deputy gangs in Los Angeles County Sheriff’s Department*, L.A. TIMES (July 11, 2019 6:39 AM), available at <https://www.latimes.com/local/lanow/la-me-fbi-investigating-sheriff-20190711-story.html>; see also Andrew Gumbel, *Police Violence, clique, and secret tattoos: fears rise over LA sheriff ‘gangs’*, THE GUARDIAN (Aug. 6, 2018 1:00 AM), <https://www.theguardian.com/us-news/2018/aug/05/police-violence-clubes-and-secret-tattoos-fears-rise-over-la-sheriff-gangs>.

¹³ Maya Lau, *L.A. County sheriff’s top watchdog is under investigation — by the L.A. County sheriff*, L.A. TIMES (Aug. 14, 2019 12:34 PM), available at <https://www.latimes.com/california/story/2019-08-14/la-county-sheriffs-department-launches-investigation-against-its-chief-watchdog>.

¹⁴ See Maura Dolan, *California Supreme Court backs greater access to police misconduct cases*, L.A. TIMES (Aug. 26, 2019 6:41 PM), available at <https://www.latimes.com/california/story/2019-08-26/brady-list-prosecutors-los-angeles-sheriff-california-supreme-court-police-misconduct>.

¹⁵ See, e.g., Alene Tchekmedyan, *For families of those killed by deputies, a long wait for answers*, L.A. TIMES (Dec. 2, 2019 6:00 AM), available at <https://www.latimes.com/california/story/2019-12-02/families-sue-sheriffs-department-shooting-records>; Alene Tchekmedyan, *Times sues L.A. County sheriff over withholding records on*

subpoenas—as well as the will of the people of Los Angeles County who overwhelmingly voted for Measure R.¹⁶ One of the subpoenas he has refused to comply with involves the investigation into his cover up of deputies’ taking and showing off gruesome photos of the helicopter crash that killed Kobe and Gianna Bryant, leading Vanessa Bryant to sue him.¹⁷

During the protests following the killings of Andres Guardado and Dijon Kizzee, sheriff’s deputies have consistently brutalized and repressed the First Amendment rights of protestors, for example recently “kettling” a National Lawyers Guild press conference, grabbing a Legal Observer, and severely beating protestors.¹⁸ On September 12, LASD abused and arrested NPR reporter Josie Huang; Villanueva then made false claims that were directly contradicted by video evidence.¹⁹ The National Lawyers Guild has sued LASD over its unlawful use of force in these protests and recently filed an application for a temporary restraining order.²⁰

deputy misconduct, L.A. TIMES (June. 30, 2020 8:22 PM), available at <https://www.latimes.com/california/story/2020-06-30/la-times-lawsuit-deputy-misconduct-records>; Leila Miller, *Sheriff’s Department defied court orders to name deputies with histories of misconduct. It was a costly decision*, .A. TIMES (Oct. 17, 2020 11:58 AM), available at <https://www.latimes.com/california/story/2020-10-17/court-orders-sheriff-refuses-to-name-deputies-misconduct>.

¹⁶ See *Editorial: Effective sheriff oversight still a work in progress*, L.A. TIMES (June 29, 2020, 3:00 AM), available at <https://www.latimes.com/opinion/story/2020-06-29/villanueva-subpoena-tested-in-court> (discussing that a judge will decide whether to order Villanueva to abide by the Civilian Oversight Commission’s subpoena to appear before the commission to answer questions regarding LASD’s management of COVID-19 in the county jails); Cindy Chang, *As sheriff defies subpoena on jails, watchdog plans another for Kobe Bryant crash records*, L.A. TIMES (May 21, 2020 6:55 PM), available at <https://www.latimes.com/california/story/2020-05-21/sheriff-watchdog-panel-meets-on-jail-conditions-koby-bryant-photos-without-defiant-sheriff>; Alene Tchekmedyan, *On heels of Sheriff’s Department scandal, L.A. County voters overwhelmingly back stronger oversight*, L.A. TIMES (Mar. 5, 2020 5:00 AM), available at <https://www.latimes.com/california/story/2020-03-05/voters-support-measure-r-oversight-sheriffs-department>.

¹⁷ Alene Tchekmedyan, *A deputy allegedly showed off gruesome Kobe Bryant crash photos at bar. A cover-up scandal ensued*, L.A. TIMES (Mar. 3, 2020 5:46 AM), available at <https://www.latimes.com/california/story/2020-03-03/kobe-bryant-crash-photos-sheriffs-department-tried-to-keep-quiet>; Richard Winton, *Vanessa Bryant sues L.A. County sheriff, alleging ‘cover-up’ of Kobe Bryant crash photos*, L.A. TIMES (Sept. 22, 2020 3:05 PM), available at <https://www.latimes.com/california/story/2020-09-22/vanessa-bryant-sues-los-angeles-county-sheriff-over-kobe-bryant-crash-photos>.

¹⁸ See, e.g., Leila Miller & Alene Tchekmedyan, *Deputies in riot gear surround peaceful news conference related to Kizzee shooting*, L.A. TIMES (Sept. 11, 2020 9:30 PM), available at <https://www.latimes.com/california/story/2020-09-11/deputies-in-riot-gear-peaceful-press-conference-related-to-kizzee-shooting>; Alex Wigglesworth & Alene Tchekmedyan, *Video shows sheriff’s deputy striking man with shield during West Hollywood protest*, L.A. TIMES (Sept. 26, 2020 1:15 PM), available at <https://www.latimes.com/california/story/2020-09-26/video-sheriffs-deputy-striking-person-shield-west-hollywood-protest-arrests>.

¹⁹ See, e.g., Aaron Menelson, *Debunking Sheriff Villanueva’s False or Misleading Claims About The Arrest of KPCC/LAist’s Josie Huang*, LAIST (Sept. 16, 2020), https://laist.com/2020/09/16/debunking_sheriff_villanueva_false_misleading_claims_arrest_kpcc_laist_josie_huang.php.

²⁰ See, e.g., Leila Miller, *Petition for restraining order alleges unlawful use of force by Sheriff’s Department at protests*, L.A. TIMES (Sept. 21, 2020 9:34 PM), available at <https://www.latimes.com/california/story/2020-09-21/application-for-restraining-order-alleges-unlawful-use-of-force-by-sheriffs-department-at-protests>.



As Sheriff Villanueva and LASD have been systematically abusing their power and violating Angelenos’ constitutional and statutory rights, families and more than 50 organizations and coalitions have called for Villanueva’s immediate resignation.²¹ In response, the COC unanimously passed a “vote of no confidence” resolution also urging Villanueva’s resignation.²² In addition, the ACLU of Southern California and the Check the Sheriff coalition partners have developed a charter amendment to strengthen a system of checks and balances that clearly has been not been working.

This “checks and balances” charter amendment would grant the Board the power to impeach and remove the Sheriff for specific grounds of violating the public trust, in addition to strengthening the oversight roles of COC and OIG. Indeed, with the Motion, titled *Report Regarding Options for Removing the Sheriff*, the Board is finally responding to the community groundswell demanding Villanueva’s resignation and the call for a charter amendment to strengthen a failing system of checks and balances. Importantly, granting the Board the power to impeach and remove the Sheriff is not a power grab or an attempt to override the will of the people. Rather, this power is to ensure the Sheriff cannot engage in egregious official misconduct with impunity, and thereby rebuild trust and enhance public safety. As you know, under the California Constitution, the Board is responsible to supervise the Sheriff; accordingly, the Board should have the appropriate powers to do so. Just as Congress has the duty and power to impeach and remove an elected President when necessary, so should the Board have the power to impeach and remove an elected Sheriff when necessary.

Therefore, we are in strong support of this Motion and urge you to vote in favor.

Sincerely,

ACLU of Southern California

²¹ Community Letter to Sheriff Alex Villanueva, July 29, 2020, https://www.aclusocal.org/sites/default/files/adiosvillanueva_letter_final_sign-on.pdf.

²² Sheriff’s Civilian Oversight Commission, Resolution Expressing No Confidence in Sheriff Alex Villanueva’s Leadership of the Los Angeles County Sheriff’s Department and Condemning His Failure to Cooperate with Civilian Oversight, http://file.lacounty.gov/SDSInter/bos/commissionpublications/report/1079910_Final-ResolutionreNoConfidenceintheSheriff10.15.2020.pdf; see also *Sheriff’s oversight commission calls on Villanueva to resign over his management of the agency*, L.A. TIMES (Oct. 15, 2020 9:50 PM), available at <https://www.latimes.com/california/story/2020-10-15/los-angeles-sheriff-villanueva-resign-oversight-commission>.

Exhibit C



May 20, 2020

County of Los Angeles Sheriff Civilian Oversight Commission
Patti Giggans, Commission Chair
Lael Rubin, Vice-Chair
Robert C. Bonner
James P. Harris
Sean Kennedy
Casimiro U. Tolentino
Xavier Thompson
Hernán Vera
Priscilla Ocen

Sent via email

Re: Changes to LASD Use of Force Proposed Policy

Dear Commissioners:

On behalf of the ACLU of Southern California, Black Lives Matter-Los Angeles, Dignity and Power Now, La Defensa, the STOP Coalition, and Youth Justice Coalition, we write regarding the proposed revisions by the Los Angeles County Sheriff's Department ("LASD" or the "Department") to its Use of Force Policies to implement Assembly Bill 392 ("Proposed Policy").

Our organizations were involved in the legislative process for AB 392, and as such have both an intimate familiarity with AB 392 and a strong interest in ensuring the Department revise its policy to comply with the new law. The Proposed Policy captures many of the important provisions in the law, but it creates confusion on some crucial points of the law and leaves others out entirely. We strongly urge additional changes to the Proposed Policy to accurately reflect how AB 392 changes the deadly force standard in California – including adopting the changes suggested by the Commission's Ad Hoc Committee on Use of Force.

I. Background on AB 392.

In an effort to address the crisis of deadly police shootings in California, the California legislature passed AB 392, revising California's laws on the use of deadly force by police.

Prior to AB 392, California's statutes on police force mirrored the constitutional limitations set by the Supreme Court's decisions in *Tennessee v. Garner*, 471 U.S. 1 (1985), and *Graham v.*

Connor, 490 U.S. 386 (1989), whereby police use of force is analyzed under the “reasonableness” standard of the Fourth Amendment, balancing the nature of the government interest and the “nature and quality of the intrusion on the individual’s Fourth Amendment interests” to determine “whether the force used to effect a particular seizure is ‘reasonable.’” *Graham v. Connor*, 490 U.S. at 396. As the Supreme Court clarified in 2007, the constitutional standard for police use of deadly force is the same as for any force: “*Graham* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer’s actions constitute ‘deadly force’ Whether or not [the police officer’s] actions constituted application of ‘deadly force,’ all that matters is whether [the officer’s] actions were reasonable.” *Scott v. Harris*, 550 U.S. 372, 382-83 (2007). California statutes set a similar “reasonable force” standard: Penal Code section 835a provided that peace officers “may use reasonable force to effect . . . arrest, to prevent escape or to overcome resistance.”

AB 392, which went into effect on January 1, 2020, preserves the “reasonable force” standard for nondeadly force, but it creates a separate, higher standard that authorizes police use of deadly force only when “necessary.” Specifically, AB 392 provides that:

a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is *necessary* for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

Penal Code § 835a(c)(1) (as amended by AB 392, effective Jan. 1, 2020) (emphasis added).

AB 392 made other modifications to California laws, providing specific definitions for “imminent threat,” clarifying that the “totality of the circumstances” includes the conduct of the *officer* leading up to the use of force. Penal Code § 835a(e) (emphasis added). Along with that emphasis on the conduct of the officer, the measure requires that “officers . . . shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer” and clarifies that while officers have no duty to retreat from resistance, de-escalation tactics do not constitute “retreat.” *Id.*; Penal Code §§ 835a(a)(2), (d). The bill clarifies that while the standard for deadly force has changed to a “necessary” standard, the *perspective* used for the analysis remains the “reasonable officer” generally consistent with both state tort law and constitutional law. Penal Code § 835a(a)(4). Finally, the bill emphasizes the role physical and mental disabilities play in police shooting, expressly prohibiting use of deadly force against a person solely based on the threat they pose to themselves. Penal Code §§ 835a(a)(5), (c)(2).

II. The Proposed Policy conveys that the legal standard for deadly force has changed from “objectively reasonable” to “necessary.”

In one of the central reforms of AB 392, the language set forth in Penal Code section 835a(c) changes the core legal standard for use of deadly force in two important ways. First, the provision changes the standard from the minimum constitutional standard of allowing force when “reasonable” to authorizing it only when “necessary.” Penal Code § 835a(c). But the “necessary” standard is only part of the reform, as the law makes clear that use of deadly force is not permitted merely in service of making an arrest or overcoming resistance, even if it might be “necessary” to those ends. Instead, second, the new law permits deadly force only “when necessary in defense of human life,” Penal Code § 835a(a)(2), specifically, “[t]o defend against an imminent threat of death or serious bodily injury to the officer or to another person” or “[t]o apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.” Penal Code § 835a(c)(1)(A), (B). These two changes – the change from “reasonable” to “necessary” and the limitation on the grounds for which “necessary” force is allowed – work together, and they are both crucial to the new measure.

The Proposed Policy does contain this language, but sets it forth in a way that separates the “necessary” standard from the limitation on justifications. In the first bullet point of 3-10/200.00, Use of Firearms and Deadly Force, the Proposed Policy states “Discharging a firearm at another human being is an application of deadly force. A Department member must reasonably believe, based on the totality of the circumstances, that such force is necessary.” In the following bullet point, the Proposed Policy states that “Department members *may use* deadly force to defend against an imminent threat of death or serious bodily injury to themselves or another person,” and in the next bullet point, it states that members “may use” deadly force to capture a fleeing person for a felony that threatened or resulted in death or serious bodily injury, where the officer reasonably believes that the person will cause death or serious bodily injury if not immediately apprehended.”

While the Proposed Policy recites much of the language from AB 392, it does so in a way that separates the key provisions from each other and robs them of their context and interaction. This separation obscures the limitation that a use of deadly force must not merely be “necessary” for any end, but must be necessary for one of the two permissible justifications. Relatedly, but perhaps more importantly, the Proposed Policy does not clearly limit the justification for deadly force to the two stated justifications: it merely states that officers “may use” deadly force in those circumstances, but does not clearly state that officers “may *only* use” deadly force for those reasons, and not others.

Recommendation 1. The Proposed Policy should more closely track the text of the provision of AB 392 that clearly sets forth the legal standard for deadly force, codified in Penal Code section 835a(c)(1), and specify that deadly force shall be used “only when necessary” to defend against an imminent threat or apprehend a fleeing person under the specified circumstances, as follows:

- Department members may use deadly force only when necessary in defense of human life. Specifically, Department members shall use deadly force only when necessary to:
 - (A) Defend against an imminent threat of death or serious bodily injury to themselves or another person; or
 - (B) Apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if they reasonably believe that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, Department members shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless they have objectively reasonable grounds to believe the person is aware of those facts.

The discussion above addresses the changes needed to meet the minimum legal requirements of AB 392. A better, simpler solution would be to establish a “necessary” standard for *all* force – both deadly and non-deadly – as other departments and model policies have done.¹

III. The Proposed Policy’s language on using deadly force to apprehend persons for a felony in specified circumstances is unclear.

The Proposed Policy authorizes use of deadly force to apprehend a person for a felony, under certain limited circumstances, in language that mostly tracks AB 392 but deviates in one key respect. AB 392 allows use of deadly force when necessary to “apprehend a fleeing person *for any felony that* threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.” Penal Code § 835a(c)(1)(b) (emphasis added).

The Proposed Policy, however, authorized deadly force “to effect the arrest or prevent the escape *of a fleeing felon that* threatened or resulted in death or serious bodily injury, if the Department member reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.” Proposed Policy, section 3-10/200.00, at 6.

The difference in language is significant. The law limits use of deadly force to apprehending a person for a felony, where *that felony* threatened or resulted in death or serious bodily injury. The Proposed Policy separates those two requirements: (a) the person to be apprehended committed a felony, and (b) the person (at some time, whether through that felony or at another time) threatened death or serious bodily injury. This significantly broadens the limitation from what is authorized by law and should be revised to track the statutory language exactly.

¹ See, e.g., Seattle Police Department Policy 8.000 - Use of Force Core Principles, available at <https://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles>; National Consensus Policy on Use of Force, available at <https://noblernational.org/wp-content/uploads/2017/10/Consensus-Policy-and-Discussion-2017.pdf> (“Officers shall use force only when no reasonably effective alternative appears to exist”).

Recommendation 2. Make the language on use of deadly force to apprehend a person for a felony track the language of AB 392 exactly: “Department members shall use deadly force only when necessary to . . . Apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if they reasonably believe that the person will cause death or serious bodily injury to another unless immediately apprehended.”

IV. The Proposed Policy should clarify that officers are *required* to use de-escalation or other alternatives instead of deadly force when it is safe to do so.

The Department’s prior policy in the section 3-10//150.00 “Tactical Incidents” stated: “When reasonable under the totality of circumstances, Department members should use de-escalation techniques such as advisements, verbal persuasion, and other force prevention tactics focused on increasing officer and/or public safety.” This language is insufficient for two reasons.

First, the existing policy merely recommends de-escalation as something officers “should” use. As the California Department of Justice has recognized, “[Department] policy should make de-escalation an affirmative duty, as opposed to what officers ‘are expected to do,’ or ‘should do,’ but instead something officers *must* or *shall do*.”²

Second, this language remains the only mention of de-escalation in the Department’s use of force policies. As noted by the Ad Hoc Committee, the Proposed Policy’s sections on deadly force contains no mention of alternatives to deadly force. AB 392 requires that “officers . . . shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” Penal Code § 835a(a)(2). That language should be repeated in the policy section on deadly force.

Recommendation 3. Make the language recommending de-escalation in section 3-10/150.00 mandatory by stating: “When reasonable under the totality of circumstances, Department members ~~should~~ **shall** use de-escalation techniques such as advisements, verbal persuasion, and other force prevention tactics focused on increasing officer and/or public safety.”

Recommendation 4. Consistent with the Ad Hoc Committee’s recommendation, include as a bullet point in section 3-10/200.00, on deadly force, the requirement of Penal Code section 835a(a)(2): “Officers shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.”

V. The Proposed Policy omits half the statutory definition of an “imminent” threat.

As the Ad Hoc Committee recognized, the Proposed Policy sets forth a definition of “imminent” threat that tracks the first half of the definition set forth in Penal Code section 835a, but omits the second half which provides crucial additional context. There is no reason for the policy to omit half the statutory definition of such a crucial term. We agree with the Ad Hoc Committee’s recommendation that the full definition should be included.

² California Dep’t of Justice, *Sacramento Police Department: Report & Recommendations*, 20 (2019) (emphasis in original).

Recommendation 5. As recommended by the Ad Hoc Committee, the Proposed Policy should include the full definition of an “imminent” threat, including the second sentence, from Penal Code section 835a(e)(2):

Department members may use deadly force to defend against an imminent threat of death or serious bodily injury to themselves or another person. Penal Code section 835a(e)(2) defines “imminent threat” as: “A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”

VI. The Proposed Policy fails to define “deadly force.”

The Proposed Policy devotes an entire section to “Use of Firearms and Deadly Force,” and uses the term “deadly force” throughout that section, but never defines that term other than to state it includes “[d]ischarging a firearm at a another human being,” even though AB 392 sets forth a definition in Penal Code section 835a(e)(1), as follows: “‘Deadly force’ means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.”

Recommendation 6. The Proposed Policy should include the definition of “deadly force” as set forth in Penal Code section 835a(e)(3).

VII. The Proposed Policy does not define “totality of the circumstances.”

As the Ad Hoc Committee recognized, the Proposed Policy uses the term “totality of the circumstances” throughout its articulation of the standards on both force and deadly force, but it does not include any definition of that term, much less the statutory definition of that term set for in AB 392. AB 392 provides: “‘Totality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” Penal Code § 835a(e)(3). This definition crucially specifies that consideration of a use of deadly force must the conduct of the officer leading up to the use of force, a point that is missing entirely from the Proposed Policy.

Recommendation 7. As recommended by the Ad Hoc Committee, the Proposed Policy should include the statutory definition of “totality of the circumstances” enacted by AB 392, set forth in Penal Code section 835a(e)(3).

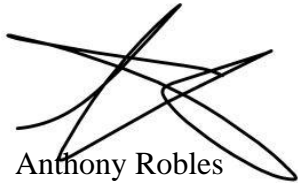
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As the Commission is well aware, the language of the Department’s Use of Force policy is crucial in protecting the lives of those the Department is sworn to protect and serve. It should not be rushed or taken lightly. We urge that the Commission take this opportunity to ensure that the Department’s Use of Force policy is created with community input and is entirely consistent with California law as set forth in AB 392.

Sincerely,



Peter Bibring
Director of Police Practices
ACLU of California



Anthony Robles
Youth Justice Coalition



Paula Minor
Black Lives Matter- Los Angeles



Elizeth Virrueta
STOP Coalition

Exhibit D

October 14, 2020

Commissioner Lael Rubin, Chair
Commissioner Hernán Vera, Vice Chair
Commissioner Robert C. Bonner
Commissioner Patti Giggans
Commissioner JP Harris, former Sheriff's lieutenant
Commissioner Sean Kennedy
Commissioner Priscilla Ocen
Commissioner Xavier Thompson
Commissioner Casimiro U. Tolentino

CC: Brian Williams, Executive Director
Max Huntsman, Inspector General, Office of the Inspector General

Via email

Re: Office of Inspector General Analysis of Criminal Investigation of Alleged Assault By the Banditos

Dear Commissioners:

Deputy gangs are a pervasive and ongoing threat to the Los Angeles community. They are both a product of the Los Angeles County Sheriff's Departmental ("LASD" or "Department") culture that tolerates, if not encourages, misconduct committed against members of the public—both on the streets of Los Angeles and within the walls of the County jails—and a catalyst for further misconduct by influencing norms around the treatment of the public and impeding accountability.

The appearance of deputy gangs throughout LASD is not random, but rather reflects the deep racial hostility of many deputies toward the Black and Latino communities they often police and a willingness of Departmental leadership—and the County—to turn a blind eye to the damage they inflict on these communities. They have frequently, if not exclusively, emerged in jurisdictions serving predominately Black and Latino populations, and some gangs have explicitly adopted white supremacist ideologies and imagery.¹ The County's failure to meaningfully address deputy gang conduct and the conditions in which they thrive necessarily

¹ See, e.g., Center for Juvenile Law and Policy at Loyola Law School, "Fifty Years of 'Deputy Gangs' in the Los Angeles County Sheriff's Department: Identifying Root Causes and Effects to Advocate for Meaningful Reforms," September 2020, p. 7, 11 available at <https://witnessla.com/wp-content/uploads/2020/08/Marked-Draft-CJLP-Report-to-Stakeholders-re-Deputy-Gangs.pdf> (observing that the Little Devils deputy gang adopted a logo that is "widely viewed as a celebration of police violence" against Chicano anti-war protestors, and citing evidence of the Vikings deputy gang embracing a "white supremacist world-view").

EXECUTIVE DIRECTOR Hector O. Villagra

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*deceased

reflects a lack of care for the Black and Latino residents that are the victims of this unchecked violence, and who have consistently spoken out about the treatment they received at the hands of LASD.

While the ACLU of Southern California (“ACLU SoCal”) appreciates the Office of the Inspector General’s (“OIG’s”) reports detailing the failings of the Department and the District Attorney’s (“LADA’s”) office in investigating violence perpetuated by deputy gang members in furtherance of their gang, the OIG’s recommendations to “discourage participation in destructive cliques”² and directing the internal affairs division to conduct better investigations,³ do not even begin scratch the surface of the systemic changes needed to address the entrenched organizations and attitudes that have manifested in decades of deputy gang violence.

First, it merits stating that the County’s practice of euphemistically referring to these deputy gangs as “subgroups,”⁴ “cliques,” or “secret societies,”⁵ contributes to the systemic minimization—or even normalization—of the violence perpetuated by LASD. This refusal to use the loaded term, “gang,” when referring to conduct that unquestionably satisfies the definition of a “criminal street gang” under California law⁶ when committed by sworn law enforcement unnecessarily and improperly sanitizes the same conduct alleged to “present a clear and present danger to public order and safety”⁷ when committed by those not wearing a Sheriff’s Department uniform. The Sheriff’s Department and the District Attorney’s Office have adopted a joint policy to prosecute “[a]ny active member of a street gang . . . to the maximum extent provided by law,” which entails filing all alternative felony/misdemeanor charges as felonies, seeking all available enhancements, and seeking upward deviations from the bail schedule for anyone LASD deputies allege is a gang member, “*irrespective of whether the crime was gang related.*”⁸ Yet, as the OIG’s report demonstrates, in a case involving a deputy gang-related assault and witness intimidation—both enumerated gang crimes⁹—neither LASD or the LADA took any of the steps under its own policy to ensure the “maximum” punishment under the law. To the contrary, through an inadequate investigation and a legally and factually deficient charging analysis the LASD and the LADA collectively ensured that there would be *no* punishment for gang-affiliated deputies committing crimes in the furtherance of their gang.

² See, e.g., Office of Inspector General, County of Los Angeles, “Reform and Oversight Efforts: Los Angeles County Sheriff’s Department,” Dec. 2018, p. 20, available at <http://file.lacounty.gov/SDSInter/bos/supdocs/133008.pdf>.

³ Office of Inspector General, County of Los Angeles, “Analysis of the Criminal Investigation of Alleged Assault by Banditos,” Oct. 2020, available at <http://file.lacounty.gov/SDSInter/bos/supdocs/OIGReport-ReviewBanditosInvestigation.10-2020.pdf>.

⁴ See, e.g., “Comprehensive Study of Secret Sheriff’s Deputy Subgroups,” Mtn. by Supervisor Hilda Solis, Mar. 12, 2019, available at <http://file.lacounty.gov/SDSInter/bos/supdocs/133802.pdf>.

⁵ See, e.g., “Expanding Authority to Investigate Deputy Secret Societies,” Mtn. by Supervisors Janice Hahn and Mark Ridley-Thomas, July 23, 2019, available at <http://file.lacounty.gov/SDSInter/bos/supdocs/138252.pdf>. The April 30, 2019 Motion by Sup. Sheila Kuehl, “Assessing County Liability in Settlements Involving Sheriff ‘Gangs,’” is one of the few instances in which the County directly refers to these deputy gangs as “gangs.” Available at <http://file.lacounty.gov/SDSInter/bos/supdocs/135076.pdf>.

⁶ See Penal Code § 186.22.

⁷ Penal Code § 186.21 (legislative findings regarding the threat posed by gangs in the context of the California Street Terrorism Enforcement and Prevention Act).

⁸ Los Angeles County Sheriff’s Department, LASD Field Operations Directive 89-007 (“Prosecution of Street Gang Members”), version 2020.6.10.1, available at <http://pars.lasd.org/Viewer/Manuals/13233/Content/14562?showHistorical=True> (emphasis in original).

⁹ See Pen. Code § 186.22(e)(1), (8).

ACLU SoCal does not endorse gang suppression tactics such as gang enhancements, databases, and injunctions, which are often used as a cudgel against Black and Latino people at large to justify greater surveillance, punitive interventions, and excessive punishments under the guise of gang abatement. Nonetheless, the fact that the County is willing to employ these tactics against civilians, even in cases when there is a much more tenuous connection to alleged gang activity or whose conduct poses a much smaller threat to the community, but refuse to do so when the gang members are agents of the state who are grossly abusing their authority, reflects a serious breakdown in County priorities. The County's consistently feeble institutional responses to a decades-long problem with deadly consequences unfortunately also demonstrates its failure to take meaningful action towards the purported seriousness of "gang crime" when Black and Latino residents are disproportionately the victims of this violence rather than the targets of prosecution.

Second, while the particular incident that precipitated the OIG's analysis involved deputy gang members harassing, attacking, and intimidating other deputies, even this misconduct pales in comparison to the deputy gang violence and terror directed against members of the public. While this report is an important illustration of the particular ways that the Department and the LADA fail to hold deputy gang members accountable for their crimes and other misconduct, it should not obscure the fact that there are community members who have been killed at the hands of prospective deputy gang members,¹⁰ beaten for prestige,¹¹ lost decades of their lives after being framed by deputy gang members and falsely incarcerated,¹² and stalked and harassed by deputy gang members when already grieving the loss of family members at the hands of LASD violence.¹³ The OIG report demonstrates the need to take substantial action to stem deputy-gang crime, but the County's responses cannot be limited to addressing the types of incidents where their targets are fellow deputies.

Third, the report's findings that neither the Department's own Internal Criminal Investigation Bureau ("ICIB"), nor the District Attorney's Office take seriously their obligations to investigate and prosecute gang-related misconduct committed by LASD deputies illustrates the conflicts of interest present in those agencies that render them ineffective oversight mechanisms. While changes in Department and LADA policy will encourage some improvements—and, at minimum, make it more evident when actors in those institutions fail to act appropriately—the

¹⁰ "Whistleblower: California Deputy Killed Teen to Join Department's 'Gang,'" Spectrum News, Aug. 31, 2020, available at <https://www.baynews9.com/fl/tampa/news/2020/08/31/whistleblower--deputy-killed-teen-to-join-department-s--gang--#:~:text=Whistleblower%3A%20California%20Deputy%20Killed%20Teen%20to%20Join%20Department%27s%20%20E2%80%9CGang%E2%80%9D&text=Los%20Angeles%20%E2%80%93%20The%20deputy%20who,sworn%20testimony%20of%20a%20whistleblower>.

¹¹ See, e.g., Maya Lau and Joel Rubin, "Must Reads: After decades of problems, new allegations surface of a secret clique within L.A. County Sheriff's Department," LA Times, July 10, 2018, available at <https://www.latimes.com/local/lanow/la-me-compton-sheriff-shooting-20180710-story.html> (reporting that a member of the 2000 Boys gang "earned his ink" by breaking the eye socket of a detained and complacent man).

¹² (discussing the wrongful conviction of Franky Carrillo, who was framed by member of the Lynwood Vikings gang), available at <https://witnessla.com/new-report-says-la-county-sheriffs-deputy-gangs-promote-a-secretive-violent-us-against-them-police-culture-but-also-points-to-ideas-to-fix-the-50-year-problem/>.

¹³ Taylor Walker, "Harassment of Grieving Families is More a Problem of LASD Management and Policy Than Individual Deputies, Says Inspector General," WitnessLA, Jan. 19, 2020, available at <https://witnessla.com/lasd-harassment-of-grieving-families-is-problem-of-management-and-policy-not-individual-deputies-says-inspector-general/>.

outcome described by the OIG is not the result of agencies simply not knowing what to do or how to do it. We can safely assume that ICIB already knows that it is a violation of the Department's own policy for a deputy to decline to participate in an ongoing criminal investigation, absent concerns regarding self-incrimination—yet it permitted 23 deputies to do so without consequence.¹⁴ Similarly, it can be reasonably presumed that LADA attorneys already know how to read a transcript in its entirety in order to find witness statements that would support the prosecution and, given their commitment to enhanced gang prosecutions, are familiar with the legal criteria for determining whether a gang exists. The results detailed in the OIG's report reflect a failure of institutional will, not simply the absence of appropriate policies. Between the oft-reported insular Department culture and the LADA's reliance on LASD deputies to prosecute its cases, there are clear conflicts of interest that will inevitably impede the investigation and prosecution of deputies for misconduct, including for deputy gang related crimes. This underscores the need to rely on external entities—including the COC, the OIG, the Office of the Public Defender, and the eyes of the public—to provide meaningful oversight over LASD deputy conduct.

If the County wishes to protect its residents from the unchecked violence perpetrated by LASD deputies—and particularly violence perpetuated in support of deputy gangs—it must undertake significant steps to completely overhaul the Department and its oversight mechanisms. ACLU SoCal recommends that the COC propose, and the County adopt, at a minimum, the following recommendations as an initial step towards greater transparency and accountability:

1. STRENGTHEN THE CIVILIAN COMPLAINT PROCESS.

- a. *Develop a system allowing a complaint against a Deputy to remain a public document, with the voluntary consent of the complainant, to ensure allegations are not concealed from the public or other oversight bodies.* This could be achieved by creating an online submission process housed within another County agency such as the OIG or the COC, where complainants can choose to share their complaints with that agency and/or designate their complaints to be published online before being submitted to the Department and made part of an officer's personnel record. This system would also permit filing complaints anonymously, and allow individuals to submit written or oral complaints offline directly to the hosting agency that would be published online upon their consent.
- b. *Create a process to allow members of the public or other deputies to submit additional information relevant to pending complaints/investigations.* If the County adopts a public website, it can include the functionality to allow individuals to directly submit additional information relevant to a public complaint or to identify as witnesses. This would also provide a check on the internal investigation process by making evident the existence of witnesses that support the complainant's version of events and any related failures of IAD to follow-up with those individuals.
- c. *Require the initiation of a personnel investigation whenever allegations of misconduct by any Department personnel, whether on or off duty, are contained in a civil lawsuit, claim for damages, or other legal process.*

¹⁴ See Manual of Policy and Procedures 3-01/040.85.

- d. *Discontinue the practice of opening a mere “inquiry” as a response to citizen complaints where a Captain determines whether to initiate a complaint investigation.*
- 2. INCREASE TRANSPARENCY OF DEPUTY DISCIPLINE AND USE OF FORCE INVESTIGATIONS.**
- a. *Require that the Department disclose the disposition of complaints directly to civilian complainants consistent with California law.*
 - b. *Mandate automatic, expedited publication of records designated as public records relating to personnel investigations, discipline, uses of force and Deputy misconduct. The County should adopt an ordinance or other policy mandating the publication of documents related to uses of force and deputy misconduct once they become public records in order to affirmatively comply with its obligations under the Public Records Act without the need for the public to file a PRA request.*
 - c. *Maintain body-worn camera or other video footage in the custody and control of the County and outside of LASD. Given the need for multiple agencies to be able to access body-worn camera footage—including the LADA, Office of the Public Defender, OIG, and COC—and the Department’s frequent recalcitrance at responding to inter-agency requests for information, hosting body-worn camera footage in a central repository that is accessible to all those with legal access would ensure that the Department does not impede timely access. Additionally, the County could impose its own policies limiting access to body-worn camera footage by deputies so that it is not inappropriately edited or reviewed to interfere with investigations into deputy conduct or criminal prosecutions.*
- 3. ENHANCE EXISTING INTERNAL ACCOUNTABILITY MECHANISMS.**
- a. *Discontinue the practice of delaying administrative investigations until the criminal investigation is concluded.*
 - b. *Prohibit Department-initiated withdrawal or discontinuation of a complaint investigation without the review and approval of the OIG or the COC.*
 - c. *Mandate that all complaints and related documents initiating a personnel investigation that allege conduct that could constitute a criminal offense of any type be investigated criminally and referred to the District Attorney’s office.*
- 4. STRENGTHEN THE CIVILIAN OVERSIGHT COMMISSION.**
- a. *Create a process to automatically agendaize issues on the Board of Supervisors agenda that arise out of the COC.*
 - b. *Require approval of significant policies and procedures—particularly those related to employee conduct, discipline, promotion, and hiring—by the COC.*
 - c. *Amend criteria for commissioners on the COC to permit and encourage the inclusion of system-impacted individuals.*
 - d. *Implement a community outreach program to ensure that community organizations are aware of upcoming openings on the COC and to recruit nominees from the community organizations that were central to the COC’s creation.*
 - e. *Fund and staff the COC commensurate with its expanded obligations.*

5. INCREASE THE ROLE OF THE OFFICE OF INSPECTOR GENERAL.

- a. *Incorporate OIG in the Internal Affairs investigation process to provide real-time monitoring of complaints by mandating that IAD investigators inform the OIG on the status of investigations and report on investigative steps that are being taken.*
- b. *Create mandatory review of the thoroughness of criminal investigations of uses of force and other misconduct especially where deputy gangs are involved. Any post-hoc review of internal administrative or criminal investigations conducted after the statute of limitations for imposing criminal or administrative penalties against the perpetrator should also mandate the imposition of penalties where the OIG review uncovers a failure to follow existing departmental rules in the investigatory or disciplinary process.*
- c. *Allow a representative of the Office of the Inspector General to attend and participate in any disciplinary panels, meetings, or case review boards.*
- d. *Require the OIG to produce a public report, on a quarterly basis, setting forth all new, pending, and concluded personnel investigations and identifying the facts and circumstances of each case as allowed by law, presence of any gang allegations, rank of the deputy involved, and discipline imposed.*
- e. *Require OIG to conduct regular audits to review the accuracy of internal stop and arrest data, and mandate that irregularities uncovered during such review result in the initiation of personnel investigations.*
- f. *Require the OIG to produce an annual report on the completion of internal affairs investigations that also identifies cases where the statute of limitations had lapsed, and disciplinary action was therefore prohibited.*
- g. *Fund and staff the OIG commensurate with its expanded obligations.*

6. SUPPORT THE OFFICE OF THE PUBLIC DEFENDER (“OPD”) AS AN EXTERNAL OVERSIGHT MECHANISM OVER THE SHERIFF’S DEPARTMENT.

- a. *Provide sufficient support to the OPD Law Enforcement Accountability Project (“LEAP”) to assist in monitoring potential misconduct, racist affiliations, or gang participation by deputies and ensuring that this information is timely provided in the context of ongoing criminal cases. The OPD is uniquely situated as the only County agency whose mission provides it with the incentive, if not the obligation, to ensure that evidence of deputy misconduct, bias, racism, violence, or dishonesty is uncovered. If the County wishes to prevent the harms—and civil liabilities—caused by further wrongful prosecutions and convictions, funding the OPD and LEAP is likely to both directly obstruct these harms and spur the LASD and LADA to take actions of its own to avoid the consequences of having questionable deputies or evidence brought to the court’s attention by a well-resourced OPD.*
- b. *Provide direct access to body-worn camera and other video evidence and provide sufficient resources for the OPD to access, review, and analyze video evidence in pending cases.*

- 7. ENLIST COUNTY COUNSEL TO AFFIRMATIVELY REPRESENT THE PUBLIC'S INTEREST AGAINST DEPUTY MISCONDUCT.**
- a. *Require County Counsel to track issues arising out of LASD-based litigation and provide quarterly reports to the Board of Supervisors and COC regarding identified issues and efforts to reduce the likelihood of deputy-related harm.*
 - b. *Strictly prohibit the use of explicit or implied non-disclosure agreements in settlement agreements with employee plaintiffs or suits filed by members of the public, especially in suits alleging deputy gang-related misconduct.*

While these recommendations represent a significant shift in the County's current approach to deputy misconduct and deputy gangs, they reflect the bare minimum reforms that must be taken if the County intends to effectively address the failure of its existing oversight mechanisms. Adopting these recommendations will create space to make further changes to the County's failing approach towards LASD transparency and accountability, and allow it to further true public safety goals.

Sincerely,

Melanie Ochoa
Senior Staff Attorney
mpochoa@aclusocal.org

Exhibit E

CHECK THE SHERIFF

May 17, 2021

Los Angeles County Board of Supervisors
Supervisor Hilda Solis
Supervisor Holly Mitchell
Supervisor Sheila Kuehl
Supervisor Janice Hahn
Supervisor Kathryn Barger
500 West Temple Street
Los Angeles, CA 90012

Via E-Mail

RE: Check the Sheriff Coalition Support for Motion for Increasing Transparency
Through Access to Peace Office Records

Honorable Members of the Board of Supervisors:

The Check the Sheriff Coalition—which includes the ACLU of Southern California (“ACLU SoCal”), Black Lives Matter – Los Angeles, Centro CSO, the National Lawyers Guild – Los Angeles, and other organizations and individuals directly impacted by sheriff’s deputy violence and misconduct—strongly supports the Motion on the Los Angeles County Board of Supervisors (“Board”) meeting agenda for Tuesday, May 18, 2021: *Increasing Transparency Through Access to Peace Office Records* (Supervisors Holly Mitchell and Hilda Solis). Not only does the policy of proactively publishing public records of deputy uses of force and misconduct further the law enforcement transparency and accountability goals repeatedly affirmed by this Board, but the movement of authority away from the Los Angeles County Sheriff’s Department (“LASD”) is a necessary step to ensure that this mandate is truly followed and is not merely another law to be ignored by LASD and the current sheriff.

LASD has a history of impeding transparency and shielding its deputies from accountability. Sheriff Alex Villanueva has continued and exacerbated this practice by actively undermining the mechanisms that have been put into place to address these long-term departmental failings, and has abused his power, to the detriment of the public in ways too numerous to account in this letter.¹ With respect to transparency, Villanueva and his spokespeople have made outrageous and demonstrably false claims. The truth is that Villanueva

¹ See, e.g., Letter from Max Huntsman, Inspector Gen., to L.A. Cnty. Civilian Oversight Comm’n re: Report Back on Unlawful Conduct of the Los Angeles County Sheriff’s Department, Dec. 14, 2020, https://oig.lacounty.gov/Portals/OIG/Reports/UnlawfulConductOfLASD.pdf?ver=m_s7zzvyXR6DSbMsR9AEw%3d%3d.

and his department have refused to comply with state law² and federal law,³ the County charter,⁴ local ordinances,⁵ and judicial orders⁶ that all compel them to disclose information about deputy misconduct and uses of force. Instead, Villanueva and LASD have withheld information that the public and oversight entities have a right to know, preventing any meaningful external check on the department.⁷

Importantly, Villanueva and LASD have systematically failed to produce records in response to California Public Record Act (“PRA”) requests seeking records related to serious uses of force and misconduct committed by sheriff’s deputies. Since January 1, 2019, Senate Bill 1421 (also known as “The Right to Know Act”) has mandated that law enforcement agencies produce records of serious use of force investigations and sustained incident of sexual abuse and official dishonesty. CAL. PEN. CODE § 832.7(b). In the face of the State’s move towards greater law enforcement transparency, LASD has been one of a few law enforcement agencies across the state to systematically violate SB 1421. For example, according to a November 2020 OIG report, as of January 2020, over 70 percent of the PRA requests pursuant to SB 1421 were still pending—the vast majority for over 180 days after they were received, in violation of the law.⁸ The report also documented that the agency was summarily denying valid PRA requests and refusing to take the steps mandated by state law to assist requestors in identifying responsive material in the LASD’s possession.⁹

² THE RIGHT TO KNOW ACT: LOS ANGELES COUNTY SHERIFF’S DEPARTMENT TO POLICE TRANSPARENCY REFORM, OFF. INSPECTOR GEN., CNTY. LOS ANGELES (Nov. 2020) (hereinafter “OIG Report”), https://oig.lacounty.gov/Portals/OIG/Reports/RighttoKnowActLASDCompliance.pdf?ver=U1_gk0xtYOOUII0KiSOgVA%3d%3d.

³ See Maura Dolan, *California Supreme Court backs greater access to police misconduct cases*, L.A. TIMES (Aug. 26, 2019 6:41 PM), available at <https://www.latimes.com/california/story/2019-08-26/brady-list-prosecutors-los-angeles-sheriff-california-supreme-court-police-misconduct>.

⁴ See, e.g., *Editorial: Effective sheriff oversight still a work in progress*, L.A. TIMES (June 29, 2020, 3:00 AM), available at <https://www.latimes.com/opinion/story/2020-06-29/villanueva-subpoena-tested-in-court> (discussing that a judge will decide whether to order Villanueva to abide by the Civilian Oversight Commission’s subpoena to appear before the commission to answer questions regarding LASD’s management of COVID-19 in the county jails); Cindy Chang, *As sheriff defies subpoena on jails, watchdog plans another for Kobe Bryant crash records*, L.A. TIMES (May 21, 2020 6:55 PM), available at <https://www.latimes.com/california/story/2020-05-21/sheriff-watchdog-panel-meets-on-jail-conditions-koby-bryant-photos-without-defiant-sheriff>; Alene Tchekmedyan, *On heels of Sheriff’s Department scandal, L.A. County voters overwhelmingly back stronger oversight*, L.A. TIMES (Mar. 5, 2020 5:00 AM), available at <https://www.latimes.com/california/story/2020-03-05/voters-support-measure-r-oversight-sheriffs-department>.

⁵ See, e.g., Alene Tchekmedyan, *Sheriff asks attorney general to monitor shooting while stonewalling inspector general*, L.A. TIMES (June 25, 2020 6:00 AM), available at <https://www.latimes.com/california/story/2020-06-25/sheriff-villanueva-attorney-general-shootings>; Maya Lau, *L.A. County sheriff’s top watchdog is under investigation — by the L.A. County sheriff*, L.A. TIMES (Aug. 14, 2019 12:34 PM), available at <https://www.latimes.com/california/story/2019-08-14/la-county-sheriffs-department-launches-investigation-against-its-chief-watchdog>.

⁶ See, e.g., Leila Miller, *Sheriff’s Department defied court orders to name deputies with histories of misconduct. It was a costly decision*, L.A. TIMES (Oct. 17, 2020 11:58 AM), available at <https://www.latimes.com/california/story/2020-10-17/court-orders-sheriff-refuses-to-name-deputies-misconduct>.

⁷ See, e.g., Alene Tchekmedyan, *L.A. sheriff touts reform despite a record of fighting transparency, civilian oversight*, L.A. TIMES (June 15, 2020, 2:48 PM), available at <https://www.latimes.com/california/story/2020-06-15/sheriff-villanueva-force-policies-transparency>.

⁸ OIG Report at 14, 16.

⁹ *Id.* at 8-9, 19.

In addition, Villanueva has continued LASD’s policy of refusing to name deputies who are involved in shootings, in defiance of a 2014 California Supreme Court ruling.¹⁰ LASD’s refusal to release these names is an outlier among law enforcement agencies across Southern California and the state.¹¹ For example, the Los Angeles Police Department released all the names of officers who opened fire between 2018-2020; LASD released none.¹² While LASD uniformly withholds this information, claiming general concerns regarding the safety of deputies if it were released, such generalized claims are insufficient under the law, and it strains credulity to think LASD deputies routinely receive credible threats when other major police agencies in the same Los Angeles and Southern California region have released the names of nearly every officer involved in a shooting since 2018 without incident. As a result of LASD’s failure to abide by the law, families of community members LASD has killed have been left grieving in the dark.

LASD’s utter failure to fulfill requests without basis and delayed responses not only impede the statewide goal of increased transparency around policing, but they also open the County up to increased liability, as requestors seek to enforce their statutory right to these records and recoup the mandatory attorneys’ fees guaranteed to prevailing parties. *See* CAL. GOV. CODE § 6259(d).¹³ Indeed, LASD is currently facing multiple lawsuits for failure to comply with the PRA, including a suit brought by ACLU SoCal and families who were denied records related to the killing of their loved ones that has been pending for nearly two years. The expense of these lawsuits—all of which will be borne by the County if the requestor prevails—is another unnecessary cost imposed on the people of Los Angeles County as a result of LASD’s failure to comply with basic laws. This liability is only likely to increase in the future, as the Legislature has been considering further changes to state transparency laws: the current draft of SB 16—as well as a similar bill introduced last year, SB 776 (Skinner 2020), which passed with significant support out of the Assembly but was not able to receive a Senate vote before the end of the session—imposes a civil fine of up to \$1,000 per day if records are not timely produced.

While Villanueva blames LASD’s noncompliance on its alleged lack of resources for PRA fulfillment, we understand that positions allocated to LASD for the PRA unit have gone unfulfilled.¹⁴ Moreover, no amount of County funding can address LASD’s affirmative stances on withholding documents that must be released, policies that are contrary to its obligations under the PRA, or its blatant hostility to state and local attempts to implement transparency around deputy misconduct. Indeed, this backdrop is ample proof that leaving transparency and compliance with SB 1421 at the discretion of the sheriff and LASD will only continue to enable violations of the law and the public trust, and continue to cost Angelenos both the information they are entitled to and valuable public funds that are sorely needed elsewhere.

We are grateful to Supervisors Holly Mitchell and Hilda Solis for introducing this motion as an important step toward ensuring transparency with respect to the conduct of LASD deputies,

¹⁰ Alene Tchekmedyan & James Queally, *L.A. County sheriff refuses to name deputies who open fire, defying state’s highest court*, L.A. TIMES (May 6, 2021 11:08 AM), available at <https://www.latimes.com/california/story/2021-05-06/sheriffs-deputies-shootings-names>.

¹¹ *See id.*

¹² *See id.*

¹³ Gov. Code Sec. 6259(d) (“The court *shall* award court costs and reasonable attorney’s fees to the requester should the requester prevail in litigation”) (emphasis added).

¹⁴ OIG Report at 10.

consistent with its duty to “supervise the official conduct of all county officers,” including the sheriff, and ensure that they “faithfully perform their duties.” CAL. GOV’T CODE § 25303. We urge the Board to unanimously pass this motion and, ultimately, an ordinance that: (a) requires County agencies employing peace officers—including LASD—comply with SB 1421 by disclosing publicly available records systematically, proactively, and immediately in an easily searchable format, once the records are disclosable; (b) ensures that the names of deputies involved in shootings are published within 48 hours; and (c) takes responsibility for publishing these records, as well as responding to PRA requests, away from LASD and provides it to an agency that can be better trusted to follow the law.

Sincerely,

Check the Sheriff Coalition

Check the Sheriff Coalition is a coalition consisting of: ACLU of Southern California; American Indian Movement – Southern California; Anti-Recidivism Coalition; Bend the Arc Jewish Action – Southern California; Black Alliance for Just Immigration; Black Jewish Justice Alliance; Black Lives Matter – Los Angeles; Brothers, Sons, Selves Coalition; California Immigrant Policy Center; Central American Resource Center – Los Angeles; Centro Community Service Organization; Clergy and Laity United for Economic Justice; Creating Justice – Los Angeles; Dignity & Power Now; Essie Justice Group; Immigrant Defenders Law Center; Inner City Struggle; Khmer Girls in Action; La Defensa; Me Too Survivors’ March International; National Immigration Law Center; National Lawyers Guild – Los Angeles; Occupy ICE – Los Angeles; People’s City Council; Reform L.A. Jails; The Row Church; TransLatin@ Coalition; White People 4 Black Lives; Youth Justice Coalition; YNOT Movement.¹⁵

Cc: Justice Deputies
Max Huntsman, Inspector General
Brian Williams, Executive Director, Sheriff’s Civilian Oversight Commission

¹⁵ CHECK THE SHERIFF, ABOUT, <https://www.checkthesheriff.com/about>.

Exhibit F

**CHECK THE
SHERIFF**



ACLU
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
Southern California

March 29, 2021

L.A. County Board of Supervisors Chair Hilda Solis
L.A. County Supervisor Holly Mitchell

Sent via email

Dear Supervisors,

Following our “Stop L.A. Sheriffs’ Attacks” family forum on Saturday, March 27, we write, first, to thank you for taking the time to participate and listen with dignity and respect to the families directly impacted by violence and harassment at the hands of the L.A. County Sheriff’s Department (LASD). We write also to share the priority needs and Board of Supervisors (Board) policies these families have expressed. On our end, we have been organizing, for example, rapid response teams to support the families when they are facing harassment. But we also urgently need the Board to support the families and do everything in your power to check the sheriff.

There are more structural issues and policy solutions that understandably will take longer to bring about—areas such as overhauling the LASD disciplinary system and strengthening the civilian and community oversight of LASD, by expanding the power of the COC over the LASD, including by amending the L.A. County charter to allow for the impeachment and removal of the sheriff. Enclosed is a letter our coalition member submitted to County Counsel in December 2020 regarding these more long-term policy recommendations.

Today, we focus on **three immediate areas for Board action: (1) Family Support; (2) Transparency; and (3) Accountability.**

- **Family Support.** The Board should create life-giving support and services to meet the families’ human needs, especially mental health resources, including by adequately funding community-based organizations that are already doing life-giving work. The Board should also push for the adoption of policies regarding family harassment, including deputies’ conduct as it pertains to families and at memorial or vigil sites, clearly banning any type of harassment or intimidation and requiring LASD leadership to proactively prevent such harassment.
- **Transparency.** The Board should require LASD to comply with state transparency laws, including by enacting a County ordinance requiring automatic, expedited publication of records designated as public and moving the responsibility for responding to California Public Records Act (CPRA) requests for records related to disclosable incidents and deputy misconduct outside of LASD. The Board should push for policies that ensure the

**CHECK THE
SHERIFF**



ACLU
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
Southern California

immediate and lawful release of names of deputies who shoot and kill community members as well as the autopsy reports to their families. In addition, the Board should expand access to civilian complaints by creating a repository of civilian complaints outside of LASD, so that they are not treated as personnel records and may be disclosed. Last but not least, the Board should prohibit protective orders and non-disclosure agreements in settlement agreements with employee plaintiffs or suits filed by members of the public regarding law enforcement misconduct.

- **Accountability.** We thank you for approving and funding the new special prosecutor position appointed by District Attorney (D.A.) George Gascón to investigate law enforcement use of force and criminal allegations. The Board should move the investigation of citizen complaints out of LASD, ensuring that complaints related to deputy misconduct that include criminal allegations are directly and immediately provided to the D.A.'s office. The Board should move to expand and strengthen the power of the COC to eventually include civilian/community control of the LASD. Regarding family harassment, the Board should recommend that the special prosecutor investigate incidents and patterns of harassment and prosecute when possible. Finally, as the Board moves to overhaul LASD's disciplinary system, at a minimum, we should do everything we can to ensure that deputies who engage in use of force or, worse, kill community members are transferred to another station.

Sincerely,

Paula Minor
Black Lives Matter – LA

Carlos Montes
Centro CSO

Melanie Ochoa
ACLU SoCal

Exhibit G



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Southern California

April 16, 2020

To: Los Angeles County Board of Supervisors
Hilda Solis, Los Angeles County Supervisor, District 1
Mark Ridley Thomas, Los Angeles County Supervisor, District 2
Sheila Kuehl, Los Angeles County Supervisor, District 3
Janice Hahn, Los Angeles County Supervisor, District 4
Katherine Barger, Los Angeles County Supervisor, District 5
Cc: Max Huntsman, Inspector General, Office of the Inspector General
Brian Williams, Executive Director, Sheriff's Civilian Oversight Commission
Patti Giggans, Chair, Sheriff's Civilian Oversight Commission

Re: Proposed Sheriff's Department Policy on Body-Worn Cameras

Dear Supervisors:

The ACLU of Southern California ("ACLU SoCal") is deeply troubled by the sheriff's proposed policy on Body-Worn Cameras ("BWCs") and does not believe that BWCs should be funded if operated under this policy. The Board of Supervisors has a statutory duty to determine how Los Angeles County funds are allocated,¹ and the statutory power controls how County property purchased with those funds are used.² The Board should not grant the Sheriff's Department millions of dollars in precious County funds for the purchase and ongoing operation of BWCs without ensuring, at a minimum, that BWCs are used in a manner that contributes to the public good.

The sheriff has touted BWCs as a way to improve transparency, accountability, and build trust between law enforcement and the public in moments of crisis. Yet, the proposed policy takes the multi-million dollar taxpayer investment in BWCs, which should theoretically provide greater transparency and accountability in a department that lacks both, and instead puts them to use in ways that will serve to impede fact-finding in deputy uses of force and other alleged misconduct, undercut accountability for deputies, and violate the public's privacy. Simply put,

¹ See *Cnty. of Butte v. Superior Court*, 176 Cal.App.3d 693, 700-01 (1985); Cal. Gov. Code §§ 29088, 25300, 25303.

² A county may adopt policies and procedures governing purchases of supplies and equipment. Cal. Gov. Code § 54202 ("Every local agency shall adopt policies and procedures, including bidding regulations, governing purchases of supplies and equipment by the local agency."). A county may also "manage . . . its property as the interests of its inhabitants require." Cal. Gov. Code § 23004(d). According to the California Supreme Court, the power to manage property necessarily includes the power to determine how it is used. *Great Western Shows, Inc. v. Cnty. of Los Angeles*, 44 P.3d 120, 130, 132 (Cal. 2002) (interpreting section 23004(d) and holding that an ordinance prohibiting the sale of firearms and ammunition on county property was a legitimate exercise of the county's power to make "management decisions about how its property would be used").

the sheriff's approach to BWCs threatens to do more harm than good—and at great cost to the County.

With an investment of this size, and an initiative of this importance, the Board should not simply rubber-stamp the sheriff's flawed approach. Rather, the Board should *require* the Department to use BWCs for its intended goals of greater transparency and accountability by authorizing funding for BWCs if, and only if, the Department revises its BWC policy to include critical safeguards to ensure that the Department uses BWCs for their proper purpose. The Board should adopt a policy regarding the use of BWCs, or condition the receipt of funds for the purchase and operation of BWCs on the Department's adoption of a policy, that does the following:

- Requires deputies to fully record every interaction with a member of the public
- Requires deputies who are being investigated for a shooting or other potential misconduct to give initial statements before permitting them to view footage of the incident at issue, consistent with prior Department policy on video evidence
- Audits BWC video to search for policy violations and imposes discipline when such violations are found
- Provides public access to BWC video while balancing privacy with the public's right to know
- Bars use of BWCs for surveillance

These are the minimum requirements that must be addressed in any effective BWC policy, and they echo the concerns the ACLU SoCal raised and detailed at length in the enclosed letter, dated August 1, 2017.

Require deputies to fully record every interaction with a member of the public

BWCs only work if they are turned on. Yet, the sheriff's proposed policy grants deputies the ability to decide not to record, or to stop a recording, anytime when in their judgement "a recording would interfere with their ability to conduct an investigation."³

What will prevent deputies from choosing against recording by simply claiming that it would *interfere* with their ability to investigate? This broad, subjective standard would make it nearly impossible to hold deputies accountable for not recording or prematurely ending a recording of an incident. As a result, deputies could effectively "edit on the fly" by simply turning off the camera when they do not want to be recorded, undermining BWCs' core purpose of deterring and documenting misconduct and undercutting the public trust in BWCs as an effective tool for accountability. There will be an implicit assumption that a deputy who did not record an incident was trying to hide something—an assumption that would be harmful if allegations of misconduct arise. In this context, clear rules about when to turn on the cameras will actually help deputies.

³ L.A. Cnty. Sheriff's Dept. Proposed Manual Revision, 4 (Jan. 16, 2020), <http://file.lacounty.gov/SDSInter/bos/supdocs/LASDBodyWornCameraPolicy20191219.pdf> (hereinafter "LASD BWC Proposed Policy").

The Department must clearly require deputies to fully record every interaction with a member of the public, including all enforcement-related contacts and consensual encounters initiated by officers for investigatory purposes. Because seemingly ordinary encounters can evolve quickly, deputies should be required to activate BWCs at the earliest stage of each interaction, before leaving a vehicle or making contact with an individual. The buffering period for BWCs should also be at minimum 20 to 30 minutes, or to the maximum permitted by the equipment purchased, to ensure that crucial moments are not lost, even if the deputies initially fail to activate their BWCs.

The Department must also mandate continued recording of statements by witnesses, suspects, or victims—although exceptions can be made as appropriate to shield the privacy of individuals in sensitive situations, such as minor victims of sexual assault. In addition, as recognized by the letter submitted by the Office of the Los Angeles Public Defender, privileged attorney-client communications should also be considered sensitive and such interactions should not be recorded. To the extent the policy permits any deactivation of BWCs during the course of an investigation, it must occur, at a minimum, with the informed consent of the subject of the recording, with the reasons stated on the record prior to deactivation.

In addition, the Department must be proactive in monitoring compliance and discipline those who fail to record when they should. The Department should conduct audits of compliance with its recording policies. Deputies who repeatedly fail to record incidents should be identified and corrected—or fired—long before they are involved in a serious incident. When an incident under investigation should have been recorded, failure to record should result in a rebuttable inference against the deputies who failed to record.

Meaningful policy requires meaningful enforcement, and for BWCs to provide transparency and accountability, deputies' compliance with Department policies requiring recording cannot be voluntary.

Require deputies who are being investigated for a shooting or other potential misconduct to give initial statements before permitting them to view footage of the incident at issue, consistent with prior Department policy on video evidence

Allowing deputies to view the BWC video before providing their statements is poor investigative practice and would not even be contemplated in the context of any other fact-finding process. Under the sheriff's proposed policy, however, deputies involved in use of force incidents have the right to review their BWC recordings *prior* to being interviewed.⁴

The best research concludes that the proposed policy undermines the search for truth: viewing a video of an event may override an individual's own independent recollection. Indeed, a wealth of studies show that presenting an individual with information that is new or different from their own percipient memory will actually alter their recollection.⁵ Therefore, exposure to

⁴ LASD BWC Proposed Policy, *supra* note 3, at 9.

⁵ See generally C.A. Morgan III et al., *Misinformation can influence memory for recently experienced, highly stressful events*, *International Journal of Law and Psychiatry* 36 (2013) 11–17, available at https://webfiles.uci.edu/eloftus/Morgan_Misinfo_IJLP2013.pdf?uniq=-5q3yfp; Jeffrey L. Foster et al., *Repetition*,

information that is not captured in the original memory does not supplement that memory; rather, the entire memory is effectively lost.⁶ Allowing a deputy to review their BWC video of an incident cannot help but change that deputy's account, even for those who may be trying to provide an honest account of their memory. This recognition led the Police Executive Research Forum ("PERF") to conclude that the best practice for law enforcement agencies is to prohibit officers from viewing video in advance of providing a statement.⁷ For example, the Oakland Police Department, which was one of the first police agencies to adopt BWCs in 2010, has a policy prohibiting officers from reviewing video prior to making a statement in an investigation arising out of a Level 1 use of force (the most serious, including shootings, and equivalent to the Department's Category 3 use of force).⁸

The Department's prior policy on BWCs was consistent with this research, as the use of force policy in place in jails operated by the Department prohibited custody assistants from viewing the video before being interviewed.⁹ When reviewing the use of cameras in the county jails, the Los Angeles County Office of Independent Review "found ample evidence that seeing additional information than what was experienced (such as seeing the action from a different angle) can alter the memory of an event," and endorsed a policy that prohibited reviewing the video prior to making a statement.¹⁰ The proposed policy thus represents a 180-degree shift from the Department's prior policy, and serves no purpose but to undermine investigations into deputy misconduct.

Seeing video before making statements would allow deputies who are inclined to lie to tailor their story to the evidence. It would enable them to lie more effectively, and in ways the video evidence will not contradict. Video evidence can be enormously helpful, but it does not capture everything from every angle. If deputies are not sure what was captured by the camera, they will feel pressure to be more candid when describing an incident to avoid being caught by a

not number of sources, increases both susceptibility to misinformation and confidence in the accuracy of eyewitnesses, *Acta Psychologica* 139 (2012) 320–26 (repeated viewing increases the chances that officers will remember video as their own perception), available at https://webfiles.uci.edu/eloftus/Foster_Repetition_ActaPsych2012.pdf?uniq=7a5h8l; Elizabeth F. Loftus, *Planting misinformation in the human mind: A 30-year investigation of the malleability of memory*, *Learning Memory* 2005 12: 361-366, available at <http://learnmem.cshlp.org/content/12/4/361.full>; M. S. Zaragoza et al., *Misinformation effects and the suggestibility of eyewitness memory*, *DO JUSTICE AND LET THE SKY FALL: ELIZABETH F. LOFTUS AND HER CONTRIBUTIONS TO SCIENCE, LAW, AND ACADEMIC FREEDOM* 35–63 (M. Garry and H. Hayne eds., 2007), available at <http://www.personal.kent.edu/~mzaragoz/publications/Zaragoza%20chapter%204%20Garry%20Hayne.pdf>. See also Kathy Pezdek, *Should Cops Get to Review the Video Before They Report?* THE MARSHALL PROJECT (Aug. 13, 2015), available at <https://www.themarshallproject.org/2015/08/13/should-cops-get-to-review-the-video-before-they-report>; Lara Boyle, *Malleable Memories: How Misinformation Alters Our Perception of the Past*, *YALE SCIENTIFIC* (April 1, 2013), available at <http://www.yalescientific.org/2013/04/5227/>.

⁶ See Loftus, *supra* note 5, at 363; Foster et al, *supra* note 5.

⁷ See Kimberly Kindy & Julie Tate, *Police withhold videos despite vows of transparency*, THE WASHINGTON POST (Oct. 8, 2015), available at <https://www.washingtonpost.com/sf/national/2015/10/08/police-withhold-videos-despite-vows-of-transparency/>.

⁸ Departmental General Order I-15.1, "Portable Video Management System," Oakland Police Department, 4 (effective July 16, 2015), available at

<http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak054254.pdf>.

⁹ Los Angeles County of Independent Review, Eleventh Annual Report, 35 (Dec. 2013).

¹⁰ *Id.* at 36.

discrepancy with the video. But if they know what was captured and what was not, they can feel at liberty to color their account, if not outright lie. Even those who try to tell the truth will base their statements on the video; they will come up with alternative, distorted, justifications after the fact, and will often come to believe this alternative reality is what actually happened. Regardless of whether a deputy intentionally alters their statement, such a policy will undoubtedly create an appearance of bias and thus taint the integrity of investigations—a secondary impact that also motivated PERF to adopt a policy against officer review.¹¹

Therefore, when there is a shooting or other investigation, deputies must be required to give initial accounts of what happened and why they acted as they did before viewing BWC video. Such a policy would ensure that deputies' statements reflect what they actually experienced and what they truly remember, not just what they saw on the video—and would avoid giving them the opportunity to tailor their stories to fit the video evidence. Deputies should then be allowed to view the video after making a statement and could explain any omissions or inconsistencies. The initial statement would preserve an important account of what they believed they observed at the time of the shooting.

The ACLU SoCal disagrees with the assertion by the Sheriff's Civilian Oversight Commission ("COC") that there are any circumstances under which deputies should be permitted to review BWC videos before making statements—even if the Department adopted "more defined criteria" for when this may occur.¹² As stated above, this proposed policy does not aid the fact-finding process in any way and only undermines the legitimacy—if not also the accuracy—of the Department's investigations. Moreover, as the practices of the current sheriff administration around the investigation and discipline of deputy misconduct have made clear, the fewer discretionary opportunities to undermine the disciplinary process, the better.

The Department does not let other witnesses watch video of a shooting before providing a statement, or show individuals the evidence in a case before interviewing them. Just as it understands that this would destroy memories and allow an investigative subject to fabricate a story to match the video record, it should hold their own deputies—officers entrusted with the public's trust and the ability to use deadly force—to at least the same standard.

Audit BWC video to search for policy violations and discipline when such violations are found

The sheriff's proposed policy seeks to prohibit the audit and viewing of recordings to search for policy violations. If an audit or review does happen, the policy would prevent discipline for "plain view" misconduct unless it would result in "suspension or termination."¹³ Yet, common sense dictates against this misguided policy. For example, not allowing audits for purposes of searching for policy violations would prevent the ability to conduct an audit on racial profiling, or ensure deputies are not falsifying field interview cards.

¹¹ Kindy & Tate, *supra* note 6.

¹² Sheriff's Civilian Oversight Commission, Evaluation of LASD's Proposed Body Worn Camera Policy, 2 (Apr. 16, 2020), http://file.lacounty.gov/SDSInter/bos/supdocs/BWCpolicy_COCfeedback_FINAL.pdf (hereinafter "COC Evaluation").

¹³ LASD BWC Proposed Policy, *supra* note 3, at 10.

Importantly, the proposed policy does not provide any guidance to supervisors on how to determine if the misconduct viewed on BWC footage “would likely result in suspension or termination.”

The ACLU SoCal agrees with the COC’s recommendation that the Department should audit compliance and punish policy violations; even low-level misconduct will undoubtedly grow if left unchecked.¹⁴ BWC video should be used to identify problems with training or behavior before those problems result in complaints or incidents. Regular review of video will allow the Department to also identify problems that might not be captured in a complaint or other mandatory investigation. Such a review should either be based on specified prior conduct where there is reason to believe misconduct has occurred, or be randomized and conducted according to auditing principles, in order to avoid and risk that some deputies are unfairly targeted by supervisors for unwarranted scrutiny.

Provide access to BWC video while balancing privacy with the public’s right to know

When it comes to the public release of critical incidents, the sheriff essentially wants to be able to release videos when they exonerate deputies but hold on to them when they do not. Instead, video of shootings and other potential misconduct must be released, pursuant to policies that ensure they do not just get out when it helps deputies. Transparency allows the public to judge for themselves whether law enforcement officers are acting in keeping with the community’s values, and whether the institutions charged with holding officers accountable are working.

Legal precedent makes clear that BWC footage is public record generally subject to disclosure under the California Public Records Act (“CPRA”).¹⁵ State law also presumptively requires the release of video from incidents involving deadly force after 45 days, unless doing so would substantially interfere with an ongoing investigation.¹⁶ The Department must follow this law.

The Department must have clear rules for when to release video to balance transparency and accountability with privacy, where there are no uses of force or allegations of deputy wrongdoing. For example, the Department could release all videos, subject to prior review to determine whether particular privacy concerns arise and justify redacting or withholding part or all of the video. In addition, civilians recorded by BWC must unquestionably have access to, and the right to make copies, of those recordings, for however long the Department maintains them. That should also apply to disclosure to a third party if the subject consents, or to criminal defense lawyers seeking relevant evidence. In this context, as the letter by the Office of the Public Defender noted, it is crucial that the office, as another County agency, has unimpeded access to video of incidents involving their clients. Release to the involved party is consistent

¹⁴ COC Evaluation, *supra* note 11, at 2-3.

¹⁵ Cal. Gov. Code §§ 6252(e), (g). In addition, the exception for certain law enforcement records in Cal. Gov. Code section 6254(f) does not provide a categorical exemption for all videos of law enforcement interactions with civilians. *See ACLU Foundation v. Deukmejian*, 32 Cal.3d 440, 449 (1982); *Haynie v. Superior Court*, 26 Cal.4th 1061, 1071 (2001).

¹⁶ Cal. Gov. Code § 6254.

with the CPRA’s requirement that law enforcement disclose certain records of incidents to “victims,” and with the California Information Practices Act (“CIPA”), which recognizes individuals’ right to access records on themselves held by state agencies.¹⁷ Under this approach, because individuals would have control over whether to make the video public, most privacy concerns would be eliminated.¹⁸

The ACLU SoCal agrees with the COC’s recommendation that the benefits of a BWC program will only be realized if the public has access to the video records and that any release policy must also conform with state law, including AB 748. We believe, however, that the access to these records must go beyond the limited disclosure it proposed and should be consistent with the principles articulated above.

Bar use of BWCs for surveillance

BWCs are a surveillance technology, and there are very real concerns that they could be used as a backdoor for surveillance or tracking of the public. The proposed policy, however, has no safeguards against BWCs being used as surveillance tools to collect and keep information, or against using BWCs to document and track activity protected by the First Amendment. Under these terms, BWCs cannot hope to improve transparency and accountability, and they will be a big backwards step for public trust in law enforcement.

The Department must include policies to bar the surreptitious gathering of information based on constitutionally protected speech, association, or religion. Such policies must also prohibit the use of facial recognition technology or other analytic tools that could transform BWCs from tools for law enforcement accountability to invasive surveillance of the public. The Department should also be prohibited from accessing videos unless there is reason to think it contains evidence of crime or misconduct and strict limits should be placed on how long footage is retained.

BWCs will never be a panacea for misconduct or for the crisis of confidence in the Department. But if they are to be any help at all—and they could be—they must be done right. In particular, the final policy should be approved only after a community process both informs and includes the public on how BWCs could be used to promote accountability and how we would limit potential negative impacts on civil rights and civil liberties.

Sincerely,



Andrés Dae Keun Kwon
ACLU of Southern California

¹⁷ Cal. Gov. Code §§ 1798 *et seq.*

¹⁸ Because the CPRA makes clear that disclosures required by law do not waive the agency’s right to assert exemptions to future disclosure, Cal. Gov. Code § 6252(b), disclosure to the video’s subjects need not necessarily constitute waiver. Cal. Gov. Code section 6254(f) itself contains language requiring local agencies to disclose records of incidents to “victims” which would seem to encompass at least those individuals complaining of misconduct or subjected to uses of force.

Exhibit H

June 17, 2021

Los Angeles County Board of Supervisors
Supervisor Hilda Solis
Supervisor Holly Mitchell
Supervisor Sheila Kuehl
Supervisor Janice Hahn
Supervisor Kathryn Barger

Via E-Mail

Re: Villanueva Out Of Venice and the County's Responsibility To Hold Him Accountable

To the Los Angeles County Board of Supervisors

This Countywide coalition, composed of over 100 organizations and leaders in housing justice, criminal justice advocacy, decriminalization of poverty, and civil liberties, is adamantly opposed to the presence of Sheriff Alex Villanueva and his department on the Venice Boardwalk. The Sheriff's department is overstepping the County's jurisdiction and causing imminent harm to the most vulnerable residents of the City of Los Angeles. This is an extraordinary misuse of County resources and is directly contrary to the County's Decriminalization Policy, which mandates the decriminalization of homelessness.¹ We urge the Los Angeles County Board of Supervisors (Board) to fully exercise its budgetary authority by removing funding from the Los Angeles County Sheriff's Department's (LASD) Homeless Outreach Services Team (HOST) program and to do all in its power to stop the Sheriff's plans for mass forced displacement and criminalization of Venice Boardwalk residents.

Villanueva has unilaterally involved the County of Los Angeles in the criminalization of homelessness within the City of Los Angeles and made the Venice Boardwalk his target. He has done so without coordination or approval from other leaders, including City elected officials, the Board, homeless service organizations, and community-based service providers. The sheriff has no experience in addressing homelessness or connection to the systems that are in place to support people in exiting homelessness. Not only does Villanueva lack the necessary expertise, he continuously promotes stereotypes, myths, and misinformation, such as recklessly attributing the homicide rate to the presence of homeless encampments and villainizing the unhoused community for "destroying our economy and way of life."² Villanueva's presence and approach to the homelessness crisis is not about addressing root causes; rather, it is about upholding the continued effort to criminalize poverty in Los Angeles. This is confirmed by the revelation that the Sheriff coordinated with the Los Angeles Police Department to set aside 2,000 custody beds that can be used as a 48-hour hold for when unhoused residents are deemed "non-compliant."³ It can be assumed that given the scarcity of housing resources, especially in permanent housing, and the fact that the Sheriff has no ongoing connection with the County's housing system, that over 200 residents could be incarcerated. Criminalization and forced displacement have been proven to be failed policies that perpetuate and reinforce inequities across our communities. Pete White, executive director of LACAN, states:

"Sheriff Villanueva's incursion into the housing crisis should not be a shock nor a surprise. However, his political stunt will have a lasting effect on those looking for a reason to banish poor and homeless people from communities they call home. The sheriff's actions makes

¹ Los Angeles County Homeless Initiative, "Approved Strategies to Combat Homelessness," Strategy E5, Decriminalization Policy, at p. 76. <https://homeless.lacounty.gov/wp-content/uploads/2017/01/HI-Report-Approved2.pdf>

² Bruce Buffer It's Time! Podcast with LA County Sheriff Alex Villanueva <https://www.youtube.com/watch?v=l7hxKWxc9Bc>

³ Knock LA <https://twitter.com/cerisecastle/status/1404661017288658949>

criminals out of those simply too poor to afford housing or that have been systemically locked out of opportunities. He assists in building a narrative that favors expensive carceral shelters over permanent housing, leaving those currently without housing little hope in securing a place to call their own.”

For decades, LASD has been rife with corruption, abuse of power, and impunity. LASD shootings and killings increased under Sheriff Villanueva, including a 45 percent increase in shootings in 2020 compared to 2018.⁴ According to a recent Loyola Law School report, these increased shootings and killings have a strong connection with the crisis of deputy gangs--which Villanueva has actively enabled and exacerbated.⁵ For example, analyzing LASD shootings in the five years between November 2015 and November 2020, the report found a strong correlation between the number of shootings committed by deputies of a station and the existence of deputy gangs at that station, “buttress[ing] the conclusion that deputy gangs escalate uses of force.”⁶ Since the murder of George Floyd, LASD has killed at least 18 community members, all but two individuals Black and Latinx folks in South L.A., East L.A., and the Antelope Valley--areas with LASD stations that are riddled with deputy gangs.

We must address the Sheriff’s presence in Venice seriously and urgently. Villanueva has consistently resisted and obstructed the systems of checks and balances designed to provide oversight and supervision of LASD. It is clear that the sheriff’s focus on targeting unhoused people in Venice is in great part an effort to distract from ongoing scandals including deputy gangs, his abuse of power and violations of the law, LASD’s harassment of families of community members deputies have killed, and LASD’s coverup of the murder of Andres Guardado.⁷ Ivette Ale, Senior Policy Lead with Dignity and Power Now states:

“Despite the Sheriff’s murder of Black and Brown people, his corruption, misogynist attacks on our only Latina Board member, slandering of the county’s Chief Executive Officer, doxing and violent attacks on protestors and the media, and escalating displacement of our most vulnerable residents in Venice, his budget remains untouched. The Sheriff’s Department’s budget is over \$3 billion -- billions that should be used to house and care for our residents. This budget does not reflect our values, does not reflect the Board’s care first vision, and enables a rogue Sheriff and a historically murderous department. The Board of Supervisors has the power to hold Sheriff Villanueva and his department accountable through the budget. The community has stood behind the Board’s efforts for accountability and will continue to stand behind them if and when they take action to disarm Villanueva through the budget.”

We are calling on the Board to take action by removing funding from LASD’s HOST program. The Board has the ability to hold Sheriff Villanueva accountable and to ensure he does not overstep the County’s jurisdiction through the control of the Sheriff’s budget. LASD has never been nor will they ever be

⁴ See Office of Inspector Gen., Cnty. Los Angeles, Reform and Oversight Efforts: Los Angeles County Sheriff’s Department: October to December 2020, 14, <http://file.lacounty.gov/SDSInter/bos/supdocs/154454.pdf>.

⁵ Center for Juvenile Law and Policy, LMU Loyola Law School, 50 Years of Deputy Gangs in the Los Angeles County Sheriff’s Department (Jan. 2021).

⁶ *Id.* at 33.

⁷ See, e.g., Letter from Max Huntsman, Inspector Gen., to L.A. Cnty. Civilian Oversight Comm’n re: Report Back on Unlawful Conduct of the Los Angeles County Sheriff’s Department, Dec. 14, 2020, https://oig.lacounty.gov/Portals/OIG/Reports/UnlawfulConductOfLASD.pdf?ver=m_s7zzvyXR6DSbMsR9AEw%3d%3d; Nat’l Lawyers Guild & ACLU, No Justice, No Peace: The Los Angeles County Sheriff’s Department’s Targeted Harassment of Grieving Families (May 2020), <https://www.checkthesherrif.com/reports>; Motion by Supervisors Holly J. Mitchell and Hilda L. Solis, Increasing Transparency Through Access to Peace Officer Records (May 18, 2020), <http://file.lacounty.gov/SDSInter/bos/supdocs/158358.pdf>; Aida Chavez, *After Killing 18-year-old Andres Guardado LA Protesters Struggle Against the Limits of Police Reform*, The Intercept (June 25, 2020), <https://theintercept.com/2020/06/25/andres-guardado-los-angeles-police/>.

equipped or have the responsibility to deliver services ensuring the health and welfare of LA's unhoused community. And they have absolutely no role in doing so within the borders of the City of Los Angeles. Continuing to fund programs like HOST, which the Sheriff is using to justify the targeting of the City's most vulnerable residents, only serves to empower a failed department while depleting precious resources that should be reinvested in funding community-based services, which are the real experts and are more cost-effective. Instead, it is critical that Los Angeles County provides relief to the 50,000⁸ unsheltered Angelenos.

**CHECK THE
SHERIFF**

JUSTICE LA

**SERVICES
NOT SWEEPS**

[CheckTheSheriff.com](https://www.checkthesheriff.com)

[JusticeLANow.org](https://www.justicelanow.org)

[ServicesNotSweeps.com](https://www.servicesnotsweeps.com)

⁸ LAHSA 2021 Homeless Count

<https://www.lahsa.org/documents?id=4692-2020-greater-los-angeles-homeless-count-total-point-in-time-homeless-population-by-geographic-areas>

Exhibit I

Dear Commissioners,

The recent shooting at Harbor UCLA Hospital by a Sheriff deputy has again sparked pain and outrage amongst community members and health workers. We cannot accept a Los Angeles where law enforcement can interfere with lives and care of patients. This outcry has sparked immediate action by the Board of Supervisors in the form of a motion, authored by Supervisor Ridley-Thomas and co-authored by Supervisor Janice Hahn, which calls into question the presence of Sheriff's in our care facilities and explores how to best achieve community safety.

As Commissioners appointed by the Board and entrusted by the community, you have a critical role in pursuing transparency and accountability by the Sheriffs Department. We are grateful for the rigor and diligence with which you pursue those objectives, including the subpoena you initiated earlier this year and the bold but appropriate statement you are making on the failures of the Sheriff himself. We also understand that it is within your authority to assess and make recommendations on the broader systemic functions of the Sheriff, including their budget and how their operations impact other vital services such as healthcare.

We are urging you to support the demands that have emerged in the wake of the recent shooting at Harbor UCLA Hospital; calling for a **1) removal of Sheriff personnel in care settings, 2) reallocation of the funding designated for Sheriff substations at County hospitals, as well as 3) policy changes that restrict any power, authority, and ability they are granted to interrupt treatment in our most sacred places of care.** The Board of Supervisors has received over 100 personal letters from clinicians who work at Harbor UCLA, medical staff from other county hospitals, and medical students who are eager to serve our communities. All have endorsed the demands to remove the Sheriff's from our hospitals and care facilities while reallocating those vital resources into the very *life saving interventions that have been working*. These community and hospital based interventions have saved countless lives, and had it not been for the Sheriff's presence last week, they would have prevented the need for lethal force.

Below is a bulleted list of demands that community members and health workers are calling for as well as short excerpts from letters sent to the Board of Supervisors. Thank you again for your leadership and commitment to our community.

Sincerely,



Mark-Anthony Clayton-Johnson
Founder
Frontline Wellness Network

Frontline Wellness Network Demands:

- **The Board of Supervisors should expand its current efforts to implement the "Care First" roadmap by removing Sheriffs, and other law enforcement entities from hospitals and places of care.** The recent shooting of a patient at Harbor UCLA- Hospital has been devastating to the local community and the staff who diligently provide care for their patients. The incident reconfirms that Sheriffs cannot be trusted to respond to crisis and that their actions continue to undermine those most qualified to provide safety and care for patients. The Board of Supervisors should reallocate resources currently designated for Sheriff substations at the three LA county hospitals, including Harbor-UCLA, and reinvesting those funds into efforts to expand community and hospital based non-law enforcement crisis response and intervention. As the county works to ensure parks remain places of health and recreation for our communities, the communities should be able to trust that facilities meant for care remain sanctuaries from law enforcement violence abuse.
- **The County should immediately end all policies and practices that criminalize patients and replace them with public health approaches that protect those seeking care from law enforcement intervention.** The shooting at Harbor UCLA is one example of a much bigger problem. The County must not only remove Sheriff's and law enforcement from hospital settings but restrict any avenues they have to criminalize patients and undermine medical care including but limited to: overriding 5150 holds to take someone into custody, intimidating health professionals to acquire patient information, requiring health workers to turn over substances and property along with patient identifying information that will result arrest or charges being brought against the patient. Health workers are best positioned to meet their patients' health and safety needs and have developed practices and protocols to meet those needs without encroachment by law enforcement. These strategies should be invested in and scaled up as part across facilities designed for care.
- **The County should take immediate action to ensure the OIG can effectively monitor the Sheriff's investigation and initiate an independent investigation of the shooting at Harbor UCLA to ensure full transparency.**

Letter Excerpts

Tessa, Surgery Resident at Harbor UCLA:

Our hospital staff has been trained in de-escalation techniques and we deal with combative, agitated patients on an hourly basis. **This was by no means an isolated event of a patient acting out, the difference was the presence of an armed officer. It is the opinion of myself and the many of the staff at our hospital that if the Sheriff had not been there we would have been able to adequately control the situation using our resources and this patient would be receiving the psychiatric and medical care that he came to the hospital for – not fighting for his life in our intensive care unit.** I had the privilege of taking care of this patient in our ICU the night after they were shot and I speak for myself and many of my colleagues when I say that the continued presence of ARMED officers in our ICU watching us try to save this patient's life is nothing short of intimidation and at times borders on hindering the heroic efforts of the nursing and medical staff tending to our patients. These officers **MUST** be removed from our hospital NOW in order to insure the safety of our staff and patients.

Saba, 3rd Year Resident at Harbor UCLA:

In the Emergency Room, we often have patients who suffer from mental health diseases, and in the DHS hospitals specifically, we often see that burden falling heavier on patients of color and from lower socioeconomic backgrounds. We work so hard to open our doors to everybody, but how can I say that in good conscience when I know that the threat of violence from sheriffs still exists within our walls? How can I take care of somebody in the biggest moment of crisis in their life, when they're not sure whether they can trust me not to call somebody with a gun? I have seen so many agitated patients be talked down by teams of nurses, mental health workers, and other staff who have gone through extensive training about responsible response to crisis in the hospital; I know from these experiences that this is possible with thorough and sensitive training. **Unfortunately, though, I've also watched the same type of patients be yelled at and threatened by sheriffs who simply do not receive the same training, thus escalating the situation and making it more tense for everybody involved. They cannot and should not be a part of any medical care team. They are not medical personnel.** They do not need to be involved with patient care.

Jobert 4th-year psychiatry resident at UCLA:

In the short time I have been working as a psychiatrist in our community, I have already come across numerous examples of individuals with serious mental illness not getting the health care they need and deserve, and instead becoming entangled instead in the criminal justice system. Too many of my patients suffering symptoms of an acute mental illness have been taken to jail instead of the hospital. And I have heard multiple examples of individuals being charged and convicted of crimes due to actions they took in the midst of an acute episode of a mental illness (when they might have been acutely manic or

psychotic and not in their right mind). **The tragedy is that my colleagues and I know how to deal with these types of acute episodes. We have strategies for de-escalating individuals, safely managing agitated and disorganized behavior, and providing treatments that can stabilize individuals in crisis (and usually in a much shorter time frame compared to the weeks and months they may spend in jail if they were arrested and charged with a crime).**

Neil, ICU Nurse at UCLA:

I have cared for many patients who are overseen by law enforcement during their hospital stay. The first time a member of law enforcement stepped in to “help”, unasked, I was taken aback. I was cleaning a wound on a prisoner, who wanted to sit up. It would be impossible for me to finish my task of cleaning the wound with the patient sitting up. The member of law enforcement came over and pushed the patient back from a sitting position to a laying position and sternly told him to stay put until I was done. It was clear to me that the member of law enforcement was attempting to help me finish my task. I did need to clean the wound, I needed the patient to lay down for me to do so, and the patient was wanting to sit up at that time. However, the part that took me aback was the quick escalation to force, pushing the patient back down. **There are many non-compliant patients in the hospital, 99.9% of whom are not supervised by law enforcement, and 100% of whom do not need intervention by law enforcement for me to complete my nursing tasks. If law enforcement was not there, and I was working with a non-compliant patient, I would have talked with the patient. I would have found out why they needed to sit up, maybe they were having trouble breathing, maybe they wanted a drink of water, maybe the wound care was painful, maybe they simply wanted to sit up; and I would have taken this opportunity to provide care to the patient.** Seeing them as a fellow human who has needs and is allowed to feel emotions. I have always been able to accomplish my tasks as a nurse, the more difficult job is to help patients feel cared for. I have found that caring for patients, hearing and responding to their needs and emotions, also tends to be the most efficient way to accomplish my nursing tasks.

Jennifer, Third year Psychiatric Resident, Harbor UCLA:

The recent shooting of a community member at Harbor-UCLA Medical Center hits very close to home. As a trainee, I have worked at Harbor-UCLA in the psychiatric emergency room and have witnessed law enforcement’s interactions with patients. **In one instance, I witnessed a patient brought in by law enforcement, who was tased by an officer in the entryway to our emergency room. It was especially distressing knowing that this man in need of emergent psychiatric therapeutic intervention, which we as psychiatrists in the appropriate facility were ready and able to deliver, was instead harmed in front of our eyes.** This should never happen in a medical facility.

David, 4th year medical student who trained at Harbor UCLA:

As a trainee, I have witnessed police officer involvement in patient care - particularly in the care of patients in the midst of mental health crises. **There is no reason police should be primary responders to patients in such crises. Trained healthcare professionals know how to support patients through such crises, without risking the patients lives. Police officers use the tools of violence available to them, inevitably violating the**

patient's safety and impeding their ability to heal. Critically, this issue disproportionately affects people of color and the houseless members of our community. The only solution is to remove all forms of law enforcement from hospitals - they do not create safety, they violate it. As a future healthcare professional, I cannot truly answer my vocation of healing if systems of violence and oppression continually undermine my ability to care for patients.

Ippolytos, MD, PhD, at UCLA:

This issue is important to me because of the things I have witnessed as a psychiatrist on the front line. Patients are not uncommonly brought to the ER in handcuffs and receive treatment with law enforcement standing over them. I have supervised many physician-trainees at UCLA who describe instances when police have intimidated them to discontinue involuntary psychiatric holds (5150s) so that the police can more expediently take them to jail. I have treated many patients who avoid hospitals because of the perception that it is another carceral space. This is due to the presence of police and guns in hospitals. Hospitals should be places where patients can receive care in safety and free from guns, police, and police influence. Medical treatment, including psychiatric, should be overseen by medical professionals and not by law enforcement.

And police shooting should not be the only way we measure and conceptualize the adverse impact of law enforcement in our care settings: I remember numerous moments in the emergency department, where I would attempt to collect a medical history from a patient brought in by law enforcement - their presence, standing over both me and my patient, created a coercive environment that dispelled trust and impeded care. Even now, when I hear from friends who are rotating at Harbor today in the wake of the shooting last week, they speak of how they are having trouble performing their duties with the even more sustained presence by law enforcement looming over them, intimidating them and patients. This shooting is not an isolated event - there is a larger epidemic of police aggression targeting communities of color and the marginalized. We as physicians see the impact of this violence on our patients in both glaring and subtle ways. This incident requires not only individual accountability, but accountability from the systems that allow this violence to continue.

Exhibit J



November 17, 2020

To: County of Los Angeles Sheriff Civilian Oversight Commission
Lael Rubin, Chair
Hernán Vera, Vice-Chair
Robert C. Bonner
Patti Giggans
James P. Harris
Sean Kennedy
Priscilla Ocen
Xavier Thompson
Casimiro U. Tolentino

Cc: Max Huntsman, Inspector General, Office of the Inspector General
Brian Williams, Executive Director, Sheriff's Civilian Oversight Commission
Justice Deputies of Supervisors Hilda Solis, Sheila Kuehl, Ridley-Thomas, Janice Hahn,
and Kathryn Barger

Sent via email

Re: Sheriff's Department's role in County hospitals and traffic enforcement as part of the Sheriff Civilian Oversight Commission meeting agenda item 2.c

Dear Commissioners:

Ahead of your monthly meeting on November 19, we write to request your prompt attention, as part of agenda item 2.c, to issues relating to the Los Angeles County Sheriff's Department ("LASD")'s presence and role in the County hospitals and traffic enforcement. As you know, on October 6, 2020, an LASD deputy from the South Los Angeles Station shot and killed Nicholas Burgos, a psychiatric patient at the Harbor-UCLA Medical Campus ("Harbor-UCLA") who succumbed on November 1.¹ This was the second use of deadly force at Harbor-

¹ See, e.g., Alene Tchemedyan, *Questions remain following deputy shooting at Harbor-UCLA that wounded patient*, L.A. TIMES (Oct. 13, 2020), available at <https://www.latimes.com/california/story/2020-10-13/hospital->

UCLA within the past five years, also involving a patient suffering with mental illness.² In addition, as LASD's killing of Dijon Kizzee on August 31, 2020 has once again shown, LASD's enforcement of the vehicle codes endangers Angelenos' lives.³

LASD's presence in the County hospitals

The shooting at Harbor-UCLA only demonstrates that LASD cannot be trusted to respond to crises, and that LASD's presence in the hospitals erodes the community's trust. The worsening COVID-19 pandemic has made clear that race, ethnicity, and income determine someone's vulnerability to contracting the virus, ease of accessing quality healthcare, and chances of survival. Evermore important during this pandemic, Black and brown and low-income community members who have historically lacked access to quality health care should be able to trust that their health will be taken care of at County hospitals—not their lives taken by LASD deputies. A County medical campus should be a sanctuary, a sensitive location, a safe haven, for our community members—not spaces of law enforcement contact and criminalization or, worse, death traps.⁴

Furthermore, the new law on police deadly force that took effect this year, AB 392, emphasizes the importance of using alternative safety measures instead of police force whenever possible to defend the sanctity of life and protect people with disabilities, including mental health disabilities, from police violence. Health care responses to behavioral health crises are alternatives to armed law enforcement responses that already function in County hospitals. This should inform how the County decides to promote health and safety on its medical campuses.

workers-protest-sheriff-violence; Josie Huang, *Patient Shot By Sheriff's Deputy Inside Harbor-UCLA Has Died, Family Says*, LAIST (Nov. 16, 2020), https://laist.com/2020/11/16/patient_shot_by_sheriffs_deputy_inside_harbor-ucla_has_died_family_says.php.

² *Id.*

³ See, e.g., Nicole Santa Cruz & Alene Tchemedyian, *Deputies killed Dijon Kizzee after a bike stop. We found 15 similar law enforcement shootings, many fatal*, L.A. TIMES (Oct. 16, 2020), available at <https://www.latimes.com/california/story/2020-10-16/examining-dijon-kizzee-bike-stop-police-shootings>.

⁴ For years, medical professionals have been calling to get law enforcement out of hospitals. See, e.g., Elisabeth Rosenthal, *When the Hospital Fires the Bullet*, N.Y. TIMES (Feb. 12, 2016), available at <https://www.nytimes.com/2016/02/14/us/hospital-guns-mental-health.html?mcubz=0>; Jennifer Tsai, *Get Armed Police Out Of Emergency Rooms*, SCIENTIFIC AMERICAN (July 14, 2020), available at <https://www.scientificamerican.com/article/get-armed-police-out-of-emergency-rooms/>; *supra* note 1.

State and local jurisdictions, including California, have advanced the principles of hospitals as “sanctuaries” and “sensitive locations” with the purpose of protecting and advancing immigrants' rights. See, e.g., ACLU Border Rights Texas, Physicians for Human Rights & NILC, *Health Care Providers: Preserve Access to Care and Protect Your Patients from Border Patrol and ICE Interference* (Aug. 2020), https://www.aclu.org/sites/default/files/field_document/nilc_aclu_healthcareprovidersguide.pdf; Sarah Stoughton & Kathryn Hampton, *Not in my Exam Room: How U.S. Immigration Enforcement is Obstructing Medical Care* (June 10, 2019), https://phr.org/wp-content/uploads/2019/06/Not-in-my-Exam-Room_-PHR-Sanctuary-Hospitals-June-2019.pdf; Cal. Attorney Gen., *Promoting Safe and Secure Healthcare Access for All: Guidance and Model Policies to Assist California's Healthcare Facilities in Responding to Immigration Issues* (Oct. 2018), <https://oag.ca.gov/sites/all/files/agweb/pdfs/immigration/healthcare-guidance.pdf>.

Advocates have been developing similar concepts to protect veterans and enhance their access to care. See, e.g., Sunita Patel, Maya Chaudhuri, and Will Ostrander, *Policy Advisory: National Association of Minority Veterans (NAMVETS) and UCLA Veterans Legal Clinic Advisory: The U.S. Department of Veterans Affairs Police Force* (May 2020), <https://webshare.law.ucla.edu/Clinical/NAMVETS-UCLawVetPolicingRpt.pdf>.

On October 27, 2020, the Board of Supervisors (“Board”) passed a motion titled, *Promoting the Health and Safety of Patients, Visitors and Employees on the County of Los Angeles’ Medical Campuses*. Through this motion, the Board directed the Acting Chief Executive Officer and the Director of the Department of Health Services to complete a review of best practices related to the provision of security services on medical campuses, including services provided by both law enforcement entities and contracted security firms and, in consultation with medical campus stakeholders, report back to the Board with recommendations on the optimal strategy for promoting community safety on medical campuses. The Board also directed the Inspector General to get to the bottom of the October 6 shooting.

As the report back is developed, we are strongly urging the Board to take the necessary actions to remove LASD and other law enforcement entities from County medical campuses. The County should also investigate and restrict any avenues LASD has to criminalize patients and undermine medical care, including but not limited to: overriding 5150 holds to take someone into custody, intimidating health professionals to acquire patient information, requiring health workers to turn over patient property and identifying information to facilitate arrest and/or criminal charges at the expense of patient privacy rights. Health workers are best positioned to meet their patients’ health and safety needs and have developed practices and protocols, such as “Code Gold,” to meet those needs without encroachment by law enforcement.⁵ These strategies should be invested in and scaled up across facilities designed for care.

In sum, we request that, as you delve into LASD’s budget as part of agenda item 2.c, you examine the cost and impact of LASD’s presence in the County medical campuses. The Board should reallocate resources currently designated for LASD substations at the three County hospitals, including Harbor-UCLA, and reinvest those funds into efforts to expand community- and hospital-based non-law enforcement crisis response and intervention. To aid in this process, we request that you ask, at a minimum, the following important questions of the Chief Executive Office and LASD:

- How much does it cost to operate the LASD substations at County hospitals?
- What is the data related to use of force or arrests at these care facilities?
- How often does LASD take people from a care setting to the jails?
- How can hospitals be a safe haven from criminalization that undermines care?

LASD’s role in traffic enforcement

LASD often uses traffic enforcement⁶ as its justification to stop and detain people, especially in Black and Latinx neighborhoods. In 2018, nearly 70 percent of LASD stops (95,443 out of 123,281 total stops) were for traffic violations. A significant proportion of these stops were for equipment and non-moving violations, particularly for Black and Latinx people.⁷

⁵ See, e.g., *supra* note 1; *Health Workers Protest After Patient Was Shot by a Deputy at Hospital*, NBC4 (Oct. 13, 2020), <https://www.nbctv.com/news/local/health-care-providers-demonstrate-harbor-ucla-hospital-deputy-shooting-patient/2443679/>.

⁶ The term “traffic enforcement” herein encompasses driving, bicycling, and pedestrian law enforcement.

⁷ Open Justice, RIPA Stop Data, <https://openjustice.doj.ca.gov/exploration/stop-data>.

Nearly half of all traffic stops of Black drivers were for non-moving or equipment violations, compared to 30 percent of traffic stops of white drivers.⁸

LASD traffic stops have led to brutalization and death. About a quarter of all uses of force by LASD deputies that caused serious bodily injury to Black or Latinx individuals followed a vehicle or pedestrian stop (rather than a call for service, response to a crime in progress, or pre-planned activity).⁹ After LASD deputies shot 34 times and killed Ryan Twyman last year while he was seated in a car, County residents provided testimony to the Civilian Oversight Commission about LASD deputies' dangerous pattern and practice of reaching into cars to open doors and force people out of their vehicles during traffic stops.¹⁰ In May of this year, video captured a LASD deputy punching and trying to drag a driver out of a car, during a stop based on a tinted window and sticker violation.¹¹

In August of this year, LASD shot and killed Dijon Kizzee after stopping him for purportedly riding his bicycle on the wrong side of the street. The Los Angeles Times recently reported on 15 other times when a bicycle stop led to officers shooting someone in Los Angeles County; it reported that the stops were concentrated in Black and Latinx communities in South Los Angeles and that all of the shootings were of Black or Latinx bicyclists.¹² In 2012, LASD shot and killed Christian Cobian after attempting to stop him, purportedly for riding a bicycle without a headlight.¹³ In 2013, an LASD deputy shot Chalino Sanchez after stopping him for "looking suspicious" while riding a bicycle.¹⁴ In 2014, LASD deputies shot and killed 23-year old Noel Aguilar because he looked in their direction while riding a bicycle; that shooting led to a \$2.97 million settlement paid by the County to Aguilar's family.¹⁵ A Los Angeles bicycling advocate—who herself has been stopped and questioned while on her bike—told the LA Times that in this context, "It feels like . . . telling people to get on bikes is a death sentence."¹⁶

LASD traffic enforcement also fuels incarceration and racial disparities in the criminal system.¹⁷ From 2013 to 2015, LASD arrested and charged nearly 20,000 individuals for driving with a suspended license; 85 percent of those arrests were of drivers of color. In the same timeframe, LASD arrested 4,391 people on traffic warrants (for failure to pay a traffic fine or appear for a traffic court hearing); over 87 percent of those arrests were of Black or Latinx drivers. Although roughly 9 percent of County residents are Black, 32.5 percent of LASD traffic warrant arrests were of Black drivers. As a result of LASD's traffic enforcement practices,

⁸ *Id.*

⁹ 37 percent of all serious uses of force by LASD against Latinx persons followed a vehicle or pedestrian stop. 19 percent of all serious uses of force against Black persons followed a vehicle or pedestrian stop. *See id.*

¹⁰ *See, e.g.,* Sam Levin, *Los Angeles officers shot at Ryan Twyman 34 times. He was one of four they killed that day*, THE GUARDIAN (Aug. 15, 2019), available at <https://www.theguardian.com/us-news/2019/aug/15/police-shootings-los-angeles-sheriffs-department-ryan-twyman>.

¹¹ Anabel Munoz, *Violent confrontation between deputy, driver in Lynwood caught on video*, ABC7 (May 28, 2020), <https://abc7.com/lasd-use-of-force-sheriffs-deputy-punches-driver-lynwood/6215874/>.

¹² *See supra* note 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See generally* East Bay Community Law Center, *Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California* http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf.

Black and Latinx drivers are more likely to face traffic citations. This reality has also led to debt burdens that cause significant harms to families as well as systemic wealth extraction from communities of color.¹⁸

The systematic, disproportionate, and devastating impact of LASD’s traffic enforcement on Black and brown communities needs to stop.

As California peace officers, LASD deputies have authority over “any public offense committed or which there is probable cause to believe has been committed” within the county or in the deputy’s presence. Cal. Penal Code § 830.1. However, the Government Code gives county boards of supervisors the power to authorize sheriffs to enforce the state Vehicle Code in unincorporated areas, and “only upon county highways.” Cal. Gov’t Code § 26613. Without board authorization, expenses incurred by a sheriff in detecting Vehicle Code misdemeanors legally are not county charges. Cal. Gov’t Code § 29601. These provisions of the Government Code suggest that LASD may not have inherent authority to enforce the Vehicle Code on county highways in unincorporated areas or is not entitled to deem expenses for such enforcement county charges without authorization from the Board. The Board of Supervisors authorized LASD to enforce the Vehicle Code several decades ago.¹⁹ L.A. County Code § 2.34.030.

Nevertheless, no law appears to preclude the County from rescinding this authorization and related access to County funds. LASD presently conducts traffic enforcement in unincorporated Los Angeles County communities pursuant to this authority granted by the Board of Supervisors.²⁰ LASD shares traffic enforcement jurisdiction with the California Highway Patrol. *See* Cal. Veh. Code § 2400, *et seq.* LASD conducts traffic enforcement under both the state Vehicle Code and Los Angeles County Code.²¹ Nothing, however, precludes the County from repealing or amending the criminal-traffic provisions of the County Code.

Communities across the country are increasingly recognizing that there are better ways to ensure traffic safety than preserving armed law enforcement’s current power and discretion to maintain a constant occupying presence in our streets.²² Street safety advocates have highlighted

¹⁸ *Id.*; *see also* East Bay Community Law Center, Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California (2015), <https://ebclc.org/in-the-news/not-just-a-ferguson-problem-how-traffic-courts-drive-inequality-in-california/>.

¹⁹ The County Code provides: “The board hereby accepts the provisions of Section 26613 of the Government Code and authorizes and directs the sheriff to enforce the provisions of the Vehicle Code on the county highways. The expense incurred by the sheriff in the performance of such duties shall be a proper county charge.” Los Angeles County Code § 2.34.030.

²⁰ For example, both Ryan Twyman and Dijon Kizzee were killed by LASD deputies in unincorporated LA County communities.

²¹ Title 15 of the Los Angeles County Code includes numerous provisions that set out criminal penalties for traffic and vehicle-related code violations. *See, e.g.*, L.A. County Code § 15.76.080 (prohibiting biking on sidewalk); *see also* Los Angeles Superior Court, 2020 Bail Schedule, at 80-82, *available at* <http://www.lacourt.org/division/criminal/pdf/misd.pdf> (listing Los Angeles County traffic code provisions and associated bail amounts).

²² *See* Transportation Alternatives, *The Case for Self-Enforcing Streets: How Reallocating a Portion of the NYPD Budget to the DOT Can Reduce the Harm of Racial Bias and Improve Safety for All New Yorkers* (June 2020), *available at* <https://www.transalt.org/press-releases/nyc-must-reimagine-traffic-enforcement>; Jordan Blair Woods, “Traffic Without the Police,” 73 STAN. L. REV. (forthcoming 2021), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3702680.

solutions like increasing investments in street redesign and free public transportation, shifting authority over crash investigations to departments of transportation and health, decriminalizing biking and walking, and programs that allow for people to fix equipment violations rather than punishing them.²³ The City of Berkeley recently moved to shift traffic enforcement from armed police to a new Department of Transportation “to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs and infrastructure,” and to “identify and implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations.”²⁴ Locally, the City of Los Angeles has been considering a motion addressing “alternative models and methods that do not rely on armed law enforcement to achieve transportation policy objectives,” including “reallocate[ing] resources to public safety strategies that are more effective than enforcement.”²⁵

Again, as you delve into LASD’s budget as part of agenda item 2.c, we also request that you examine the cost and impact of LASD’s role in traffic enforcement. Below are some important questions you can ask to inform this effort:

- What would be the effect of the Board rescinding the authorization currently in L.A. County Code § 2.34.030?
- What have LASD expenses related to traffic enforcement been this year? Last year? How does LASD keep track of or report these expenses?
- Does LASD have a division, deputies, or assignments specifically tasked with traffic enforcement? Towing? Parking?
 - If so, how much County funding is allocated to them?
 - Where are they deployed?
 - How many of the traffic enforcement stops conducted by LASD are conducted by traffic-specific divisions, deputies, or assignments, as opposed to others?
- What information does LASD track related to the proportion of its patrol deputies’ time spent on traffic enforcement, as opposed to other matters?
- What percentage of LASD traffic stops in unincorporated areas are of Black drivers? Latinx drivers?
- What are the most common offenses cited as the justification for LASD traffic enforcement stops in unincorporated areas?
- How is LASD spending its \$2 million grant from the California Office of Traffic Safety?

²³ *Id.*; see also California Bicycle Coalition, “Reduce the Role of Police in Traffic Enforcement for the Safety of Everyone” (Aug. 31, 2020), <https://www.calbike.org/reduce-police-in-traffic-enforcement/>.

²⁴ Memo from Councilmembers Rigel Robinson et al. to Mayor and City Council re BerkDOT: Reimagining Transportation for a Racially Just Future (July 14, 2020), https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-14_Item_18e_BerkDOT_Reimagining_Transportation_pdf.aspx.

²⁵ L.A. City Council, Ad Hoc Police Reform Committee, https://clkrep.lacity.org/onlinedocs/2020/20-0875_mot_06-30-2020.pdf. The motion recognizes that the Safe Routes to School National Partnership and Vision Zero Network have formally dropped Enforcement as one of the “E’s” of traffic safety, and the National Association of City Transportation Officials issued a statement that “It is past time to have the hard conversations about how to limit law enforcement’s role in the management of public space.”

Sincerely,

ACLU Foundation of Southern California
Community Coalition
Dignity & Power Now
Frontline Wellness Network
JusticeLA
La Defensx
Reform LA Jails