



OFFICE OF THE SHERIFF

COUNTY OF LOS ANGELES

HALL OF JUSTICE

ALEX VILLANUEVA, SHERIFF



December 17, 2021

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**REQUEST FOR OUTSIDE COUNSEL IN FURTHER RESPONSE TO COMPLIANCE
WITH DEPARTMENT OF JUSTICE 2015 SETTLEMENT AGREEMENT AND
DISPUTES OVER MANAGEMENT OF THE JAILS AND PERSONNEL**

I am requesting that the Los Angeles County Board of Supervisors (Board) appoint special outside legal counsel to represent me in an ongoing dispute with this Board concerning management of the Sheriff's Office and, specifically, the jails over which I have sole management and oversight authority. The Board's actions, under the guise of budgetary management, have specifically been designed to interfere with my exclusive management of the jails within the County of Los Angeles (County), to the detriment of inmate safety, the provision of proper medical and psychiatric care to inmates, and the safety of my personnel. I am entitled to special outside legal counsel for the following non-exclusive reasons:

The condition of mental health care in California is a public policy failing of the most profound level. Ramifications from the lack of available therapy and intervention reach to families and entire communities. Our homeless population is substantially comprised of people with severe untreated or undertreated mental illness. The County of Los Angeles criminal justice system is struggling with situations interwoven with mental illness, particularly in our jails. Enormously difficult interactions with law enforcement also follow in the aftermath of the lack of sufficient care being provided to those inmates suffering from mental health issues in the custody of the Sheriff. This is the demanding context in which this Sheriff's Office would like to establish the comprehensive and coordinated ability to treat, stabilize, and release the offenders suffering from mental

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illness whom we must necessarily and unavoidably detain under our current structure of incarceration and programmatic delivery. One of the influences shaping what we must confront has been the impact of the AB109 Realignment. This shift in criminal sentencing practices moved major State responsibilities to the counties in California and has had a significant impact on the Sheriff's Office. Regrettably, your failure as a Board to utilize available realignment funding has made these impacts even worse.

The Public Safety Realignment Committee (Committee), as it has been configured under your direction, does not conduct true investigation and assessment with respect to effective and efficient spending of these funds to treat the people in our care in the County jail system. The Committee does not even have involvement with a substantial portion of the mitigation funds dispersed by the State. Part of the dysfunction comes from the Board having each appointed their own member to the Committee. The full implication of these deficiencies is the lack of a valid and comprehensive strategic planning process for deployment of these resources inclusive of the mental health treatment needs of our in-custody patients.¹ The consequence has been the accumulation of a shocking surplus of \$1.6 billion of public taxpayer revenue that could have been applied toward critical treatment and facility improvements if oversight were more effective. The failure to allocate these funds represents lost past and future opportunities to give the people in our care a better chance at mental health stabilization and recovery. Their recovery would also represent a more realistic opportunity for reintegration into society and prevention of future victimization by these individuals, as well as reduce recidivism.

This Board's deliberate constraints on staffing and overtime appropriations have also been very damaging. The practical reality is that providing mental health care in a detention environment means moving patients to a care provider, overseeing the safety of the treatment process, and returning the person to appropriate housing. This Board has failed to properly fund these necessary staffing costs for years. This gap has created substantial barriers to patient recovery, interfered with management of custody operations, and blocked compliance with the settlement agreements mandating levels of care and staffing that we are legally obligated to fulfill.

Similarly, the elimination of over a thousand positions from Custody Operations and a protracted hiring freeze has created the false exigency of needing to choose between fulfilling court-ordered and appropriate mandates in the detention centers or reducing

¹ Public Safety Realignment-Weak State and County Oversight Does Not Ensure that Funds Are Spent Effectively, Report 2020-102 at <http://auditor.ca.gov/pdfs/reports/2020-102.pdf>.

operating units elsewhere in the Sheriff's Office to the overall detriment of public safety. The loss of these positions is impairing actions of the Sheriff's Office seeking to form stronger relationships with the community that we serve and disrupting our efforts to limit the damage to victims in our community from evolving crime trends.

In point of fact, as to the reduction in staffing, I wrote directly to this Board approximately one year ago warning of the negative impacts that would inevitably result from the Board's proposed severe staff reductions. Specifically, I detailed the grave ramifications of the cuts on my ability to comply with the requirements of the Department of Justice (DOJ), Rosas and ADA-Johnson settlement agreements. These settlement agreements impose requirements related to inmates with mental health needs, disabilities requiring accommodations for access to programs and services, and other risk mitigation services, facilities and training, as well as duties relating to the use of force policy implementation, review and investigation. As I stated then, and which remains the case today, the County entered into these agreements but has never fully funded the means for me to actually comply with the terms of these agreements. To make matters worse, the loss of other positions has also had impacts on compliance and custody operations, including transport security, administration, food services, and mental health care, as explained in my prior letter.

As you are well aware, both the County and the Sheriff are parties to the 2015 settlement agreement with the DOJ. Under the terms of this agreement, the County and the Sheriff are jointly responsible for developing and delivering training as well as establishing programs and services as they relate to inmates affected by mental health issues, those needing disability accommodations, and anyone requiring additional supervision or evaluation to protect them from suicide risks. The Board's obligations under the agreement is to fund the staff and resources needed to comply with these court mandates. However, you have failed to perform this fundamental duty over and over again, despite my continued communication of what needs to be done.

The way the Board is utilizing dedicated public safety revenue generated under Proposition 172 (One-Half Cent Sales Tax Public Safety Augmentation Fund) is also significantly interfering with how I meet my statutory obligations to oversee the jails. The voters who supported this initiative were making the decision to impose a tax on themselves to establish a supplemental source of public safety revenue. It is difficult to imagine these same voters would find any respect for their intent in the accounting gimmicks for transference of these funds done at the direction of this Board. As an example, the current budget year appears to include a distribution of over \$170 million in "additional" restricted public safety revenue to my Department but is then

accompanied by a corresponding equivalent deduction from the Department's budget by this Board's actions.² These actions clearly undermine the intent of the voters with respect to the use of these supplemental funds. This disregard of voter purpose also undermines public safety, including services and care to inmates in the jails under my supervision.

As problematic as each of these forms of degradation to our essential resources have been, the farthest reaching and most destructive of this Board's actions is your order for the closure of Men's Central Jail (MCJ), without first adequately providing alternatives for the care of the people in our custody. The extent of your reliance on detention population reduction strategies is invalid and cannot be expected to prevent the harm that is going to occur from the closure if you do not take necessary measures first. Accurate plans and appropriate funding could make elimination of the facility ultimately successful at some point in the future. However, this is after adequate systems have been implemented and proven sufficient and resources have been provided. As I have pointed out on multiple occasions, these systems and resources do not currently exist.

The Chief Executive Office (CEO) summarized the JFA Institute Report for this Board in a memorandum dated October 6, 2021. The memorandum clearly indicated to this Board what was necessary before the closure of MCJ. However, this Board blatantly ignored what the subject matter experts were telling you, and ordered the closure of MCJ without the criteria first being met – including the requirement that “[t]he County must expand the number of community mental health beds.” As this report noted, the Men's Central Jail “provides the jail systems' majority of single cells for high-security inmates.” Closure means that these inmates will have to be housed elsewhere, with direct ramifications on occupancy and operations of other facilities, jeopardizing the overall inmate population in the County's care and the safety of my staff. As this Board is well aware, my staff, which you have significantly and systematically underfunded and cut, is struggling to care for the current population as serious mental health needs continue to increase. In addition, the current and more dangerous inmate population that remains after widespread releases of offenders with less significant charges has posed greater risks of inmate on inmate and inmate on staff violence. As the memo acknowledged, “[t]ransferring these MCJ populations to other facilities will have a cascading impact as one jail population displaces another” and “would create structural

² County of Los Angeles 2021-22 Recommended Budget, April 2021, Volume One, at <https://ceo.lacounty.gov/wp-content/uploads/2021/04/2021-22-Recommended-Budget-Book-Volume-One-Final-Online-Version.pdf>, pg. 56.3. Recommended Adjustments to the 2021-22 Recommended County Budget to Reflect Various Changes and Authorization to Execute Funding Agreements, June 28, 2021. Recommended Adjustments to the Fiscal Year (FY) 2021-22 Adopted County Budget to Reflect Various Changes and Authorization to Execute Funding Agreements, Oct. 5, 2021.

overcrowding." Amazingly, this Board's actions to close MCJ follows this Board having abandoned plans to construct a modern mental healthcare facility to rectify these issues, as well as causing the loss of \$80 million in design costs that essentially were wasted on a project that has now been scrapped.

We are glad to be able to share with you that the Department of Corrections (DOC) has resumed inmate transfers. However, this improvement has coincided with a return to functioning of the courts and the remainder of the justice system. As a result, we have not experienced meaningful relief in our average daily detention population. The dependence on the eventual expansion of community-based care for people with mental illness, as an immediate form of jail population reduction, is simply not founded in practical reality and definitely does not provide a basis for such a critical strategic decision as when to close MCJ.

As much as we welcome the Department of Corrections again accepting transfer of inmates, we face another serious threat related to State involvement with custody significantly impacting our ability to provide mental health care treatment. With the passage of SB 317, we anticipate having between 500 and 700 inmates previously determined to be incompetent to stand trial and being returned to our facilities in the coming months. They will be at the highest levels of impairment without foreseeable recovery. We expect this population of inmates to require full monitoring and will include expanded risk of violence to other inmates and detention staff. This additional demand being imposed compounds what was reflected in the JFA warning.

As a point of information, apart from my recognition of the current limitations on the availability of community-based strategies, I completely support implementation of alternative forms of mental health treatment and diversion away from county jail and will put the full force of the organization behind successful development of these strategies. Regrettably, the successive movements of high-risk offenders caused by the closure of MCJ will disrupt more than 900 people comprised from the mental health treatment population forcing them into a much more vulnerable setting. Tragically, everything discussed in this letter has occurred across a period of persistent and serious increases in inmate mental health care demands. **In my role as Sheriff and as an elected official, I can tell you, to a professional and moral certainty, we will not be able to fulfill our obligations under the existing 2015 DOJ agreement if this closure of MCJ moves forward as structured -- without the creation of a modern mental healthcare facility or substantially updating existing alternative locations.**

As the situation exists right now, even before MCJ is closed, we are supposed to have housing available at the Twin Towers Correctional Facility for the men's high

observation mental health population 95% of the time. As was documented in the most recent report from the Monitor, housing was accessible when needed 0% of the time during the selected evaluation period.³ Currently, a high-observation patient entering custody may have to wait weeks or even a month before being placed in the correct level of housing. We also have less than roughly half the clinically licensed beds we need for inpatient care. These are beds for patients who have extreme need and are a threat to themselves or other people. These patient/inmates would similarly require inpatient care in a community setting and possibly involuntary medication for their own safety.⁴ The consequence is that we have a large population of inmates for whom we would like to provide more out-of-cell time and expanded opportunities for social engagement, as well as library and radio access. The expert guidance we have received is that these actions would be expected to reduce symptoms, improve functioning, and make the detention environment safer for everyone. Your unwillingness to provide reasonable funding is preventing us from being able to offer all of these basic beneficial conditions that inmate/patients need for their recovery.

Although it is tempting to entirely blame the pandemic, we also must dramatically improve how frequently moderate and high observation patients are seen by a qualified mental health professional.⁵ On a related issue, as the Monitor has noted, we are now six years into this agreement and are still not in compliance with our obligation to deliver therapeutically appropriate treatment in accordance with treatment plans.⁶

It is absolutely incoherent to somehow think that depriving 900 patients of what little housing we do have is going to somehow make this situation better. Your lack of investment is creating an almost impossible scenario to comply with upcoming California Board of State and Community Corrections (BSCC) recommended Title 15 (Cal. Code Regs., tit. 15, §§ 1000-1282) changes including: Expanding requirements for safety checks to ensure they are random and varied, and increasing the amount of time inmates must spend outside their cells. These changes, in addition to others, will result in increasing staffing and related costs.

As elected leaders, each of you is entitled to your own policy perspective, and our views may not be the same. You hold your positions by virtue of a vote of the community members in your districts and your presence on this Board is an exercise of the democratic process, the same democratic process the members of the Los Angeles County Sheriff's Office have sworn an oath to uphold. Your actions, however, taken

³ Provision 63.

⁴ Provision 64.

⁵ Provision 66.

⁶ Provision 79.

together, exceed what is lawful under the legislative and budgetary authority of your office. Your role is a broad oversight function. You are attempting to configure, control, and undermine the functioning of the Sheriff's Office, as well as directly prevent my ability to comply with the 2015 DOJ settlement agreement. Your actions exceed Government Code statutory parameters and controlling case law. (See, Gov. Code §§ 25303, 26600, 26602 and 26605; Brandt v. Board of Supervisors (1978) 84 Cal.App.3d 598; County of L.A. v. Superior Court (1998) 68 Cal.App.4th 1166.)

The California Constitution, the statutory structure, and decisions from the appellate courts have a purpose in setting these parameters on the areas of both overlap and separation in authority of the Sheriff and Board. Part of the importance of this separation is it places control of detention operations under the authority of a directly accountable elected leader -- me, the Sheriff -- with the highest depth of understanding of these operations.

This situation is not simply a policy dispute between elected leaders within the protected confines of the chamber of the Board or a Zoom meeting. Real world harm is resulting every day from your actions to interfere with my management of the Sheriff's Office and jails. Apart from the injuries that may be caused to the people for whom we are responsible, the deprivation of resources is also destructive for our employees. What you are doing is creating an unrelenting strain of excessive duty hours and causing continuous angst amongst detention staff. The unreasonable working conditions and expectations are manifesting in a reduced retention rate and the increased use of sick leave creating a tenuous situation.

Importantly, the JFA authors also warned us that "[d]isplacing the mental health population to any other jail facilities would be incompatible with the DOJ consent decree on services to the mentally ill and would place the County at risk for additional litigation and penalties. Otherwise, the County would need to build a new dedicated mental healthcare facility, which is recommended, to meet the mandates of the DOJ consent decree."⁷

As unfortunate as it is, an actual legal conflict of interest exists between me as the Sheriff, and you as the Board. The conflict comes from your own actions as a Board and from your disruption of my operations and management of my staff through the CEO's Office and staff. Use of the budget process to restrict overtime, delete/freeze positions, obstruct necessary promotions, suspend academy classes, move to block my

⁷ Estimated Cost Savings from a Reduced Jail Population and Closure of Men's Central Jail and Jail Population Projections, Final Report, JFA Institute, September 2021, pp. 13-14.

ability to make temporary assignment changes, and negligently ordering the closure of MCJ -- all overreach beyond your statutorily created authority and are an attempt at reorganizing the Sheriff's Office. In addition, and most importantly, your actions continue to inflict on-going harm on the Sheriff's Office and the communities that we serve. Further, you are imposing on me, the Sheriff's Office, and the County the risk of exposure to personal and organizational litigation based on the sufficiency of care we are required to provide under the existing settlement agreements, state and federal statutory duties and mandates, and the Constitution.

California Government Code Section 31000.6 requires the Board of Supervisors to provide legal counsel for the Sheriff when County Counsel has a conflict of interest.

The California Rules of Professional Conduct governing the conduct of attorneys also forbids a lawyer from representing clients with conflicting interests. Specifically, an attorney cannot represent one client "if the representation is directly adverse to another client in the same . . . matter," when "there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client," or the attorney will not reasonably "be able to provide competent and diligent representation to each affected client." (Cal. Rules Prof. Conduct, Rule 1.7.)

The comments to the rules provide additional important information pertaining to this situation. "[L]oyalty and independent judgment are essential elements in the lawyer's relationship to a client." The comments explain how a conflict of interest can arise when the representation of "several individuals . . . may materially limit the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the other clients. The risk is that the lawyer may not be able to offer alternatives that would otherwise be available to each of the clients. . . . The critical questions are the likelihood that a difference in interests exists or will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of each client."

The conclusion is unavoidable that a conflict of interest within the legal meaning exists between you as the Board and me as the Sheriff on these matters. County Counsel cannot adequately and ethically represent both of us. The County Counsel's Office has already given the Board or the CEO legal advice against what I am trying to accomplish on some of these very issues. As an example, on more than one occasion, County Counsel has advanced the opinion that I lacked the authority to temporarily assign staff under my command and control for specific duties. This was despite remaining within

the parameters of the number of employees appropriated by the Board to the Department.

Further, given our longstanding and diametrically opposed viewpoints, it is clear to me that, under the circumstances, an ethical wall cannot properly be created within the County Counsel's office to provide legal representation for me on these issues. As noted above, County Counsel has already provided legal opinions against my interest and the authority of my office on some of these same areas of dispute. Very importantly, this Board is also acting outside the assessment of the Department of Justice Monitor, a position completely inconsistent with my legal and ethical stance.

For all of these reasons, I am asking to be provided independent legal counsel in order to perform the duties of my office. I intend to ask the Federal Court and Monitor to treat my Office and the County as distinct parties in the 2015 DOJ Joint Settlement Agreement to attempt to achieve compliance independent from this Board actions, and for purposes of any contempt proceedings that may arise for failure to comply with the terms of applicable settlement agreements and consent decrees currently in place. I also intend to request the Court exercise greater control over this situation and direct a healthier course forward consistent with my goals of meeting the mandates imposed by the various settlement agreements governing the operations of the jails. Additionally, I must caution you I will seek immediate judicial relief in the Superior Court from your decision if you choose to deny my request for representation.

The CEO and the County Counsel have direct understanding of the importance of sufficient funding as an essential dimension of treating the mental health population in our care as well as fulfilling the mandatory requirements of the settlement agreements. Despite this understanding, this Board reduced funding and drastically cut my departmental positions, in consultation with the County Counsel's Office. The honest reality is that County Counsel has been a part of the Board's imposition of the barriers perpetuating the hardships in MCJ. The disappointing conclusion is that the County Counsel's Office cannot be relied upon to guide me or the Sheriff's Office through what is demanded by this unacceptable set of circumstances, or in attaining full compliance with the DOJ consent decree, the objective the Los Angeles County Sheriff's Office is seeking to accomplish.

The remaining issue we should be weighing together is the collective safety of the County of Los Angeles community. We currently are experiencing a well-documented, tragic level of severe violence in our County. It is also probable that the people we serve have simply grown weary of reporting all the property offenses involving their

cars, homes, and businesses related to the lack of ultimate accountability for the persons committing these ongoing and pervasive crimes. The criminal justice system in Los Angeles County is failing in its duty to stop what is happening. Currently, we are essentially direct releasing any offender with a sentence of less than 240 days, due to space and staffing limitations created by the Board's actions. This lack of a meaningful sanction is part of what allows active and focused repeat offenders to continue to freely victimize others in our society. The actions of this Board are a major limiting factor constraining the ability of the Sheriff's Office to respond to these conditions impacting the safety of our community. The trajectory of our present situation is a grim outcome where mental health patients are not treated, and the community is not protected. I cannot allow the Sheriff's Office to be any part of what is being inflicted on our community.

I look forward to achieving an outcome fair to our entire community. Should you have any questions or would like to discuss further, please feel free to contact me at [REDACTED]
[REDACTED]

Sincerely,

A handwritten signature in blue ink, appearing to read 'Alex Villanueva', with a stylized flourish at the end.

ALEX VILLANUEVA
SHERIFF

AV:JAV:ms
(Office of the Sheriff)

c: Fesia A. Davenport, Chief Executive Officer
Rodrigo A. Castro-Silva, County Counsel