



June 11, 2024

Via E-Mail

Ms. Kristen Clarke
Assistant Attorney General for Civil Rights
U.S. Department of Justice

Mr. James Felte
Chief of the Criminal Section, Civil Rights Division
U.S. Department of Justice

Mr. E. Martin Estrada
United States Attorney
Central District of California

Ms. Cassie Palmer
Assistant United States Attorney
Central District of California

Re: Request for Criminal Investigation – Los Angeles County Jails

Dear Ms. Clarke, Mr. Felte, Mr. Estrada, and Ms. Palmer:

We are counsel for Plaintiffs in *Rosas v. Luna*, CV-12-00428 DDP (C.D.Cal), a class action filed in 2012 by people incarcerated in the Los Angeles County jails challenging the improper uses of force and physical abuse of jail detainees by Los Angeles Sheriffs' Department ("LASD") staff. This case is one of several long-standing class action cases against LASD about conditions in the jails, including the U.S. Department of Justice's case challenging the inadequate mental health care provided to people in the jails, *United States v. Cnty. of Los Angeles*, CV-15-05903 DDP (C.D. Cal.); the ACLU's other longstanding case related to general conditions in the jails, *Rutherford v. Luna*, CV-75-04111 DDP (C.D.Cal); and *Johnson v. Luna*, CV-08-03515 DDP (C.D. Cal), a case brought by the ACLU and disability rights groups on behalf of detainees with mobility impairments, alleging violations of the Americans with Disabilities Act.

Because of the ACLU's work as Plaintiffs' counsel in *Rosas*, we became aware of a video of a grotesque use of force incident in which two deputies threw a detainee head-first into a concrete wall in Men's Central Jail. As a result, the man received extensive head lacerations

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and injuries. A video of the incident is attached; this incident also received widespread coverage last year. See, e.g., Keri Blakinger, *Video shows deputy slamming handcuffed inmate into concrete wall at Men's Central Jail*, *L.A. Times*, (June 3, 2023) (<https://www.latimes.com/california/story/2023-06-03/video-shows-deputy-slam-handcuffed-inmate-into-concrete-wall-at-mens-central-jail>). Former Director of the Washington State Department of Corrections, Stephen Sinclair, who reviewed the video, described it as a “deputy grab[bing] the inmate by the head and aggressively slam[ming] his head into a concrete wall, causing significant head trauma with lacerations to the inmate’s head. . . .” See Declaration of Stephen Sinclair, *Rosas v. Luna* Dkt. No 253-I (May 31, 2023) (<https://www.aclu.org/cases/rosas-v-luna?document=Rosas-v-Luna-Declaration-of-Stephen-Sinclair-%28Doc-253-I%29#legal-documents>).

Unfortunately, the Los Angeles County District Attorney (“LADA”) has just filed a declination memo announcing that it does not intend to criminally prosecute the two deputies. We believe that the attached declination memo is full of misstatements and misinterpretations, and that the criminal actions of the two involved deputies are clear.

We are asking the U.S. Department of Justice and U.S. Attorney of the Central District of California to initiate a criminal investigation into this incident, as well as the actions taken by LASD officials after the fact.

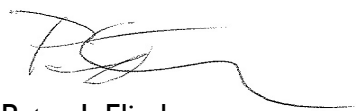
But the LADA’s failure to prosecute is not a one-off incident; it is part of a sad pattern of that office’s failing to play a meaningful role in accountability for criminal acts of deputies in the Los Angeles County jails. Fortunately, in the past the United States Department of Justice and U.S. Attorney of the Central District of California have stepped in to fill the breach when the LADA has failed. As you may remember, between 2012 and 2016 the federal government prosecuted more than 10 members of the LASD — from then-Sheriff Baca and then-Undersheriff Tanaka to lieutenants, sergeants and deputies who worked in the jails — for obstruction of justice for filing false reports about use of force incidents, and improper force. See, e.g., Joel Rubin, *Tanaka Convicted on Conspiracy and Obstruction of Justice Charges*, *L.A. Times* (April 5, 2016) (<https://www.latimes.com/local/lanow/la-me-ln-tanaka-trial-20160405-story.html>); Joel Rubin, *Three L.A. County Deputies Convicted in Beating of Jail Visitor*, *L.A. Times* (June 24, 2015) (<https://www.latimes.com/local/lanow/la-me-ln-three-la-deputies-convicted-in-jail-beating-case-20150624-story.html>); U.S. Attorney’s Office, *Six Current and Former Los Angeles Sheriff’s Deputies Sentenced to Federal Prison for Obstructing Federal Civil Rights Investigation* (Sept. 23, 2014) (<https://www.fbi.gov/contact-us/field-offices/losangeles/news/press-releases/six-current-and-former-los-angeles-sheriffs-deputies-sentenced-to-federal-prison-for-obstructing-federal-civil-rights-investigation>).

In a number of those cases, the LADA had declined to prosecute before the federal government stepped in. Perhaps the most egregious incident involved the savage beating of a visitor to the jails, Gabriel Carrillo, and subsequent false reports by LASD personnel that might have resulted in Mr. Carrillo’s going to prison, if not for the work of his criminal defense lawyer, who showed that Mr. Carrillo was the victim and LASD personnel the wrongdoers. Nonetheless, the LADA declined to prosecute the LASD personnel involved in the beating and false reports. The U.S. Department of Justice stepped in, and obtained convictions against five members of the Sheriff’s Department. This article from the *LA Times* and the attached letter the ACLU sent to then-DA Jackie Lacey goes into greater detail about the DA’s gross failings.

See Joel Rubin, *Feds Did What L.A. Prosecutors Didn't Do: Bring Deputies in Jail Visitor's Beating to Justice*, L.A. Times (Dec. 26, 2015) (<https://www.latimes.com/local/countygovernment/la-me-da-jail-abuse-20151226-story.html>).

We hope the United States will once again step in to remedy the LADA's failure to provide accountability for violence by LASD. We welcome the opportunity to meet with you or your colleagues to discuss this further. Please feel free to reach out to Peter Eliasberg (peliasberg@aclusocal.org or 213-977-5228), if you have any questions or would like more information.

Sincerely,



Peter J. Eliasberg
Chief Counsel
ACLU Foundation of
Southern California



Corene T. Kendrick
Deputy Director
ACLU National Prison Project

Encs.

cc: Robert Luna, Los Angeles County Sheriff
George Gascón, Los Angeles County District Attorney
Dawyn Harrison, Los Angeles County Counsel
Max Huntsman, Los Angeles Inspector General

**LOS ANGELES COUNTY DISTRICT ATTORNEY
CHARGE EVALUATION WORKSHEET**

X FELONY MISDEMEANOR	AGENCY NAME LASD - INTERNAL CRIMINAL	DA CASE NO. 44187706	DATE 05/17/2024
	AGENCY FILE NO. (DR OR URN) 023-00018-2003-441	DA OFFICE CODE J.S.I.D. #24-0009R	VICTIM ASSISTANCE REFERRAL <input type="checkbox"/> YES - NOTIFY VWAP <input checked="" type="checkbox"/> NO
SUSP NO.	SUSPECT		CHARGES
		CODE	SECTION
		OFFENSE DATE	REASON CODE
1	NAME (LAST, FIRST MIDDLE)) GUTIERREZ, JONATHAN		PC 149 07/04/2022 B
	DOB	SEX (M/F) M	BOOKING NO. VIP -- Yes X No
	Gang Member Name of Gang		Victim Gang Member Name of Gang:
	Victim Name:		Victim DOB:
2	NAME (LAST, FIRST MIDDLE)) PERALTA, JOSE		PC 149 07/04/2022 B
	DOB	SEX (M/F) M	BOOKING NO. VIP -- Yes X No
	Gang Member Name of Gang		Victim Gang Member Name of Gang:
	Victim Name:		Victim DOB:
3	NAME (LAST, FIRST MIDDLE))		
	DOB	SEX (M/F)	BOOKING NO. VIP -- Yes -- No
	Gang Member Name of Gang		Victim Gang Member Name of Gang:
	Victim Name:		Victim DOB:
Comments SEE ATTACHED.			

LAST NAME: GUTIERREZ

FIRST NAME: JONATHAN

DA CASE NUMBER: 44187706

I have conveyed all relevant information to the above-named Deputy District Attorney to be used in consideration of a filing decision.

FILING OFFICER (PRINT): SGT. DAVID A DUARTE FILING OFFICER (SIGNATURE): mailed 5/22/24 SERIAL #: 467596

DEPARTMENT OF JUSTICE REASON CODES (FORM 8715) A. Lack of Corpus B. Lack of Sufficient Evidence C. Inadmissible Search/Seizure	D. Victim Unavailable/Declines To Testify E. Witness Unavailable/Declines to Testify F. Combined with Other Counts/Cases G. Interest of Justice	H. Other (indicate the reason in Comments section) I. Referred to Non-California Jurisdiction J. Deferred for Revocation of Parole K. Further Investigation	L. Prosecutor Prefiling Deferral <u>DISTRICT ATTORNEY'S REASON CODES</u> M. Probation Violation filed in lieu of N. Referred to City Attorney for Misdemeanor Consideration
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The Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office (LADA) has completed its review of the allegations that Los Angeles County Sheriff's Department (LASD) Deputies Johnathan Gutierrez, Serial #605625, and Jose Peralta, Serial #654570, assaulted under color of authority inmate [REDACTED] [REDACTED] in violation of Penal Code section 149. For the reasons set forth below, this office declines to initiate criminal proceedings.

The following analysis is based on surveillance video and reports, presented to the LADA by Sergeant David Duarte, Internal Criminal Investigations Bureau (ICIB) on January 4, 2024. The deputies submitted use of force reports. They did not provide voluntary statements to investigators.

INTRODUCTION

On July 4, 2022, deputies responded to the single person cell of inmate [REDACTED] [REDACTED] to escort him to the shower. [REDACTED] was assigned to "disciplinary housing" and classified as "K-20" because of past threats to stab and otherwise assault sheriff's deputies.

Surveillance footage shows that [REDACTED] exited his cell and turned his back to Deputies Gutierrez and Peralta. The deputies tried to take hold of [REDACTED] arms from behind. [REDACTED] stepped away from them and suddenly twisted his body right and left. Gutierrez placed his right arm across [REDACTED] upper back and shoulders, in a backhand position, and grabbed the back of his neck or trapezius muscle area. [REDACTED] body turned toward a cement wall opposite the cell. His head forcefully collided with the wall, causing two lacerations to his head.

FACTUAL ANALYSIS

Use of Force Reports

Gutierrez and Peralta authored separate use of force reports documenting the incident.

According to Gutierrez, [REDACTED] was housed in a "discipline housing" cell block, where inmates are kept in single person cells. Peralta wrote that inmates such as [REDACTED] "are classified as K-19 or K-20 due to their assaultive behavior toward other inmates and staff." [REDACTED] "has an extensive history of assaulting staff and other inmates." In this cell block inmates are handcuffed through a door slot before they can exit the cell. By policy they must be escorted at all times by two deputies who are required to maintain a firm grip on the inmate.

Gutierrez met Peralta to assist him with escorting [REDACTED] to the shower. According to both reports, [REDACTED] said, "Don't touch me," when he exited his cell. According to Peralta, [REDACTED] may have also threatened to "headbutt" Gutierrez.

Gutierrez described the use of force as follows:

“[redacted] quickly turned toward the G-row shower. This sudden movement by S/Valadares caught me off guard. I reacted by immediately grasping one of S/[redacted] [sic] forearms with my left hand and reaching forward with my right arm to grasp S/[redacted] shoulder. S/[redacted] simultaneously lunged his upper body forward. This was all occurring in a matter of seconds and all I was thinking was turning S/[redacted] toward the wall and controlling him. My right hand ended up behind S/[redacted] head as S/[redacted] was moving forward. My right hand was in contact with S/[redacted] head as his momentum took him toward the wall and it was his own momentum that caused his head to make contact with the wall.”

Similarly, Peralta wrote that [redacted] “lunged” toward Gutierrez, and “[redacted] unprovoked sudden movement caused his head to hit the window sill.”

Video Footage

In jail surveillance footage, Gutierrez and Peralta stand in front of [redacted] cell, which is sixth in a row of cells that empty into a narrow walkway, across from which is a concrete wall with a row of windows. The walkway appears just wide enough to accommodate two people standing side by side. (According to reports, it is narrower than similar walkways in the general population cell blocks.)

[redacted] cell door opens automatically. [redacted] steps into the walkway. His hands are already cuffed behind his back. [redacted] faces the deputies and appears to say something to them. [redacted] turns and places his back to the deputies. Gutierrez stands on [redacted] right side. Peralta stands on his left side. Gutierrez and Peralta appear to try to grip [redacted] arms, but [redacted] makes a sudden movement to his left: hunching, pivoting his hips, and stepping away from the deputies. [redacted] follows his sudden leftward movement by turning his body rightward, toward Gutierrez. Simultaneously, Gutierrez reaches across [redacted] back toward his opposite shoulder. [redacted] moves and turns toward Gutierrez and the wall. Gutierrez’s arm comes across [redacted] shoulders and upper back. Gutierrez holds [redacted] by the back of the neck or trapezius muscle area. Peralta is behind [redacted] still holding one or both of his arms. [redacted] continues rightward until his head slams into the wall. [redacted] bends at the waist and eventually the deputies take him to the ground in a prone position. After several minutes, [redacted] is lifted back to his feet and he walks under his own power down the hallway with a deputy holding each arm.

Statement

Hours after the incident, [REDACTED] told investigators: "I'm walking out, the cops pulled me out, and I went forward, and he hit me right in the forehead. That's all I remember. Because the cop told me yesterday that once they get me out of the cell, they were going to get me."

[REDACTED] went on to tell investigators that he is on "psych" medication. He also said, "I have telepathy. I'm a Satanist. I have a cross on my face and chisel it out for a reason." Investigators were unable to keep [REDACTED] on the topic of the incident and ended the interview.

Investigators attempted to reinterview [REDACTED] on May 31, 2023. [REDACTED] declined to speak about the incident, stating, "I don't believe in snitching or locking people up."

Injuries

According to medical records, [REDACTED] sustained a three inch laceration to his forehead and a two inch laceration to the top of his head. The records do not indicate the wounds were treated with sutures.



Figure 1: Photo of [REDACTED] injuries shortly after incident.

LEGAL ANALYSIS

A police officer who assaults a person without "lawful necessity" is guilty of a felony or misdemeanor. Penal Code section 149.

To prove that a defendant is guilty of this crime, the People must prove: (1) the defendant was a public officer at the time of the conduct; (2) the defendant was acting under color of authority as a public officer; (3) the defendant assaulted or beat another person; and (4) the defendant acted without legal necessity. *People v. Perry* (2019) 36 Cal.App.5th 444, 460-461. "In order to prove that the defendant acted without legal necessity, the People must prove that he used more force than was necessary under the circumstances." *Id.* at p. 461.

The People must prove the defendant acted willfully, unlawfully, and not in self-defense.
CALCRIM 908.

Application

Here, there is insufficient evidence to prove beyond a reasonable doubt that Gutierrez or Peralta acted *willfully* or *unlawfully* in causing [REDACTED] head to collide into the wall. Both deputies claim that [REDACTED] own momentum carried him into the wall, and [REDACTED] declined to give his version of events.

The video confirms that [REDACTED] made sudden movements as the deputies initially attempted to take hold of his arms (as required for a K-20 inmate). Video also appears to confirm that [REDACTED] began moving his body in the direction of the wall *before* Gutierrez grabbed [REDACTED] by the back of the neck.

It cannot be determined from the video footage whether Gutierrez deliberately slammed [REDACTED] into the wall, or whether the contact was accidental, as a result of [REDACTED] swinging and lunging his own body toward the wall (and Gutierrez) combined with Gutierrez's efforts to control [REDACTED] and overcome his resistance.

CONCLUSION

Based on the foregoing, there is insufficient evidence to prove beyond a reasonable doubt that [REDACTED] injuries were caused by the willful or unlawful force of Deputies Gutierrez or Peralta. Accordingly, we decline to initiate criminal proceedings.