

October 20, 2022

Via E-Mail

Honorable Members of the Board of Supervisors  
Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Re: The Most Recent Monitors' Report in the DOJ Jails Consent Decree (*United States v. County of Los Angeles*) and the Preliminary Injunction in *Rutherford v. Villanueva* Relating to Conditions in IRC

Honorable Members of the Board of Supervisors:

The most recent report by the court-appointed Monitor for the consent decree about treatment of people with mental illness in the county jails<sup>1</sup> and the grant of a TRO and Preliminary Injunction (PI) addressing conditions in the Inmate Reception Center make clear that the crisis in the jails driven in large part by the overincarceration of people with mental illness continues unabated. Moreover, the Monitor's report reveals that the County still has no long-term plan to address one of the key provisions of the consent decree – the availability of appropriate mental health housing for those who need it.<sup>2</sup> And a number of the County's proposed solutions to the crisis in IRC are doomed to failure and will likely exacerbate the already unconstitutional treatment of people with mental illness.

There is only one effective and durable solution to these problems, which is the dramatic reduction of the number of people with mental illness in the jails. It is high time the Board stop talking about Care First, Jails Last, stop passing motions asking for report backs without committing to funding more beds, stop prioritizing budgetary concerns over its constitutional obligations to people with mental illness, and accelerate the development of community beds to enable the diversion of a much greater population of people with mental illness in the jails.

The Board's recent decision to expand ODR Housing by 750 beds is welcome. *But it is not nearly sufficient to address the scope of the problem.*

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<sup>1</sup> See Fourteenth Monitors Report, Dkt No 221, *United States v. County of Los Angeles* CV 15-05903 DDP (JEMX) , filed Sept. 20, 2022.

<sup>2</sup> *Id.* at 4.

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### The Consent Decree in *United States v. County of Los Angeles* and the IRC Backlog

As we previously informed the Board in a letter dated December 10, 2021 (attached), the County has been flagrantly out of compliance for 25 years with either a Memorandum of Agreement or a consent decree with the United States government designed to protect the rights of people with mental illness in the County Jails. Almost a year later, the County's failure to fully abide by the terms of the consent decree continues.

The Twelfth Report by the court-appointed consent decree monitor concluded that the County was out of compliance with Provision 63 of the consent decree, which requires the "County to maintain adequate HOH and MOH housing 'sufficient to meet the needs of the jail population with mental illness.'"<sup>3</sup> A year later, the Monitor's Fourteenth report shows that there is still a major problem with availability of MOH and HOH housing for those who need it. The Fourteenth report shows 48% of inmates at TTCF waited seven or more days for permanent mental health housing, while 49% of inmates at CRDF waited seven or more days for permanent mental health housing.<sup>4</sup> According to the monitor, "the number of inmates with prolonged waits for mental health housing is still unacceptably high—and it has substantial human costs. The County must improve these numbers in the next Reporting Period."<sup>5</sup>

As the ACLU showed in the TRO and PI, and the County agreed, the recent horrific backlog in IRC where people with mental illness were warehoused in IRC, sleeping on benches or concrete floors, denied psychotropic medication, and in some cases chained to benches for prolonged periods was a direct result of insufficient MOH and HOH housing in the jails. The County has now agreed to a PI that limits stays in IRC to 24 or fewer hours and caps the time that someone with severe mental illness can be chained to the front bench in IRC to four or fewer hours.

### A Number of the County's Plans to Address the Backlog in IRC Are Ill-Advised, Dangerous, and Doomed to Failure

Unfortunately, a number of the solutions the County proposed in its response to the ACLU's PI motion are doomed to failure, and some are already harming people with mental illness in significant ways. Specifically, three of the County's proposed methods to reduce wait times in IRC to constitutional limits – increasing the number of people who need MOH housing in Men's Central Jail, moving people who need MOH housing from TTCF to Pitchess Detention Center North, and double celling people who need HOH housing -- are not solutions to the crisis.

Increasing the number of MOH housing units in MCJ so that the County can repurpose MOH units in TTCF into HOH units merely trades one bad problem for another. It is undisputed that MCJ is an archaic, filthy, crowded and unsafe facility that is completely inappropriate for housing people with significant mental health needs.<sup>6</sup> Indeed, Supervisor Hahn described MCJ

<sup>3</sup> See Twelfth Monitor's Report, at 11.

<sup>4</sup> See Fourteenth Monitor's Report, at 84.

<sup>5</sup> *Id.*

<sup>6</sup> See, e.g., Dr. Terry Kupers, Report on Mental Health Issues at Los Angeles County Jails, provided to Los Angeles County Board of Supervisors, (April 6, 2009) (on file with author).

as “an abomination. It is archaic, and it is not a good place both for those who are incarcerated and also our deputies that have to work there.”<sup>7</sup> It is indeed troubling that one of the County’s responses to the crisis in IRC is to move people with serious mental illness from an inadequate facility – TTCF – into a facility that is an “abomination.”

Moving people who need MOH housing from TTCF to Pitchess North and repurposing the MOH units for HOH housing is also proving to be difficult. We have learned from a reliable source that there is insufficient medical and mental health staff at Pitchess to deal with the influx of people assigned to MOH housing who need mental health treatment and generally need psychotropic medication. Instead, pill call has been cancelled at various units housing people with serious mental illness, and routine medical care such as wound treatment and blood pressure checks is being neglected. Lack of continuity in the provision of prescription medications can cause serious problems. Those problems are particularly pronounced for people with severe mental illness who do not regularly receive their prescribed psychiatric medication. As noted forensic psychiatrist Dr. Terry Kupers stated in his declaration in *Rutherford*, “[a]brupt discontinuation of psychiatric medication causes serious harm. \* \* \* The side effects of abrupt discontinuation of psychotropic medications include death – by suicide, seizures, or by physiological reactions to the abrupt biochemical change.”

But even if the problems we are hearing about at Pitchess North are merely the short-term result of accelerating the timeline to move people who need MOH from downtown to free up HOH beds in TTCF, we are concerned about the potential for continuing problems. The County has had a difficult time hiring and retaining sufficient mental health staff in the downtown jail. It will likely be even more difficult to hire and retain sufficient medical and mental health staff at Pitchess North.<sup>8</sup>

If the County were to increase the practice of double celling people who need HOH housing because of the seriousness of their mental illness it would create very serious risks of harm. Indeed, Dr. Terry Kupers who has visited the LA County Jails multiple times states:

[I]n solitary confinement settings, or in situations where individuals spend most of their day locked in a cell and do not have access to substantial amounts of high quality out of cell time that includes lots of mental health programming like group therapy and the ability to move around and socialize freely, double-celling is dangerous. Cellmates are too prone to get in each other’s way. One has to jump up on a bunk to let the other pass to use the toilet. Tensions mount. There is a solid consensus nationally in corrections that individuals with serious mental illness must not be double-celled when they are forced to spend most of their days in the cell. They are simply too

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<sup>7</sup> See, e.g., Statement of Supervisor Janice Hahn, Transcript Board of Supervisors Hearing at 166 (June 22, 2021). Supervisor Kuehl has described MCJ as “outdated,” “crumbling,” and “dangerous.” Supervisor Solis said about MCJ, “someone earlier said [MCJ] . . . is dungeon. We know it is. For Pete’s sake, who would want someone stay there when they have mental issues of substance abuse issues.”

<sup>8</sup> L.A. County CEO, *Jails Last: Addressing the Overcrowding Concerns in the IRC* (Aug. 3, 2022) (“[T]here is a high clinical vacancy rate in the jails.”) available at <http://file.lacounty.gov/SDSInter/bos/supdocs/170774.pdf> .

unpredictable, on average, for that to be a safe arrangement, especially if the two individuals who are forced to cell together are not permitted to choose a cellmate, or not permitted to refuse to be housed with certain individuals.<sup>9</sup>

But people in HOH do spend most of their time locked in their cell and more importantly do not receive substantial amounts of high-quality out of cell time. Under Provision 80 in the DOJ consent decree, they are supposed to get “ten hours of structured therapeutic or programmatic time per week.” But the County is grossly out of compliance with this Provision. As stated in the Monitor’s most recent report: ““14% and 0% for CRDF and TTCF, respectively – rather than the required 100% – of prisoners residing in HOH were offered the required structured out-of-cell time” during the First Quarter of 2022.<sup>10</sup>

Moreover, the unstructured out of cell time that people in HOH units receive is basically worthless and certainly not of the kind to help reduce the risks of double celling. As the DOJ Monitor stated in his Twelfth report:

The out-of-cell time that we observed in these HOH pods was also concerning. During out-of-cell time, a small number of inmates, often 3-5, were handcuffed to individual metal “spider tables” in the shared dayroom while all other inmates remaining locked in their cells. The out-of-cell inmates generally watched TV or sat at their tables doing nothing. They were not able to engage in the activities that generally characterize out-of-cell time in jail environments, such as moving around the dayroom, exercising, reading, using the telephones, showering, engaging in group activities, or interacting with other inmates.<sup>11</sup>

A recent death in jail demonstrates the dangers of double celling people who need HOH housing, particularly with the County’s extreme non-compliance with Provision 80 of the consent decree. On September 26, a 48 year-old man was found dead in his cell in TTCF. We have learned from two independent, reliable sources that he was double celled in an HOH unit and that his cell mate strangled him while his cellmate was in a “floridly psychotic state.”

We are relieved that the County has so far not increased the amount of double celling people HOH housing units to help reduce the backlog in IRC. But if the backlog in IRC were to increase and the County were to increase the amount of double celling in HOH units in response, it would merely be trading one dangerous practice that endangers the health and even lives of people with mental illness in the jails for another.

The County Still Does Not Have in Place an Effective Plan to Address Its Longstanding Non-Compliance with the DOJ Consent Decree or Ensure that the recent crises in IRC will Not Recur

The shortage of mental health housing has resulted in the County’s continued non-compliance with the DOJ consent decree and was a primary cause of the shocking conditions and mistreatment in IRC. Yet despite years of non-compliance, as well as repeated crises in IRC,

<sup>9</sup> E-mail from Dr. Terry Kupers (October 17, 2022) (on file with author).

<sup>10</sup> Fourteenth Monitor’s Report, at 110.

<sup>11</sup> Twelfth Monitor’s Report, at 13-14.

less than three weeks ago the court-appointed Monitor in the DOJ consent decree concluded that “the County has yet to articulate plausible or realistic plans for obtaining compliance with . . . Provision 63 [which] requires the County to have sufficient housing for the jail population with mental illness.”<sup>12</sup> The Monitor noted that the County is “evaluating” ways to reduce the population of people with mental illness in the jails but concluded that “[t]here is no proposed timetable for this exploration, nor an estimated percentage of the existing P3 and P4 population that would be eligible for such diversion, or how quickly the County would be able to create or obtain the necessary ODR beds or otherwise scale such an initiative.”<sup>13</sup>

The Monitor summarized this distressing situation as follows:

This . . . imbalance [between the number of people who needs specialized mental health housing and its availability] has continued to grow for each of the last several years, and the bigger it gets, the greater are its detrimental impacts on inmate and staff safety and well-being inside the jails. \* \* \* In this context, and for the avoidance of doubt, to comply with Provisions 63 and 64:<sup>14</sup> *Los Angeles County must either reduce demand by lowering the number of incarcerated patients who require beds at the P3 and P4 levels, expand supply by increasing the number of beds available to treat such patients, or some combination of two.*<sup>15</sup>

The Board has already decided not to expand the availability of mental health housing by building a mental health jail. A plethora of letters from noted forensic psychiatric experts detailing the enormous problems with and harms caused by so-called mental health jails are proof of the wisdom of the Board’s decision.<sup>16</sup> The problems with County’s attempt to address the crisis in IRC by trying to expand the availability of mental health housing in the current jail facilities such as MCJ and in the face of continued shortages of medical and mental health staff demonstrate that there is only one real solution to addressing the supply/demand problem the Monitor has identified.

The County Must Move Rapidly and Far More Aggressively to Expand Programs like ODR Housing that Will Enable Substantial Reduction of the Jail’s Mental Health Population.

For years the Office of Inspector General has reported on problems in the IRC. In its 2019 report about a backlog in IRC similar to the one this summer, it concluded the County needed to “increase efforts to divert qualified prisoners with mental illnesses to community-based mental health treatment programs in order to alleviate overcrowding in mental health housing locations” which was a cause of overcrowding in IRC.<sup>17</sup>

<sup>12</sup> Fourteenth Monitor’s Report, at 3 (emphasis in original).

<sup>13</sup> *Id.* at 4

<sup>14</sup> Provision 64 governs the availability of forensic inpatient beds. It is another provision of the consent decree that the County has long been violating.

<sup>15</sup> Fourteenth Monitor’s Report, at 4.

<sup>16</sup> See, e.g., Letter from Dr. Pablo Stewart, January 24, 2019 (attached)

<sup>17</sup> Office of Inspector General, *Review of the Inmate Reception Center Intake Evaluation Process*, at 13 (November 2019) available at <https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/c2463bac-4aab-43b6-9824-7e8c9c10fdb8/Review%20of%20IRC%20Intake%20Evaluation%20Process.pdf>

On September 23, 2021 Assistant Inspector General Cathleen Beltz testified that the jail population needed to be reduced to the Board of State and Community Corrections rated capacity of 12,404 to address the “grossly inadequate” conditions in IRC.<sup>18</sup> However, the current jail population stands at 14,975 about 40% of which are people with mental illness.<sup>19</sup>

For years, the Board has flirted with steps to decrease the number of people with mental illness in the jails, including expanding ODR Housing. But the Board failed to do so in large part because of the CEO’s focus on ODR’s so-called “structural deficit.”<sup>20</sup> But prioritizing budgetary concerns over fixing problems in the IRC and the longstanding violations of the DOJ consent decree is inconsistent with the County’s constitutional obligations.<sup>21</sup>

The Board’s recent decision to include funding in the supplemental budget to lift the freeze on ODR Housing placements and expand the number of ODR Housing beds by 750 is a step in the right direction. But it is not nearly enough. According to the OIG, preventing recurrence of the 2019, 2021, and 2022 crises in IRC will require reducing the jail population by **more than 2,500 people**. Even if increasing the number of people in ODR Housing by 750 caused a corresponding drop in the jail mental health population by 750, it will effect only about 30% of the necessary reduction.

### Conclusion

Eight years ago, the Department of Justice informed the County that reducing the population of people with mental illness in the jail was an essential component of the County’s living up to its obligations to protect the constitutional rights of people with mental illness:

The delivery of mental health services in the corrections environment is difficult and presents unique challenges. Many of the prisoners may well be safely and more effectively served in community-based settings at a lower cost to the County. The remedies that we seek in order to ensure that the conditions in the Jails meet the minimum required by the Constitution – that ensure that prisoners are safe and that staff are not placed at an unreasonable risk of harm – can be implemented more effectively if the number of prisoners needing mental health services is reduced.

In considering solutions to this problem, we strongly encourage the Sheriff, the Mental

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<sup>18</sup> Transcript of Testimony of Cathleen Beltz, Civilian Oversight Commission Hearing, September 23, 2021 (available with author)

<sup>19</sup> See *Care First L.A.: Tracking Jail Decarceration*, Vera Institute of Justice (available at <https://www.vera.org/care-first-la-tracking-jail-decarceration>)

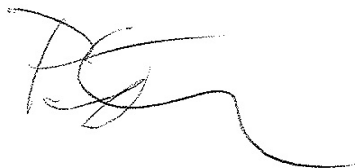
<sup>20</sup> See Memo from CEO to LA Board of Supervisors (November 17, 2020).

<sup>21</sup> See, e.g., *Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014) (en banc) (“Lack of resources is not a defense to a claim for prospective relief because prison officials may be compelled to expand the pool of existing resources in order to remedy continuing Eighth Amendment violations.”) (citations omitted); *Wright v. Rushen*, 642 F.2d 1129, 1134 (9th Cir.1981) (“[C]osts cannot be permitted to stand in the way of eliminating conditions below Eighth Amendment standards.”).

Health Director, and the County to consider alternatives to incarceration for those prisoners with mental illness who can be supervised in the community without compromising public safety.<sup>22</sup>

The County's continued violations of the consent decree and the recent crises in IRC demonstrate beyond a doubt that the County must do far more than it is currently doing to reduce the population of people with mental illness in the jails.

Sincerely,



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Cc: Dylan Ford  
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<sup>22</sup> Letter from Jonathan Smith, Chief, Special Litigation Section United States Department of Justice to Anthony Peck, Deputy County Counsel (June 4, 2014) available at <https://www.clearinghouse.net/chDocs/public/JC-CA-0005-0008.pdf>