



June 27, 2017

Sandra Hutchens, Sheriff-Coroner  
[shutchens@ocsd.org](mailto:shutchens@ocsd.org)  
550 N. Flower Street  
Santa Ana, CA 92703

**RE: Unconstitutional conditions of confinement for individuals who are incarcerated in the Orange County jail system.**

Sheriff Hutchens:

The Orange County Sheriff's Department (the "Department") must remedy numerous issues with the conditions of confinement at its five county jails – Intake/Release Center, Central Men's Jail, Central Women's Jail, Theo Lacy Facility and James Musick Facility. These unlawful conditions – several of which have persisted despite repeated recommendations and demands for reform from various entities – are described in the accompanying executive summary and report.<sup>1</sup>

In addition to the ACLU SoCal findings, after a two year investigation, outlined in aforementioned documents, other evidence of problems within the Department under your leadership has surfaced:

**The OCSD has operated without any external oversight for more than a year.**

- The Office of Independent Review (OIR) was established in 2008 to investigate jailhouse deaths and review allegations of excessive use of force against deputies following the fatal beating of an incarcerated individual.<sup>2</sup> In March 2016, its former executive director, Stephen Connolly, resigned amid criticism that he failed to uncover the jailhouse informant issue and did not provide county supervisors with adequate updates.<sup>3</sup> In January 2017, county supervisors directed staff to hire Gary Schons to fill the law enforcement watchdog position. Two weeks after he had been selected for the position, Schons withdrew his application.<sup>4</sup> The position remains vacant and thus the Sheriff's Department is currently tasked with investigating itself.

**Several cases highlight systemic attempts by the Sheriff's Department and the District Attorney's Office to circumvent the constitutional protections allowed to criminal defendants.**

- In March 2015, Orange County Superior Court Judge Thomas Goethals recused the DA's office from continuing to prosecute Scott Dekraai, who pleaded guilty in 2016 to killing eight people at a Seal Beach hair salon in 2011.<sup>5</sup> Judge Goethals found that the DA's office was unlawfully utilizing jailhouse informants and unconstitutionally concealing the information from defense lawyers. The state Attorney General's Office has taken over the case. The matter is also being investigated by the Department of Justice and CA Attorney General. Although the Orange County grand jury released a report in June 2017 claiming that the OCSD was not operating an organized jailhouse informant program, and that allegations of systemic cheating were unfounded; testimony appears to contradict said findings.<sup>6</sup> Since late May, discovery hearings in *Dekraai v. People* have revealed that deputies have been working with informants at the jails for several years. Members of the OC Public Defender's office and the media have questioned the

grand jury's findings given court hearings about the matter remain ongoing.<sup>7</sup> To date, half a dozen cases have been affected by the controversy, including reduced charges and previous verdicts overturned.<sup>8</sup>

**Since 2010, both the Musick Facility and the Theo Lacy Facility have participated in the federal program, commonly known as “Beds for Feds,” to house undocumented immigrants who are awaiting deportation hearings or deportation.**

- A March 2017 report by the Department of Homeland Security's Office of Inspector General documented that immigrant detainees housed at the Theo Lacy Facility are subject to serious health and safety risks.<sup>9</sup> Concerns include unsanitary food and handling; 24-hour disciplinary segregation known as solitary confinement; poor sanitation, including mildewed shower stalls and refuse in cells; broken phones; faulty grievance procedures; and an inadequate classification system. The OIG report confirms concerns raised by advocacy groups for years about the substandard conditions for immigration detainees at Theo Lacy. In May 2017, despite opposition from community organizations and several reports citing inhumane conditions and abuse at the Theo Lacy Facility, the OC Board of Supervisors unanimously approved a request to modify the existing five-year inter-governmental service agreement (IGSA) with ICE to increase bed space for detainees.<sup>10</sup>

**OCSD management did not adequately train and supervise deputies at the jail which permitted custody staff to repeatedly violate security policies and procedures.**

- In January 2016, three individuals escaped from the OCSD's Central Men's Jail. Custody staff did not learn of the escape for almost 15 hours.<sup>11</sup> The incident sparked a weeklong search before one of the three individuals turned himself in and the other two were caught soon after. In April 2017, the Orange County grand jury released a report identifying lax supervision and improper inmate counting procedures as significant factors that permitted the escape and helped extend the escapees' time on the run.<sup>12</sup>

**The Orange County sheriff's deputies union sued the county claiming that mishandling and negligence by management has cultivated an unsafe environment in the jails.**

- In February 2016, the Association of Orange County Deputy Sheriffs (AOCDS) filed a lawsuit against the OCSD and Sheriff Hutchens.<sup>13</sup> The suit alleges that staff reductions and directives from jail managers have resulted in dangerous conditions. The lawsuit is still pending.

**The Department of Justice identified systemic deficiencies within the OCSD which reflect longstanding issues and pose a continued and serious risk of harm to incarcerated individuals.**

- On December 23, 2008, the DOJ notified Orange County officials of their investigation into conditions in the Orange County Jail to examine a decade's worth of allegations that deputies mistreated incarcerated individuals and used excessive force. On March 4, 2014, the DOJ issued a letter with notice of the results from the investigation.<sup>14</sup> The DOJ identified operational deficiencies and recommendations involving the use of force, crowding, supervision practices, medical care, and mental health care. The DOJ recommended that the Jail take additional steps to avoid violating the Fourteenth Amendment's due process protections for pre-trial detainees,



**STAND FOR JUSTICE**

as well as the Eighth Amendment's protections for those convicted of a criminal offense. The investigation has not been formally closed.

In light of multiple high-profile controversies and ongoing investigations, including the findings from the ACLU SoCal's report, we and the letter's signatories demand that the Department revise all policies and procedures and immediately take remedial measures to ensure constitutional conditions of confinement in the Orange County jail system. Failure to correct inadequacies may demonstrate deliberate indifference, which is prohibited by the Constitution.

The Department must take necessary steps to:

- Resolve conditions of confinement that pose a substantial risk of serious harm to individuals who are incarcerated.
- Ensure the safety of incarcerated individuals, and meet their basic needs, including medical and mental health care.
- Prohibit the use of excessive force and other forms of abuse.
- Hold custody staff accountable for any and all misconduct and ensure greater supervisory oversight.
- Establish an impartial civilian oversight body to thoroughly investigate and report allegations of transgressions or abuses of power.

We demand that the Department's command staff take immediate action and meet with representatives from the ACLU SoCal and partner organizations to discuss next steps. Please respond by July 11, 2017 by contacting Daisy Ramirez, OC Jails Project Coordinator at (714) at [dramirez@aclusocal.org](mailto:dramirez@aclusocal.org). We look forward to hearing from you.

A hard copy of this letter and accompanying material has also been submitted in person.

Sincerely,

ACLU of Southern California  
Law Enforcement Accountability Network (LEAN)  
Katie Tinto, Director of the UCI Law School Criminal Justice Clinic  
Dennis Clarke, Director of Micah's Way

cc) Undersheriff Don Barnes, Constitutional Policing Advisor Mary Izadi, Assistant Sheriff Steve Kea, Assistant Sheriff Bob Peterson, Commander Jon Briggs, Captain Cindi Coppock, Captain Brian Schmutz, Captain Jason Park, Captain Paul D'Auria, and County Counsel Leon Page

Encs.



STAND FOR JUSTICE

<sup>1</sup> Esther Lim and Daisy Ramirez, “Orange County Jails,” ACLU of Southern California, last modified June 27, 2017, <https://www.aclusocal.org/sites/default/files/ocjails2017-aclu-socal-report.pdf>; “Executive Summary” Orange County Jails,” ACLU of Southern California, last modified June 27, 2017, <https://www.aclusocal.org/sites/default/files/ocjails2017-aclu-socal-execsummary.pdf>

<sup>2</sup> “Office of Independent Review: What’s Next?” Orange County grand jury 2015-2016, last accessed June 26, 2017, [http://www.ocgrandjury.org/pdfs/2015\\_2016\\_GJreport/2016-06-30\\_Website\\_Report\\_\(OIR\).pdf](http://www.ocgrandjury.org/pdfs/2015_2016_GJreport/2016-06-30_Website_Report_(OIR).pdf)

<sup>3</sup> MRubio, “Stephen Connolly to Resign from the Office of Independent Review,” *Voice of OC*, last modified February 18, 2016, <http://voiceofoc.org/2016/02/stephen-connolly-to-resign-from-the-office-of-independent-review/>

<sup>4</sup> Jordan Graham, “Orange County Law Enforcement Watchdog Job to Remain Empty as Chosen Candidate Withdraws,” *The Orange County Register*, last modified February 3, 2017, <http://www.ocregister.com/articles/schons-742991-board-county.html>

<sup>5</sup> Christopher Goffard, “Orange County D.A. is removed from Scott Dekraai murder trial,” *Los Angeles Times*, last modified March 12, 2015, <http://www.latimes.com/local/orangecounty/la-me-jailhouse-snitch-20150313-story.html>

<sup>6</sup> James Queally and Christopher Goffard, “Despite grand jury findings, fallout from O.C. jailhouse snitch scandal is far from over,” *Los Angeles Times*, last modified June 19, 2017, <http://www.latimes.com/local/lanow/la-me-ln-orange-county-jail-informant-report-20170619-story.html>

<sup>7</sup> R. Scott Moxley, “Snitch Myth? Only to Orange County’s Reality-Denying Grand Jury,” *OC Weekly*, last modified June 21, 2017, <http://www.ocweekly.com/news/reality-timeline-in-orange-countys-jailhouse-snitch-scandal-contradicts-grand-jurys-report-8201616>

<sup>8</sup> Kelly Puente and Tony Saavedra, “Feds launch investigation into Orange County D.A.’s Office, Sheriff’s Department over jailhouse informants,” *The Orange County Register*, last modified December 16, 2016, <http://www.ocregister.com/2016/12/16/feds-launch-investigation-into-orange-county-das-office-sheriffs-department-over-jailhouse-informants/>

<sup>9</sup> “Management Alert on Issues Requiring Immediate Action at the Theo Lacy Facility in Orange, California,” U.S. Department of Homeland Security, Office of Inspector General, <https://www.oig.dhs.gov/assets/Mga/OIG-mga-030617.pdf> on March 9, 2017

<sup>10</sup> “Theo Lacy Detention Center: Expose and Close,” Detention Watch Network, <https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Theo%20Lacy.pdf>; “Multi-Individual Complaint – Theo Lacy Facility,” Community Initiatives for Visiting Immigrants in Confinement (CIVIC), <http://www.endisolation.org/TheoLacy>; TSEARS, “OC Community Groups Ask OC Board of Supervisors Not To Expand Immigration Detention in Orange County, Cite Worsening Conditions At County Jail,” *Voice of OC*, last modified May 9, 2017, <http://voiceofoc.org/2017/05/oc-community-groups-ask-oc-board-of-supervisors-not-to-expand-immigration-detention-in-orange-county-cite-worsening-conditions-at-county-jail/>; Michael Kaufman and Carmen Iguina, “Wasteful Spending to Detain Immigrants in a Maximum Security Jail,” ACLU of Southern California, last modified December 10, 2012, <https://www.aclusocal.org/en/news/wasteful-spending-detain-immigrants-maximum-security-jail>

<sup>11</sup> “Three Inmates Escape from Orange County Jail,” *Los Angeles Times*, last modified January 26, 2016, <http://www.latimes.com/local/california/la-me-oc-jail-escape-sg-storygallery.html>

<sup>12</sup> Nick Gerda, “Grand jury report faults management in O.C. jail escape,” *Los Angeles Times*, last modified April 27, 2017, <http://www.latimes.com/socal/daily-pilot/news/tn-wknd-et-jail-break-20170427-story.html>;

<sup>13</sup> Nick Gerda, “Deputies’ Union Sues County, Says Negligence Could Have Led to Jailbreak,” *Voice of OC*, last modified February 12, 2016, <http://voiceofoc.org/2016/02/deputies-union-sues-county-says-negligence-could-have-led-to-jailbreak/>

<sup>14</sup> Jonathan M. Smith, “Orange County Jail – Investigatory Results Letter,” U.S. Department of Justice, last modified March 4, 2014, [https://www.justice.gov/sites/default/files/crt/legacy/2014/03/26/ocj\\_investletter\\_3-4-14.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/03/26/ocj_investletter_3-4-14.pdf)



STAND FOR JUSTICE