



May 1, 2023

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

Re: Support for Revised Motion “Expanding the Office of Diversion and Reentry Housing” (Supervisors Mitchell and Horvath, May 2, 2023)

Honorable Members of the Board of Supervisors:

The ACLU of Southern California strongly supports the Revised Motion by Supervisors Mitchell¹ and Horvath, “Expanding the Office of Diversion and Reentry Housing” on the agenda for the Board’s May 2, 2023 meeting. The Motion is an important step toward improving public safety. And it serves an additional vital purpose -- helping bring the County into compliance with its legal and constitutional obligations as set forth by the federal court in *United States v. County of Los Angeles*, and *Rutherford v. Luna*. However, for the reasons explained below, the Motion is necessary *but not sufficient* to protect the County from being in contempt of court in both of those two cases. In short, after this motion passes, the Board must do much more on an expedited basis to ensure the Court does not impose substantial fines and other relief for violations of these court orders.

ANALYSIS

It cannot be seriously disputed that expanding ODR diversion and reentry housing programs improves public safety. The recidivism rate for people with mental illness who are not diverted but instead serve their sentences in the County jail is abysmal.² By contrast, as set forth in the Motion’s preamble, the recidivism rate and housing retention rate for people served by ODR programs such as ODR Housing is exemplary.

But this Motion will also help further another vital purpose – bringing the County into compliance with its constitutional obligations set forth in court orders in two cases: *United States v. County of Los Angeles*, which protects the rights of people with mental illness in the

¹ The ACLU So Cal is particularly appreciative of Supervisor Mitchell’s consistent leadership in trying to address the humanitarian crisis in the jails.

² See, e.g. H. Richard Lamb, et al., *Treatment Prospects for Persons With Severe Mental Illness in an Urban County Jail*, 58 *Journal of Psychiatric Services* 782 (June, 2007).

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County jails, and *Rutherford v. Luna*, which among other things sets forth requirements for people in the Inmate Reception Center, including treatment in the IRC for people with mental illness.

The Decree in *US v. County of Los Angeles*

Unfortunately, the County has been out of compliance with a number of fundamental provisions of set forth in the *US v. County of Los Angeles* case since the entry of the court-enforceable settlement agreement in 2015.³ The non-compliance has been so flagrant that the Court recently entered an order setting firm deadlines for the County to reach full compliance. That order requires that the County reach full compliance with its obligation under Paragraph 63 of the settlement agreement to ensure adequate High Observation Housing for people with a P3 assessment by the end of 2024;⁴ and it must reach 80% compliance by the end of the second quarter of 2024. In addition, the order requires the County have adequate forensic inpatient beds for people with a P4 assessment under Paragraph 64 of the settlement agreement by the end of the third quarter of 2024, and ensure 20 hours of out of cell time for people in High Observation Housing under Paragraph 80 of settlement agreement by the end of the second quarter of 2025.⁵ The order also sets forth interim deadlines by which the County must be moving towards full compliance, the first deadlines arriving in a matter of weeks at the end of June 2023.

During the hearing on the DOJ motion, the Court made clear that it was “not impressed” by the County’s current planned expenditures dedicated to expanding diversion for people with mental illness and urged that the County dedicate the kind of effort and resources akin to the response to rebuilding the 10 Freeway, which was completed in less than 3 months and ahead of schedule. Moreover, the lead lawyer for the US DOJ indicated that the United States was more than willing to move for contempt if the County did not comply with Court-imposed deadlines – not just the final deadline but each interim deadline as well.⁶

In response to the DOJ’s motion seeking firm compliance deadlines, the County represented to the Court that it would need to lower the HOH population by 750 persons, requiring the creation of 1,500 new beds suitable for P3s and P4s to come into compliance. To reach 80% compliance by the June 30, 2024, the County will need to have created (not just funded) approximately 1,200 new community beds for P3s and P4s. However, according to the table in

³ The ACLU of Southern California has repeatedly informed the Board that the County is “flagrantly” out of compliance with the DOJ settlement agreement and that the only way for the County to come into compliance was to substantially expand ODR programs to significantly lower the population of people with serious mental illness in the jails. See, e.g., Letter of Peter Eliasberg and Melissa Camacho ((October 10, 2022); Letter from ACLU, Disability Rights California, et al (June 10, 2022).

⁴ The consent decree also requires adequate Moderate Observation Housing for P2’s. While the County is closer to compliance for P2s, it has done so by housing P2’s in Men’s Central Jail and in housing units in Pitchess North. Both the Board and the Director of Correctional Health Services, Dr. Tim Belavich, have recognized that MCJ is not an appropriate place for anyone, much less someone with a serious mental illness. Moreover, the Board of State and Community Corrections recently found that the County is housing P2s in units in Pitchess that are severely overcrowded.

⁵ Order Setting Deadlines for Substantial Compliance, Dkt 248 *US v. County of Los Angeles*, 15-cv-5903-DDP-JEMx (April 20, 2023).

⁶ K Blakinger, *Federal Court Orders Contempt Hearing over L.A. County’s Failure to Clean Up its Jails*, LA Times (April 20, 2023), <https://www.latimes.com/california/story/2023-04-20/la-me-judge-contempt-county-jails>

the proposed motion, the County will only have created approximately 660 new beds to divert people with mental illness from the jails by June 30, 2024 and 910 new beds for by the end of 2024. Even assuming the 1500 bed number is sufficient and that all the 910 beds are appropriate for P3s and P4s, the County will be well short of creating the beds necessary to avoid contempt. **In sum, without more ODR (and DMH) bed expansion, there will be a gap of almost 600 beds by June 30, 2024 and a similar number at the end of 2024 causing the County to be in contempt of all the interim Court-ordered compliance deadlines for Paragraph 63 between June 30, 2023 and December 31, 2024.**⁷

The proposed motion will help bring the County into compliance at some point in the future. But it will, unfortunately, do nothing to avoid the County's being in contempt starting June 30, 2023 and continuing through 2024. That is the case because the revised motion does not provide for any expansion until FY 2024-25, i.e., not to begin at earliest until July 1, 2024 after the County will already be in contempt of multiple Court-ordered deadlines in *US v. County of Los Angeles*.

Rutherford v. Luna

The prognosis for the County's avoiding contempt of the order in *Rutherford v. Luna* is even more dire. This motion is helpful to eventually bringing the County into compliance. But it is not sufficient to ameliorate that risk in the near-term, and more needs to be done quickly.

The Court's IRC order requires the County fulfill specific obligations to people in the IRC, including not holding any of them for more than 24 hours in the IRC, not keeping someone in an IRC holding cell for more than 12 hours, and not chaining someone with mental illness to the "front bench" for more than 4 hours.⁸ At the April 19, hearing on Plaintiffs' Motion for an Order to Show Cause re Contempt, the County admitted it is *not* currently in compliance with the Court's IRC order.⁹ Moreover, the County has also informed the Court that it needs to lower the population of P3s and P4s by 700 by creating 1500 new community beds for P3s and P4s to come into compliance with the order.¹⁰

However, under the County's current plan, the County will have only created 910 of the necessary 1500 beds by the end of 2024. In other words, the County is out of compliance with the IRC order today, and risks being in contempt for years to come. The proposed ODR motion will not even begin to address that almost 600 bed gap until at earliest the third quarter of 2024.

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⁷ The analysis for Paragraphs 64 and 80 is similar.

⁸ Preliminary Injunction, *Rutherford v. Luna*, Dkt. No. 351 75-cv-04111-DDP (Sept. 27, 2022)

⁹ K Blakinger, *Federal Court Orders Contempt Hearing over L.A. County's Failure to Clean Up its Jails*, LA Times (April 20, 2023), <https://www.latimes.com/california/story/2023-04-20/la-me-judge-contempt-county-jails>.

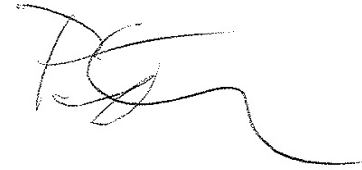
¹⁰ Defendants' Filing of Reports Required to Respond to Order to Show Cause, *Rutherford v. Luna*, Dkt. No. 378 at p. 5, 75-cv-04111-DDP (March 10, 2023).

CONCLUSION

The County's blatant failure to comply with its constitutional obligations to people incarcerated in the County jail, particularly those with serious mental illness -- as embodied in federal court orders -- is completely unacceptable.¹¹ Thousands of people in the LA County Jails are kept in custody pre-trial due, in part, to fears they will not follow a court's order to appear in their criminal case. How ironic that their rights are consistently violated in those jails because this Board will not take necessary action to follow a court's orders.

We support passage of this Motion, which will eventually help bring the County into compliance with its constitutional obligations. But unless the Board moves quickly to do far more than this motion does, the County will continue to violate the law and the rights of people in the jails. Among other things, the Board needs to be laser-focused on greater and faster community bed expansion, and the rapid build-up of a needs-based pretrial entity.

Sincerely,



Peter Eliasberg
Chief Counsel



Melissa Camacho
Senior Staff Attorney

¹¹ See, e.g., Letter from Senators Feinstein, Padilla, Gillibrand and Booker (October 25, 2022)(detailing “ongoing constitutional and humanitarian crisis in three of our nation’s largest jails” including Los Angeles)