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16 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

17 ALEX ROSAS and JONATHAN
18 GOODWIN on behalf of themselves
and of those similarly situated,

19 Plaintiffs,

20 vs.

21
22 Robert Luna, Sheriff of Los Angeles
County, in his official capacity,

23 Defendant.
24

Case No. CV 12-00428 DDP (MRW)

SUPPLEMENTAL
DECLARATION OF
STEPHEN SINCLAIR

REDACTED

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Supplemental Declaration of Stephen Sinclair

I, Stephen Sinclair, declare as follows:

1. I have reviewed the Defendant’s Opening Brief Addressing Proposed Compliance plan dated May 31, 2023,¹ as well as Limitations on Force v31 (Sheriff and ACLU Agreement)² and WRAP Restraint v33 Rosas Changes³. Note: both the Limitations on Force v31 and WRAP Restraint v33 drafts are not mutually agreed to at this time. From my review, I have made opinions about these documents and the *Rosas* matter. My opinions are also based on documents and videos reviewed in the preparation of my previous declaration in the *Rosas v Luna* matter.⁴

2. In the Defendant’s Opening brief, I identified areas of concern as described in this declaration. As noted in the brief LASD has taken steps to address some of the previous concerns related to:

- (1) eliminating impermissible head strikes;
- (2) ensuring appropriate utilization of force prevention and de-escalation techniques;
- (3) ensuring proper use of the WRAP restraint device, and
- (4) ensuring accountability for the Department personnel who violate the Implementation Plan’s provisions and or Department use of force policies.

3. As acknowledged, there has been movement and even noted improvement related to the number of use of force incidents and head strikes. However, as noted by using the term “elimination” in (1) above it demonstrates a goal much higher than LASD has been able to achieve in the last 9 years since the plan became effective. LASD’s goal should be eliminating head strikes as an

¹ See 251.BRF.DCT. Defendant's Opening Brief Addressing Proposed Compliance Plan 05.31.2023

² See CDM 7.01.030.00 Prohibited Force v31 (Sheriff and ACLU Agreement) 06.01.23

³ See CDM 7.03.050.00 WRAP Restraint V33 Rosas Changes

⁴ See 253-1-Redacted-Sinclair-Declaration

1 acceptable use of force unless there are truly unique circumstances such that
2 deadly force is justified. Until LASD treats head strikes as deadly force and holds
3 personnel accountable through firm discipline for violations of an appropriate head
4 strike policy, it is my opinion that there will continue to be unnecessary head
5 strikes that endanger the health and safety of the inmates who are hit in the head.

6 4. While LASD lauds having reduced these incidents, they are a long way
7 from eliminating them. They report that there were 51 reported uses of head
8 strikes in the downtown jails in 2022 and that there were 16 in the first four months
9 of 2023, which works out to a rate of 48 for 2023. This decline is a step in the
10 right direction. But two things are notable. It does not appear that LASD is on
11 pace for any significant decline between 2022 and 2023 (i.e., 51 versus 48), and in
12 my opinion 48 or 51 head strikes in a given year is still too many. It is evidence of
13 LASD's failure to have in place a sufficiently restrictive policy on use of head
14 strikes and a continued unwillingness to identify use of head strikes as out of
15 policy and discipline their use appropriately.

16 5. I have not reviewed any newer use of force packages than the ones I
17 reviewed for my prior declaration to determine subsequent discipline or corrective
18 action taken by LASD towards its employees who engaged in the use of
19 impermissible head strikes. Because of this, I must rely upon the Monitors'
20 repeated discussion of LASD's multi-year non-compliance with the provision in
21 the Rosas Implementation Plan governing head strikes (Provision 2.6). I have also
22 relied on nine (9) incidents I did review. Eight of the nine were reviewed under
23 LASD's previous head strike policy, and one was reviewed under the new policy,
24 which the Department asserts is an appropriate standard. In 8 of the 9, it was
25 obvious to me that the use of head strikes was unnecessary and excessive force.
26 And in none of those 8 was it apparent any discipline was issued to those involved
27 in the impermissible use of head strikes, based on the pre-existing Custody
28

1 Operations Force Manual.⁵ In the most recent incident I reviewed, [REDACTED]
2 [REDACTED]
3 [REDACTED] Thus, even in incidents where
4 individuals were in restraints at the time they were struck in the head with a fist,
5 there was no noted discipline under either the old head strike policy or the new
6 revised policy.

7 A. Eliminating impermissible head strikes

8 6. In my experience, there is never a justification for the use of head
9 strikes on individuals who are already restrained and thus no longer have the
10 ability to render serious bodily injury or death. Even in an extreme case where a
11 restrained person head-butts an escorting deputy, the deputy always has the ability
12 to step back and reposition themselves to avoid this type of contact. Then the
13 deputy can use alternative tactics like take-down techniques or control techniques
14 to guide the individual to the ground until others can assist. In all but one of the
15 force situations I reviewed, there was more than one deputy present when the head
16 strike was used, and the other involved deputies could maintain control while the
17 assaulted deputies create a safe distance and then re-engages to assist the other(s).

18 7. LASD proposes to replace the current language about the prohibited
19 force with limitations on force. In the first paragraph, it says “Department
20 members may only use these force options -- head strikes with personal weapons,
21 kicking an inmate who is on the ground, and kicking a standing inmate anywhere
22 above the knee --when they reasonably believe that an inmate is violent or has
23 demonstrated by their physical action and intent to be violent and reasonably
24 appears presently capable of causing serious physical injury.” The policy goes on
25 to state that those same three uses of force may only be used when:

- 26 (1) the inmate is assaultive,
27 (2) there is imminent danger of serious injury to personnel or others, and

28 ⁵ See Custody Division Manual _ Volume 7 - Custody Operations Force Manual

1 (3) there are no other reasonable means to avoid serious physical injury.

2 8. As I have explained in my previous declaration, I do not believe that
3 this change is adequate to address the multi-year pattern of non-compliance with
4 the *Rosas* head strike provision and the failure of LASD to hold its personnel
5 accountable for unnecessary use of head strikes. My opinion is based on not only
6 the failures the Monitors have identified, but also my own review of 9 relatively
7 recent use of force incidents involving head strikes, [REDACTED]

8 [REDACTED]
9 [REDACTED] and the fact that LASD 2023 head strike numbers are still far too
10 high.

11 9. Thus, it is my strong recommendation that head strikes with “personal
12 weapons” be included under “Deadly Force” as one of the “types of force [that]
13 may only be used if a Department member can reasonably articulate that the
14 circumstances justify the use of deadly force . . .” As I noted in my previous
15 declaration, [REDACTED]

16 [REDACTED]
17 [REDACTED]

18 [REDACTED] That conclusion is consistent with my
19 recommendation that LASD should adopt an “only where deadly force is
20 permissible” standard because in my professional opinion when a correctional
21 officer is subjected to a head punch by an unrestrained inmate, it is a situation
22 where deadly force in the form of head punches is justified.

23 10. It is important for me to note this incident because it shows that there
24 are circumstances where officers would still be permitted to use head strikes
25 against an unrestrained inmate if head strikes are moved to the “Deadly Force”
26 portion of LASD’s Limitation of Force Policy. Indeed the policy makes clear that
27 the types of force that are considered deadly force may be used *if* “a Department
28 member can reasonably articulate that the circumstances justify the use of deadly

1 force as defined in AB392 and PC 835a, Subsection (c)(1).” In my experience in
2 corrections a situation where an unrestrained inmate initiates force against a deputy
3 by punching him or her in the head posing a risk of serious bodily injury or death,
4 the standard is met, provided no alternative exists.

5 11. In my 32 years of experience in the Washington Department of
6 Corrections (WDOC) striking restrained individuals in the head has never been an
7 allowable practice and when it did occur was grounds for discipline. The fact the
8 WDOC has included head strikes as a form of deadly force in their use of force
9 policy, even when not restrained, makes it clear this remains the policy and
10 practice. To the best of my knowledge, this has not created a safety issue for staff
11 and is evidence the practice is achievable. My logic includes the fact, as stated in
12 my previous declaration,⁶ LASD has charged inmates who use head strikes on staff
13 with assault with a deadly weapon. Granted, I have no idea if the charge was
14 sustained through prosecution, however, it does show LASD perceived this act as
15 assault with a deadly weapon.

16 12. In sum, I disagree with the assertion in the Defendants’ brief that
17 limited head strikes to situations when deadly force is permissible “will endanger
18 the safety of Department personnel working in the Jails.” The availability of other
19 techniques that are as effective or more effective and pose a lesser risk to the health
20 and safety of inmates and staff do exist. As an example, the deputy pushing off the
21 assaulter, to create time and distance, then deploying OC could be just as effective.
22 It should also be considered that punching people in the head creates a significant
23 risk that correctional personnel will fracture bones in their hands. Finally, LASD’s
24 situation appears to be unique to me because of the nine (9) year history of failing
25 to resolve this problem, so elevating head strikes to deadly force may be the only
26 way to ensure these instances of excessive force receive the scrutiny they deserve.

27
28 ⁶ See 253-1-Redacted-Sinclair-Declaration, paragraph 31

1 B. Addressing LASD’s continued non-compliance with force prevention

2 13. In addition to changing the Limitations on Force Policy to move head
3 strikes to the deadly force category, it is my opinion the use of “or” in the
4 introductory statement in the Prohibited Force Policy opens a wide range of
5 interpretations⁷. LASD would be better served by rewriting the policy as follows
6 adding the clause which is in bold below:

7 Department members may only use these force options when they
8 reasonably believe that an inmate is **assaultive and reasonably**
9 **appears presently capable of causing serious physical injury** or has
10 demonstrated by their physical action an intent to be violent and
11 reasonably appears presently capable of causing serious physical
injury

12 By making this small change it would require deputies to be faced with an actual
13 physical threat of *serious bodily injury* before using kicks. It would also be more
14 consistent with the language used elsewhere in the draft document

15 14. In the next paragraph “Use of Personal Weapons (Head Strikes and
16 Kicks)” LASD states.

17 The following types of force may only be used when (1) the inmate is
18 assaultive, (2) there is an imminent danger of serious injury to
19 personnel or others, and (3) there are no other reasonable means to
avoid serious physical injury.

- 20 • Head strikes with personal weapons
- 21 • Kicking an inmate who is on the ground
- 22 • Kicking a standing inmate anywhere above the knee.”

23 15. In addition to moving head strikes out of the portion of the policy and
24 into the deadly force section, I recommend replacing the word “imminent” with
25 “immediate”. The use of the word imminent as opposed to immediate could be
26 misinterpreted. The word imminent opens the statement up to perception. As an

27 ⁷ The opening statement reads as follows: “Department members may only use these force
28 options – [head strikes with personal weapons, kicking an inmate who is on the ground, and
kicking a standing inmate anywhere above the knee --] when they reasonably believe that an
inmate is violent or has demonstrated by their physical action and intent to be violent and
reasonably appears presently capable of causing serious physical injury.”

1 example, a deputy could justify an improper head strike by saying I thought he was
2 going to hit me, so I punched him first. The use of the word immediate narrows
3 this to mean there is an actual action where my only alternative was to use a kick in
4 self-defense. It should be noted the section called “Use of Force against Restrained
5 Inmates” does use the word immediate, which is a better word choice. For the
6 purposes of training, it would behoove LASD to use consistent terminology.

7 16. In the fifth paragraph of the proposed revision, it says.

8 If an assaultive inmate restrained to a fixed object presents an
9 immediate threat of injury to personnel engaged with the inmate, force
10 de-escalation principles require personnel to distance themselves from
11 the assaultive conduct and request the presence of a sergeant rather
12 than utilize the force options listed above, unless immediate
intervention is required.

13 17. This language appears adequate for the situation described, but it does
14 cause me to question why this same language isn’t applicable in the previous
15 statement about inmates who are not restrained to a fixed object. In other words,
16 given LASD’s longstanding non-compliance with the *Rosas* force prevention
17 provisions, and the numerous uses of force I saw where unnecessary or excessive
18 force was used against inmates who were restrained, including in the WRAP or in
19 handcuffs, but not restrained to a fixed object, I recommend that language that
20 currently applies only to inmates restrained to a fixed object should also be applied
21 to all restrained inmates. For example, MCJ-922-02082, which I described in
22 paragraphs 22-23 of my first declaration reveals the impunity LASD personnel
23 appear to have about using unnecessary and dangerous force against restrained
24 inmates. That case involved two deputies grabbing an inmate who was handcuffed
25 behind his back as he exited a cell and throwing him head first against a wall
26 causing deep lacerations in his head. Video attached to the concurrently filed
27 Notice of Lodging as Exhibit A.

28 18. In relation to the use of head strikes with personal weapons, as stated

1 in paragraph 15 of my previous declaration simply changing the language in the
2 policy so that head strikes are permissible only when deadly force is justified is
3 important to address LASD's longstanding failures. But it is not sufficient to cause
4 the necessary behavior change for staff. To accomplish this LASD will need to
5 hold deputies accountable to the new standard, which did not appear to be the
6 situation under the previous policy. That is why I have recommended both policy
7 changes and mandatory discipline for violations of the head strike policy.

8 19. One encouraging action item taken by LASD was the development of
9 an independent force review team.⁸ This approach may reduce instances of
10 cronyism if the independent force review team can increase accountability by
11 recommending discipline for those staff who use impermissible head strikes, but
12 only time will tell.

13 20. I do believe the LASD efforts to track incidents where de-escalation
14 efforts were successful is laudable and is a good practice if achieved. This is also
15 true with expressly evaluating this in incidents where the use of force occurred.

16 21. For me, the most noteworthy effort is an apparent expansion and
17 improvement to DeVRT training offered to deputies. In my experience, enhanced
18 training for staff can have significant results. As an internal learning tool, actual
19 use of force videos showing what should and should not occur can re-enforce
20 learning.⁹

21 22. However, as I noted above with respect to head strikes, for LASD to
22 come into compliance with the *Rosas* force prevention requirements it is essential
23 that it both modify its policies in the ways I have described above and require
24 discipline for personnel who violate them, and supervisors who fail to identify
25 clear violations in their force reviews.

26 ⁸ See 251-8.DEC.DCT. Declaration of Larry Alva ISO Defendant's Opening Brief
27 Addressing Proposed Compliance Plan 05.31.2023, Page 12, Line 23

28 ⁹ Because I have not reviewed the actual curriculum, or any proposed changes to it,
I can offer no specific opinions about the content of the training.

1 C. Ensuring proper use of the WRAP restraint device

2 23. I have reviewed LASD's proposed changes to their Custody Division
3 Manual on the use of the WRAP restraint device. In my previous declaration, I
4 reviewed the different draft language that was proposed. In the current proposed
5 WRAP language, it says,

6 The WRAP restraint may only be used on inmates who pose an
7 immediate threat to themselves or others when the circumstances
8 reasonably perceived by personnel at the time indicate the WRAP
9 restraint application is necessary to control the inmate. An immediate
10 threat is present when:

- 11 • an inmate is violent or is physically resisting; or
- 12 • an inmate has demonstrated, by words or actions, an intent to be
13 violent or to physically resist, and reasonably appears presently
14 capable of causing physical harm to themselves, custody staff, or
15 others if the WRAP restraint is not applied.

16 24. This language is good with one exception, I believe the first bullet
17 should have language that clarifies the inmate has to continue to be violent or
18 actively resistive even in traditional wrist and leg restraints, like “an inmate
19 remains violent or is physically resisting while in traditional restraints”. I strongly
20 recommend this policy change, which would demonstrate the use of the WRAP
21 restraint is only permissible in exceptional circumstances after alternatives have
22 been attempted.

23 25. Also, this new version of the WRAP policy states that “when applying
24 the WRAP restraint after a use and force, if circumstances permit, the inmate shall
25 be placed in the recovery position while waiting for the WRAP restraint to arrive
26 to the scene.”

27 26. In my opinion, this language implies the WRAP will always be used
28 after a use of force incident. In almost all the videos reviewed for my prior
declaration, the appearance was the staff were on auto-pilot and went directly to
applying the WRAP restraint without conducting any type of assessment after the

1 inmate was restrained. In some of those instances, there were multiple staff on the
2 individual, likely causing reflex-reaction and making a true assessment of the level
3 of resistance impossible. Based on the multiple unnecessary uses of WRAP by
4 LASD personnel that I witnessed I suggest adding the following language to
5 clarify the policy:

6 Prior to applying the WRAP restraint after a use and force, if
7 circumstances permit, the inmate shall be placed in the recovery
8 position while waiting for the WRAP restraint to arrive to the scene,
9 so the on-scene supervisor can assess the level of risk and resistance
10 posed by the restrained individual prior to the use of the WRAP
11 restraint.

12 27. I also recommend language explicitly stating that the WRAP restraint
13 is an exceptional device, used only in exceptional circumstances.

14 28. Overall, my opinion from my previous declaration remains the same
15 related to LASD's overuse of the WRAP restraint. The suggested modifications to
16 the proposed language, if adopted, would likely reduce the use of the WRAP
17 restraint device. However, as I have stated elsewhere in both of my declarations
18 writing policy expectations is not the end-all for behavior change (culture change).
19 LASD will need to ensure appropriate training to the new policy expectations as
20 well as constant accountability to ensure the policy is being followed as intended
21 and WRAP use becomes the exception instead of the norm.

22 D. Ensuring accountability for the Department personnel who violate the
23 Implementation Plan's provisions and or Department use of force policies.

24 29. Again, I believe the creation of an independent review team is a good
25 approach, but I would urge caution in selecting members of this team to avoid
26 cronyism.¹⁰ The independent force review team members should be made fully
27 aware of the expectations of their role to include the paramount task of protecting
28 the integrity of the organization and profession.

¹⁰ See 253-1-Redacted-Sinclair-Declaration, paragraphs 66, 73 & 75

1 30. In the interim before the independent force review team is established
2 LASD proposes to have all use of force packets involving head strikes reviewed at
3 the level of the Assistant Sheriff of the Custody Division. I have experienced this
4 approach myself as the Superintendent (Warden) of the Washington State
5 Penitentiary, one of the busiest jobs I have had. In my opinion, the intention is to
6 elevate the importance of these reviews which is good, however, I know it is
7 difficult to give each incident the thorough review it requires. I would recommend
8 the review level immediately before the Assistant Sheriff of the Custody Division,
9 have the expectation to provide completed work to the Assistant Sheriff, which
10 includes a thorough review of the video and all associated materials. As well as
11 identification of critical moments of potential impermissible actions and corrective
12 or disciplinary action recommended by that reviewer.

13 31. Absent this expectation, reviewers below the top level may not
14 complete as thorough a review as necessary, based on the knowledge it is just
15 going to be looked at by someone else anyway. The best approach is to have the
16 same requirement, including reviewing the video, all the way down to the initial
17 supervisor documenting the use of force incident. I raise this concern because of
18 my experience in that role and recognizing staff can take impermissible actions
19 that you did not see or are unaware of, even when you are right there. With this
20 approach documenting supervisors should be cautioned to only identify
21 questionable actions and not take corrective action, which could cause a double
22 jeopardy situation and preclude more severe discipline when required.

23 32. Use of impermissible head strikes is excessive force and should be
24 treated as an egregious action taken by the deputy. As pointed out in my previous
25 declaration,¹¹ inmates who engage in head strikes against deputies can and have
26 been charged with assault with a deadly weapon, which I assume is a felony under
27 California law. While false reporting or dishonesty in reporting may not rise to the

28 ¹¹ See Redacted-Sinclair-Declaration, paragraphs 31

1 same level as a felony, it is devastating in any criminal justice profession, because
2 once proven, all actions or reports generated by the individual going forward are
3 questionable. Under the Supreme Court ruling in *Brady v. Maryland*¹² this
4 information may be exculpatory and therefore damaging to any case the
5 officer/deputy is involved in for the rest of his career. It is my opinion that
6 incidents of excessive force and dishonesty are egregious and require an
7 appropriate level of discipline.

8 33. I recognize how the term “Mandatory Discipline” can sound
9 draconian as a stand-alone statement. However, mandatory discipline can be as
10 simple as creating a minimum discipline grid for certain egregious acts like
11 specific types of excessive force like head strikes or failure to follow clear force
12 prevention policies and dishonesty. A minimum discipline grid could include
13 elevated discipline for repeated impermissible actions to include dismissal
14 depending on the circumstances. All of these can only be administered after a
15 thorough investigation and the other elements of just cause have been met.
16 Essentially, what a minimum discipline grid does is make everyone aware of the
17 cardinal sins of the department and what can be expected should it be proven an
18 employee committed such an act.

19 E. Conclusion

20 34. I have reviewed Defendants’ Brief, use of force statistics, supporting
21 materials and revised WRAP and Prohibited Force policies. A number of the
22 changes they have agreed to with Plaintiffs, including creating an independent
23 review team, creating templates to ensure that force reviewers assess whether head
24 strikes, WRAP use, etc. were consistent with Department policies, are sound. But
25 nothing in their brief and proposed revised policies changes my opinion that they
26 need to alter their WRAP and Prohibited Force policies (including the portion

27 ¹² See U.S. Department of Justice, Office of Justice Programs, Police Officer
28 Truthfulness and the Brady Decision; <https://www.ojp.gov/ncjrs/virtual-library/abstracts/police-officer-truthfulness-and-brady-decision>

1 addressing head strikes with “personal weapons,” i.e., punches to the face or head)
2 and *require* discipline within the ranges set forth in their own disciplinary
3 guidelines for violations of the policies relating to head strikes, force prevention,
4 WRAP, dishonesty, and for supervisors who fail to identify clear violations of
5 those policies or impose appropriate discipline for them.

6 I declare under penalty of perjury that the foregoing is true and correct.

7 Executed June 12, 2023 in Olympia, Washington.

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9 

10 Stephen Sinclair
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Exhibit A

Video Clip

Filed with Notice of Lodging