

LOS ANGELES COUNTY SHERIFF
CIVILIAN OVERSIGHT COMMISSION MEMORANDUM

FROM: Sean Kennedy, COC commissioner

TO: Lael Rubin, COC chair, Brian Williams, COC executive director

DATE: May 27, 2021

RE: Villanueva administration's investigation of oversight officials, etc.

I. INTRODUCTION

I write to voice concern about what appears to be a pattern of LASD officials announcing they have opened “criminal investigations” of various department heads, oversight officials, and professionals. These highly publicized criminal investigations have never resulted in charges being filed, suggesting an ulterior motive. The Los Angeles County Sheriff Civilian Oversight Commission (COC) should call for an investigation to ascertain whether Sheriff Alex Villanueva is abusing his power or extorting public officials.

Section II of this memo identifies the Villanueva administration's pattern of accusing public officials and other professionals who are in conflict with the department of committing crimes, followed by an analysis of the implications of that pattern. Subsection A catalogues the individual incidents in which the Sheriff or his deputies publicly announced that the LASD was opening an investigation of a public official or professional even though no criminal charges were ever filed. Subsection B highlights commentary from experts regarding the propriety of these announcements, particularly the alleged “criminal investigations” of officials conducting oversight of the department. Subsection C examines whether such announcements constitute extortion under California law. Finally, Section III concludes with a plea for an investigation by an independent body.

II. LEGAL ANALYSIS

A. Is the Villanueva Administration Misusing Its Investigative Powers to Target Oversight Officials and Political Adversaries?

Over the past 24 months, members of the Villanueva administration have made highly unusual announcements that the LASD has opened “criminal investigations” of

oversight officials and other professionals who have publicly criticized the department about budgetary and policy issues. The number and similarity of the announcements suggest a pattern of targeting oversight officials for investigation. Despite the high-profile announcements, none of the targets has ever been charged with any criminal offenses. The totality of the evidence raises serious questions about the motives for and legitimacy of the fruitless investigations.

1. The LASD’s Pattern of Announcing “Criminal Investigations” of Oversight Officials, Department Heads, and Advocates in Conflict with the Department

In April 2019, a person identifying himself as an LASD sergeant called then County Counsel Mary Wickham on her personal cell phone and directed her to turn herself in at a sheriff’s station to avoid being arrested at home for violating a 2006 grand jury summons. Maya Lau, *Man Claiming to be Sheriff’s Official Phoned Threat to County Counsel, Sparking Probe*, L.A. Times (Apr. 22, 2019). Wickham at the time was pursuing legal action against Sheriff Villanueva over his reinstatement of Carl Mandoyan, a disgraced former deputy with a Grim Reapers tattoo who had been fired by the previous administration for violating policies regarding domestic violence and dishonesty. *Id.* Wickham, several supervisors, and other county officials all objected to the call as an intimidation tactic. For example, Interim Inspector General Rod Castro-Silva stated, “These threats are a hostile act intended to intimidate a public official doing her job on behalf of Los Angeles County, the Board of Supervisors, and the residents we serve.” Celeste Fremon, *Updated: Man Claiming to Be LA Sheriff’s Sergeant Threatens County Counsel with Arrest*, WitnessLA (Apr. 22, 2019). The LASD claimed the call was a “common scam” regarding jury service, but other county officials noted that details of this call differed from prior common jury-scam calls and that the name the caller had used to identify himself was the actual name of an LASD sergeant. *Id.* In the end, Wickham was never arrested or prosecuted, and no information has ever been released about the source of the call.

In August 2019, LASD Undersheriff Timothy Murakami¹ announced the opening of a “criminal investigation” of Los Angeles County Inspector General Max Huntsman for accessing and reviewing confidential personnel files in the course of conducting oversight of the Department. Maya Lau, *L.A. County Sheriff’s Top*

¹ Some LASD deputies have alleged that Murakami has a “Cavemen” tattoo. Frank Stoltz, *East LA Sheriff’s Deputies File Suit Claiming Harassment, Violence by “Banditos” Clique*, LAist (Sept. 18, 2019). Murakami has denied being a member of the clique.

Watchdog is under investigation—by the L.A. County Sheriff, L.A. Times (Aug. 4, 2019). Prior to this announcement Villanueva had been informed by Huntsman that the OIG was releasing a report² critical of his reinstatement of Mandoyan. *Id.* Villanueva warned Huntsman there would be “consequences” for releasing the report. *Id.*

Murakami told reporters that the LASD was investigating whether Huntsman had committed “conspiracy, theft of government property, unauthorized computer access, theft of confidential files, unlawful dissemination of confidential files, civil rights violations, and burglary.” *Id.* Murakami suggested that the FBI was assisting the department in the investigation. *Id.* No representative of the FBI has ever confirmed that claim.³

Later press accounts reported that the LASD was also investigating Diana Teran, the former constitutional policing advisor to previous sheriff James McDonnell, for the same conduct.⁴ Marc Brown & Lisa Bartley, *LASD Has “Criminal Investigation” into Its Own Watchdog*, ABC7 Investigations (Aug. 14, 2019). Villanueva blamed Teran for the termination of Mandoyan, causing him to harbor resentment against her as well. Jorge Luis Macias, *The Controversial Hiring of Mandoyan*, La Opinión (July 31, 2019). Despite the sensational announcement twenty months ago, the LASD has not provided any updates on the investigation, nor have any charges been filed against Huntsman or Teran.

On December 2019, the LASD announced that they had opened a criminal investigation of Hollywood-producer-turned-juvenile-justice-advocate Scott Budnick,⁵

² Office of Inspector General County of Los Angeles, *Initial Implementation by Los Angeles County Sheriff’s Department of the Truth and Reconciliation Process* (July 2019).

³ The Department of Justice Manual states: “DOJ generally will not confirm the existence of or otherwise comment on ongoing investigations. Except as provided in subparagraph C of this section, DOJ personnel shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress before charges are filed.” *DOJ Manual*, §1-7.400 – Disclosure of Information Concerning Ongoing Criminal, Civil, and Administrative Investigations (2018), available at <https://www.justice.gov/jm/jm-1-7000-media-relations>. Exceptions to the no-comment policy require prior approval from the U.S. Attorney or Assistant Attorney General. *Id.*

⁴ Diana Teran served as a constitutional policing advisor for LASD from November 2015 through November 2018, when newly elected Sheriff Alex Villanueva announced that he was abolishing the positions. Frank Stoltze, *Alex Villanueva Says He would Eliminate the LA Sheriff’s Constitutional Policing Advisors*, LAist (Nov. 21, 2018).

⁵ Governor Jerry Brown in 2012 named Budnick “California’s volunteer of the year.” The Board of Supervisors also named him Los Angeles County’s volunteer of the year. President Obama in 2015 appointed Budnick to serve on the advisory council of My Brother’s Keeper Alliance, which

as well as Blair Berk and Michael Cavalluzzi, two prominent attorneys recruited by Budnick to represent a juvenile accused of participating in a robbery-murder of a police officer. Alene Tchekmedyan, “*Hangover*” *Producer Helped a Teen Convicted in Killing. Now He’s Under Investigation*, L.A. Times (Dec. 15, 2019). The LASD claimed they were investigating Budnick and the defense attorneys for witness tampering and obstruction of justice. The LASD served a search warrant on Budnick’s social media accounts. *See In re Search Warrant for All Records Associated with Google Account Scottarcla@gmail.com*, No. BH 012910, Order Quashing Search Warrant (Nov. 12, 2020). Budnick successfully moved to unseal the affidavit in support of the request for the search warrant. *Id.* After Judge William Ryan ruled that the search warrant had improperly issued without probable cause, it was quashed, and all seized documents were returned to Budnick. *Id.* No charges were filed against Budnick, Berk, or Cavalluzzi.

On March 30, 2020, the Board of Supervisors voted unanimously to put the county’s chief executive, Sachi Hamai, in charge of disaster preparedness and response, thereby removing Sheriff Villanueva as head of the emergency operations center over his objection. Alene Tchekmedyan, *L.A. Supervisors Remove Sheriff Alex Villanueva as Head of Emergency Operations Center*, L.A. Times (Mar. 31, 2020). Villanueva’s resentment of Hamai increased after she advised him that the LASD would suffer budget cuts along with all other county agencies due to reduced revenues as a result of the pandemic.

During a July 22, 2020 Facebook Live session, Sheriff Villanueva referenced Hamai’s participation on the board of the United Way-Los Angeles. The United Way describes its mission as “to permanently break the cycle of poverty for our most vulnerable neighbors: low-income families, students, veterans and people experiencing homelessness.” <https://www.unitedwayla.org/en/about/mission>. Villanueva suggested that Hamai was enriching herself through granting a public contract to the United Way in violation of section 1090 of the Government Code. <https://www.facebook.com/LosAngelesCountySheriffsDepartment/videos/vb.225060950854159/309753690178503/?type=2&theater>.⁶ In fact, section 1090 is inapplicable

identifies innovative solutions to eliminate gaps and increase achievement opportunities for boys and young men of color.

⁶ The accusation may have been a preplanned strategy. Near the end of the Facebook Live session, Vivian “Bibi” Villanueva, the sheriff’s wife, submitted a written question asking, “Is it a felony for the County CEO to be part of the board of the United Way?” The Sheriff responded that it was a felony, citing Cal. Government Code § 1090.

because Hamai was a volunteer board member who received no compensation and therefore had no financial interest in any public contract with the United Way. Nevertheless, Villanueva later reported Hamai in a letter to the Attorney General's office. After Hamai threatened to sue for defamation and a "toxic work environment created by a fellow department head," the County settled for \$1.5 million and agreed to provide security for her and her family. Ian Spiegelman, *Sheriff Villanueva's Alleged Grudge against L.A. County's CEO Results in a \$1.5 Million Settlement*, L.A. Magazine (Aug. 27, 2020).

During an April 2020 public meeting, several supervisors discussed with budget officials whether department heads who overspent on their budgets were committing a misdemeanor. Villanueva—who apparently became defensive about the LASD's projected budget shortfall—interjected, "I could go on for a long, long time about a long list of felony crimes and the consequences of them—and they're done by public officials. Good luck with that if you're gonna scare me with the claim about a misdemeanor crime." Alene Tchekmedyan & Jaclyn Cosgrove, *Sheriff's Sexist Slur and Accusations of "Blood Money" Ramp up Feud with L.A. County Supervisors*, L.A. Times (July 27, 2020). The comment prompted Supervisor Kathryn Barger to ask Villanueva whether he was making a "veiled threat." *Id.* Villanueva has never retracted his dramatic claim, nor elaborated whom in county government he was asserting had committed felonies.

In February 2021, LASD officials told the press that they had executed search warrants on LA Metro and Peace over Violence as part of a "criminal investigation" regarding contractual services that Peace over Violence provided to subway riders who been harassed or assaulted during transit. Jason Henry, *L.A. County Sheriff Searches Offices of LA Metro, Oversight Board Member in Criminal Probe*, Pasadena Star News (Feb. 19, 2021). Peace over Violence is a non-profit organization "dedicated to building healthy relationships, family, and communities free from sexual, domestic and interpersonal violence." <https://www.peaceoverviolence.org/about-us>. Patti Giggans, the executive director of Peace over Violence, had just finished serving two consecutive terms as chair of the COC. During Giggans's tenure, the COC clashed with Villanueva on many issues, including asking him to resign and successfully litigating his obligation to comply with a subpoena to testify before the commission. *See City News Service, Sheriff's Oversight Commission Calls on Villanueva to Resign over Management of the Agency*, L.A. Times (Oct. 15, 2020); Allen Tchekmedyan, *L.A. County Sheriff Cannot Ignore Watchdog's Subpoena, Judge Rules*, L.A. Times (Nov. 20, 2020).

Deputy Eric Ortiz told the press, “The search warrant was signed by a judge and partially sealed in connection to an ongoing investigation.” *Id.* The article on the search notes: “It is uncommon for the Sheriff’s Department to conduct investigations into other county agencies. The Los Angeles County District Attorney’s Office typically handles public corruption cases in the county through its Public Integrity Division. The Sheriff’s Department did not respond to questions about whether it is working with other agencies, nor would it address whether it has taken steps to avoid any conflicts related to investigating a commissioner.” Jason Henry, *L.A. County Sheriff Searches Offices of LA Metro, Oversight Board Member in Criminal Probe*, Pasadena Star News (Feb. 19, 2021).

According to defense counsel, LASD officials have confirmed in writing they don’t believe that Giggans committed any crime, but that letter has never been made public. Frank Stoltze, *Sheriff to DA: Let’s Probe Corruption Together. DA to Sheriff: No Thanks*, LAist (Mar. 5, 2021). LASD officials nevertheless continue to represent that there is a criminal investigation pending; for example, on March 11, 2021, LASD spokesman John Satterfield responded to an email from a third party asking about funding for Peace Over Violence by stating, “We will not be renewing or renegotiating an MOU while we have an active criminal investigation.”⁷

Facing so many objections to the LASD investigating other department heads and oversight officials, Sheriff Villanueva recently proposed creating a joint task force with the District Attorney’s Office to fight government corruption and target venal politicians. Los Angeles District Attorney George Gascón declined the unorthodox proposal, stating that the office already has “significant expertise” in investigating public corruption and that he did “not want to compromise our ability to engage in that work in an independent manner.” Frank Stoltze, *Sheriff to DA: Let’s Probe Corruption Together. DA to Sheriff: No Thanks*, LAist (Mar. 5, 2021). Shortly thereafter, Villanueva endorsed a fledgling campaign to recall Gascon. *Id.*

2. The “Criminal Investigations” Never Result in Charges Being Filed, But Are Invoked to Chill Oversight and Criticism of the LASD

Because none of the above investigations has ever resulted in charges being filed against the accused officials, there is good reason to question their legitimacy.

⁷ Peace over Violence had previously been contracted to provide anonymous hotline services to the LASD, a requirement of the Prison Rape Elimination Act. The service is similar to that provided by LA Metro and for which the LASD had sought contact information on callers who were also promised anonymity in reporting sexual violence.

Villanueva’s targeted investigations are conducted by a team that reports directly to the undersheriff and includes a member who was accused of serious misconduct before being rehired. Alene Tchekmedyan, *Sheriff Rehired Corruption Investigator Accused of Posing as a Deputy in Bizarre Jail Incident*, L.A. Times (Oct. 23, 2019). Moreover, the LASD’s early public disclosure of the existence of the alleged criminal investigations suggests that the motive is to chill oversight of the Department, not to pursue a prosecution. For example, after Murakami announced the investigation of Huntsman, he urged the Board of Supervisors to recuse Huntsman and appoint an “interim inspector general” until their alleged investigation was concluded. Maya Lau, *L.A. County Sheriff’s Top Watchdog is under investigation—by the L.A. County Sheriff*, L.A. Times (Aug. 4, 2019). To date, the investigation has been pending for over two years.

While no one is above the law, public officials should not be targeted for criminal investigation as a means of chilling their performance of oversight functions over the LASD. The same is true of advocates working on behalf of accused people in the criminal justice system; they should not be targeted for criminal investigation merely because they have taken positions that influential LASD investigators disagree with. In preparing this memo, I interviewed several of the targets. They described their feelings of distress and intimidation after being publicly accused of criminal conduct by LASD officials, especially since—in their view—there was no evidence to support the accusations. Hamai was apparently so intimidated that she requested and received security as part of her settlement with the county over the alleged harassment by the Sheriff.

B. Experts Sound the Alarm about the Impropriety of LASD’s Retaliatory “Criminal Investigations”

After the LASD announced its investigation of OIG employees for doing their jobs, observers sounded the alarm. Michael Gennaco, a former federal prosecutor who had conducted oversight of the LASD prior to the creation of the OIG, called the investigation “unconscionable.” Maya Lau, *L.A. County Sheriff’s Top Watchdog is under investigation—by the L.A. County Sheriff*, L.A. Times (Aug. 4, 2019). The *Los Angeles Times* editorial board objected to the practice as well, writing:

Villanueva is now sheriff, and his broad, irresponsible and unsupported allegations of criminality aren’t aired on private message boards. His statements are public. They are amateurish and undignified—and again, unsupported—and they diminish

public confidence in the department. If there is a dispute over the proper interpretation of county ordinances that grant the IG access to personnel files, the proper response is to file a lawsuit, not to launch a criminal probe of the civilian authorities that oversee the department.

Editorial: L.A. County Thought it Was Getting a Progressive Sheriff. Instead, Like Trump, Alex Villanueva Is Painting His Political Adversaries as Criminals, L.A. Times (Aug. 16, 2019).

Experts continued to object as more “criminal investigations” were announced. Ann Skeet, senior director of leadership ethics at the Markkula Center for Applied Ethics at Santa Clara University, highlighted the retaliatory aspect of Villanueva’s accusations against Hamai, noting that it “does actually seem to be a pattern of his” and that “it seems to be primarily aimed at women.” Jaclyn Cosgrove & Alene Tchekmedyan, *L.A. County CEO to Receive \$1.5 Million in Security over Alleged Harassment by Sheriff*, L.A. Times (Aug. 26, 2020). Retired LASD commander Rod Kusch, who once headed the Internal Criminal Investigations Bureau, took the position that “the sheriff has no business investigating Giggans and her organization” because “you just don’t want to have a situation that makes you appear as if you have an agenda toward any particular entity.” He stressed, “The idea is to have a completely unbiased investigation.” Frank Stoltze, *Sheriff to DA: Let’s Probe Corruption Together. DA to Sheriff: No Thanks*, LAist (Mar. 5, 2021). Professor Laurie Levenson, who holds a chair in ethical advocacy at Loyola Law School, questioned Villanueva’s attempt to initiate a “joint task force” on public corruption, since chief prosecutors, not local law enforcement officials, usually spearhead such efforts. “It’s like he wants to be the DA,” she said. *Id.*

C. The LASD’s Use of “Criminal Investigations” to Thwart Oversight Officials from Carrying out Official Duties May Constitute Extortion

Sheriff Villanueva’s accusations of criminal conduct by oversight officials raise concerns about extortion.⁸ *See* Cal. Pen. Code §§ 518-524. Section 518 of the Penal

⁸ Alex Villanueva is not the first elected sheriff to use his criminal investigative and arrest powers to intimidate perceived adversaries. In 2013, Sheriff Lee Baca and his undersheriff, Paul Tanaka, directed two sergeants to dissuade a female FBI agent from investigating civil rights offenses perpetrated by custody deputies in Men’s Central Jail. When the FBI agent failed to heed their warning, the sergeants left a voicemail for her supervisor stating that the agent had been named in a criminal complaint, and then went to the agent’s home and told her she that she would be arrested.

Code defines “extortion” as “the obtaining of property or other consideration from another, with his or her consent, or *the obtaining of an official act of a public officer*, induced by a wrongful use of force or fear, or under color of official right.” Cal. Pen. Code § 518 (emphasis added.)⁹ The term “official act” refers to “only those acts performed by a [public] officer in his official capacity, which make some use of his public office.” *People v. Norris*, 40 Cal.3d 51, 56 (1985). Section 519 further states, “Fear, such as will constitute extortion, may be induced by a threat of any of the following: ... *To accuse the individual threatened, or a relative of his or her, or a member of his or her family, of a crime.*” Cal. Pen. Code § 519.3 (emphasis added).

Given the above, one who threatens to accuse a public officer of committing a crime in order to illegally obtain an official act of that officer commits extortion. *Isaacs v. Superior Court*, 79 Cal.App. 3d 260, 263 (1978). Indeed, the model jury instructions define “official act extortion” as follows:

1. The defendant threatened to accuse another person of a crime;
2. When making the threat, the defendant intended to use that fear to obtain the other person’s consent;
3. As a result of the threat, the other person consented to do an official act;
4. As a result of the threat, the other person then did an official act.

CALCRIM 1830.

Villanueva’s conversation with Huntsman prior to the release of the OIG report on his illegal reinstatement of Mandoyan likely constitutes official acts extortion. The authorizing ordinance for the Inspector General directs him to “investigate” and issue “public reports” about the LASD. L.A. County Code § 6.44.190. As such, reporting on the sheriff’s misconduct in reinstating Mandoyan is certainly part of the Inspector

Jack Leonard & Robert Faturechi, *Sheriff’s Officials Taped Threat to Arrest FBI Agent*, *Prosecutors Say*, L.A. Times (Dec. 16, 2013). Of course, Baca, Tanaka, and other LASD employees were eventually convicted of obstruction of justice—in part because of the sergeants’ false accusations and threats to arrest the FBI agent—and they all served time or are currently serving time in federal prison.

⁹ There can be no doubt that section 518 covers threatening or blackmailing public officers to obtain official acts. The original 1872 extortion statute only covered threatening people to obtain “money or other property from another,” which prompted an appellate court to reverse a conviction for threatening a judge to obtain an appointment as a receiver because the statute did not extend to threats to obtain public offices or official acts. *People v. Robinson*, 130 Cal.App. 664, 667-68 (1933). In response to *Robinson*, the legislature in 1939 amended section 518 to prohibit extortion of public officers to obtain official acts. Stats. 1939, ch. 601, p. 2017, §1.

General's "official duties." Despite this, Villanueva threatened Huntsman with "consequences" if he published the report. After Huntsman nevertheless released the OIG report, the undersheriff announced that the LASD was investigating him for felonies. Thus, Villanueva attempted to use the natural human fear of being wrongfully accused of a crime to induce Huntsman to refrain from releasing a damaging report about his own misconduct. The timing and public nature of the accusation support an inference of intent to extort.

The fact that Villanueva's threat ultimately failed to dissuade Huntsman from releasing the OIG report does not insulate him from liability because the statutory scheme for extortion explicitly criminalizes attempted extortion. Cal. Pen. Code § 524. Attempted extortion occurs when one person accuses another person of a crime with "specific intent to commit extortion" and engages in "a direct ineffectual act done towards its commission." *People v. Sales*, 116 Cal.App. 4th 741, 749 (2004). The courts have held that section 524 applies to official acts extortion. *Isaacs*, 79 Cal.App. 3d at 263.

III. CONCLUSION

The Villanueva administration's pattern of announcing "criminal investigations" of oversight officials and other perceived political enemies has persisted for over two years. While these heavily publicized criminal investigations have never resulted in the filing of any criminal charges, the targeted officials remain obligated to conduct oversight of the Department with a sword of Damocles hanging over their heads. The likelihood is high that such investigations have chilled meaningful civilian oversight of the LASD.

To date, the COC has remained silent in the face of substantial evidence that the Sheriff is engaging in extortion or some other abuse of power. The COC should request an independent investigation by an entity unaffected by the announced investigations, such as the Office of the California Attorney General or the U.S. Department of Justice.