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August 24, 2021

VIA Email

Andrew Szefi, County Solicitor
Allegheny County Law Dept.
445 Fort Pitt Blvd.
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RE: Liability of Allegheny County

Mr. Szefi,

We write to inform the County of its liability for its contracts with Corrections Special Application Unit (“CSAU”), headed by notorious civil rights violator Joseph Garcia, to train Allegheny County Jail corrections officers on its Special Emergency Response Team (“SERT”),¹ and the contracts to procure weapons for those officers from Lightfield Less Lethal Research (“Lightfield”) and Kel-Tec. Allegheny County, County Executive Rich Fitzgerald, and Warden Orlando Harper will be subject to legal liability if this unlawful contract is not cancelled. This letter reviews ACJ’s culture for excessive force, provides an account of Garcia’s unconstitutional trainings, and explains the County’s liability for adopting and implementing Garcia’s unconstitutional use of force policies and procedures at ACJ.

ACJ’s History of Excessive Force

For half a decade or more, under the auspices of County Executive Rich Fitzgerald and the administration of Warden Orlando Harper, uses of force at ACJ, per capita, have increased exponentially in nearly every category. According to data reported to the Pennsylvania Department of Corrections, ACJ has the most uses of force against incarcerated people among all 67 jails in Pennsylvania by far. Even when ACJ’s population declined in 2020 due to COVID-19 related decarceration, the uses of force per capita remained at the previous high rate.

¹ Also referred to as CERT.



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| USE OF FORCE INDICATORS ACJ VS PENNSYLVANIA JAILS | | | | | | | | | | | | |
|---|--------------------|------------|--------------------|------------|--------------|------------|----------------|------------|-------|-------|-------|-------|
| | 2020 | | | | | | 2019 | | 2018 | 2017 | 2016 | 2015 |
| | Total Pennsylvania | | Total PA minus ACJ | | ACJ | | ACJ Historical | | | | | |
| | Total | Per Capita | Total | Per Capita | Total | Per Capita | Total | Per Capita | Total | Total | Total | Total |
| Avg. population | 24,089 | | 22,242 | | 1,847 | | 2,243 | | 2,342 | 2,426 | 2,400 | 2,612 |
| UOF incidents | 4,204 | 17% | 3,619 | 16% | 585 | 32% | 720 | 32% | 576 | 483 | 497 | 414 |
| UOF physical | 2,316 | 10% | 2,176 | 10% | 140 | 8% | 85 | 4% | 67 | 100 | 65 | 48 |
| UOF restraints | 2,699 | 11% | 2,508 | 11% | 191 | 10% | 134 | 6% | 70 | 17 | 73 | 3 |
| UOF restraint chair | 1,278 | 5% | 964 | 4% | 314 | 17% | 339 | 15% | 283 | 227 | 217 | 184 |
| UOF shackles | 807 | 3% | 803 | 4% | 4 | 0% | 7 | 0% | 4 | 1 | 36 | 33 |
| UOF handcuffs | 2,583 | 11% | 2,583 | 12% | - | 0% | 54 | 2% | 1 | 1 | 40 | 47 |
| UOF chemical agents | 1,549 | 6% | 1,483 | 7% | 66 | 4% | 122 | 5% | 75 | 65 | 55 | 50 |
| UOF stun gun | 301 | 1% | 196 | 1% | 105 | 6% | 146 | 7% | 111 | 80 | 29 | 41 |

The primary victims of this force are the approximately 64% of people at ACJ who have a serious mental illness/psychiatric disability. Force, rather than medical intervention or de-escalation techniques, is meted out disproportionately, unnecessarily, and discriminatorily against these individuals in response to their requests for treatment or due to manifestations of their mental health symptoms.

Troublingly, the recipients of Garcia and CSAU’s training are officers on SERT, which is a corrections tactical squad responsible for responding to riots, escapes, hostage situations, and incarcerated persons experiencing a mental health crisis at ACJ. Even though SERT officers are required to respond to mental health crises of incarcerated persons and authorized to use force on them, officers receive no additional or specialized training for these encounters. Unsurprisingly, SERT officers are often responsible for the most uses of force and for severely injuring incarcerated people.

Bradford Hansen, a corrections expert with 44 years of experience and a former warden of a Nebraska prison, recently assessed ACJ’s use of force policies and practices and found there are many systemic deficiencies, which amounted to an intentional policy of permitting excessive force on incarcerated people in violation of their federal civil rights.² These deficiencies include

² Bradford Hansen Report at 14-16, 30-34, *Andrews v. Harper*, No. 2:19-cv-00670-CWW (Aug. 4, 2021), ECF. 106-1; Paula Ward, *Pittsburg-area Woman Decries Use of Force at Allegheny County Jail*, TRIBLIVE (July 23, 2021; 11:00 AM), <https://triblive.com/local/pittsburgh-area-woman-decries-use-of-force-at-allegheny-county-jail/>.



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authorizing force for minor, non-violent infractions, using force as punishment for non-compliant innocuous behavior, failing to adequately train and encourage officers to use de-escalation or crisis intervention techniques, which is necessary and the correctional standard when interacting with incarcerated people with psychiatric disabilities.^{3,4} Hansen found ACJ's use of force numbers "extraordinary, and ... evidence that there is a culture that has been created by Administration where force is being approved in situations where it was not necessary or at the very least other methods should have been tried before force was escalated."⁵ Hansen recommended that one particularly egregious use of force be referred to law enforcement, which was subsequently done by counsel for the woman who was assaulted in that incident.⁶

Hansen's findings leave little reason to wonder why there are many individual lawsuits⁷ and a class action case⁸ against ACJ and its officers for using excessive force. These cases also raise

³ See Bradford Hansen Report at 14-16, 30-34, *Andrews v. Harper*, No. 2:19-cv-00670-CWW (Aug. 4, 2021), ECF. 106-1.

⁴ See *id.* at 34 (finding that the lack of de-escalation training and unwarranted emphasis on force methods have "created an environment where staff have become accustomed to using higher levels of force than is necessary and harmful to inmates.").

⁵ See *id.* at 14-15.

⁶ Paula Ward, *Pittsburgh-area Woman Decries Use of Force at Allegheny County Jail*, TRIBLIVE (July 23, 2021; 11:00 AM), <https://triblive.com/local/pittsburgh-area-woman-decries-use-of-force-at-allegheny-county-jail/>; Cara Sapida, *Woman Sues Allegheny County Jail Over Excessive Force*, WPXI (July 28, 2021; 6:24 PM), <https://www.wpxi.com/news/top-stories/woman-sues-allegheny-county-jail-over-excessive-force/RPMZVRJRVBGDHAXFM3RA2C5K5M/>.

⁷ Juliette Rihl, *Allegheny County Jail Sued for Alleged Assaults on Women with Psychiatric Disabilities*, PUBLICSOURCE (Dec. 2, 2020), <https://www.publicsource.org/allegheny-county-jail-lawsuit-assault-inmates-psychiatric-disabilities/>; Brittany Hailer, *Allegheny County Jail Sergeants Sued for Abuse if Pregnant & Disabled Women*, PITTSBURGH CURRENT, (Dec. 2, 2020), <https://www.pittsburghcurrent.com/allegheny-county-jail-sergeant-sued-for-alleged-abuse-of-pregnant-and-disabled-women/>; Torsten Ove, *Ex-Allegheny County Jail Inmates with Disabilities Sue Over Alleged Abuse by Sergeant*, POST-GAZETTE (Dec. 2, 2020; 9:49 AM), <https://www.post-gazette.com/news/crime-courts/2020/12/02/Ex-Allegheny-County-Jail-inmates-disabilities-lawsuit-alleged-abuse-sergeant/stories/202012020130>; Amy Wadas, *3 Women with Disabilities Sue Allegheny County Jail Alleging Brutal Assault by Sergeant*, CBS PITTSBURGH (Dec. 2, 2020; 1:21 PM), <https://pittsburgh.cbslocal.com/2020/12/02/allegheny-county-jail-women-assaulted-lawsuit/>; Paula Ward, *Lawsuit: Allegheny County Jail Staff Beat, Restrained Women Inmates*, TRIBLIVE (Dec. 2, 2020; 1:42 PM), <https://triblive.com/local/lawsuit-allegheny-county-jail-staff-beat-restrained-women-inmates/>; Paula Ward, *Pittsburgh-area Woman Decries Use of Force at Allegheny County Jail*, TRIBLIVE (July 23, 2021; 11:00 AM), <https://www.radio.com/kdkradio/listen>; <https://triblive.com/local/pittsburgh-area-woman-decries-use-of-force-at-allegheny-county-jail/>.

⁸ Claudia Lauer, *Lawsuit: Pennsylvania County Jail Punishes Mentally Ill*, ASSOCIATED PRESS (Sept. 15, 2020), <https://apnews.com/af91b3e6a4462d3173cb4b800ec16c08>; Torsten Ove, *Groups Sue Allegheny County Officials Alleging Mistreatment of Inmates with Psychiatric Disabilities*, PITTSBURGH POST-



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claims against the County for violating federal disability laws for ACJ's policies that are discriminatory, deny individuals with psychiatric disabilities access to programs and services at the jail, and fail to accommodate them. These cases, and others, have garnered media attention and public outrage against ACJ for its draconian and inhumane practices. But neither ACJ nor the County have made any reasonable effort to prevent officers, including those heavily armed, from using force against disabled individuals even if interactions are certain.

On May 18, 2021, 70% of the County's voters condemned ACJ's excessive force by approving a referendum to ban the jail from using the restraint chair, chemical agents, and most forms of solitary confinement.⁹ However, soon after the vote, the County and employee(s) of ACJ sought to circumvent the will of the voters by surreptitiously negotiating and executing sole-source contracts with CSAU, Kel-Tec, and Lightfield, which were apparently done without the knowledge or approval of the Allegheny County Jail Oversight Board ("JOB")—a government entity statutorily empowered to oversee, manage, and administer policies and practices in ACJ and authorize or cancel contracts related to those issues. At the August 2021 JOB meeting, several board members were stunned to hear that the contracts were signed without first obtaining the JOB's authorization,¹⁰ and they were even more concerned upon learning that the intent of these contracts are to teach officers to fire weapons at incarcerated people and offer no training on de-escalation.¹¹

GAZETTE (Sept. 15, 2020; 10:26 AM), <https://www.post-gazette.com/news/crime-courts/2020/09/15/Groups-sue-Allegheny-County-officials-alleging-mistreatment-of-inmates-with-psychiatric-disabilities/stories/202009150107>; Matt Petras, *Inmates with Mental Illness Suing Allegheny County Jail for Discrimination, Mistreatment*, PITTSBURGH CURRENT (Sept. 15, 2020), <https://www.pittsburghcurrent.com/inmates-with-mental-illness-suing-allegheny-county-jail-for-discrimination-mistreatment/>; Paula Ward, *Inmates at Allegheny County Jail Sue Over Dangers to Their Mental Health*, TRIBLIVE (Sept. 15, 2020; 10:52 AM), <https://triblive.com/local/inmates-at-allegheny-county-jail-sue-over-dangers-to-their-mental-health/>; Ryan Deto, *Lawsuit Against Allegheny County Jail Alleges Inadequate Mental Health Care and "Dehumanizing" Conditions*, PITTSBURGH CITY PAPER, (Sept. 15, 2020), <https://www.pghcitypaper.com/pittsburgh/lawsuit-against-allegheny-county-jail-alleges-inadequate-mental-health-care-and-dehumanizing-conditions/Content?oid=18002448>; ACJ Sued for Treatment Of Inmates with Psychiatric Disabilities, PUBLICSOURCE, (Sept. 15, 2020), <https://www.publicsource.org/acj-sued-inmates-psychiatric-disabilities-mental-health/>; An-Li Herring, *Class-Action Lawsuit Alleges Abuse Of Allegheny County Jail Inmates With Psychiatric Disabilities*, WESA (Sept. 15, 2020; 1:06 PM), <https://www.wesa.fm/post/class-action-lawsuit-alleges-abuse-allegheny-county-jail-inmates-psychiatric-disabilities>.

⁹ Ban goes into effect in December 2021. <https://www.scribd.com/document/519368235/Text-of-Solitary-Confinement-Initiative>.

¹⁰ Contracts of this nature require JOB's approval before they can be executed.

¹¹ Paula Ward, *Allegheny County Jail Staff Under Fire for Contracts Seeking Weapons & Militaristic Training*, TRIBLIVE (Aug. 5, 2021; 5:32 PM), <https://triblive.com/local/allegheny-county-jail-under-fire-for-contracts-seeking-weapons-and-militaristic-training/>; Andrew Goldstein, *Concerns Raised Over*



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Joseph Garcia & CSAU

The County contracted Joseph Garcia’s company CSAU to train SERT officers at ACJ.¹² Garcia markets his training services as deploying militaristic tactics and weapons in a jail setting against pretrial detainees.

The bona fides of Garcia and his training team are highly suspect. According to a federal court complaint, “Garcia appears to lack certifications, licenses, or expertise” and “is unqualified to train staff and help implement policies for a County or a jail,” or inform them “that his training and tactics are unconstitutional....”¹³

Garcia has refused to disclose his training materials, claiming them to merit a secret classification status even though they involve matters of public concern.¹⁴ Nevertheless, Garcia’s training tactics have been ascertained from the litany of lawsuits they have caused, including independent audits from a wrongful death, interviews of incarcerated people and officers he’s trained, and from Garcia’s social media accounts.

Garcia trains officers to view pretrial detainees as “enemies” and to see it as their job to engage in “combat” and “fight” so-called “enemies,” i.e. detainees. He trains officers to view their jobs as “going to battle with” detainees, and to see themselves as “warriors” against them.¹⁵ One of Garcia’s favorite mottos, overheard by jail staff participating in his training program, is “Break

Contracts Meant to Help ACJ End Solitary Confinement, POST-GAZETTE (Aug. 5, 2021; 8:01 PM), <https://www.post-gazette.com/news/crime-courts/2021/08/05/allegheeny-county-jail-oversight-board-solitary-confinement-contracts-pittsburgh-corrections-acj/stories/202108050171>; Kiley Kosciński, *Contracts for ‘Less Lethal’ Weapons, Military-Style Training at Allegheny County Jail Criticized by Oversight Board*, WESA (Aug. 6, 2021; 6:14 AM), <https://www.wesa.fm/identity-community/2021-08-06/contracts-for-less-lethal-weapons-military-style-training-at-allegheeny-county-jail-criticized-by-oversight-board>.

¹² SS CSAU1 Agreement at 1.

¹³ Complaint Rustgi v. Reams at 74, No. 1:20-cv-00945 (D. Colo Apr. 3. 2020), ECF No. 1; Matt Enright, *Allegations of Physical Threats & Sexual Abuse Dog York County Prison Contractor*, YORK DISPATCH (Apr. 18, 2021; updated 1:56 PM), <https://www.yorkdispatch.com/story/news/local/2021/08/18/allegations-physical-threats-and-sexual-abuse-dog-york-county-prison-contractor/8107657002/>.

¹⁴ Complaint Rustgi v. Reams at 74; Matt Enright, *Allegations of Physical Threats & Sexual Abuse Dog York County Prison Contractor*, YORK DISPATCH (Apr. 18, 2021; updated 1:56 PM), <https://www.yorkdispatch.com/story/news/local/2021/08/18/allegations-physical-threats-and-sexual-abuse-dog-york-county-prison-contractor/8107657002/>.

¹⁵ Complaint Rustgi v. Reams at 65.



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the jaw and walk away.”¹⁶ Unfortunately, Garcia’s despicable views of incarcerated people and their rights are applied in his trainings for correctional officers.

Garcia & CSAU’s Training Is Unconstitutional and in Violation of the Americans With Disabilities Act

Garcia’s trainings, taught by CSAU, and other training companies he has overseen or directed, violate correctional standards and federal laws, are the subject of civil litigation and criminal inquiries, and have resulted in serious injuries and the death of incarcerated people.

Garcia trains officers to use unwarranted, disproportionate force to terrorize and brutalize pretrial detainees. These unconstitutional tactics include blinding noncompliant detainees with laser shotguns and then shooting them with rubber bullets “until the pain convinces them to comply,”¹⁷ using physical violence such as eye gouges and multiple strikes to the head,¹⁸ tasing detainees for passive resistance,¹⁹ and guarding detainees at gunpoint to invoke fear.²⁰ These, and many of his other tactics, are contrary to appropriate policies and procedures in a pretrial detention setting, violate best practices, violate minimal standards for the pretrial detention setting,²¹ and have been highly criticized by a corrections expert.²²

¹⁶ Complaint Rustgi v. Reams at 72.

¹⁷ *ACJ Pays \$350K for Shotguns, Bullets, and Deadly Riot Training*, ALC COURT WATCH, (Aug. 13, 2021), <https://alccourtwatch.org/blog-2/016-acj-pays-350k-for-shotguns-bullets-and-deadly-riot-training/>

¹⁸ Rich Calder & Yoav Gonen, *Rikers Trains Guards in Prohibited Eye Gouges, Elbow Strikes*, NEW YORK POST, (Aug. 22, 2016), <https://nypost.com/2016/08/22/rikers-trains-guards-in-prohibited-eye-gouges-elbow-strikes/#:~:text=City%20corrections%20officers%20are%20being,feds%2C%20The%20Post%20has%20learned.>

¹⁹ Gary Raney, USE OF FORCE ANALYSIS RELATED TO THE DEATH OF JAMAL SUTHERLAND, at 25, July 24, 2021 (*hereinafter* RANEY REPORT), <https://www.counton2.com/wp-content/uploads/sites/7/2021/07/raney-use-of-force-analysis-ref-jamal-sutherland-07262021.pdf> (“[E]vidence showed the SACDC had, at one time, sanctioned the [Garcia’s] training of using a TASER against passive resistance” including “in situations with verbal non-compliance.”).

²⁰ RANEY REPORT at 7, 49; Complaint Rustgi v. Reams at 70

²¹ See Complaint Rustgi v. Reams at 75; RANEY REPORT at 6, 10, 13, 27, 47-48; American Correctional Association standard for use of force states that “Physical force is to only in instances of self-protection, protection of the inmate or others, protection of property, and prevention of escapes,” “and then only as a last resort and in accordance with appropriate statutory authorization. In no event is physical force used as punishment.” Bradford Hansen Report at 12-13.

²² RANEY REPORT at 6, 10, 13, 27, 47-48.



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Garcia also routinely utilizes tactics that would constitute war crimes if used in a situation of international armed conflict,²³ including using incarcerated people in mock executions as part of his training. Incarcerated individuals at the York County Prison were handcuffed and forced to face a wall while a training instructor, most likely Garcia, directed officers to aim their weapons and prepare to fire on the human targets.²⁴ Garcia's practice of forcefully enlisting un-consenting incarcerated individuals for his militaristic trainings has continued to ACJ. We received anonymous reports that on or around August 17, 2021, while Garcia was training SERT officers he shot bean bag projectiles close-range at an incarcerated person who was refusing to lock in.

Most troubling, Garcia's trainings have been shown to cause serious injuries and resulted in the death of at least one incarcerated person. In July 2021, corrections expert Gary Raney²⁵ found that Garcia's training contributed to the death of 31-year-old Jamal Sutherland Jr., who had been diagnosed with bipolar disorder and schizophrenia, which caused him visual and auditory hallucinations. Sutherland was killed by officers at Cannon Detention Center ("SACDC") in Charleston, South Carolina who had adopted Garcia's use of force practices.²⁶ Charleston County Council later settled with the family for \$10 million.²⁷ In Colorado, the Board of County Commissioners and the Weld County Sheriff's Office are being sued for Garcia's trainings which were adopted and implemented at the jail and are alleged to have caused serious injuries, including a "large gash to his forehead, hemorrhaging in his left eye, and a concussion" to a college student detained there.²⁸ At the same jail, officers have continued to fire the Kel-Tec shotguns as taught in Garcia's trainings, resulting several injuries, including one particularly horrendous instance, "putting a hole in a men's leg muscle and causing extensive and permanent injury....". These shootings are the subject of inquiries by federal authorities on civil rights violations.²⁹

Making matters worse, there is absolutely no evidence that Garcia's trainings provide any meaningful instruction on de-escalation or other alternative non-force methods that would satisfy

²³ *Practice Relating to Rule 90. Torture and Cruel, Inhuman or Degrading Treatment*, IHL DATABASE, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule90_sectiona.

²⁴ Matt Enright, *Allegations of Physical Threats & Sexual Abuse Dog York County Prison Contractor*, YORK DISPATCH (Apr. 18, 2021; updated 1:56 PM), <https://www.yorkdispatch.com/story/news/local/2021/08/18/allegations-physical-threats-and-sexual-abuse-dog-york-county-prison-contractor/8107657002/>.

²⁵ Review was done at the request of Ninth Circuit South Carolina Solicitor's Office. RANEY REPORT at 2-5.

²⁶ *Id.* at 6, 13, 47-48.

²⁷ Steve Garrison, *Charleston County Settles with Jamal Sutherland's Family for Millions*, THE POST & COURIER, https://www.postandcourier.com/news/charleston-county-settles-with-jamal-sutherlands-family-for-millions/article_2688c030-bdb0-11eb-8b67-ebc90c182a5c.html.

²⁸ Complaint Rustgi v. Reams at 1.

²⁹ *Id.* at 85-86.



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correctional standards.³⁰ Rather, Garcia trainings prefer and encourage use of force over de-escalation and harm avoidance techniques.³¹

County's Liability

Allegheny County is municipally liable for unconstitutional policies, practices, customs, and trainings that are the moving force and cause individuals to be deprived of their federal rights. The County is liable for adopting and implementing the unconstitutional policies and trainings of Garcia's/CSAU for ACJ SERT officers, which uses excessive force on incarcerated individuals in violation of their Constitutional rights to be free from cruel and unusual punishment. The County is responsible for Garcia's trainings, which fail to provide standard instruction on de-escalation and force avoidance techniques and fail to instruct on interactions with individuals with psychiatric disabilities who they are certain to encounter on a daily basis.³² These techniques are necessary to prevent the obvious use of excessive force.

³⁰ Corrections expert Raney, who evaluated Garcia's training for the tactical response officers on SOG found that "[t]here was no evidence of meaningful de-escalation or avoidance training in the SOG training." The Ninth Circuit Solicitor's Office similarly found that Garcia's training "preferred use of force over avoidance and de-escalation techniques." RANEY REPORT at 10, 27

³¹ *Id.* at 8, 10.

³² Rustgi v. Reams, No. 20-CV-0945-WJM-STV, 2021 WL 1698142, at *14 (D. Colo. Apr. 29, 2021) The U.S. District Court for Colorado found plaintiff sufficiently pled plausible claim against the Board of County Commissioners for the harm caused by Weld County Sheriff's Office adopting and implementing Joseph Garcia's use of force policies and procedures:

The Court finds Rustgi has sufficiently pled a failure to train claim against the BOCC. At a general level, Rustgi alleges that Sheriff Reams hired a contractor named Joseph Garcia to assist him in training and implementing the Special E Operations Group in WCSO. Further, Defendant Reams and Garcia trained deputies to use a variety of weapons and tactics in the jail setting, including shotguns, concussion explosives, and physical violence, as used against Plaintiff. Rusti alleges that Defendant Reams intentionally hired Garcia from 2016 to the present to assist him in implementing the unconstitutional policies and training, which are also contrary to any legitimate penal justification, contrary to appropriate standards in the detention setting, and extremely dangerous and unnecessary. Further, the SOGS are trained to intimidate and be unnecessarily aggressive and violent with detainees, and to escalate the use of force against detainees unreasonably and precipitously. The SOGs are trained by Defendant Reams to view themselves as warriors against enemy combatants, to use weapons unlawfully and dangerously, and generally to treat detainees held in the jail as enemies to be intimidated and victimized by violence. Ultimately, Rustgi alleges that Sheriff Reams has failed to implement constitutional training and policies for WCSO.

Id. at 14. (internal citations and quotations omitted).



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The County also is subject to liability under the Americans With Disabilities Act and Rehabilitation Act. These federal laws prohibit the County from implementing policies or practices that discriminate against pretrial detainees because of their disability, deny them access to the jail's programs, benefits, or services, or fail to provide them reasonable accommodations. The County is adopting Garcia's policies and procedures for force at ACJ, which will result in officers discriminatorily using force on incarcerated individuals for non-violent conduct caused by their psychiatric disability, and the policy of using force rather than providing an accommodation or medical intervention will deprive those individuals the right to enjoy the jail's programs and services.

ACJ is seriously in need of policies and practices that prevent excessive force against incarcerated individuals. However, the County has acted antithetically to that imperative and contracted with a person whose training program will predictably and certainly result in unnecessary suffering and harm. Consider this letter a formal notice that we will sue the County, the County Executive, and Warden Harper if they do not immediately rescind the contract with Garcia and CSAU.



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Respectfully,

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