

# Sheriffs as Carceral Controllers

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*This report will evaluate the origin, history, and contemporary role of the Orleans Parish Sheriff and his associated office within the framework of the American judicial system. With roots in British colonialism and American slave-catching practices, combined with close ties to judges, lawyers, and police departments, sheriffs in the United States have long enjoyed sweeping power as chief law enforcement officers. With little government oversight, they have continuously filled our jails and expanded local carceral systems. Lack of public consciousness about the role of the sheriff within law enforcement has paved the way to a rampant lack of liability steeped in white supremacy – one that plays a large hand in the brutal legacy of America’s mass incarceration.*

## Origins

### I. A Shroud of Mystery

In contemporary American culture the word “sheriff” is immediately illustrative of a brazen and authoritative law enforcement officer. Sheriffs are some of the most, if not the most, powerful law enforcement officers in the country.<sup>1</sup> They occupy an ideology distinct from police forces and are meant (allegedly) to serve as a public protector of rights and defense for their citizenry.<sup>2</sup> In reality this is a vague and romanticized conception of American sheriffs, inconsistent with policing scholarship that characterizes sheriffs as cut from the same cloth as other law enforcement officers.<sup>3</sup> Even as national consciousness about mass incarceration has grown significantly, most existing scholarship on carceral policymaking suggest that such criminal legal policy is made primarily at the state level in the legislature, the county level in the courtroom, or on the streets.<sup>4</sup> But this cannot be true when sheriffs, the final authorities responsible for operating local jails, have massive control over the supply and demand of local jailing.<sup>5</sup> With this level of control, sheriffs exert power over not only the conditions in which we jail people at a local level, but also the amount, size, and shape of those jails.<sup>6</sup> In this task sheriffs often defy notions of public safety and fill jails as full as possible, using this as a tool for securing funding to build more jails and collect more revenue.<sup>7</sup> This mindset, rooted in greed and the capitalization of crime, ignores that policy reforms to reduce criminalization and incarceration as well as increase services to the public would actually achieve far better public

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<sup>1</sup> *About*, SHERIFF ACCOUNTABILITY PROJECT, <https://www.sheriffaccountabilityproject.com/about> (last visited Aug. 12, 2021).

<sup>2</sup> TOM ASWELL, *LOUISIANA’S ROGUE SHERIFFS: A CULTURE OF CORRUPTION* xiii (2019).

<sup>3</sup> James Tomberlin, Note, “*Don’t Elect Me*”: *Sheriffs and the Need for Reform in County Law Enforcement*, 104 Va. L. Rev. 113, 116 (2018).

<sup>4</sup> *See generally* Aaron Littman, *Jails, Sheriffs, and Carceral Policymaking*, 74 Vand. L. Rev. 861, 864 (2021).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 865.

safety outcomes and obviate the need for more jail space.<sup>8</sup> As jail administrators, sheriffs work closely with police chiefs, district attorneys, and judges.<sup>9</sup> Sheriffs thus have the power to advocate for local (and state) policy and practice that would reduce jail populations, improve the conditions of their jails, and shorten the durations of stays.<sup>10</sup> In this regard, sheriffs are crucial figures when it comes to advocating for criminal justice reform and should not be overlooked by community organizers working to reshape our carceral landscape.

## ***II. The Legacy of Slavery and the Sheriff***

After American chattel slavery was abolished by presidential proclamation in the mid-nineteenth century, it was swiftly repackaged by lawmakers under the Thirteenth Amendment. This constitutional amendment allowed, and still allows, convict leasing in the sharecropping system. In the South where the economic infrastructure relied on slave labor, policing served as a critical tool of whites in arresting free Black people and forcing them into the criminal justice system to continue to work on their plantations.<sup>11</sup> Local police and sheriffs worked in tandem to advocate for legislation that would criminalize everyday activities such as “vagrancy,” enabling them to legally arrest free Black people based on little to no evidence.<sup>12</sup> Decades later in the Jim Crow era, the American South still had police forces with a historic and central purpose in maintaining racial inequality against Black people through convict leasing labor.<sup>13</sup> Police forces during this time were often joined in practice and ideology by ad-hoc vigilantes such as the Ku Klux Klan, a white supremacist terrorist group made up of many active officers.<sup>14</sup> This practice continues in states like Louisiana today where private citizens are allowed to join sheriffs as unofficial policing forces and engage in their law enforcement activities without any formalized training.

## ***III. Colonialism as a Frame for the American Sheriff***

The brutal legacy of the sheriff began before the colonization of the United States.<sup>15</sup> The sheriff’s office is an ancient one, born in ninth century England and known as the “shire-reeve,” or the “protector of the shire (county).”<sup>16</sup> By the eleventh and thirteenth centuries, sheriffs’ power in England had peaked in executive and judicial authority; the sheriff controlled local military, held shire court (criminal and civil jurisdiction over pleas of the Crown), could gather citizens into law enforcement forces, performed tax collection, executed writs, and conducted the “apprehension and custody of prisoners.”<sup>17</sup> Over time however, English sheriffs lost considerable importance in enforcing the law under the Crown.<sup>18</sup> When British colonizers made their murderous route to the United States the blueprint for the sheriff as a chief enforcement officer in their newly conceptualized government found new life.<sup>19</sup> As colonizers overtook

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 866.

<sup>10</sup> *Id.*

<sup>11</sup> ALEX S. VITALE, *THE END OF POLICING* 99 (2017).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Tomberlin, *supra* note 3, at 117.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 119.

<sup>19</sup> *Id.*

previously pastoral lands and transformed them into colonies and official counties, they formed towns in the north which had shared power between the county local governments and town constables.<sup>20</sup> In the South, they did not create such towns (and constables) so as colonies formed the primary ruling officer was the sheriff (government officer) who did not have to share power with town constables.<sup>21</sup> The colonial sheriff in the American South, since inception, has enjoyed sole importance as a law enforcement chief who would “serve process papers, maintain law and order, collect taxes, and maintain jails.”<sup>22</sup> The driving difference between the English and American sheriff was the reliability of compensation: In America, the sheriff could charge a premium on all revenues he collected and charge fees for writs, arrests, recaptured runaway slaves, criminals he imprisoned, witnesses summoned, and juries gathered.<sup>23</sup> This fee system was the beginning of American capitalization for “criminal” activity, and it incentivized sheriffs to perpetuate mass incarceration and solidify a judicial system based more in human greed and corruption than justice.<sup>24</sup>

#### ***IV. Contemporary American Sheriffs as Elected Officials***

Differences between contemporary American sheriffs depend on the region, state, and county or parish in which they operate.<sup>25</sup> Some sheriffs have been stripped of actual law enforcement powers and only provide oversight of correctional services (such as jail maintenance and prisoner transport), execution of court orders, service of process, courtroom security, seizure of property that is claimed by a county, fee and tax collection, and other administrative duties.<sup>26</sup> Nevertheless, all sheriffs are government officers, and thus enumerated (and only changeable by legislature) under a state’s constitution.<sup>27</sup> Despite some states bifurcating sheriffs from formal law enforcement duties and reducing their individual power, on average the size of sheriff departments (measured by number of sworn officers) increased by 10% between 2007 and 2013.<sup>28</sup> This influx in manpower reflects a larger governmental American ideal in favor of re-allocating local funds to continuously increase policing budgets despite a steadily decreasing national crime rate over the past thirty years.<sup>29</sup> Meanwhile, American incarceration rates in state prisons continue to rise.<sup>30</sup> And this is how America finds itself today: the most incarcerated nation in the world with local governments and municipalities saturating policing budgets with billions of dollars at the expense of crucial social services budgets.

Unlike police chiefs, sheriffs are elected officials who have legal jurisdiction over their entire county (or parish) and are not appointed and restricted to municipal constraints.<sup>31</sup> Thus, citizens may be able to shift the carceral systems in their communities by voting in sheriffs

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<sup>20</sup> *Id.* at 120.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *See generally id.*

<sup>25</sup> *Id.* at 122.

<sup>26</sup> *Id.* at 123.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Reported Violent Crime Rate in the U. S. from 1990 to 2019*, STATISTICA RESEARCH DEP’T (July 5, 2021), <https://www.statista.com/statistics/191219/reported-violent-crime-rate-in-the-usa-since-1990/>.

<sup>30</sup> E. Ann Carson, *Prisoners in 2013*, U.S. DEP’T. OF JUSTICE (Sept. 30, 2014), <https://bjs.ojp.gov/content/pub/pdf/p13.pdf>.

<sup>31</sup> *Id.*

elections. American sheriffs are (and always have been since the first election in Virginia in 1651<sup>32</sup>) popularly elected by the public groups they serve.<sup>33</sup> While this fact inherently politicizes their practice of policing within a given county, it also allows for the voter majority to somewhat design a candidate of their choosing. Whoever is elected for a given term limit is determined solely by voters; their scope of power is bounded by state constitution and statute.<sup>34</sup> As such, sheriffs answer to no power besides their constituents and are not controlled by the mayor or city council except in allocation of municipal money towards their annual revenue budgets.<sup>35</sup> This lack of checks and balances has enabled sheriffs to prioritize the will of the voter majority over their responsibility to preserve equal rights, and many times in the process violate the civil liberties of non-white citizens with excessive force.<sup>36</sup> Many sheriffs enjoy consistent reelection and decades in power because no written law limits the number of times they can be reelected and because general voter populations lack knowledge of their practice and politics.<sup>37</sup>

Evaluating the local political systems within which sheriffs are elected is equally important. As of 2019 the majority of Black Americans (56%) still live in the American South.<sup>38</sup> Black Americans only earned the right to vote 56 years ago and since then have consistently faced voter suppression, particularly in the South. Pervasive gatekeeping of Black votes makes it unsurprising that the majority of sheriffs in the U.S., particularly in the South, are white men who practice with “law and order” force.<sup>39</sup>

## *Louisiana*

### *I. The Role and Responsibilities, by Constitution*

Law enforcement is a sheriff’s constitutional duty in Louisiana, and thus sheriffs are legally obligated to uphold all mandated functions in the law.<sup>40</sup> LSA-Const. Art. 5, § 27 states that in each parish a sheriff will be elected for a term of four years, and

He shall be the chief law enforcement officer in the parish, except as otherwise provided by this constitution, and shall execute court orders and process. He shall be the collector of state and parish ad valorem taxes and such other taxes and license fees as provided by law. This Section shall not apply to Orleans Parish.<sup>41</sup>

This constitutional grant is extremely broad and as it is written allows for massive discretionary power. Those evaluating the Louisiana sheriff have noted two main characteristics of sheriffs in

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<sup>32</sup> *Littman, supra* note 4, at 121.

<sup>33</sup> Jessica Pishko, *How Sheriffs’ Power and Autonomy Make Them Central Players for Policing Reform*, THE APPEAL (Sept. 26, 2019), <https://theappeal.org/politicalreport/sheriffs-and-policing-practices-the-badge/>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Jessica Pishko, *The Power of Sheriffs: Explained*, THE APPEAL (Jan. 4, 2019), <https://theappeal.org/the-power-of-sheriffs-an-explainer/>.

<sup>37</sup> *Id.*

<sup>38</sup> *The Majority of the U.S. Black Population Lives in the South*, PEW RESEARCH CENTER (Mar. 24, 2021), [https://www.pewresearch.org/social-trends/fact-sheet/facts-about-the-us-black-population/all-blacks\\_geography-map/](https://www.pewresearch.org/social-trends/fact-sheet/facts-about-the-us-black-population/all-blacks_geography-map/).

<sup>39</sup> Brooke Wolford, *Elected Sheriffs are 90% White Men, Report Says. How does that Affect our Policing?*, MIA. HERALD (June 5, 2020), <https://www.miamiherald.com/news/nation-world/national/article243316511.html>.

<sup>40</sup> La. Att’y. Gen. Op. No. 16-0159.

<sup>41</sup> La. Const. art. V, § 27.

the state: (1) a general lack of qualifications (other than being successful politicians), and (2) lack of accountability for their professional actions which are shielded from oversight by the president, congress, and the governor.<sup>42</sup> Louisiana has time and time again seen that the concentration of such power under one individual who is not held to a standard of qualification is ripe for abuse and greed.<sup>43</sup>

## ***II. History of Corruption***

American sheriffs in the South have created practices centered on money-making for their offices with little oversight. They did this through tax collections, charging for judicial proceedings and services, and filling jail facilities by bail bond charges and renting beds to other entities who needed them. Indeed, the history of fraud in the Louisiana sheriffs' office is long and rampant.<sup>44</sup> In 1951, the Senate Crime Commission held a traveling investigation of organized crime in America; the result was glaring national attention on Louisiana and four of its sheriffs who had facilitated, in their official capacities, an exceedingly lucrative gambling and prostitution ring.<sup>45</sup> Throughout the trials, three parishes (Jefferson, St. Bernard, and Orleans) stood out for their kingpin sheriffs and municipal police officers who blatantly defied their oath to protect and serve.<sup>46</sup> In the committee report, Orleans Parish represented a microcosm of organized crime that reflected "how national gambling and racketeering elements align themselves with local operators in a metropolitan area."<sup>47</sup> It also noted how much the operation relied on the active participation and cooperation of negligent police officers and the parish sheriff.<sup>48</sup>

## ***III. The Louisiana Sheriffs Association (LSA)***

In Louisiana there is an all-powerful entity attached to the sheriffs, their deputies, and thus responsible for their collective political influence: the Louisiana Sheriffs Association (LSA). Founded in 1938, it represents the 64 elected parish sheriffs and their almost 14,000 deputy sheriffs.<sup>49</sup> Its stated purpose is to "maintain the powers of the sheriff as peace officer, to ensure the delivery of first-rate services by sponsoring legislation to promote the administration of criminal justice and to serve as a clearinghouse of information."<sup>50</sup> However, most of the bills the LSA has introduced in recent years at legislative sessions have little to do with actual criminal justice and more to do with the sheriffs' personal economic interests (insurance premiums and salaries).<sup>51</sup> The LSA holds a tremendous amount of capital and, through its PAC, contributed \$266,000 to local political sheriff campaigns during the 2015 election cycle, mostly towards republican candidates who favored harsh practices of policing and celebrated incarceration in the interest of public safety.<sup>52</sup> The LSA also spends a large deal of money paying for general counsel

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<sup>42</sup> ASWELL, *supra* note 2, at xvi.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 1.

<sup>46</sup> *Id.* at 4.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *About LSA*, LOUISIANA SHERIFFS ASSOCIATION, <https://www.lsa.org/about-lsa> (last visited Aug. 12, 2021).

<sup>50</sup> *Id.*

<sup>51</sup> ASWELL, *supra* note 2, at 4.

<sup>52</sup> *Id.*

under its risk management arm.<sup>53</sup> This arm, the Louisiana Sheriffs' Law Enforcement Program (LSLEP), is composed of 45 of the 64 parish sheriff departments that are self-insured against public liability for the unlawful acts of their sheriffs and deputies.<sup>54</sup> To pay for this, premiums are collected from the departments and usually average around \$5 million a year.<sup>55</sup> LSLEP's total assets in 2016 were just over \$17 million against active liabilities of \$8.2 million.<sup>56</sup> A law firm based out of New Orleans, Ursy & Weeks, represents 36 of the 45 departments, and bills—quite unusually in legal practice—at a flat rate of \$150,000 a month (\$1,620,000 annually).<sup>57</sup> Such figures suggest that the LSA accepts paying for the large liability their illegal practices cost the association. This is not difficult to imagine within the context of national policing landscapes where we see endless national incidents of blatant police brutality and murder. It is crucial to remember that these departments pay for these legal fees out of their budgets (including revenue streams from federal and state grants), and thus this liability falls on taxpayers.

#### ***IV. Liability***

Louisiana parish sheriffs' offices are not considered legal entities capable of being sued as a whole; they are, by law, public offices operated by a public official whose deputies are considered state employees despite being under the sheriffs' authority.<sup>58</sup> For example, in a Louisiana tort suit seeking to hold the sheriff vicariously liable for the tort of his deputy, and not for his own negligence, the sheriff can be sued in his official capacity, but the office cannot be sued because it is not a legal entity.<sup>59</sup> Furthermore, the sheriff can only be liable in a personal capacity for his negligent acts committed while within the performance of his official duties, but again this liability does not attach to his office and cannot pass from one sheriff to the next.<sup>60</sup>

#### ***V. The Job***

The Louisiana constitution enumerates a broad judicial role for the sheriff that touches upon complex intersections of practical and substantive executive government. Despite this, there is no education or prior experience requirement to run for office. Many Louisiana sheriffs are trained only in law enforcement practices or general policing and do not have previous experience working in government or professional administrative capacities. This lack of education and prior experience leads to sheriffs who do not possess the skills necessary to do their jobs. The sheriff is much more than law enforcement. In fact, the sheriff's main role is to be responsible for running the jails in their county, which requires a high level of administrative capacity. Sheriffs are responsible for keeping those who are incarcerated safe, fed, clothed, and receiving proper medical and mental health care. Leaving this responsibility to someone trained only as a police officer is inherently dangerous to the communities he or she purports to serve.

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 15.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Jenkins v. Jefferson Parish Sheriff's Office*, 385 So.2d 578 (La. 1981).

<sup>59</sup> *Burge v. Parish of St. Tammany*, 187 F.3d 452 (La. 1997).

<sup>60</sup> *Liberty Mut. Ins. Co. v. Grant Par. Sheriff's Dep't*, 350 So. 2d 236 (La. Ct. App. 1977).

## ***VI. Incarceration Capital of the World***

Louisiana is home to one of the largest concentrations of Black Americans in the entire country where 32.8% of the state population is Black.<sup>61</sup> For context, in 2018 new data unseated Louisiana as the “prison capital of the world,” with an incarceration rate of 1,052 per 100,000 people, second only to the state of Oklahoma.<sup>62</sup> This rate far outpaces the U.S. national average of 698 per 100,000 people.<sup>63</sup> Louisiana’s massive population of incarcerated individuals is within the exclusive control of its 64 elected sheriffs. These sheriffs are responsible for the conditions in which anyone jailed locally is held. They control the funds and thus executive power to determine incarcerated people’s meals and daily activities (including education, work study, and treatment programming), as well as the parish prison population, the number of jails and beds in a facility, mental and physical health care, treatment opportunities, access to attorneys, family visits, phone calls, and general conditions of confinement or housing.

Despite state racial demographics, only 3 of the 64 total elected sheriffs (5%) in the state are Black. The other 61 are white. The incarceration of Black people in local jails averaged across the parishes outpaces white people incarcerated approximately 2 to 1.<sup>64</sup> This is consistent with the state average of 2.4 Black people to 1 white person being incarcerated (52% of the total jail population in Louisiana is Black).<sup>65</sup> These rates of incarceration in Louisiana are important to consider in the context of the sheriff’s role as a chief law enforcement officer. Running a jail can be an extremely lucrative business;<sup>66</sup> sheriffs collect revenue from jail services such as the commissary, inmate phone calls, and jail beds which they out per head to neighboring counties, their state prison system, and the federal government (including I.C.E.).<sup>67</sup>

## ***Orleans Parish***

### ***I. The Role & Liability***

In Orleans Parish the sheriff is responsible for caring for all people incarcerated in the parish correctional facility, Orleans Parish Prison (OPP); he is the executive officer for the criminal and civil courts in New Orleans, and his deputies serve subpoenas, perform courtroom security, and assist in the executory process.<sup>68</sup> The Orleans Parish Sheriff statute originally bifurcated from the state constitution section mentioned previously because the role was

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<sup>61</sup> *Quick Facts Louisiana*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/LA> (last visited Aug. 12, 2021).

<sup>62</sup> Peter Wagner et. al., *The States of Incarceration: The Global Context 2018*, [https://www.prisonpolicy.org/global/2018.html?gclid=Cj0KCQjw0K-HBhDDARIsAFJ6UGi\\_WAbrJ-TwklWyg6qHkPAXSbqTC-UPkDISSCuvomM52GYuxWE3jLaUaAvNzEALw\\_wcB](https://www.prisonpolicy.org/global/2018.html?gclid=Cj0KCQjw0K-HBhDDARIsAFJ6UGi_WAbrJ-TwklWyg6qHkPAXSbqTC-UPkDISSCuvomM52GYuxWE3jLaUaAvNzEALw_wcB).

<sup>63</sup> *Id.*

<sup>64</sup> *Incarceration Trends in Louisiana*, VERA INST. OF JUSTICE, <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-louisiana.pdf>.

<sup>65</sup> *Id.*

<sup>66</sup> *Pishko*, *supra* note 33.

<sup>67</sup> Chris Mai, et al., *Broken Ground: Why America Keeps Building More Jails and What It Can Do Instead*, VERA INST. OF JUSTICE (Nov. 2019), <https://www.vera.org/downloads/publications/broken-ground-jail-construction.pdf>.

<sup>68</sup> Orleans Parish Sheriff’s Office of Marlin N. Gusman, [https://www.opso.us/index.php?option=com\\_content&view=article&id=145&Itemid=724](https://www.opso.us/index.php?option=com_content&view=article&id=145&Itemid=724), (last visited July 26, 2021).

originally divided between criminal and civil capacity.<sup>69</sup> However, the Orleans Parish Sheriff's office was legislatively redesigned in 2010 by Louisiana Revised Statute §13:5581.<sup>70</sup> This revised statute abolished the roles of "criminal sheriff" and "civil sheriff" for Orleans Parish and consolidated them into one sheriff elected every 4 years and serving over the entire geographic region including all its encompassed municipalities.<sup>71</sup> The Orleans Parish Sheriff thus became, like the rest of the parish sheriffs, the chief law enforcement officer under both the criminal and civil jurisdictions and thus in charge of all criminal investigations; responsible for executing all court orders and processes of service; and in charge of maintaining the public jail, Orleans Parish Prison (OPP).<sup>72</sup> The only notable deviation from the other parish sheriffs was that the Orleans Parish Sheriff does not collect ad valorem taxes or other taxes and license fees as provided by law; rather, the city of New Orleans itself provides for tax collection.<sup>73</sup>

Legal liability for the Orleans Parish sheriffs is consistent with state case law and lies in La. Rev. Stat. §13:2163:

The sheriff for the parish of Orleans and his deputies, are hereby granted the powers of peace officers when carrying out the duties of the court and are authorized to require incarceration of the subject involved in any of the city, parish or state prisons, precinct stations, or houses of detention in the parish of Orleans. They shall be exempt from liability for their actions in the exercise of this power in the same manner and fashion as liability is excluded generally for peace officers of this state and political subdivisions.<sup>74</sup>

Again, we see the sheriff and his deputies enjoy freedom from broad-sweeping liability and state-sanctioned immunity when it comes to performing their employment duties as long as they are not found (under a high burden) to be either intentionally tortious and outside of reasonability or grossly negligent. This statute does not mention the actual liability of the office itself, but multiple lawsuits against current Orleans Parish Sheriff, Marlin N. Gusman, would suggest that litigation is typically properly brought against him in his official capacity for any alleged criminal or tortious action. This litigation has been a costly hot button issue for Gusman. In 2012 Gusman was grilled in budgetary hearings regarding the mysterious lines in his 2011 budget which showed he spent \$1.9 million paying outside attorneys from the same firm employed by the LSA, Ursy, Weeks & Matthews.<sup>75</sup> Media outlets in 2015 wrote that Gusman had been paying the firm around \$1.7 million a month between 2011 and 2014; a cost of about \$130,000 a month or \$32,500 a week.<sup>76</sup> This figure is shockingly large considering that Gusman has continued to request a larger budget and has been unable to account for what in legal liability this money is being spent for.<sup>77</sup>

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<sup>69</sup> State and Local Government in Louisiana: An Overview 2012-2016 Term, *Ch. 3 Local Gov't.: Pt. B Constitutional Offices*, <https://house.louisiana.gov/slg/PDF/Chapter%203%20Part%20B%20-%20Constitutional%20Offices.pdf>.

<sup>70</sup> La. Rev. Stat. §13:5581.

<sup>71</sup> *Id.*

<sup>72</sup> State and Local Government in Louisiana: An Overview 2012-2016 Term, *supra* note 69.

<sup>73</sup> *Id.*

<sup>74</sup> La. Rev. Stat. §13:2163.

<sup>75</sup> Lee Zurik, *Lee Zurik Investigation: Sheriff's Budget Bloated by Mystery Legal Fees*, FOX NEWS (Jan. 21, 2015), <https://www.fox8live.com/story/21292442/lee-zurik-investigation-sheriffs-legal-fees-astound-observers/>.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*



## ***II. The Mission and Responsibilities***

Orleans Parish Sheriff's Office (OPSO) stated mission is to "provide public safety and service to the citizens of Orleans Parish."<sup>78</sup> OPSO brands itself as the entity that provides for the "care, custody, control, and rehabilitation of inmates."<sup>79</sup> OPSO also provides "service and security to the court systems, the execution of court mandates, and the protection of individuals' rights and freedoms."<sup>80</sup> In interpretation of this mission, OPSO should be responsible, in practice, for the constitutional wellbeing of those incarcerated at the parish jail, Orleans Parish Prison (OPP). This care, custody, control, and rehabilitation includes maintaining the jail in its physical and financial form (including all its exterior and interior functions and items) up to legal standards, feeding and clothing those incarcerated at the prison, providing standard comprehensive health services, providing programs to incarcerated people, managing their communications with the outside world, and providing safe transport through the court system. It also means managing the actual jail population. For example, OPSO reports to New Orleans judges, the Orleans Parish District Attorney, and the New Orleans Police Department on the number of open beds at the prison. The New Orleans Sheriff can also rent the beds of the jail to the state, federal government, or other Louisiana parishes for a fee. He or she is thus responsible for any increases in jail space and has critical financial incentive to do so: more people incarcerated and OPP means more revenue for OPSO.

In addition to all professional responsibilities related to running OPP, OPSO is also responsible for services and security in the actual court rooms of the Orleans Parish municipal court system (Criminal District; Civil District; Traffic Court, etc.). The sheriffs' office receives a large revenue stream from the city that must be approved by the city council but is allowed to make commission for its service of all court related documents.<sup>81</sup> The commission is derived from service fees and in billing for the reimbursement of mileage expenses when they are serving process.<sup>82</sup> All fees are pursuant to Act Number 135 of the Regular Session of the 2017 Louisiana Legislature Effective March 9, 2018.<sup>83</sup> More specifically, OPSO charges a legally determined service fee of \$30 for: (1) the service and returns of any legal documents, notices, subpoenas; the execution of all writs and court orders; (2) the execution of all Notice of Seizure and returns of thereon; (3) the preparation of newspaper advertisements (typically for serving process on someone); (4) the execution of writs of both possession or ejection; and (4) the service of Notices to Vacate and other eviction actions.<sup>84</sup> OPSO thus profits from the criminalization of poverty in New Orleans. It is important to note that because these rates are determined by law, to resolve the cruelty of charging someone a fee for a notice of eviction or seizure the legislature must reform the policy. Generally, the elected sheriff is vitally important for reform, but OPSO's power is also designated at both a state legislative and municipal level. Advocating for policy reforms at the legislature and electing city officials who oppose large portions of the sheriff's revenue coming from the city are equally important to electing a sheriff who can be held accountable.

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<sup>78</sup> Orleans Parish Sheriff's Office of Marlin N. Gusman, *supra* note 68.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

### III. The Budget

Review of the OPSO revenue budget from 2017 to 2021 (see Figure 1) reveals just how many sources of revenue the sheriffs' office has. OPSO receives its largest revenue stream, by far, from the city. This figure must pass through approval from the Orleans City Council and the mayor on an annual basis. While the city council and mayor do not necessarily control the OPSO by governmental oversight, their contribution pays for over half the annual budget revenue and thus inevitably influences operations. The city gives money in two streams: operational appropriation and on behalf of. Such 'on behalf' funding is for health insurance, workers' compensation, and unemployment of all OPSO employees. Based off the actual revenues between FY 2017 and FY 2020, OPSO collected approximately \$10.3 million from "DOC revenues," \$1.8 million from commissary sales, \$3.7 million from inmate telephone calls, \$900,000 from processing fees mentioned above, and \$580,000 from a 3% bail bond fee. This is close to \$17 million dollars made in revenue streams in four years by a public office. Beyond the absurdity of such a figure, the city of New Orleans is what provides the OPSO with the ability to function on such a large scale, with an approved budget for FY 2021 of \$53,188,976 operational budget and additional \$6,293,717 on behalf budget. For context, the city funds the New Orleans Police Department at close to \$175 million a year. With its \$60 million contribution to the sheriff office, the city of New Orleans spends close to a quarter of a billion dollars to collectively run their policing forces, *each year*.

#### Orleans Parish Sheriff's Office

	Actual FY 2017	Actual FY 2018	Actual FY 2019	Adopted FY 2020	Revised FY 2020	Org Proposed FY 2021	Proposed FY 2021
<b>Revenues</b>							
<b>General Fund</b>							
Ad Valorem Tax	\$8,097,044	\$6,011,806	\$5,696,437	\$5,930,297	\$6,582,899	\$7,530,336	\$5,930,297
Loan Proceeds	3,000,000	4,500,000	1,750,000	1,750,000	750,000	-	1,750,000
DOC Revenues	2,920,872	2,322,634	2,603,399	2,541,600	2,475,077	2,477,000	2,541,600
State Supplemental Pay	2,132,149	1,911,760	2,024,856	1,536,000	2,059,125	1,644,000	1,536,000
State and Federal Grants	2,078,485	453,302	586,325	450,000	450,000	450,000	450,000
Other Revenues	474,328	1,135,798	682,011	180,000	182,901	96,400	180,000
Commissary	393,890	466,449	477,221	394,200	450,188	462,800	394,200
Inmate Telephone	934,431	973,421	865,168	830,700	911,253	713,500	830,700
Processing Fees	258,800	225,183	209,902	208,000	194,234	162,850	208,000
3% Bail Bond fee	181,421	130,034	149,269	-	121,526	123,900	-
Work Release Reimbursements	182,616	208,945	264,882	172,400	198,294	125,200	172,400
City Appropriations (Operating)	52,469,920	51,515,932	59,841,398	53,188,976	53,035,122	57,453,031	53,188,976
City On Behalf	6,023,258	6,453,284	6,293,717	5,793,663	6,293,717	6,293,717	6,293,717
<b>Total Criminal Division (Including On Behalf Payments)</b>	<b>79,147,214</b>	<b>76,308,547</b>	<b>81,444,586</b>	<b>72,975,836</b>	<b>\$73,704,336</b>	<b>\$77,532,734</b>	<b>73,475,890</b>
Fees and Commissions	5,549,029	4,263,699	3,971,518	3,600,000	2,844,071	3,600,000	3,600,000
Loyola Division	816,872	973,485	1,024,732	911,507	1,119,234	1,013,500	911,507
<b>Total Civil Division</b>	<b>6,365,901</b>	<b>5,237,184</b>	<b>4,996,250</b>	<b>4,511,507</b>	<b>3,963,305</b>	<b>4,613,500</b>	<b>4,511,507</b>
<b>General Fund Revenues</b>	<b>85,513,115</b>	<b>81,545,732</b>	<b>86,440,835</b>	<b>77,487,343</b>	<b>77,667,641</b>	<b>82,146,234</b>	<b>77,987,397</b>
<i>Check</i>							

Figure 1

In review of the expenditure category of the OPSO budget from FY 2017 to FY 2021 (see Figure 2) more startling trends appear. OPSO spends over \$35 million on personnel, but only \$19,466,354 for *all* yearly inmate related expenses at OPP. This is startling because the mission of the office is supposedly to provide for the care, control, and rehabilitation of inmates. Nothing in these expenditures suggests that any portion of spending is done on rehabilitation or programs. Many of the programs on the OPSO website are for crime victims in the public, and they fail to

offer comprehensive programming for those actually incarcerated at OPP.<sup>85</sup> Presently there is Alcoholics Anonymous (which is notably free), community service projects (also free), High School equivalency classes, and HIV counseling and testing.<sup>86</sup> All of these programs fall short of any real rehabilitative qualities. The transitional work program is only available for people with 18 months or shorter sentences.<sup>87</sup>

Medical services account for the bulk of OPSO spending costs on “inmate-related” services, but only \$100,000 was proposed for long term care in FY 2021. This report will later explore how the medical services at OPP have consistently fallen short of constitutional standard, despite this allotment. Unsurprisingly given budget trends, “inmate clothing” funds received less money allotted than staff uniforms, despite wide discrepancies in the number of staff versus the number of those incarcerated. Almost double the amount of money was spent on employee pensions than was spent on feeding everyone incarcerated at the prison over the year. The general trend of this budget fails the OPSO mission in every possible way.

Expenditures							
<b>General Fund</b>							
<b>Personnel</b>							
Regular Wages	21,861,040	22,684,059	27,349,134	26,096,547	25,623,951	28,413,783	26,096,547
Overtime	3,897,239	4,256,961	4,825,938	3,108,825	2,814,084	3,720,444	3,108,825
Pension	3,514,801	3,517,176	4,103,643	3,831,974	3,609,060	4,475,615	3,831,974
State Supplemental Pay	2,076,050	1,815,283	1,980,749	1,536,000	2,059,125	1,644,000	1,536,000
Annual Leave	-	-	-	-	-	-	-
Sick Leave	-	-	-	-	-	-	-
Uniforms	157,167	116,879	169,311	396,041	573,434	575,000	396,041
Recruitment	-	-	-	-	212,089	250,000	-
FICA	386,387	402,413	479,801	378,400	442,209	489,784	378,400
<b>Total Personnel</b>	<b>31,892,684</b>	<b>32,792,770</b>	<b>38,908,574</b>	<b>35,347,787</b>	<b>35,333,952</b>	<b>39,568,626</b>	<b>35,347,787</b>
City On Behalf - Health Insurance	4,213,833	4,417,113	4,760,603	4,213,833	4,760,603	4,760,603	4,760,603
City On Behalf - Workers' Comp	979,029	2,008,855	1,501,018	979,029	1,501,018	1,501,018	1,501,018
City On Behalf - Unemployment	36,643	27,316	32,096	36,643	32,096	32,096	32,096
<b>Total City on Behalf</b>	<b>5,229,505</b>	<b>6,453,284</b>	<b>6,293,717</b>	<b>5,229,505</b>	<b>6,293,717</b>	<b>6,293,717</b>	<b>6,293,717</b>
<b>Inmate-Related</b>							
Medical Services	13,964,112	15,032,080	17,994,792	14,982,404	16,186,227	17,177,670	14,982,404
Long Term Care	-	-	-	100,000	-	-	100,000
Security Equipment and Supplies	168,303	145,609	128,618	732,000	1,102,124	1,100,000	732,000
Inmate Clothing	145,250	255,608	245,804	243,450	157,188	200,000	243,450
Inmate Food	1,838,744	1,853,253	1,859,636	1,993,500	1,589,590	1,900,000	1,993,500
Temporary Inmate Housing	4,573,935	1,558,625	1,024,033	1,400,000	687,549	-	1,400,000
Other Inmate Spending	21,999	16,025	16,983	15,000	14,637	15,000	15,000
<b>Total Inmate-Related</b>	<b>20,712,343</b>	<b>18,861,200</b>	<b>21,269,866</b>	<b>19,466,354</b>	<b>19,737,315</b>	<b>20,392,670</b>	<b>19,466,354</b>

Figure 2

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<b>Other Operational Spending</b>							
Operational Debt Service	3,596,566	3,320,138	3,058,347	2,590,000	2,211,618	1,220,220	2,590,000
Liability	2,790,095	3,055,911	2,250,681	1,892,039	1,635,366	1,600,000	1,892,039
Building Maintenance and Repairs	1,481,740	1,654,642	2,227,811	1,750,000	1,838,301	1,900,000	1,750,000
Utilities	2,052,189	2,223,568	1,989,768	2,260,000	1,478,668	1,840,000	2,260,000
Contracted Services	3,748,710	2,679,108	3,036,874	1,625,000	2,337,698	2,400,000	1,625,000
Materials and Supplies	758,778	775,316	866,586	700,000	953,045	700,000	700,000
Monitor	623,637	624,791	491,212	350,000	604,735	327,500	350,000
Vehicles and Parts	365,618	626,902	672,154	600,000	789,741	900,000	600,000
Equipment	128,344	171,838	114,675	210,000	8,606	10,000	210,000
Dues and Subscription	136,492	129,919	143,456	75,000	164,771	90,000	75,000
Travel	53,026	40,065	61,938	35,000	36,274	40,000	35,000
Other	206,851	185,085	337,730	118,000	280,531	250,000	118,000
Capital	1,576,867	-	-	-	-	-	-
write off	844,188	-	-	-	-	-	-
<b>Total Other</b>	<b>18,363,101</b>	<b>15,488,284</b>	<b>15,251,231</b>	<b>12,205,039</b>	<b>12,339,354</b>	<b>11,277,720</b>	<b>12,205,039</b>

Figure 3

Lastly, OPSO FY 2017 to FY 2021 reflects the liability portion of the budget (see Figure 3). This cost peaked in 2018 at just over \$3 million but still hovers around \$2 million for the proposed FY 2021. This figure reflects any loans, outstanding outgoing costs, and any legal or regulatory risk or obligation. Such money would account for any payments to lawyers representing OPSO and its personnel (including the sheriff himself) and for settlement payments from any findings of legal liability against them. As we can see, it is not an insignificant annual cost. In fact, because of unconstitutional conditions at OPP since 2013, the OPSO budget has included the cost of having a federal monitor under a consent decree in place after a U.S. Department of Justice civil rights investigation. This annual figure is reflected in the “monitor” line in Figure 3. Between FY 2017 and FY 2020 the federal monitor cost the OPSO over \$2.5 million. The proposed FY 2021 budget includes an additional \$350,000 for the monitor. This cost exists because Sheriff Gusman proved incapable of running OPP at a constitutional level.

### ***Sheriff Marlin N. Gusman***

Marlin N. Gusman has been the sheriff of Orleans Parish for seventeen years since his initial election in 2004. He is a Black man who holds multiple advanced degrees in policy and law from both the Harvard Kennedy School of Public Policy and Loyola University New Orleans School of Law. Since his election win in 2004 he has won three additional elections back-to-back. Despite this, he has consistently and dangerously failed at the duties of his job. His operation of OPP has garnered national attention and a federal decree of oversight has been in place for the last eight years of his reign.

#### ***I. Hurricane Katrina***

Sheriff Gusman assumed office just one year shy of the worst disasters and humanitarian crises the city of New Orleans has seen in the twenty-first century: Hurricane Katrina. Hurricane Katrina ripped through the city as a category five hurricane and in its wake exposed the faulty infrastructure of the city, causing upwards of 1,800 deaths (mostly Black residents) that, ultimately, could have been preventable. Part of the horror of Katrina involved Sheriff Gusman and his complete lack of emergency planning for those incarcerated at Orleans Parish Prison (OPP). He admitted after the storm that he had no plan for evacuation, despite New Orleans having a long and understood tropical storm season, and he never ordered any evacuation prior to

the storm striking land.<sup>88</sup> In particular cruelty, young men who were housed at OPP during the storm reported standing for hours in dirty floodwater without food and water for approximately three to five days.<sup>89</sup> They remember being so hungry they were grabbing floating food from the contaminated floodwater and drinking this water before being rescued.<sup>90</sup> They described how they had to flee to the tops of their bunks in the dark as the floodwater rose, and when they were rescued being roped together with plastic handcuffs and led out of the jail through neck-high water.<sup>91</sup>

These children only accounted for 150 of the over 7,000 people incarcerated at OPP during Katrina and the horror did not stop with them.<sup>92</sup> Adults at the prison faced similar conditions of sewage-laced water up to their chests, no electricity, drinking water, food, or ventilation, and they ended up in tents outside of the prison waiting for aid and suffering from dehydration, heat exhaustion, and hunger under the stifling Louisiana heat.<sup>93</sup>

## ***II. Fraud***

Sheriff Gusman's legacy is not limited to his disastrous and inhumane response to Hurricane Katrina. All sheriffs' offices in Louisiana are considered public agencies and thus are subject to routine state audits to expose any fraud.<sup>94</sup> In 2016, a scathing report was released by the Legislative Auditor on the financial deficiencies of Sheriff Gusman's office.<sup>95</sup> The report noted numerous cases of illegal operation of private security businesses where deputy sheriffs were fraudulently billing private work ostensibly performed during working hours and a general failure to comply with public bid laws when awarding construction contracts.<sup>96</sup> Specifically, from January 2011 to September 2014, OPSO had the state pay out supplemental pay to their employees performing clerical or non-enforcement duties totaling \$1,026,083.<sup>97</sup> The report noted that this action of fraud was possibly in violation of constitutional law.<sup>98</sup>

## ***III. Orleans Parish Prison***

No matter how denting the fraud in Gusman's legacy is, nothing stands out as more brutally nightmarish than his chief duty in the running Orleans Parish Prison. For decades federal judges and the U.S. Justice Department have been attempting to bring OPP up to a humane standard.<sup>99</sup> The basic rights consistently denied for those incarcerated there run the gamut: health care, sanitary conditions, suicide, violence amongst the population, and deputies physically assaulting and injuring incarcerated persons.<sup>100</sup> It is worth noting that OPP is the nation's ninth largest jail in terms of its daily average population and sits within the 35<sup>th</sup> largest city in

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<sup>88</sup> Adam Nossiter, *Teenage Prisoners Describe Hurricane Horrors*, N. Y. TIMES (May 10, 2006), <https://www.nytimes.com/2006/05/10/us/10prison.html>.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> ASWELL, *supra* note 2, at 134.

<sup>94</sup> *Id.* at 125.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 132.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 133.

<sup>100</sup> *Id.*

America.<sup>101</sup> Issues with OPSO and OPP maintenance began before Gusman. His predecessor, Sheriff Foti, was once federally fined \$10 million for illegal strip-searching and body-cavity searches of more than 60,000 minor-offense arrestees.<sup>102</sup> This was the largest civil rights settlement by any law enforcement agency in Southeast Louisiana, and it was described by the then Attorney General as part of the “40 years of failure” of OPP.<sup>103</sup> This context is important because it reveals the environment into which Gusman entered and to which he continued to make worse without any official governmental oversight or intervention.

In 2008, four years after Gusman took office, the Department of Justice Civil Rights Division toured OPP multiple times after a successful CRIPA (Civil Rights of Institutionalized Persons Act) complaint was filed.<sup>104</sup> A 32-page letter to Gusman dated September 11, 2009 from Acting U.S. Assistant Attorney General Loretta King came next. The letter painted a horrifying picture of OPP, fraught with conditions that rampantly violated multiple constitutional rights of those incarcerated there and demanded, amongst other things, that OPSO end the violence there.<sup>105</sup> More specifically, King wrote that “those confined at OPP are not adequately protected from harm, including physical harm from excessive force by staff and inmate-on-inmate violence.”<sup>106</sup> In addition, the letter found that “inmates do not receive adequate mental health care, including proper suicide prevention...we found specific deficiencies in medication management. OPP inmates also face serious risks posed by inadequate environmental and sanitation conditions.”<sup>107</sup>

#### ***A. O.P.P.R.C and The Class Action***

The letter from King and the DOJ sparked community organizing in New Orleans by a group called OPPRC (Orleans Parish Prison Reform Coalition).<sup>108</sup> OPPRC hosted community forums with community partners, members of the DOJ, and residents who had been incarcerated at OPP and had them share their stories and suggestions for change.<sup>109</sup> The work of OPPRC was the inspiration behind a class action lawsuit filed by the Southern Poverty Law Center (SPLC) on behalf of numerous New Orleanians who had been subjected to the deplorable jail conditions at OPP against Sheriff Gusman in his official capacity and OPSO in 2012.<sup>110</sup>

#### ***B. Federal Consent Decree 2013-Present***

The 2012 class action lawsuit prompted a federal district judge to approve a consent decree in 2013 calling for widespread change to OPP to fix ongoing cases of inmate deaths, poor mental health care, inmate violence, and ongoing escapes.<sup>111</sup> The decree was quickly politicized because of the estimated cost to the city by then-mayor Mitch Landrieu. The decree mandated

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<sup>101</sup> *Id.* at 134.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> Letter from Loretta King, Acting Assistant Att’y Gen., C. R. Division of U.S. Dep’t of Just., to Marlin N. Gusman, Orleans Parish Crim. Sheriff (Sept. 11, 2009).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Federal Consent Decree*, ORLEANS PAR. PRISON REFORM COAL., <https://opprcnola.org/federal-consent-decree> (last visited Aug. 12, 2021).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Naomi Martin, *Fed. Judge Approves Orleans Parish Prison Consent Decree*, TIMES-PICAYUNE (June 7, 2013), [https://www.nola.com/news/crime\\_police/article\\_12368ec8-2d8c-52f8-b74b-703dcbf8324a.html](https://www.nola.com/news/crime_police/article_12368ec8-2d8c-52f8-b74b-703dcbf8324a.html).

extensive reform of the conditions at OPP and demanded increased staffing and training. Sheriff Gusman begrudgingly signed the decree deal with the U.S. DOJ and SPLC but continued to exert influence.<sup>112</sup> The federal consent decree required monitors to observe the mental health treatment, housing, and services provided at OPP on a consistent basis; a federal judge was assigned to overlook the process and review the monitors' annual compliance reports on a set of decided provisions. OPPRC continued to monitor these reports and shared their substance with the larger New Orleans community for transparency. The 174 provisional requirements of the consent decree represented accepted correctional practices for jails in the U.S. and were all rated separately on an overall scale. The decree says that once OPP met the stipulated agreements, OPSO will be able to operate their jail under a constitutional system without monitoring. The decree, eight years later, remains in place, and it wasn't until 2021 that Sheriff Gusman resumed control of OPP. Part of why the consent decree remain in place is that the essential purpose of the decree was sustained compliance in all provisions and thus it requires maintenance of substantial compliance in each provision for a 24-month period before OPP and the OPSO can be lifted from federal monitoring.<sup>113</sup>

Despite the decree, in 2016, a hearing took place where federal monitors criticized Gusman and his staff as lacking fundamental knowledge of how to run a jail and thus failing in compliance for the judgement.<sup>114</sup> Lead monitor Susan McCampbell testified "they just have no clue. We are dealing with people's lives here. Inmates' lives and deputies' lives."<sup>115</sup> Earlier in the year, Cleveland Tumlin committed suicide while he was incarcerated at OPP, which monitors called preventable if Gusman had met requirements of the suicide prevention policy and training that were in place.<sup>116</sup> As a result, Gusman was downgraded to not having final authority over OPP.<sup>117</sup> Instead, appointed expert Darnley Hodge, a former jail administrator, would manage jail operations on behalf of Gusman for the next three years.<sup>118</sup>

Since Hodge began in early 2018 OPP finally found success in meeting its mandated 174 reform provisions.<sup>119</sup> The 2019 monitor report noted that the jail had come into compliance with 103 of the 174 provisions and had completed the first year of no deaths for people incarcerated there in the 14 years since Katrina struck (and Gusman was elected).<sup>120</sup> Generally, improvements came in the form of safer and more sanitary conditions and better health care (including mental health services), but overworked staff continued to abuse those incarcerated at the jail and still only 37% of the provisions were deemed in substantial compliance.<sup>121</sup> The 2020 report wrote that there was partial compliance in 97% of the provisions and 59% of substantial compliance of

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<sup>112</sup> *Id.*

<sup>113</sup> Margo L. Frasier et. al., *Report No. 11 of the Independent Monitors Orleans Parish Jail Monitors 4* (2019).

<sup>114</sup> *Monitor: Gusman, Staff Have 'No Clue' on Running Jail*, 4WWL (May 25, 2016 8:36 P.M.), <https://www.wvltv.com/article/news/local/orleans/monitor-gusman-staff-have-no-clue-on-running-jail/289-214748951>.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Matt Sledge, *New Orleans Jail Made 'Meaningful' Progress in Year Without Inmate Death, Monitors Say*, TIMES-PICAYUNE (Jan. 27, 2020 5:06 P.M.), [https://www.nola.com/news/courts/article\\_9bc9edc6-4159-11ea-a019-77872dcba3b8.html](https://www.nola.com/news/courts/article_9bc9edc6-4159-11ea-a019-77872dcba3b8.html).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

the provisions.<sup>122</sup> 5 (3%) of the provisions remained in non-compliance.<sup>123</sup> All of these provisions in non-compliance were in the medical or mental health areas.<sup>124</sup> The 2020 report was released in July, and one month later in August of 2020 yet another incarcerated person committed suicide at OPP.<sup>125</sup> This prompted reports to be filed by monitors in early 2021 that again listed a short staff (1 person watching 5 clients at a time) for medical contractor Wellpath and thus relied on poorly trained deputies for 30% of their suicide watches.<sup>126</sup> Incarcerated people under observation of the deputies were reported as often having the means to obtain supplies that they could use to harm themselves, which was also reflective of a rampant contraband issue; monitors also noted that Mayor Cantrell's cuts to Wellpath's budget were threatening to make the situation worse.<sup>127</sup> Overall, they observed that suicide prevention was still "extremely problematic" and that when deputies were routinely asked about their duties while actively on watch they could not articulate them.<sup>128</sup> This falls woefully short, again, of the federal requirements of the decree.<sup>129</sup> Furthermore, these 2021 reports came after Gusman's legal victory in August 2020 following the July 2020 report, where the federal judge monitoring the decree said that as of the end of November 2020 a transfer of control over the jail would be completed back to Gusman.<sup>130</sup> With Gusman back in charge, a global pandemic raging, and mental and physical health conditions still (after eight years of monitoring) falling below constitutional requirements, the future of OPP and the consent decree appear even more deadly.

### ***C. Additional Litigation***

Beyond the larger class action lawsuit, there have been multiple civil suits filed against Gusman throughout his time as Sheriff. *Nagle v. Gusman* was filed in 2016 as a civil suit following the suicide of William Goetzee who was incarcerated at OPP at the time of his death.<sup>131</sup> Goetzee was on suicide watch following a mental health diagnosis of psychosis and was being monitored by a deputy who left his post three times, during which Goetzee was able to swallow enough toilet paper to asphyxiate himself was found unresponsive by the deputy.<sup>132</sup> This case highlights the issues mentioned in the federal decree report by monitors who highlighted the issue of OPP using untrained deputies to perform suicide watch for their understaffed health services contractor, Wellpath. Other lawsuits alleging deputy violence against incarcerated persons such as *Davis v. Gusman, et al.* from 2011 have been accompanied by medical proof of horrific injury (e.g. broken jaw) to inmates with no other explanation than violence. A lawsuit against Sheriff Gusman alleging unconstitutional overdeterment of individuals in custody at OPP is currently pending in federal court.<sup>133</sup>

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<sup>122</sup> Frasier et. al., *supra* note 113.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Matt Sledge, *Jail Monitor Blasted by Marlin Gusman Say his New Orleans Lockup has 'Backslid' Since July*, TIMES-PICAYUNE (Feb. 10, 2021 5:11 P.M.), [https://www.nola.com/news/courts/article\\_158ea25c-6bf5-11eb-962c-37d8fcb6d022.html](https://www.nola.com/news/courts/article_158ea25c-6bf5-11eb-962c-37d8fcb6d022.html).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *See generally Nagle v. Gusman*, 61 F. Supp. 3d 609 (E.D. La. 2014).

<sup>132</sup> *Id.* at 611.

<sup>133</sup> *Grant, et al. v. Gusman, et al.*, No. 17-2797 (E.D. La. filed Apr. 2, 2017).



More lawsuits have been filed against Gusman for medical negligence and deliberate indifference, but several plaintiffs have failed substantively because they failed to state whether they are suing him in his official or individual capacity and thus failed to state their claim under the complicated legal standards governing sheriffs' liability. Although properly brought official capacity suits against the sheriff provides one way of pleading an action, plaintiffs suing governmental officials in their individual capacities must allege specific conduct giving rise to a constitutional violation.<sup>134</sup> This standard essentially requires alleging personal involvement of Gusman and specific facts giving rise to the constitutional claims.<sup>135</sup> Notably, Gusman cannot be held liable under any theory of strict liability, vicarious liability, or for federal civil rights violations allegedly committed by a subordinate.<sup>136</sup> In summary, Gusman's liability for negligence is limited by law, and the most successful check on his power to date has been the federal consent decree.

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<sup>134</sup> *Morrison v. Gusman*, No. 10-217, 2010 WL 724173 (E.D. La. Feb. 22, 2010).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*