



Northern  
California

*October 18, 2018*

**Sent via U.S. mail and email**

Sheriff Carlos G. Bolanos  
San Mateo County Sheriff's Office  
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Redwood City, CA 94063  
sbolanos@smcgov.org

District Attorney Stephen M. Wagstaffe  
County of San Mateo County District Attorney  
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Redwood City, CA 94063  
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**Re: Request for records on use of force, de-escalation and Taser policies in the wake of the deputy-involved killing of Chinedu Valentine Okobi**

Dear Sheriff Bolanos and District Attorney Wagstaffe:

The American Civil Liberties Union of Northern California ("ACLU") writes to demand that the San Mateo County District Attorney's Office ("District Attorney") swiftly and transparently complete its investigation into the death of Chinedu Valentine Okobi at the hands of San Mateo County Sheriff's Office ("Sheriff's Office") deputies. This investigation must include not only an investigation into whether the deputies involved used excessive and unlawful force, but also a determination of whether the Sheriff's Office has in place policies and procedures necessary to regulate and limit deputies' use of force, including policies on Taser use, de-escalation, racially-biased policing and best practices for interacting with persons experiencing mental health crises.

The Sheriff's Office must also undertake a public review of these policies and procedures, starting with informing the public about the existence and content of such policies or procedures. To this end, the ACLU requests immediate release, pursuant to the California Public Records Act ("PRA"), of all records showing the Sheriff's Office's policies, procedures and training requirements in these areas, as specified in the formal PRA request at the conclusion of this letter.

**American Civil Liberties Union Foundation of Northern California**

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## **Excessive use of force and Taser use against Black people and people with psychiatric disabilities**

The nation has seen far too many Black people killed at the hands of law enforcement and their deaths have placed the excessive use of force against communities of color in the spotlight. Too often, police treat communities like enemies—a problem that disproportionately impacts people of color and Black men, like Mr. Okobi. Excessive force, including lethal force, is also unfortunately common when law enforcement interacts with persons with mental health conditions. Data indicates that at least 25 percent of all law enforcement killings involve people in a mental health crisis,<sup>1</sup> and that, as with police killings in general, that group is made up disproportionately of people of color.

It has been reported that Mr. Okobi was unarmed and wandering in traffic at the time the Sheriff's Office made contact with him and we have serious questions about the level of force, including multiple uses of a Taser, employed on someone who did not appear to be armed or otherwise presenting an active danger to himself or other members of public. It has also been reported that Mr. Okobi had a history of mental illness and may have been exhibiting signs of mental distress at the time deputies made contact with him, which raises serious questions about the Sheriff's Offices policies and training around mental health crisis intervention and de-escalation tactics. Best practices in this regard include things such as setting up a perimeter and calling in officers or other professionals trained in crisis intervention and de-escalation, recognizing that it may take time for a person to understand what is happening and creating a calm environment in which one person is communicating simple instructions and giving time for a response. From the facts reported so far, it does not appear that the deputies' actions were consistent with these well-recognized best practices.

It has also been disturbingly reported that at least two officers tased Mr. Okobi at least three or four times. It is widely known that Tasers, even when used as intended, are not non-lethal. Instead, Tasers, which operate by delivering up to a 50,000-volt shock designed to override a subject's central nervous system and disable him or her by causing uncontrollable muscle contractions and instant collapse, can cause serious injury and death. An ongoing Reuters investigation into Taser use has now documented over 1,045 Taser-related deaths in the United States, a quarter of which victims were people suffering from a mental illness or neurological disorder and 90 percent of which were unarmed.<sup>2</sup> Studies have consistently called into question the weapon's safety, in particular against high-risk populations such as those with

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<sup>1</sup> *Fatal Force*, The Washington Post, [https://www.washingtonpost.com/graphics/national/police-shootings-2017/?noredirect=on](https://www.washingtonpost.com/graphics/national/police-shootings-2017/?hpid=hp_national-police-shootings_20170822_story&hpid=hp_national-police-shootings_20170822_story).

<sup>2</sup> *Reuters finds 1,005 deaths in U.S. involving Tasers, largest accounting to date*, Reuters, Aug. 22, 2017, available at: <https://www.reuters.com/article/us-axon-taser-toll/reuters-finds-1005-deaths-in-u-s-involving-tasers-largest-accounting-to-date-idUSKCN1B21AH>; Peter Eisler, Jason Szep, Ti Reid and Grant Smith, *Shock Tactics, Part 1*, Reuters, Aug. 22, 2017, available at : <https://www.reuters.com/investigates/special-report/usa-taser-911/>; *The Reuters Tracker: Deaths involving Tasers* (showing a current figure of 1,042 Taser deaths), available at: <https://www.reuters.com/investigates/special-report/usa-taser-tracker/>.

mental illness,<sup>3</sup> and other studies have shown direct connection between the electrical shock delivered to the chest by a Taser and cardiac arrest and sudden death.<sup>4</sup>

Tasers can also hurt efforts to implement de-escalation, time and distance safeguards and other crisis intervention tactics both because an officer is required to be close to the subject to employ a Taser and because Tasers can lead to heightened mental health distress, panic and inability to comply with instructions. Reports indicate officers rely on Tasers when such force is not necessary, rather than using less severe alternatives, such as verbal de-escalation techniques or options lower on the force continuum. Tasers – by design – are light and easy to carry and use, and inflict severe pain without leaving substantial marks.<sup>5</sup> As Department of Justice (“DOJ”) researchers note, Tasers’ “ease of use and popularity among officers raise the specter of overuse” such that they risk being used “too much and too often.”<sup>6</sup> The DOJ researchers warned that “[s]ome officers may turn to a [Taser] too early in an encounter and may rely[] on a [Taser] rather than rely on the officer’s conflict resolution skills or even necessary hands-on applications.”<sup>7</sup> All of these risks and cautionary warnings are highly relevant to this incident.

Data also shows that law enforcement use Tasers on Black people far more frequently than people of other races and that Black people in particular make up a disproportionate number of those exposed to Taser.<sup>8</sup> In lethal cases, available data shows that Black people make up at

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<sup>3</sup> AMERICAN MEDICAL ASSOCIATION, COUNCIL ON SCIENCE AND PUBLIC HEALTH, USE OF TASERS BY LAW ENFORCEMENT, CSAPH Rep. 6-A-09 (June 2009); Byron K. Lee, *et al.*, *Relation of Taser (Electrical Stun Gun) Deployment to Increase in In-Custody Sudden Deaths*, 106 AM. J. CARDIOLOGY 877 (2009); POLICE EXECUTIVE RESEARCH FORUM, 2011 ELECTRONIC WEAPON CONTROL GUIDELINES 14 (March 2011) (“Some populations currently believed to be at a heightened risk for serious injury or death following a [Taser] application include pregnant women, elderly persons, young children, visibly frail persons or persons with a slight build, persons with known heart conditions, persons in medical/mental crisis, and persons under the influence of drugs (prescription and illegal) or alcohol.”), *available at*

[https://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Use\\_of\\_Force/electronic%20control%20weapon%20guidelines%202011.pdf](https://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf). Even Taser International, Inc. warns its customers about potential serious injury and death from use of the weapons. TASER Handheld CEW Warnings, Instructions, and Information: Law Enforcement, *available at* [https://axon.cdn.prismic.io/axon%2F100852d3-e500-4903-811b-70237da3946d\\_law-enforcement-warnings+8-5x11.pdf](https://axon.cdn.prismic.io/axon%2F100852d3-e500-4903-811b-70237da3946d_law-enforcement-warnings+8-5x11.pdf).

<sup>4</sup> Erica Goode, *Tasers Pose Risks to Heart, a Study Warns*, New York Times, April 30, 2012, *available at* <http://www.nytimes.com/2012/05/01/health/research/taser-shot-to-the-chest-can-kill-a-study-warns.html>.

<sup>5</sup> AMNESTY INTERNATIONAL, ‘LESS THAN LETHAL’? THE USE OF STUN WEAPONS IN US LAW ENFORCEMENT at 1-2 (Dec. 2008), *available at* <https://www.amnesty.org/download/Documents/52000/amr510102008en.pdf> (hereinafter AMNESTY REPORT).

<sup>6</sup> NATIONAL INSTITUTE OF JUSTICE, POLICE USE OF FORCE, TASERS AND OTHER LESS-LETHAL WEAPONS 15–16 (May 2011), *available at* <http://www.ncjrs.gov/pdffiles1/nij/232215.pdf>.

<sup>7</sup> *Id.* at 16.

<sup>8</sup> Andrea J. Ritchie & Joey L. Mogul, In the Shadows of the War on Terror: Persistent Police Brutality and Abuse of People of Color in the United States, DePaul J. Soc. Just. 175, 193-194 (2008); David A. Harris, *Taser Use by Law Enforcement: Report of the Use of Force Working Group of Allegheny County, Pennsylvania*, 71 U. PITT. L. REV. 719, 744, n.44 (2010) (quoting Roma Khanna, *Audit says Houston*

least a third to nearly half of all Taser deaths.<sup>9</sup> The disparate application of Taser use by law enforcement against people of color signals troubling racial bias in the deployment of these weapons.

### **PRA Request**

The public deserves to know what happened to Mr. Okobi, why and what can be done to ensure that needless killings such as this one do not happen again. The ACLU requests that the Sheriff's Office and District Attorney immediately release the following records pursuant to the PRA<sup>10</sup>:

- 1) All records<sup>11</sup> pertaining to the Sheriff's Office use of force policy;
- 2) All records describing the training requirements for Sheriff's Office deputies and management on the use of force policy;
- 3) All records pertaining to Sheriff's Office's policies governing the use of Tasers or other conductive energy devices, including use of Tasers and conductive energy devices in county jails and use of Tasers and conductive energy devices by patrol officers;
- 4) All records describing training requirements around the use of Tasers or other conductive energy devices and the Sheriff's Office's training requirements around use of those devices;
- 5) All records pertaining to any policies the Sheriff's Office has on racially-biased policing;

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*Police More Likely to Taser Blacks*, HOUSTON CHRONICLE, Sept. 8, 2008, available at <http://www.chron.com/disp/story.mpl/metropolitan/5989712.html>); OFFICE OF THE CITY CONTROLLER, CITY OF HOUSTON, REPORT NO. 2009-09, CONDUCTED ENERGY DEVICE PROGRAM PERFORMANCE AUDIT 5-6, 27 (2008), available at <https://www.houstontx.gov/controller/audit/reports/2009-09.pdf>; AMNESTY REPORT, *supra* note 5 at 22; MARYLAND TASK FORCE ON ELECTRONIC WEAPONS, REPORT OF THE MARYLAND ATTORNEY GENERAL'S TASK FORCE ON ELECTRONIC WEAPONS 15 (2009), available at [https://www.nccpsafety.org/assets/files/library/Report\\_on\\_Electronic\\_Weapons.pdf](https://www.nccpsafety.org/assets/files/library/Report_on_Electronic_Weapons.pdf); Mark Puente and Doug Donovan, *Shocking force: Police in Maryland didn't follow Taser safety recommendations in hundreds of incidents*, The Baltimore Sun, Mar. 19, 2016 (out of nearly 3,000 Taser uses in a three year period in Maryland, 64 percent of those uses were on a Black person), available at: <http://www.baltimoresun.com/news/maryland/investigations/bal-tasers-in-maryland-story.html>.

<sup>9</sup> See AMNESTY REPORT, *supra* note 5, at 22 (between 2001 and 2008, in the cases in which race of the deceased was ascertainable, which was in approximately 60% of all Tasers deaths, African Americans represented 45% of Taser deaths, while only accounting for 12% of the national population); *Bolts from the blue*, The Guardian, Nov. 5, 2015, (citing statistic that Black people make up 40% of those killed by Tasers), available at: <https://www.theguardian.com/us-news/2015/nov/05/police-tasers-deaths-the-counted>; Reuters, *Taser Death Profile Data* (out of the Tasers deaths in which race was ascertainable, 332 of the deceased were Black out of 1,045 deaths; race was no ascertainable in at least 269 deaths), available at: <https://www.reuters.com/investigates/special-report/usa-taser-database/>.

<sup>10</sup> Gov. Code § 6250 *et seq.*

<sup>11</sup> Throughout this request, the term "records" includes but is not limited to any paper or electronic information, reports, evaluations, memoranda, correspondence, letters, emails, charts, graphs, flyers, meeting agendas, meeting minutes, training materials, diagrams, forms, DVDs, tapes, CDs, notes, or other similar materials.

- 6) All records describing any training that deputies and management in the Sheriff's Office receive about racially-biased policing;
- 7) All records pertaining to the Sheriff's Office's policies around deputies' interaction with persons with mental illness or experiencing mental health crisis, including policies around crisis intervention techniques and de-escalation tactics;
- 8) All records describing any training deputies or management in the Sheriff's Office receives about interacting with persons with persons with mental illness or experiencing mental health crisis, including any training on crisis intervention techniques and de-escalation tactics.

In accordance with the PRA, and due to the urgent nature of this matter, please respond without delay and in any event within the 10 days required under the PRA.<sup>12</sup> If you believe that any of the records are exempt from disclosure, please provide a written response setting forth the legal authority on which you rely and if portions of the documents are exempt from disclosure, please provide the non-exempt portions.<sup>13</sup>

The ACLU is a non-profit organization dedicated to public service. We therefore request that you waive any fees that would normally be applied to a PRA request. In addition, we request that any records maintained in electronic format be provided in that same format, to avoid copying costs.<sup>14</sup> However, should you be unable to do so, ACLU will reimburse your agency for the direct costs of copying these records plus postage.<sup>15</sup> If you anticipate that the cost of duplication or any other cost of production will exceed \$50, or that the time needed to copy the records will delay their release, please contact us so that we can arrange to inspect the document<sup>16</sup> or decide which documents we wish to have copied. Otherwise, please copy and send them as soon as possible, and we will promptly pay the required costs.

If we can provide any clarification that will help expedite your attention to our request, please contact Micaela Davis at: 415-621-2493 or [mdavis@aclunc.org](mailto:mdavis@aclunc.org). Thank you for your prompt attention to this matter.

Sincerely,



Micaela Davis  
Staff Attorney



Alan Schlosser  
Senior Counsel

cc: Jenna McAlpin, [jmcalpin@smcgov.org](mailto:jmcalpin@smcgov.org); Yolanda Sena, [ysena@smcgov.org](mailto:ysena@smcgov.org); Public Information Office, [pio@smcgov.org](mailto:pio@smcgov.org)

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<sup>12</sup> Gov. Code § 6253(c).

<sup>13</sup> Gov. Code § 6253(a).

<sup>14</sup> Gov. Code § 6253.9.

<sup>15</sup> Gov. Code § 6253(b).

<sup>16</sup> Gov. Code § 6253(a).