

*In the*  
**Supreme Court of the United States**

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JOHN SCOTT, SHERIFF, LOS ANGELES COUNTY,  
CALIFORNIA, ET AL.,

Petitioners,

v.

JUAN ROBERTO ALBINO,

Respondent.

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On Petition for a Writ of Certiorari  
To the United States Court of Appeals  
For the Ninth Circuit

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**BRIEF IN OPPOSITION**

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## QUESTIONS PRESENTED

Neither the decision below nor the record raises the questions presented in the defendant's petition for certiorari. The questions raised by the decision are as follows.

1. Are a correctional facility's administrative remedies "available" within the meaning of the Prisoner Litigation Relief Act of 1995, 42 U.S.C. § 1997e(a) (PLRA) where the facility failed to inform the inmate of its remedies and the inmate did not know they existed?
2. May a Court of Appeals apply a clear error standard in reviewing a lower court's summary judgment where the lower court did not make factual findings?

## PARTIES TO THE PROCEEDINGS

The petitioner states the only party left in the proceeding is the Los Angeles County Sheriff. Pet. ii. This statement is incorrect. Mr. Albino's complaint names John Doe defendants who, as a result of the reversal in this matter, continue to be parties to the action. Pet. App. 31, 89, 101 n. 6.

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**BRIEF IN OPPOSITION**

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The respondent, Juan Roberto Albino, respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Ninth Circuit's en banc opinion in this case. That opinion is reported at *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014).

## STATEMENT

### A. Mr. Albino's Detention and Mistreatment.

In May 2006, the respondent, Juan Roberto Albino, became a pretrial detainee at the Los Angeles County Men's Central Jail (LASD Jail). Pet. App. 4, 90. Shortly after Mr. Albino's detention, fellow inmates savagely beat him. As he lay unconscious, the attackers raped him. Pet. App. 4. Jail staff had instigated the assault by falsely informing inmates Mr. Albino was incarcerated for sex acts with children. Pet. App. 4, 90. During the next four months, inmates perpetrated two more attacks on Mr. Albino. Pet. App. 5-6, 90.

The brutal assaults left Mr. Albino with permanent, crippling injuries. Pet. App. 4-6. He suffered broken teeth, broken ribs, a broken shoulder, damage to his hip, and multiple cuts to his face. Pet. App. 4-5, 90. During the first attack, the assailants cut a six-inch cross into Mr. Albino's face causing such extensive nerve damage he lost hearing in his right ear and most of the vision in his right eye. Pet. App. 4, 6. The LASD Jail did not provide Mr. Albino with the medical treatment that would have corrected his nerve damage, and thus, his deafness and blindness

became permanent. Pet. App. 6-7. He now uses a hearing aid and a cane for the blind. Pet. App. 6.

Mr. Albino is 5 feet 3 inches tall, and at the time of the detention, weighed 123 pounds. Pet. App. 4. Thus, when he first arrived at the jail, he requested placement in protective custody. Pet. App. 4. Deputies refused his request and placed him with the general population. Pet. App. 4, 90.

After each assault, Mr. Albino again pleaded with deputies to place him in protective custody. Pet. App. 5, 90. They refused his pleas and returned him to the general population. Pet. App. 5-6, 90.

In refusing to place Mr. Albino in protective custody following the first assault, the accompanying deputies told him it was his public defender's job to protect him. Pet. App. 5. When Mr. Albino begged deputies to place him in protective custody after his third assault, they intimidated him and threatened that if he did not stop complaining, they would not only put him in the general population, they would further disclose the details of his case. Resp. App. 34-35.<sup>1</sup>

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<sup>1</sup>Relevant portions of the record are attached in the Appendix to this brief and cited as "Resp. App."

After the first two attacks, sheriff's deputies took Mr. Albino's statement and prepared an incident report. Pet. App. 4-6. Mr. Albino gave both statements in Spanish because Spanish is his primary language and his command of English is negligible. Pet. App. 24, 53, 77, 96; Resp. App. 1-2, 22-23, 27.

B. Mr. Albino's Lawsuit and Petitioner's Motion for Summary Judgment.

Because of the jail's wrongdoing and the permanently crippling nature of his injuries, Mr. Albino sued, inter alia, Los Angeles County Sheriff Lee Baca. Pet. App. 2. Defendant Baca, as well as the other defendants, conducted the discovery they considered necessary, including taking Mr. Albino's deposition. Pet. App. 20. After completing discovery, Defendant Baca moved for summary judgment raising Mr. Albino's failure to exhaust the jail's administrative remedies as required by the PLRA. Pet. App. 7, 20, 91.

In his motion for summary judgment, Defendant Baca explained it was the proper vehicle for raising the failure to exhaust. Pet. App. 20; Resp. App. 7-8. In so explaining, he cited Federal Rules of Civil Procedure,

Rule 56(c) and relevant case law stating, “. . . summary judgment is proper if there is no genuine issue of a material fact and the moving party is entitled to a judgment as a matter of law.” Resp. App. 7-8.

As proof that the grievance procedure existed, Defendant Baca provided a portion of the LASD Custody Division Manual § 5-12/010.00 describing the process. Pet. App. 7, 22-23, 95. This booklet was, however, an employee manual for jail personnel. Inmates did not have access to it, and there was no indication jail staff told inmates the manual existed. Pet. App. 25-26.

The detailed description of the grievance procedure claimed the jail allowed inmates to fill out complaint forms which were “. . . available for any inmate who requests them.” Pet. App. 23, 25, 95-96. Inmates could place their complaints in locked boxes located somewhere in each housing unit. Pet. App. 23-24, 95-96.

Other than a statement that the complaint boxes were locked and in each housing unit, Defendant Baca provided no other description. He did not indicate the boxes were labeled in any way, let alone labeled in such



a way as to inform inmates of the boxes' purpose. He did not describe the location of the boxes within the housing units. Pet. App. 23, 25-26.

Although Defendant Baca asserted Mr. Albino filed no inmate grievance about the incidents alleged, he did not claim Mr. Albino was ever informed of the institution's grievance procedure. Resp. App. 15. Similarly, the defendant did not assert there were materials or processes for informing inmates the jail had administrative remedies. Resp. App. 13-15.

In response to the defendant's motion for summary judgment, Mr. Albino explained he repeatedly complained about his mistreatment to jail staff and sought protection to no avail. Pet. App. 5-6, 90. He presented evidence that he was not aware of the jail's asserted administrative remedies because he had never been informed of them by officials or anyone else. In his declaration, Mr. Albino averred:

- At no time during his stay at the jail was he given any type of orientation;
- No one mentioned to him the LASD Custody Division Manual § 5-12/010.00. At no time during his stay at the jail did he see

LASD Custody Division Manual § 5-12/010.00, or if he did, it was not in Spanish so he could read and understand what it was;

- He never saw or heard of an LASD Jail complaint form;
- He never saw a complaint box while at the jail, and no one told him of such a box;
- “Ten or so times,” he “begged” officers to place him in segregation but not one officer or staff member handed him a complaint form or a rule book or told him to fill out a complaint form and that the staff member would put it in a complaint box. All any of the staff told him was that it was his public defender’s job to protect him;
- His public defender also never informed him of the LASD Jail’s grievance procedure.

Pet. App. 5, 7, 24, 26-27, 96.

C. The District Court's Ruling on the Motion for Summary Judgment.

In adjudicating the motion for summary judgment, the district court stated the grant of summary judgment would be appropriate only if there were no genuine issue on any material fact. Pet. App. 91-92. In granting the motion for summary judgment, the district court concluded:

. . . the Court finds no genuine issue of material fact as to the existence of a grievance procedure at the jail, its accessibility to inmates, or Plaintiff's failure to avail himself of it.

Pet. App. 97.

The district court granted the motion for summary judgment on the ground that Mr. Albino had failed to exhaust the jail's administrative remedies. Pet. App. 7-8, 89, 99-100. The district court ruled that neither a lack of awareness of grievance procedures nor a facility's failure to inform an inmate of them excuses the inmate's failure to exhaust. Pet. App. 7-8, 97-99. The district court further ruled that whether Mr. Albino knew of the jail's grievance procedure was irrelevant, and it made no determination on credibility or reasonableness. Pet. App. 97-99. The

district court did not reach the merits of Mr. Albino's claims. Pet. App. 7-8, 20, 99-100. Mr. Albino appealed the summary judgment. Pet. App. 55.

D. The Ninth Circuit Court of Appeals' Decisions.

When the three-judge panel of the Ninth Circuit Court of Appeals reviewed the matter, *Wyatt v. Terhune*, 315 F.3d 1108, 1119-1120 (9th Cir. 2003) allowed it to treat the defendant's summary judgment as an "unenumerated" Rule 12(b) motion. The term "unenumerated" signified that the motion was not one described by Federal Rules of Civil Procedure, Rule 12(b).

The three-judge panel reviewed the motion for summary judgment as an unenumerated Rule 12(b) motion and on that basis affirmed the district court's dismissal. The decision was published with a dissenting opinion. Pet. App. 8, 50, 80. Mr. Albino filed a petition for rehearing en banc which the Ninth Circuit granted. Pet. App. 8.

In its en banc decision, the Ninth Circuit Court of Appeals first addressed the standard of review. The Court determined the use of an unenumerated 12(b) motion was at odds with *Jones v. Bock*, 549 U.S. 199 (2007) and no longer good law. Pet. App. 10. Thus, courts within the Ninth

Circuit must treat an exhaustion defense under the PLRA within the framework of the Federal Rules of Civil Procedure. Pet. App. 10.

In departing from the unenumerated 12(b) motion, the en banc Court explained the possible procedures the Federal Rules of Civil Procedure allowed defendants to use in asserting a failure to exhaust. Pet. App. 11-16. Although the Federal Rules of Civil Procedure allow various procedures, the en banc Court explained that because Defendant Baca brought his motion under the rules for summary judgment and the district court decided the motion under those rules, the appropriate standard of review was that normally associated with the review of a motion for summary judgment. Pet. App. 20-21. The en banc Court thus reviewed the judgment de novo. Pet. App. 21.

With the proper standard of review in mind, the en banc Court acknowledged *Jones*, supra, 549 U.S. at 204, 212, 216, wherein this Court held defendants in a PLRA case must plead and prove exhaustion as an affirmative defense. Pet. App. 16, 27. The Ninth Circuit en banc Court then reaffirmed that it was Defendant Baca's burden to prove there was an available administrative remedy and that Mr. Albino had not

exhausted that remedy. Pet. App. 18. The en banc Court reiterated that, “. . . as required by Jones, the ultimate burden of proof remains with the defendant.” Pet. App. 18.

The en banc Court determined Defendant Baca had not carried his burden of proving the jail provided an “available” administrative remedy. It reversed the district court’s grant of summary judgment for defendants and remanded with instructions to enter summary judgment for Mr. Albino on the issue of exhaustion. Three members of the en banc panel dissented. Pet. App. 31.

## REASONS FOR DENYING THE WRIT

### I. NEITHER THE DECISION BELOW NOR THE RECORD RAISES THE QUESTION WHETHER AN INMATE'S “SUBJECTIVE” LACK OF AWARENESS EXCUSES HIS “FAILURE” TO EXHAUST.

The petitioner presents as his initial question whether “. . . an inmate’s subjective lack of awareness of existing grievance procedures excuses his failure to exhaust his administrative remedies . . . .” Pet. i. The Ninth Circuit did not decide this question in its en banc opinion, and the facts in the record will not support a determination of the issue.

Below, respondent explained that the LASD Jail’s administrative remedies were not available within the meaning of the PLRA because the jail had no method for informing inmates that a grievance procedure existed, and the existence of the remedies was not apparent by other means. The jail had no accessible written or visual materials informing inmates the remedies existed. Neither staff nor any other individuals

informed Mr. Albino of the remedies, and thus, he was unaware they existed. Pet. App. 5, 7, 24, 26-27, 96.

In its en banc decision, the Ninth Circuit determined:

Defendants have failed to prove that administrative remedies were available at the jail where Albino was confined. Because no administrative remedies were available, he is excused from any obligation to exhaust under § 1997e(a).

Pet. App. 3.

This decision does not rely on a determination of Mr. Albino's "subjective" lack of awareness nor does it excuse a "failure" to exhaust. Rather, it concludes the petitioner did not meet his burden of proving the jail's administrative remedies were available, and this lack of proof excused Mr. Albino from any "obligation" to exhaust the jail's remedies (as opposed to excusing a "failure" to exhaust as petitioner poses.) Pet. App. 3. Thus, the decision below does not give rise to the initial Question Presented.

Petitioner attempts to support his proffer of the initial Question Presented by failing to fully acknowledge that he challenged Mr. Albino's action by moving for summary judgment. As appropriately recognized by



the en banc Court, neither it nor the district court could resolve disputed questions of material fact in that context. Pet. App. 20-21.

The district court in this matter followed the procedural requirements for adjudicating a motion for summary judgment. Pet. App. 91-92. It specifically ruled that Mr. Albino's awareness of the jail's administrative remedies was irrelevant. Pet. App. 97-98. The district court did not evaluate whether Mr. Albino subjectively or even objectively knew of the jail's administrative remedies. Pet. App. 22, 91-92, 97.

The en banc decision clearly follows the procedural requirements for reviewing a motion for summary judgment, and accordingly it did not engage in a factual evaluation of Mr. Albino's lack of awareness. Pet. App. 21-22. The en banc decision focuses on whether petitioner met his burden of proving there was an available administrative remedy. Pet. App. 18-19. The en banc Court determined:

Viewing all of the evidence in the light most favorable to Albino, we conclude as a matter of law that defendants have failed to carry their initial burden of proving their affirmative defense that there was an available administrative remedy that Albino failed to exhaust.

Pet. App. 27.

Neither the decision nor the facts of this case give rise to the initial question petitioner presents. Thus, this Court could only resolve the petitioner's initial Question Presented by rendering an advisory opinion. Such an opinion is impermissible and not a compelling basis for the grant of certiorari.

## II. THE DECISION BELOW DOES NOT CREATE A CERTWORTHY CONFLICT AMONG THE LOWER COURTS ON THE ISSUE OF EXHAUSTION.

### A. The Decision Does Not Create an “Intractable”

#### Split of Authority on the Issue of Exhaustion.

Petitioner contends the en banc decision creates an “intractable” split between the circuits as to whether an inmate’s “subjective” lack of awareness about the existence of a correctional facility’s grievance procedure renders that procedure effectively unavailable within the meaning of the PLRA. Pet. 12. As discussed in the preceding section, the Ninth Circuit’s en banc decision does not address an inmate’s “subjective” awareness. Rather, the en banc Court used an objective standard to determine petitioner had not met his burden of showing the jail’s administrative remedies were available. Under these circumstances, there is no conflict between the instant decision and those of other circuits.

Neither *Brock v. Kenton County*, 93 Fed.Appx. 793, 798 (6th Cir. 2004); *Gonzales-Liranza v. Naranjo*, 76 Fed.Appx. 270 (10th Cir. 2003); nor *Johnson v. Dist. of Columbia*, 869 F.Supp.2d 34 (D. D.C. 2012)

evidence the circuit conflict petitioner asserts. In each case, the correctional facility met its burden of proving that administrative remedies were available within the meaning of the PLRA by showing it notified inmates of its administrative remedies and/or that the inmate/plaintiff knew of the facility's remedies.

In Brock, 93 Fed.Appx. 793, the plaintiff/inmate had notice of the jail's grievance procedure because inmates were given a short form of the rules upon admission, and they received written regulations upon being assigned to a cell. Id. at 798. In Gonzales-Liranza, 76 Fed.Appx. 270, the defendant presented evidence that the facility provided an inmate handbook, written in both English and Spanish, to all newly-admitted inmates during an admission orientation, that the prison's grievance procedures were included in the handbook, and that the contents of the handbook were explained to all inmates during the orientation. The defendant also presented evidence that plaintiff had been housed at the facility on seven occasions and had received a copy of the inmate handbook each time. Id. at 272. In Johnson, 869 F.Supp.2d 34, the inmate

had also been provided information regarding the existence of the facility's grievance procedure. *Id.* at 40.

Because the defendants in Brock, Gonzales-Liranza, and Johnson produced evidence showing they provided their inmates with notice of their administrative remedies, the inmates' assertions of unavailability based on a lack of awareness were requests that the court determine the inmates' subjective awareness. In other words, the inmates were essentially requesting that the district court believe they were not sufficiently aware of the grievance procedure even though they had been given notice of it.

The Seventh's Circuit's *Twitty v. McCoskey*, 226 Fed.Appx. 594, 596 (7th Cir. 2007) suffers from similar ills. Although the *Twitty* Court did not discuss the facts showing the defendant had met its burden of proof on availability, that Court limited its holding to a determination of whether an inmate's subjective lack of awareness rendered the jail's administrative remedies unavailable. *Id.* at 596.

As with the other cases petitioner cites, *Twitty* does not conflict with the objective analysis in the instant decision. A more recent case from the

Seventh Circuit confirms this. In *Wade v. Lain*, 2:11-CV-454, 2012 WL 3044247 (N.D. Ind. July 24, 2012), the district court discussed Twitty in the context of an inmate's claim he was unaware of his jail's administrative remedies. The Wade Court ultimately concluded:

Although the Court of Appeals for the Seventh Circuit has not articulated a standard, district courts routinely find that an inmate must be aware of or must have been informed of the grievance process if the PLRA is employed as a defense. An institution may not keep inmates unaware of a grievance procedure and then fault them for not using it. *Arreola v. Choudry*, 2004 U.S. Dist. LEXIS 6917, at \*8, 2004 WL 868374 (N.D. Ill. Apr. 22, 2004). If administrative remedies are “made unavailable by the actions of prison officials, the prisoner may file suit without pursuing those unavailable remedies to conclusion.” *Id.* at 2–3.

*Id.* at \*5.

The remaining cases petitioner cites are even less helpful to his position. Neither *Napier v. Laurel County, Ky.*, 636 F.3d 218, 221 n. 2 (6th Cir. 2011); *Chelette v. Harris*, 229 F.3d 684, 688 (8th Cir. 2000) nor *Yousef v. Reno*, 254 F.3d 1214, 1221 (10th Cir. 2001) address an inmate's lack of awareness of his institution's administrative remedies.

In *Napier*, 636 F.3d 218, the inmate never claimed he was unaware the jail's grievance procedure existed. He claimed the jail's administrative

remedies were not available to him because, when he sought to submit a complaint, he was incarcerated in an institution other than the one where his mistreatment took place and he didn't know he could still file a grievance. *Id.* at 223.

In *Chelette v. Harris*, 229 F.3d 684 (8th Cir. 2000), the plaintiff/inmate failed to aver that he was unaware of the facility's grievance policy. Rather, the plaintiff simply asserted that he filed no grievance because the warden said he would take care of the matter. *Id.* at 686, 688.

*Yousef v. Reno*, 254 F.3d 1214 (10th Cir. 2001) also has nothing to do with an inmate's lack of awareness of his prison's administrative remedies. There, the inmate unsuccessfully argued he did not need to comply with the prison's grievance procedure because it could not provide him with the relief he requested. *Id.* at 1220-1221.

Like the inmates in *Napier*, *Chelette*, and *Yousef*, the inmate in *Dillon v. Rogers*, 596 F.3d 260 (5th Cir. 2010) did not claim he was unaware of his facility's administrative remedies. He claimed the

remedies were unavailable because prison conditions and staff prevented him from filing a grievance. *Id.* at 267-268.

In requesting certiorari, petitioner refuses to distinguish between a court's decision regarding an inmate's subjective knowledge of his facility's administrative remedies and a court's objective determination of whether a facility has met its burden of showing its administrative remedies were "available" within the meaning of the PLRA. This refusal is fatal to petitioner's assertion of a circuit split, because, as pointed out in at least one decision, ". . . even Courts that have held a prisoner's subjective knowledge is immaterial have concluded that objective notice of the grievance procedure is still a relevant consideration." *Tope v. Fabian*, 09-0734, 2010 WL 3307351 (D. Minn. July 29, 2010) citing *King v. Iowa Dept. of Corr.*, 598 F.3d 1051, 1053 (8th Cir. 2010).

The cases petitioner proffers address the relevance of a prisoner's subjective knowledge, whereas the en banc decision in the instant matter addresses whether the facility provided objective notice of the grievance



procedure. Under these circumstances, there is no circuit conflict providing this Court with a compelling reason to grant certiorari.

B. This Case Is a Poor Vehicle for Addressing the Exhaustion Issue Because of its Fact-Specific Nature.

The en banc decision's exhaustion holding turns on a constellation of specific, undisputed facts peculiar to this case. The fact-specific nature of this matter makes it a poor vehicle for review.

The LASD Jail did not inform Mr. Albino of its administrative remedies through any orientation or written material. Pet. App. 7, 24, 25-27. Any written material discussing the administrative remedies was reserved for jail employees. Pet. App. 7, 24-27. Despite Mr. Albino's repeated pleas for help, no one told him about the facility's administrative remedies. Pet. App. 5, 7, 24-27.

Petitioner asserted grievance complaint forms were "available" to inmates. Such forms, however, were available upon request. Pet. App. 25. If an inmate did not know about the grievance procedure, he did not know to ask for the forms. Pet. App. 26.

Petitioner claimed each housing unit had a complaint box to receive grievances. It did not, however, indicate the boxes were labeled or located so as to inform inmates of their function. Pet. App. 24-26.

Included in these myriad facts is that jail staff misdirected Mr. Albino to his criminal public defender telling him that only his criminal attorney could help him. Pet. App. 5, 7, 24, 26-27. The unique set of facts in this case will make it difficult for this Court to articulate a generally applicable standard that can assist lower courts.

Although not a basis for the en banc Court's decision, the record shows that in addition to repeatedly misleading Mr. Albino about the existence of the jail's administrative remedies, staff also threatened Mr. Albino, and these actions thwarted his ability to discover the jail's administrative remedies and thus file a grievance. Pet. App. 5, 7, 15, 24, 26-27, 96; Resp. App. 1-2, 22-23, 27, 34-35. This is an additional layer of idiosyncratic facts that make this case a poor vehicle for review.

C.     Petitioner’s Contention That the En Banc Decision  
Will Open the Floodgates to Additional Litigation  
Is Legally and Factually Incorrect.

Petitioner claims the en banc decision will open the floodgates to additional litigation. Pet. 8-9. Petitioner claims the en banc decision requires courts to engage in the additional “time-consuming task” of assessing an inmate’s awareness of the facility’s administrative remedies. Pet. 11. These claims are both legally and factually inaccurate.

As discussed fully in the Sections I and II of this brief, the en banc Court did not engage in a determination of Mr. Albino’s subjective awareness. Rather, it engaged in an objective determination of whether the LASD Jail’s grievance procedure was “available” within the meaning of the PLRA. Courts must always determine whether a facility’s administrative remedies are “available” within the meaning of the PLRA because the very language of that statute demands it. See *Booth v. Churner*, 532 U.S. 731, 736-737 (2001). Thus, the en banc opinion will not create additional burdens for courts because, in a purely legal sense, the

decision does not change or add to a court's duties in determining exhaustion.

Under the objective analysis the en banc Court uses, courts must look to the facility's actions to determine availability. Correctional facilities can and have simplified such an inquiry by taking the common sense approach of telling their inmates about their administrative remedies. Because so many facilities have formal procedures for informing their inmates of their administrative remedies, the "dramatic" effect on dockets petitioner claims the instant decision will cause would have already happened. As the statistics cited by petitioner show, such an increase has in fact not happened. Pet. 10. A review of the relevant regulations and case law is instructive on this point.

Jails and prisons in the Ninth Circuit already have requirements that staff notify inmates of the institution's administrative remedies. The California Legislature requires both state and local correctional facilities provide this information. Cal. Penal Code §§ 2930, 6030(a). See also, Cal. Code Regs. tit. 15 §§ 1069, 1073, 3002. Other prison systems in the Ninth Circuit are required to notify their inmates of relevant administrative

remedies. See, e.g., State of Alaska, Department of Corrections, Policies and Procedures, Index # 808.3 at p. 4 (Effective September 24, 2002); State of Arizona, Department of Corrections, Department Order Manual, Inmate Grievance Procedure, Department Order 802.12 at p. 9 (Effective December 12, 2013); State of Idaho, Department of Corrections, Standard Operating Procedure Division of Prisons Offender Management, Grievance and Informal Resolution Procedure for Offenders, Control Number 316.01.01.001, Version 3.9, § 2 at p. 4 (Reviewed February 28, 2013); State of Montana, Department of Corrections, Policy Directive, Policy No. Doc. 3.3.3, ¶¶ A.1. and A.5.a. at pp. 1-2 (Revised June 18, 2012); State of Nevada, Department of Corrections Administrative Regulation 511, Inmate Orientation Program, § 511.01, ¶ 3.A. (Effective December 17, 2012); State of Washington, Department of Corrections, Offender Grievance Program, Policy Directive, DOC 550.100, ¶ I.B.6. at p. 2 (Revised March 18, 2013). These statutes and regulations most often require correctional facilities provide inmates with an orientation and/or written materials explaining their administrative remedies. *Ibid.* See also Cal. Code Regs. tit. 15 § 3002(a).

State correctional facilities across the country routinely inform their inmates of their administrative remedies. It is quite common for institutions to have formal procedures requiring the provision of this information. *Arnold v. Goetz*, 245 F.Supp.2d 527, 539 (S.D. N.Y. 2003); *Brock*, 93 Fed.Appx. at 796; *Frentzel v. Boyer*, No. 07-2670, 2007 WL 1018663, at \*2, 5 (E.D. Mo. March 29, 2007); *Gonzales-Liranza*, 76 Fed.Appx. at 272; *Graham v. County of Gloucester, Va.*, 668 F.Supp.2d 734, 736-737 (E.D. Va. 2009); *Hinton v. Corrections Corp. of America*, 623 F.Supp.2d 61, 62, 64 (D. D.C. 2009); *Larry v. Byno*, No. 99-CV-651, 2003 WL 1797843, at \*2 (N.D. N.Y. April 4, 2003); *Ruggiero v. County of Orange*, 467 F.3d 170, 173 (2d Cir. 2006); *Womack v. Smith*, No. 1:06-CV-2348, 2008 WL 822114, at \*8 (M.D. Pa. March 26, 2008). When providing such information, facilities may require inmates to sign a form acknowledging receipt. *Graham*, 668 F.Supp.2d at 736-737; *Womack*, No. 1:06-CV-2348, 2008 WL 822114, at \*8.

The Federal Bureau of Prisons also requires its institutions to inform inmates of their administrative remedies through an orientation program. U.S. Department of Justice, Federal Bureau of Prisons, Program

Statement, Number 5290.14 (April 3, 2003) at pp. 1-2, 4-5, [http://www.bop.gov/policy/progstat/5290\\_014.pdf](http://www.bop.gov/policy/progstat/5290_014.pdf) (Last visited August 31, 2014); U.S. Department of Justice, Bureau of Federal Prisons, Institution Admission and Orientation Program Checklist, Form BP-A0518, ¶ 22, [http://www.bop.gov/policy/forms/BP\\_A0518.pdf](http://www.bop.gov/policy/forms/BP_A0518.pdf) (Last visited August 31, 2014). Staff at federal facilities must document that each inmate has received a copy of the institution's inmate handout and has completed the institution's Admission and Orientation Program. U.S. Department of Justice, Federal Bureau of Prisons, Program Statement, Number 5290.14 (April 3, 2003) at p. 10, [http://www.bop.gov/policy/progstat/5290\\_014.pdf](http://www.bop.gov/policy/progstat/5290_014.pdf) (Last visited August 31, 2014).

The formalized methods many correctional facilities use to inform inmates of their administrative remedies show that unlike the petitioner, these facilities understand the purpose of the PLRA and how that purpose is best effected. As this Court has pointed out, 42 U.S.C. § 1997e(a) is primarily for the benefit of prison administrators: to give them notice of a problem and an opportunity to solve it before being haled into court. *Porter v. Nussle*, 534 U.S. 516, 524-525 (2002); *Booth v. Churner*, 532 U.S.

731, 737 (2001). Where an inmate uses his correctional facility's administrative remedies, the facility can quickly resolve the reported problem. Corrective action taken in response to an inmate's grievance can improve prison administration and satisfy the inmate, obviating the need for litigation. *Porter v. Nussle*, 534 U.S. 516, 525 (2002) citing *Booth*, 532 U.S. at 737. See also *Woodford v. Ngo*, 548 U.S. 81, 94-95 (2006). Additionally, a rapid and appropriate resolution of the issues giving rise to the original inmate complaint means that such problems are less likely to reoccur, and ultimately, there will be less litigation.

This Court has also pointed out that an inmate's use of his correctional facility's administrative remedies will reduce the court's burden if litigation arises stating, "And for cases ultimately brought to court, an administrative record clarifying the controversy's contours could facilitate adjudication." *Porter*, 534 U.S. at 525 citing *Booth*, 532 U.S. at 737 and *McCarthy v. Madigan*, 503 U.S. 140, 146 (1992). See also *Woodford*, 548 U.S. at 94-95.

The petitioner's "floodgates" argument is wholly unsupported because large numbers of correctional facilities do inform inmates of their



grievance systems. The en banc opinion will further diminish inmate litigation by encouraging even more jails and prisons to reliably inform their inmates about their grievance systems, thereby solving more problems without litigation and making availability of facility remedies a non-issue in many more cases.

D. The Decision below Is Consistent with the  
Statutory Text, Supreme Court Authority, and the  
Purposes of the PLRA.

1. The En Banc Decision Is Correct.

Petitioner devotes the majority of his discussion to arguing that the decision below was wrongly decided. Pet. 12-19. Petitioner's position on the merits is not a compelling basis for this Court to grant review. His position is also incorrect. The Ninth Circuit's en banc decision is consistent with the text of the PLRA, the decisional authority of this Court, and the purpose of the statute.

Substantively, the en banc decision focuses on whether the LASD Jail's administrative remedies were "available" as required by the language of the PLRA. 42 U.S.C. § 1997e(a). Pet. App. 18. This Court

acknowledges that a determination of an administrative remedy's availability can properly be the "crux" of an exhaustion determination. Booth, 532 U.S. at 736. Thus, the en banc decision is in line with both statute and this Court's holdings.

This Court has adopted the view that non-exhaustion is an affirmative defense a defendant must prove. Jones, 549 U.S. at 204. In keeping with this ruling, the en banc decision addresses whether petitioner met his burden of proving the jail's administrative remedies were "available" within the meaning of the PLRA. Pet. App. 18. See also 2 J. Strong, McCormick on Evidence § 337, p. 415 (5th ed. 1999) quoted in Dixon v. United States, 126 S.Ct. 2437, 2442 (2006).

As discussed in Section II. C. of this brief, the PLRA's dominant concern is to promote administrative redress, filter out groundless claims, and foster better prepared litigation of claims aired in court. Porter, 534 U.S. at 528 citing Booth, 532 U.S. at 737. These purposes can only be met where an inmate knows of his facility's administrative remedies. The en

banc decision promotes this awareness by encouraging correctional facilities to inform inmates that administrative remedies exist.<sup>2</sup>

As explained, the Ninth Circuit's en banc opinion is wholly in keeping with the text of the PLRA, the decisional authority of this Court, and the purpose of the statute. There is no compelling reason for a grant of the petition for certiorari on the issue of exhaustion.

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<sup>2</sup>Although not a basis for the en banc Court's decision, the record shows the jail repeatedly misled Mr. Albino about the existence of its administrative remedies and these actions thwarted Mr. Albino's ability to file a grievance. Time and time again, Mr. Albino pleaded with jail staff for help and protection. Despite these explicit complaints, jail staff never informed Mr. Albino of the jail's administrative remedies. Instead, sheriff's deputies misled Mr. Albino telling him that only his attorney could help him. Pet. App. 5, 7, 15, 24, 26-27, 96. Additionally, Mr. Albino provided the jail with written statements about the first two incidents, and this was done at the direction of staff. In requesting these statements, jail staff again misled Mr. Albino when they failed to inform him of the jail's administrative remedies. Resp. App. 1-2, 22-23, 27. Jail staff even threatened Mr. Albino to stop complaining about his mistreatment. Resp. App. 34-35. Petitioner's misleading, obstructive, and threatening actions further support the reversal in this matter. *Nunez v. Duncan*, 591 F.3d 1217, 1224, 1226 (9th Cir. 2010).

2. Petitioner's inappropriate and inaccurate assertion of the facts below are irrelevant to the grant of certiorari.

In requesting certiorari, petitioner argues at length various factual issues in an effort to show the Ninth Circuit wrongly decided this case. Petitioner's assertion of these facts, however, does not support his contention that the Ninth Circuit wrongly decided the matter.

Petitioner first claims, ". . .there is no evidence that the complaint boxes are inaccessible to inmates and there is no evidence that the grievance procedure is not being used." Pet. 3. In the context of a motion for summary judgment, these claims are irrelevant. The relevant facts are that the petitioner failed to present evidence that the procedure is accessible and thus the Ninth Circuit found petitioner failed to meet his burden of proving availability. Pet. App. 18.

Petitioner next asserts that, although it presented no evidence to show Mr. Albino had an opportunity to learn the LASD Jail had administrative remedies, case law shows that such an opportunity existed for inmates generally. Pet. 3. To support this contention, petitioner cites

Fletcher v. Baca, CV 07-4180, 2012 WL 1114696 (C.D. Cal. Feb. 3, 2012). Rather than showing that the plaintiff filed the grievance because inmates were generally aware of the jail's administrative remedies, that case shows the exact opposite. The plaintiff's initial grievance was not filed because he knew of the jail's administrative remedies. The initial grievance was filed because the ACLU filed it on the plaintiff's behalf. Id. at \* 6.<sup>3</sup>

Petitioner implies that Mr. Albino knew of the jail's administrative remedies as evidenced by his attempt to file a grievance and that the district court made a finding to this effect. Pet. 4. Mr. Albino has never claimed awareness of the grievance procedure and the district court made

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<sup>3</sup>Petitioner does not present any evidence showing LASD Jail inmates were generally aware the facility had administrative remedies. Even if there were an indication the grievance system was used by some inmates, such use would not show that administrative remedies were available to Mr. Albino within the meaning of the PLRA. As discussed more fully in Section II. C. of this brief, the California prison system, the Federal Bureau of Prisons and other correctional facilities across the country, routinely inform inmates of their grievance procedures. Inmates who have been incarcerated in such facilities would have some basis for specifically asking LASD Jail staff about the jail's administrative remedies and thus using it. Mr. Albino had no history that would have allowed him to acquire this type of information.

no finding that Mr. Albino had such an awareness or that he had ever attempted to submit a complaint through the grievance procedure. Pet. App. 99 n. 5.<sup>4</sup>

In arguing the Ninth Circuit wrongly decided this matter, petitioner's factual assertions are inappropriate, inaccurate, and unhelpful. Even if petitioner's arguments were accurate, the assertion that the Ninth Circuit wrongly decided the case is not a compelling reason to grant certiorari.

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<sup>4</sup>The district court's opinion references a portion of Mr. Albino's First Amended Complaint that states, ". . . the defendant intimidated and threaten[ed] to put plaintiff into [the] general population and disclose plaintiff's case information if plaintiff did not withdraw his complaint." Pet. App. 99, n. 5. See also Resp. App. 34-35. In so referencing, the district court concluded that because it was unclear whether Mr. Albino was suggesting he made a complaint through the grievance procedure, the district court would not consider this allegation. Pet. App. 99, n. 5.

III. NEITHER THE DECISION BELOW NOR THE RECORD  
RAISES THE QUESTION “WHETHER A REVIEWING  
COURT MAY DECLINE TO APPLY THE CLEAR ERROR  
STANDARD” TO THE REVIEW OF A SUMMARY  
JUDGMENT.

Petitioner contends the district court made factual findings in rendering summary judgment and the en banc Court reviewed those findings under the wrong standard. Pet. 6-7. These statements are incorrect. The motion before the district court was one for summary judgment, and thus it was precluded from making factual findings. The en banc court thus correctly reviewed the summary judgment using a de novo standard.

In adjudicating the motion for summary judgment, the district court relied on the normal rules for such a determination stating:

Summary judgment is appropriate if, viewing the evidence in a light most favorable to the nonmoving party, the Court determines that ‘there is no genuine issue as to any material fact. . . .’ The Court does not weigh the evidence, but only determines if there is a genuine issue of fact . . . .

Pet. App. 91-92.

The district court further acknowledged its role in adjudicating the motion for summary judgment was not to resolve facts by concluding:

. . . the Court finds no genuine issue of material fact as to the existence of a grievance procedure at the jail, its accessibility to inmates, or Plaintiff's failure to avail himself of it.

Pet. App. 97.

On appeal, the en banc Court thus noted:

The district court granted summary judgment to the defendants. It is black-letter law that in granting summary judgment a district court cannot resolve disputed questions of material fact; rather, that court must view all of the facts in the record in the light most favorable to the non-moving party and rule, as a matter of law, based on those facts . . . .

Pet. App. 21.

The en banc Court concluded:

On appeal, we review de novo a district court's ruling on a summary judgment motion . . . . Like the district court, we cannot resolve any disputed questions of material fact; rather, like the district court, we must view all of the facts in the light most favorable to the non-moving party and rule, as a matter of law, based on those facts.

Pet. App. 21.



Petitioner does not fully acknowledge the lower courts' reliance on this black-letter law. He does, however, admit that the district court stated it made no factual findings. Pet. App. 16. In so admitting, petitioner claims that, although the district court said it made no factual finding, it actually did, and thus the Ninth Circuit had to review those findings using a clear error standard. Pet. 16. Petitioner's claims have no basis in the record.

Petitioner asserts the district court made a factual finding about Mr. Albino's ". . . contention that he attempted to submit a grievance but withdrew it because he was threatened by guards." Pet. 16 citing Pet. App. 99-100 n. 5. This misstates Mr. Albino's contention as well as the district court's statements. Mr. Albino did not contend he was aware of the grievance procedure and as a result of that awareness tried to file a grievance through jail staff. Correspondingly, the district court made no finding on Mr. Albino's contention on this point. The district court stated Mr. Albino's assertions were confusing and because of their muddled nature, it would not consider them. Pet. App. 99 n.5. This is not

a finding of fact. Rather, it is a refusal to consider one of Mr. Albino's assertions.

The en banc Court's use of a de novo standard of review is fully in line with the relevant rule of court and this Court's decisions governing motions for summary judgment. Federal Rules of Civil Procedure, Rule 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-250 (1986); *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). Neither the district court in this case nor the en banc Court deviated from the standard principles for adjudicating and reviewing a summary judgment.

The petitioner does not and cannot claim the en banc decision conflicts with the decisions of other circuits. The petitioner cannot claim the en banc decision departed from an accepted and usual course of judicial proceedings or from any decisions of this Court. Under these circumstances, petitioner has no basis for his second Question Presented and his request for certiorari should be denied.

## CONCLUSION

The Ninth Circuit Court of Appeal has carefully applied the text of the PLRA to craft an opinion in keeping with the language of the statute and this Court's relevant decisional authority. Despite the propriety of the decision, petitioner seeks review by presenting questions on issues that neither the *en banc* decision nor the record below raise.

The faulty nature of petitioner's request is compounded by the lack of conflict among the circuit courts on the questions presented and the factual uniqueness of this case. There is no compelling reason to grant certiorari, and petitioner's request for what would essentially be an advisory opinion is impermissible. For these reasons, Mr. Albino requests this Court deny the petition for a writ of certiorari.

Dated: September 15, 2014

Respectfully submitted,



Andrea Renee St. Julian  
Counsel of Record for Respondent,  
Juan Roberto Albino

# APPENDIX

## 1. SWORN DECLARATION OF JUAN R. ALBINO

2. PURSUANT TO 28 U.S.C. § 1746

3. I, JUAN ROBERTO ALBINO, BEING COMPETANT AND  
4. WILL TO TESTIFY IN COURT, HEREBY SWEARS THE  
5. FOLLOWING:6.  
7. 1) I AM THE PLAINTIFF IN THIS ACTION;8.  
9. 2) I HAVE PERSONAL KNOWLEDGE OF THE FACTS  
10. STATED IN THIS MOTION AND DECLARATION;11.  
12. 3) ON FEB. 2, 2011, PLAINTIFF RECEIVED AND SIGNED  
13. FOR, THE DISTRICT COURT'S ORDER EXTENDING TIME  
14. TO FILE AN APPEAL TO 1/28/11. ALL PRISON INM-  
15. ATES MUST SIGN AN INCOMING LEGAL MAIL LOG  
16. (CDCR FORM 119) PER CCR TITLE 15 § 31A3(c).  
17. ASSERTS THAT, SHOULD THIS COURT ORDER CDCR  
18. MAILROOM STAFF TO PRODUCE THE LEGAL MAIL LOG,  
19. PLAINTIFF'S CLAIMS WILL BE VERIFIED;20.  
21. 4) IT IS NOT DISPUTED BY ANY PARTY: THAT PLAI-  
22. NTIFF READS AND WRITES SPANISH; THAT PLAI-  
23. NTIFF SPEAKS BUT FEW WORDS IN ENGLISH; THAT  
24. PLAINTIFF CANNOT UNDERSTAND WRITTEN ENGLI-  
25. SH; THAT THESE FACTS WERE ESTABLISHED BOTH  
26. DURING MY STAY AT L.A. COUNTY JAIL AND AT  
27. MY DEPOSITION BY DEFENDANTS, WHO USED AN  
28. INTERPRETE;

5) DESPITE DEFENDANTS' KNOWLEDGE OF PLAINTIFF'S INABILITY TO READ ENGLISH, THEY SENT ALL OF THEIR DOCUMENTS TO ME, IN ENGLISH;

6) PLAINTIFF THEN HAD TO RELY UPON OTHER PRISON INMATES (AS STATED IN MANY COURT DOCUMENTS) TO READ, UNDERSTAND AND INTERPRET DEFENDANTS' DOCUMENTS INTO SPANISH.

PLAINTIFF IS UNABLE TO READ THOSE DOCUMENTS IN THE FIRST PERSON;

7) DURING THE COURSE OF THE 1983 CIVIL PROCEEDINGS, PLAINTIFF HAS HAD THE ASSISTANCE OF FOUR INMATES. ALL OF THOSE INMATES FAILED TO ADEQUATELY READ, UNDERSTAND AND INTERPRET DEFENDANTS' DOCUMENTS. AS A RESULT, I DID NOT KNOW THAT THERE WAS NO RESPONSE TO SOME OF DEFENDANTS' MOTIONS; I DID NOT KNOW THAT I NEEDED TO RESPOND, WITH SPECIFICITY, TO CLAIMS BY DEFENDANTS' THAT, AMONG OTHER THINGS, I HAD FAILED TO EXHAUST MY ADMINISTRATIVE REMEDIES;

8) HAD I KNOWN OF THE ISSUES, I WOULD HAVE RESPONDED DIFFERENTLY AND IN MORE FACTUAL AND LEGAL DETAIL, AS I STATE INFRA;

9) PLAINTIFF HAD TO RELY UPON UNTRAINED INMATES WHO WERE NOT OBLIGATED TO ASSIST ME AND WHO RECEIVED

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Attorneys for Defendant SHERIFF LEROY BACA

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

|  |   |
|--|---|
| 11 JUAN R. ALBINO,<br>12<br>13 Plaintiff,<br>14 vs.<br>15 LEE BACA, in his official capacity;<br>16 LOS ANGELES COUNTY, a public<br>17 entity; JOHN DOE 1 through 5, in their<br>18 official and individual capacities;<br>19 JOHN DOE 6, in his official capacity,<br>20 inclusive, and each of them,<br>21 Defendants.<br>22<br>23<br>24 | ) CASE NO. CV 08-3790 GAF (MLG)<br>) <i>[Assigned to the Magistrate Judge Marc</i><br>) <i>Goldman, Courtroom 6A]</i><br>)<br>) <b>DEFENDANT BACA’S NOTICE OF</b><br>) <b>MOTION AND MOTION FOR</b><br>) <b>SUMMARY JUDGMENT</b><br>)<br>) <i>[Filed concurrently with Defendant’s</i><br>) <i>Statement of Uncontroverted Facts and</i><br>) <i>Conclusions of Law; Declaration of John</i><br>) <i>Jansen; Declaration of Deputy Jason Ford;</i><br>) <i>Declaration of Deputy Kevin Kelley;</i><br>) <i>Declaration of Catherine M. Mathers; and</i><br>) <i>Notice to Plaintiff regarding Motion for</i><br>) <i>Summary Judgment]</i><br>)<br>)<br>) <b>Complaint Filed: 07/03/08</b><br>) |
|--|---|

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:**

**PLEASE TAKE NOTICE** that Defendant SHERIFF LEROY BACA  
 (hereinafter “BACA”), hereby moves the Court for summary judgment on the ground  
 that there are no genuine issues as to any material fact and that BACA is entitled to



1 judgment as a matter of law for the following reasons:

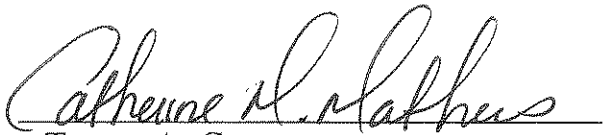
- 2 1. Plaintiff JUAN R. ALBINO (hereinafter "PLAINTIFF") has failed to  
3 exhaust his available administrative remedies pursuant to the Prison  
4 Litigation Reform Act, 42 USC § 1997e(a).  
5 2. PLAINTIFF cannot establish claim for relief under 42 U.S.C. § 1983.  
6 3. PLAINTIFF's state law causes of action are barred by California  
7 *Government Code* § 844.6.

8 This motion is based on this Notice of Motion and Motion, the accompanying  
9 Memorandum of Points and Authorities, Statement of Uncontroverted Facts and  
10 Conclusions of Law; Declaration of John Jansen; Declaration of Deputy Jason Ford;  
11 Declaration of Deputy Kevin Kelley; Declaration of Catherine M. Mathers; and Notice  
12 to Plaintiff regarding Motion for Summary Judgment, filed concurrently herein, all  
13 pleadings and papers on file in this action, and upon such other matters as may be  
14 presented to the Court at the time of the hearing.

15  
16 DATED: August 7, 2009

COLLINS COLLINS MUIR + STEWART LLP

17  
18 By:

  
Tomas A. Guterres  
Catherine M. Mathers  
Attorneys for Defendant  
SHERIFF LEROY BACA



## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

Plaintiff JUAN R. ALBINO (hereinafter "PLAINTIFF") alleges that Defendant SHERIFF LEROY BACA (hereinafter "BACA"), in his official capacity violated his civil rights by failing to place him in protective custody. Specifically, PLAINTIFF alleges the following causes of actions in the First Amended Complaint: (1) Violation of Civil Rights 42 U.S.C. § 1983; (2) Deliberate Indifference to Medical Needs; (3) Intentional Infliction of Emotional Distress; and (4) Gross and Wanton Negligence.

PLAINTIFF failed to exhaust his administrative remedies pursuant to the Prison Litigation Reform Act (hereinafter "PLRA"), 42 U.S.C. § 1997e(a); therefore, PLAINTIFF's lawsuit must be dismissed. Moreover, even if PLAINTIFF had properly exhausted his available administrative remedies, PLAINTIFF has failed to set forth any admissible evidence supporting a claim for a violation of his civil rights under 42 U.S.C. § 1983 as against BACA. Additionally, PLAINTIFF's state law causes of action are barred by *Government Code* § 844.6. Accordingly, Defendant BACA respectfully requests that this Court grant his Motion for Summary Judgment in its entirety.

### II.

#### STATEMENT OF FACTS

PLAINTIFF was arrested by the Glendale Police Department on May 11, 2006 for violation of *Penal Code* § 261(A)(1) (Rape). (Defendant's Statement of Uncontroverted Facts (hereinafter "SOF") 1). Shortly after his arrest, PLAINTIFF was transported to the Inmate Reception Center at the County of Los Angeles Sheriff's Department (hereinafter "LASD") where he was processed into the custody of LASD jails. (SOF 2). At the time of PLAINTIFF's initial booking and classification by LASD personnel on May 11, 2006, PLAINTIFF had not been charged with a sex crime against a minor. (SOF 3).

1 When PLAINTIFF arrived in LASD custody, he underwent various interviews  
 2 and screening to determine his appropriate classification. Based on his a number of  
 3 factors, including the nature of PLAINTIFF's Rape charge, PLAINTIFF was  
 4 classified with a custody level of 7 (high-medium) and a security level of medium.  
 5 Accordingly, PLAINTIFF was appropriately assigned housing in general population  
 6 with other similarly classified inmates. (SOF 4).

7 On June 17, 2006, Deputy Jaquez was approached by PLAINTIFF in the 5000  
 8 floor hallway. PLAINTIFF reported that he had just been assaulted by four Hispanic  
 9 inmates. (SOF 5). Following PLAINTIFF's report to Deputies, PLAINTIFF was  
 10 transported to County USC Medical Center (hereinafter "LCMC") where he was  
 11 treated for his injuries. (SOF 6). Additionally, PLAINTIFF was relocated to another  
 12 housing location for his safety. (SOF 7).

13 In mid June, 2006, PLAINTIFF was placed in Men's Central Jail ("MCJ")  
 14 Module 5900 which was another dorm that housed general population inmates with a  
 15 similar security level of PLAINTIFF. (SOF 8). None of the inmates involved with  
 16 the assault on June 17 were housed with PLAINTIFF in Module 5900. (SOF 8).

17 PLAINTIFF was housed in Module 5900 for several weeks without incident.  
 18 (SOF 9). However, on July 8, 2006 at approximately 9:00 p.m., PLAINTIFF was  
 19 involved in another altercation with inmates. (SOF 10). PLAINTIFF reported the  
 20 incident to Deputy Espinosa. (SOF 11). PLAINTIFF could (or would) not identify  
 21 the suspects and informed the deputy that he was not desirous of prosecution. (SOF  
 22 11). Following the incident on July 8, 2006, PLAINTIFF was again re-housed for his  
 23 safety. (SOF 13).

24 Following the July 8, 2006 report, LASD has no further record of any incidents  
 25 involving PLAINTIFF. However, PLAINTIFF alleges that he was assaulted a third  
 26 time in or around September 2006 while he was housed in Module 4700  
 27 (PLAINTIFF's First Amended Complaint, p.8, ¶25). Following this undocumented  
 28 incident in or around September 2006, PLAINTIFF does not allege any further

1 incidents or alterations with inmates. (SOF 14).

2 **III.**

3 **ARGUMENT**

4 The failure to exhaust administrative remedies under the PLRA is treated as a  
5 matter of abatement and is properly raised in a motion for summary judgment. See  
6 *Panaro v. City of North Las Vegas*, 432 F.3d 949, 953 (9th Cir. 2005) (wherein the  
7 court held that “[b]ecause the PLRA requires that inmates exhaust their available  
8 administrative remedies, and because Panaro did not exhaust his administrative  
9 remedies here, the district court properly granted summary judgment in favor of  
10 Defendants.”). Here, PLAINTIFF has failed to resolve the administrative remedies  
11 available to him under the PLRA, therefore his suit against BACA is improper in its  
12 entirety.

13 In addition, pursuant to Rule 56(c) of the *Federal Rules of Civil Procedure*,  
14 summary judgment is proper if there is no genuine issue of a material fact and the  
15 moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett*,  
16 477 U.S. 317, 325, 106 S.Ct. 2548, 2554 (1986). In *Celotex*, the Supreme Court held  
17 in pertinent part that:

18 “[T]he plain language of Rule 56(c) mandates the entry of  
19 summary judgment, after adequate time for discovery and upon  
20 motion, against a party who fails to make a showing sufficient  
21 to establish the existence of an element essential to that party's  
22 case, and on which that party will bear the burden of proof at  
23 trial. In such a situation, there can be no genuine issue as to any  
24 material fact, since a complete failure of proof concerning an  
25 essential element of the nonmoving party's case necessarily  
26 renders all other facts immaterial. The moving party is entitled  
27 to a judgment as a matter of law because the nonmoving party  
28 has failed to make a sufficient showing on an essential element

of her case with respect to which she has the burden of proof.”

*Id.* at 322-323.

Here, PLAINTIFF has had more than adequate time for discovery yet PLAINTIFF has failed to make a showing sufficient to establish that PLAINTIFF suffered a deprivation of a federally protected right and that the deprivation was caused by the conduct of a person acting under the color of state law. (*See Parratt v. Taylor*, 451 U.S. 527, 535, 68 L.Ed.2d 420, 101 S.Ct. 1908 (1981)). PLAINTIFF has not provided any evidence that BACA maintained a custom, practice, policy in violation of his constitutional rights. Therefore, both of his causes of action under 42 U.S.C. § 1983 are without merit and summary judgment in favor of BACA is warranted.

Lastly, PLAINTIFF has not only failed to provide a statutory basis for liability against BACA in his state law claims, but BACA, being sued solely in his official capacity, has a complete defense because he is immune to injuries caused by prisoners under California *Government Code* § 844.6.

**A. PLAINTIFF’s Lawsuit is Barred for his Failure to Exhaust His Available Administrative Remedies as Mandated by the Prison Litigation Reform Act**

Pursuant to the PLRA, a prisoner must exhaust all available administrative remedies for lawsuits arising out of prison conditions. 42 U.S.C. § 1997e(a). In *Porter v. Nussle*, 534 U.S. 516, 532, 122 S. Ct. 983, 152 L. Ed. 2d 12 (2002), the Supreme Court held that “the PLRA’s exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” In mandating exhaustion of administrative remedies, the Supreme Court explained in pertinent part that:

Beyond doubt, Congress enacted § 1997e(a) to reduce the quantity and improve the quality of prisoner suits; to this purpose, Congress afforded corrections officials time and opportunity to



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EMAIL: [cmathers@ccmslaw.com](mailto:cmathers@ccmslaw.com)

Attorneys for Defendant SHERIFF LEROY BACA

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

|  |   |
|--|---|
| JUAN R. ALBINO,                        | ) CASE NO. CV 08-3790 GAF (MLG)                     |
|  | ) <i>[Assigned to the Magistrate Judge Marc</i>     |
| Plaintiff,                             | ) <i>Goldman, Courtroom 6A]</i>                     |
|  | )   |
| vs.                                    | ) DEFENDANT BACA'S STATEMENT                        |
|  | ) OF UNCONTROVERTED FACTS AND                       |
| LEE BACA, in his official capacity;    | ) CONCLUSIONS OF LAW IN SUPPORT                     |
| LOS ANGELES COUNTY, a public           | ) OF MOTION FOR SUMMARY                             |
| entity; JOHN DOE 1 through 5, in their | ) JUDGMENT  |
| official and individual capacities;    | )   |
| JOHN DOE 6, in his official capacity,  | ) <i>[Filed concurrently with Defendant's</i>       |
| inclusive, and each of them,           | ) <i>Motion for Summary Judgment;</i>               |
|  | ) <i>Declaration of John Jansen; Declaration of</i> |
| Defendants.                            | ) <i>Deputy Jason Ford; Declaration of Deputy</i>   |
|  | ) <i>Kevin Kelley; Declaration of Catherine M.</i>  |
|  | ) <i>Mathers; and Notice to Plaintiff regarding</i> |
|  | ) <i>Motion for Summary Judgment]</i>               |
|  | )   |
|  | ) Complaint Filed: 07/03/08                         |
|  | )   |

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56-1, Defendant SHERIFF LEROY BACA (hereinafter "BACA") hereby submits this

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DEFENDANT BACA'S STATEMENT OF UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW

Statement of Uncontroverted Facts and Conclusions of Law in support of summary judgment.

| UNDISPUTED FACT  | SUPPORTING EVIDENCE   |
|--|---|
| 1. Plaintiff JUAN ALBINO (hereinafter "PLAINTIFF") was arrested by the Glendale Police Department on May 11, 2006 for violation of <i>Penal Code</i> § 261(A)(1) (Rape)  | 1. Declaration of Deputy John Jansen ("Jansen Decl."), p.2, ¶3. |
| 2. Shortly after his arrest, on May 11, 2006, PLAINTIFF was transported to the Inmate Reception Center at the County of Los Angeles Sheriff's Department (hereinafter "LASD") where he was processed into the custody of LASD jails.   | 2. Jansen Decl., p.2, ¶2, ¶4.                                   |
| 3. When PLAINTIFF arrived in LASD custody, he underwent various interviews and screening to determine his appropriate classification. Based on his a number of factors, including the nature of PLAINTIFF's Rape charge, PLAINTIFF was classified with a custody level of 7 (high-medium) and a security level of medium. Accordingly, PLAINTIFF was appropriately assigned housing in general population with other similarly classified inmates. | 3. Jansen Decl., p.2, ¶4.                                       |

| UNDISPUTED FACT   | SUPPORTING EVIDENCE  |
|---|--|
| <p>4. At the time PLAINTIFF entered LASD custody on May 11, 2006, PLAINTIFF did not have a charge of <i>Penal Code</i> §288 (lewd and lascivious acts with a minor) or any other charge indicating a sex crime against a child. Therefore, PLAINTIFF did not require protective custody housing under LASD Custody Division Manual § 5-02/060.00.</p> | <p>4. Jansen Decl., p.2, ¶ 5.</p>  |
| <p>5. On June 17, 2006, Deputy Jaquez was approached by PLAINTIFF in the 5000 floor hallway. PLAINTIFF reported that he had just been assaulted by four Hispanic inmates</p>  | <p>5. Incident Report, dated June 17, 2006 (COLA 0001 – COLA 0005), attached to the Declaration of Deputy Kevin Kelley (“Kelley Decl.”), p.3, ¶8 as Exhibit “P.”</p> |
| <p>6. Following the incident on June 17, 2006, PLAINTIFF was transported to County USC Medical Center (hereinafter “LCMC”) where he was treated for his injuries.</p>   | <p>6. Exhibit “P” to Kelley Decl.; Inmate Injury Report, dated June 17, 2006 (COLA 00015 – COLA 00016), attached to the Kelley Decl., p.3 ¶9 as Exhibit “Q.”</p>     |
| <p>7. Following the incident on June 17, 2006, PLAINTIFF was relocated to another housing location for his safety.</p>  | <p>7. Exhibit “P” to Kelley Decl.</p>  |
| <p>8. In mid June, 2006, PLAINTIFF was placed in MCJ Module 5900 which was another dorm that housed general</p>   | <p>8. Deposition of Plaintiff Juan Albino (“PLAINTIFF’s Depo”), p.62, lines 9-11, 23-25. True and correct copies of the</p>  |

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| UNDISPUTED FACT   | SUPPORTING EVIDENCE  |
|---|--|
| population inmates with a similar security level of PLAINTIFF. None of the inmates involved with the assault on June 17 were housed with PLAINTIFF in Module 5900.            | cited portions of PLAINTIFF's Deposition are attached as Exhibit "T" to the Declaration of Catherine M. Mathers.   |
| 9. PLAINTIFF was housed in Module 5900 for several weeks without incident.  | 9. PLAINTIFF's Depo, p.63:1-11 (Exhibit "T" to Mathers Decl.).   |
| 10. On July 8, 2006 at approximately 9:00 p.m., PLAINTIFF was involved in another altercation with inmates.   | 10. Incident Report, dated July 8, 2006 (COLA 0010 – COLA 0012), attached to the Kelley Decl., p.3, ¶8 as Exhibit "R."                                     |
| 11. PLAINTIFF reported the July 8, 2006 incident to Deputy Espinosa. PLAINTIFF did not identify the suspects and informed the deputy that he was not desirous of prosecution. | 11. Exhibit "R" to Kelley Decl.  |
| 12. Following the incident on July 8, 2006, PLAINTIFF was taken to MCJ Medical Clinic where he was treated for his injuries.  | 12. Exhibit "R" to Kelley Decl.; Inmate Injury Report, dated July 8, 2006 (COLA 00017 – COLA 00018), attached to the Kelly Decl., p.3, ¶11 as Exhibit "S." |
| 13. Following the incident on July 8, 2006, PLAINTIFF was again re-housed for his safety.   | 13. Exhibit "R" to Kelley Decl.  |
| 14. Following the incident in August or September 2006, PLAINTIFF does not allege any further incidents or alterations with inmates.  | 14. PLAINTIFF's Depo p. 70:25-p.71:5, p.73, lines 1-3, p. 77, lines 3-5 (Exhibit "T" to Mathers Decl.).  |

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| UNDISPUTED FACT   | SUPPORTING EVIDENCE   |
|---|---|
| <p>15. Pursuant to LASD's Custody Division Policy, inmates are provided with the opportunity to file grievances/complaints regarding the conditions of confinement.</p>   | <p>15. Custody Division Manual §5-01/010.00 "Inmate Complaints" (COLA 00297 – COLA 00301), attached as Exhibit "D" to the Declaration of Deputy Jason Ford ("Ford Decl."), p.2, ¶2.</p> |
| <p>16. At Men's Central Jail, inmates are given access to Inmate Complaint Forms to fill out, or they may submit a written complaint of any kind, to address any number of issues, including but not limited to personnel conduct, medical care, classification actions and conditions of confinement. The Inmate Complaint Forms are available at various locations within the facility, and an adequate supply is maintained and available for any inmate who requests them. Inmates may place their complaints in a locked complaint box, or give them directly to the staff. All written complaints are picked up by legal staff, logged by the inmate's name, booking number, date of complaint, date received, and nature of complaint, given a reference number, and assigned a supervisor. All complaints and related</p> | <p>16. Kelley Decl., pp.2-3, ¶¶2-7.</p>   |

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| UNDISPUTED FACT   | SUPPORTING EVIDENCE |
|---|---------------------|
| <p>documents are filed with the Legal Unit, to be maintained for five years, and information regarding the Inmate Complaint Forms is entered into the Los Angeles County Sheriff's Department computer system. Complaints are generally resolved within ten days of receipt unless there are justifiable reasons for the delay. If a complaint is not resolved, the floor sergeant from the floor where the complaint originated would conduct an investigation to determine the validity of the complaint, would either resolve the complaint or prepare a memorandum to the Captain regarding the nature of the incident, action taken, and whether the complaint was founded or unfounded, and would prepare a written response to the inmate regarding the disposition of the complaint, for the Captain's signature. If the inmate's complaint was denied, the inmate could appeal the decision through five levels of review: (1) Watch Commander; (2) Operations Lieutenant; (3) Captain (Unit</p> |                     |

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| UNDISPUTED FACT  | SUPPORTING EVIDENCE   |
|--|---|
| Commander); (4) Area Commander; and (5) Custody Division Chief.  |   |
| 17. PLAINTIFF did not file an inmate complaint/grievance regarding the incidents alleged in the First Amended Complaint.   | 17. PLAINTIFF's Depo, p.96:25- p.97:11 (Exhibit "T" to Mathers Decl.).  |
| 18. PLAINTIFF has been incarcerated since March 11, 2006.  | 18. PLAINTIFF's Depo, p.78, lines 15- 19 (Exhibit "T" to Mathers Decl.).  |
| 19. LASD policy specifically provides that during an inmate's detention in one of its facilities, "the custodian of a prisoner shall be accountable and duty-bound for the safety and protection of that prisoner. Reasonable and ordinary care for the prisoner's life and health shall be constantly exercised." | 19. Manual of Policies and Procedures § 5-03/000.00 "Prisoners" (COLA 00321 – COLA 00322), attached as Exhibit "M" to Mathers Decl., p.2, ¶3. |
| 20. An inmate's classification determines where he or she is housed within LASD jail facilities. The purpose of an inmate's classification is to provide for the "placement of the inmate in the least restrictive housing compatible with his or her assessed risk and needs."                                    | 20. Custody Division Manual § 5-01/010.00 "Inmate Classification" (COLA 00297 – COLA 00301), attached as Exhibit "A" to Ford Decl., p.2, ¶2.  |
| 21. All inmates are periodically reviewed as to their appropriate classification. In   | 21. Exhibit "A" to Ford Decl.   |

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COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT

## A TRADITION OF SERVICE

## INCIDENT REPORT

DATE 06-17-06

PAGE 1 OF 5

|  |  |                                       |  |                         |                              |         |                   |       |      |   |  |
|--|--|---------------------------------------|--|-------------------------|------------------------------|---------|-------------------|-------|------|---|--|
| ACTION: <input checked="" type="checkbox"/> ACTIVE<br><input type="checkbox"/> INACTIVE <input type="checkbox"/> PENDING |  | NON-CRIMINAL <input type="checkbox"/> |  | # OF ADULT ARRESTS<br>0 | # OF SUBJECT DETENTIONS<br>0 | URN # 0 | RETENTION YEAR 06 | 00860 | 5100 | CLASSIFICATION 1 / LEVEL / STAT CODE<br>Assault with a Deadly Weapon 245(a)(1)P.C./F/05 : 1   | SEX OFFENSE - VICTIM INFO? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> |
| CLASSIFICATION 2 / LEVEL / STAT CODE<br>Battery (Personal Weapons) 242P.C./M/144   |  |                                       |  |                         |                              |         |                   |       |      | DOMESTIC VIOLENCE<br><input type="checkbox"/> NON-PERSONAL (GUN, KNIFE, ETC.)<br><input type="checkbox"/> PERSONAL (HANDS, FEET, FIST, ETC.)<br>INJURY<br><input type="checkbox"/> Major <input type="checkbox"/> Minor <input type="checkbox"/> None |  |
| DATE, TIME, DAY OF OCCURRENCE<br>06/17/06, 0645hrs., Saturday  |  |                                       |  |                         |                              |         |                   |       |      | PRINTS REQUESTED <input type="checkbox"/> BY: None  |  |
| LOC. OF OCCURRENCE<br>441 Bauchet St. Los Angeles, Ca. 5600- Dorm  |  |                                       |  |                         |                              |         |                   |       |      | BUS. NAME<br>Men's Central Jail   |  |
| CODE: V-VICTIM W-WITNESS I-INFORMANT R-REPORTING PARTY P-PARTY   |  |                                       |  |                         |                              |         |                   |       |      |   |  |

|                          |          |                        |       |   |      |                        |     |       |
|--------------------------|----------|------------------------|-------|---|------|------------------------|-----|-------|
| CODE # of                | LNAME    | FNAME                  | MNAME | SEX   | RACE | ETHNIC ORIGIN          | DOB | Age   |
| V 1 1                    | Albino   | Juan                   |       | M   | H    |                        | 60  | 46    |
| RES. ADDR.               |          | CITY                   | ZIP   | VICTIM OF OFFENSE(S) (CLASSIFICATION) #:                            |      | RES. PHONE (Area Code) |     |       |
| 1147 Isabel St.          |          | Los Angeles            | 90012 | 1 2   |      | 323-223-8537           |     |       |
| BUS. ADDR.               |          | CITY                   | ZIP   | ENGLISH SPEAKING  |      | BUS. PHONE (Area Code) |     |       |
| LA County Inmate         |          | #9039242               |       | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |      | 213-974-4921           |     |       |
| CODE # of                | LNAME    | FNAME                  | MNAME | SEX   | RACE | ETHNIC ORIGIN          | DOB | Age   |
| W 1 1                    | Cendejas | R.                     |       | M   |      |                        |     | Adult |
| RES. ADDR.               |          | CITY                   | ZIP   | VICTIM OF OFFENSE(S) (CLASSIFICATION) #:                            |      | RES. PHONE (Area Code) |     |       |
| LA County Deputy Sheriff |          | #217000 (Citrus Court) |       |   |      |                        |     |       |
| BUS. ADDR.               |          | CITY                   | ZIP   | ENGLISH SPEAKING  |      | BUS. PHONE (Area Code) |     |       |
|                          |          |                        |       | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |      |                        |     |       |

|   |           |               |         |                                |      |           |                          |     |  |
|---|-----------|---------------|---------|--------------------------------|------|-----------|--------------------------|-----|--|
| CODE: S-SUSPECT SJ-SUBJECT M-PATIENT S/V-SUSPECT /VICTIM SJ /V -SUBJECT /VICTIM |           |               |         |                                |      |           |                          |     |  |
| CODE # of   | LNAME     | FNAME         | MNAME   | DRIVER'S LICENSE (STATE & No.) |      |           |                          |     |  |
| S 1 4   | Rodriguez | Manuel        |         | NIP                            |      |           |                          |     |  |
| RES. ADDR.  |           | CITY          | ZIP     | RES. PHONE (Area Code)         |      |           |                          |     |  |
| BUS. ADDR.  |           | CITY          | ZIP     | BUS. PHONE (Area Code)         |      |           |                          |     |  |
| SEX   | RACE      | ETHNIC ORIGIN | HAIR    | EYES                           | HGT. | WGT.      | DOB                      | Age |  |
| M   | H         |               |         |                                |      |           |                          |     |  |
| CHARGE<br>242P.C.   |           |               |         |                                |      |           | WHERE DETAINED OR CITE # |     |  |
| AKA   |           |               | MONIKER |                                |      | BOOKING # |                          |     |  |
|   |           |               |         |                                |      | 9022042   |                          |     |  |
| CODE # of   | LNAME     | FNAME         | MNAME   | DRIVER'S LICENSE (STATE & No.) |      |           |                          |     |  |
| S 2 4   | Unknown   |               |         |                                |      |           |                          |     |  |
| RES. ADDR.  |           | CITY          | ZIP     | RES. PHONE (Area Code)         |      |           |                          |     |  |
| BUS. ADDR.  |           | CITY          | ZIP     | BUS. PHONE (Area Code)         |      |           |                          |     |  |
| SEX   | RACE      | ETHNIC ORIGIN | HAIR    | EYES                           | HGT. | WGT.      | DOB                      | Age |  |
| M   | H         |               |         |                                |      |           |                          |     |  |
| CHARGE  |           |               |         |                                |      |           | WHERE DETAINED OR CITE # |     |  |
| AKA   |           |               | MONIKER |                                |      | BOOKING # |                          |     |  |
|   |           |               |         |                                |      |           |                          |     |  |

|                  |   |                                    |                       |      |      |  |           |       |
|------------------|---|------------------------------------|-----------------------|------|------|--|-----------|-------|
| VEHICLE #        | SUSPECT STATUS  | <input type="checkbox"/> IMPOUNDED | LICENSE (STATE & No.) | YEAR | MAKE | MODEL  | BODY TYPE | COLOR |
|                  | VICTIM <input type="checkbox"/> STORED <input type="checkbox"/> OUTSTANDING |                                    |                       |      |      |  |           |       |
| REGISTERED OWNER |   |                                    | IDENTIFYING FEATURES  |      |      | CHP 180 SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |           |       |
|                  |   |                                    |                       |      |      | GARAGE NAME & PH.  |           |       |

|  |                                |                     |                              |                      |                           |
|--|--------------------------------|---------------------|------------------------------|----------------------|---------------------------|
| BY DEP.<br>Jaquez, H.  | EMPLOYEE #<br>470558           | VACATION DATES<br>0 | DEP.<br>MCJ                  | EMPLOYEE #<br>410536 | VACATION DATES<br>6-18-06 |
| STATION<br>MCJ   | UNIT / CAR #<br>56/57 Title 15 | SHIFT<br>A.M.       | APPROVED<br>SGT. SMITHSON    | DATE<br>6-18-06      | TIME<br>1000              |
| VICTIM DESIROUS OF PROSECUTION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |                                |                     | ASSIGNMENT<br>J.L.U.         |                      |                           |
| HQ NOTIFICATION REQ. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO           |                                |                     | SPECIAL REQUEST DISTRIBUTION |                      |                           |
| SUSP / SUBJ RELEASE APPROVED BY  |                                |                     | TT & C BY                    |                      |                           |
| TIME   |                                |                     | DATE                         |                      |                           |
| PCO SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                 |                                |                     | SECTY.                       |                      |                           |

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INCIDENT REPORT CONTINUATION

#218

UIN: 006-00860-5100-052

053

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|                  |                     |
|------------------|---------------------|
| CLASSIFICATION # | / LEVEL / STAT CODE |
| CLASSIFICATION # | / LEVEL / STAT CODE |
| CLASSIFICATION # | / LEVEL / STAT CODE |

|                  |                |                                    |                                      |      |      |  |           |                   |
|------------------|----------------|------------------------------------|--------------------------------------|------|------|--|-----------|-------------------|
| VEHICLE #        | SUSPECT STATUS | <input type="checkbox"/> IMPOUNDED | LICENSE (STATE & No.)                | YEAR | MAKE | MODEL  | BODY TYPE | COLOR             |
| #                | VICTIM         | <input type="checkbox"/> STORED    | <input type="checkbox"/> OUTSTANDING |      |      |  |           |                   |
| REGISTERED OWNER |                |                                    | IDENTIFYING FEATURES                 |      |      | CHP 180 SUBMITTED:                                       |           | GARAGE NAME & PH. |
|                  |                |                                    |                                      |      |      | <input type="checkbox"/> YES <input type="checkbox"/> NO |           |                   |

CODE: V-VICTIM W-WITNESS I-INFORMANT R-REPORTING PARTY P-PARTY

|            |      |       |       |       |   |      |               |                        |           |
|------------|------|-------|-------|-------|---|------|---------------|------------------------|-----------|
| CODE       | # of | LNAME | FNAME | MNAME | SEX   | RACE | ETHNIC ORIGIN | DOB                    | Age       |
|            |      |       |       |       |   |      |               |                        |           |
| RES. ADDR. |      | CITY  |       | ZIP   | VICTIM OF OFFENSE(S) (CLASSIFICATION) #:                                  |      |               | RES. PHONE (Area Code) | Day Phone |
| BUS. ADDR. |      | CITY  |       | ZIP   | ENGLISH SPEAKING <input type="checkbox"/> YES <input type="checkbox"/> NO |      |               | BUS. PHONE (Area Code) | Day Phone |
| CODE       | # of | LNAME | FNAME | MNAME | SEX   | RACE | ETHNIC ORIGIN | DOB                    | Age       |
|            |      |       |       |       |   |      |               |                        |           |
| RES. ADDR. |      | CITY  |       | ZIP   | VICTIM OF OFFENSE(S) (CLASSIFICATION) #:                                  |      |               | RES. PHONE (Area Code) | Day Phone |
| BUS. ADDR. |      | CITY  |       | ZIP   | ENGLISH SPEAKING <input type="checkbox"/> YES <input type="checkbox"/> NO |      |               | BUS. PHONE (Area Code) | Day Phone |
| CODE       | # of | LNAME | FNAME | MNAME | SEX   | RACE | ETHNIC ORIGIN | DOB                    | Age       |
|            |      |       |       |       |   |      |               |                        |           |
| RES. ADDR. |      | CITY  |       | ZIP   | VICTIM OF OFFENSE(S) (CLASSIFICATION) #:                                  |      |               | RES. PHONE (Area Code) | Day Phone |
| BUS. ADDR. |      | CITY  |       | ZIP   | ENGLISH SPEAKING <input type="checkbox"/> YES <input type="checkbox"/> NO |      |               | BUS. PHONE (Area Code) | Day Phone |

CODE: S-SUSPECT SJ-SUBJECT M-PATIENT S/V-SUSPECT/VICTIM SJ/V-SUBJECT/VICTIM

|                          |      |               |         |         |                                |           |     |     |  |
|--------------------------|------|---------------|---------|---------|--------------------------------|-----------|-----|-----|--|
| CODE                     | # of | LNAME         | FNAME   | MNAME   | DRIVER'S LICENSE (STATE & No.) |           |     |     |  |
| S                        | 3    | 4             | Unknown |         |                                |           |     |     |  |
| RES. ADDR.               |      | CITY          |         | ZIP     | RES. PHONE (Area Code)         |           |     |     |  |
| BUS. ADDR.               |      | CITY          |         | ZIP     | BUS. PHONE (Area Code)         |           |     |     |  |
| SEX                      | RACE | ETHNIC ORIGIN | HAIR    | EYES    | HGT.                           | WGT.      | DOB | Age |  |
| M                        | H    |               |         |         |                                |           |     |     |  |
| CHARGE                   |      |               |         |         |                                |           |     |     |  |
| WHERE DETAINED OR CITE # |      |               |         |         |                                |           |     |     |  |
| AKA                      |      |               |         | MONIKER |                                | BOOKING # |     |     |  |
| CODE                     | # of | LNAME         | FNAME   | MNAME   | DRIVER'S LICENSE (STATE & No.) |           |     |     |  |
| S                        | 4    | 4             | Unknown |         |                                |           |     |     |  |
| RES. ADDR.               |      | CITY          |         | ZIP     | RES. PHONE (Area Code)         |           |     |     |  |
| BUS. ADDR.               |      | CITY          |         | ZIP     | BUS. PHONE (Area Code)         |           |     |     |  |
| SEX                      | RACE | ETHNIC ORIGIN | HAIR    | EYES    | HGT.                           | WGT.      | DOB | Age |  |
| M                        | H    |               |         |         |                                |           |     |     |  |
| CHARGE                   |      |               |         |         |                                |           |     |     |  |
| WHERE DETAINED OR CITE # |      |               |         |         |                                |           |     |     |  |
| AKA                      |      |               |         | MONIKER |                                | BOOKING # |     |     |  |
| CODE                     | # of | LNAME         | FNAME   | MNAME   | DRIVER'S LICENSE (STATE & No.) |           |     |     |  |
|                          |      |               |         |         |                                |           |     |     |  |
| RES. ADDR.               |      | CITY          |         | ZIP     | RES. PHONE (Area Code)         |           |     |     |  |
| BUS. ADDR.               |      | CITY          |         | ZIP     | BUS. PHONE (Area Code)         |           |     |     |  |
| SEX                      | RACE | ETHNIC ORIGIN | HAIR    | EYES    | HGT.                           | WGT.      | DOB | Age |  |
|                          |      |               |         |         |                                |           |     |     |  |
| CHARGE                   |      |               |         |         |                                |           |     |     |  |
| WHERE DETAINED OR CITE # |      |               |         |         |                                |           |     |     |  |
| AKA                      |      |               |         | MONIKER |                                | BOOKING # |     |     |  |





On the indicated date and time, while assigned to 5000 floor, 56/57 title 15 Deputy, I was approached by an Inmate (Later identified as V/ Albino) in the 5000 hallway. I noticed that V/ Albino was holding a white piece of cloth over his right jaw and was bleeding profusely. He also had multiple cuts and redness throughout his entire facial area and he complained of pain to his face .

V/ Albino told me he was housed in dorm 5600 and was assaulted by 4 Hispanic inmates a short while ago. I asked him if he would be able to identify them and elaborate more on why and how he was assaulted.

V/ Albino said that one of the person's that had assaulted him was assistant to the "Paisa" representative in the dorm. The other Inmate had a tattoo across his chest of an eagle, NFD. He added that he was near his bunk when he was attacked and that he was kicked and stomped numerous times, in the front and back of his head, after he had fallen to the floor.

When I asked him why he was assaulted, he stated because the Inmates had asked him last night (06-16-06) what he was in for, and he told them. When I asked him what he was in for, he replied rape. V/ Albino added the next day (06/17/06) the Inmates inquired more on what had happened. He told them his partner was the one who raped her and he believed she was 16 years old. He said a short while later he was assaulted in the corner.

Due to the severity of V/ Albino injuries he was taken to the Mens Central Jail clinic by Deputy Flores #506553 and then transported to Los Angeles County Medical Center (LCMC) via radio car .

I contacted the booth Officer W/ Cendejas who told me he was approached by an unknown Inmate in the dorm, who said the Inmate at the door needed to leave. W/ Cendejas added as he opened the door to contact the Inmate, the Inmate had walked around the corner and was holding the right side of his face with a towel, NFD.

With the assistance of Deputy personnel, we conducted a search of the dorm for suspects, witnesses, and/or weapons, including the dorm representatives (South side, White, Black, and "Paisa").

Let it be noted in county jail most dorms and modules have representative Inmates who reiterate the jail rules to the newly housed inmates, i.e.(Who cleans the dorm, who eats first, etc.).

While the Inmate representatives were in the hallway, V/ Albino, who was around the corner, pointed out S/ Rodriguez as one of the combatants.

I contacted S/ Rodriguez and asked him what had happened. He said freely that V/ Albino had came in last night bragging about that he had raped a girl. When he was questioned today, he continued to talk about it and that was when they beat him up. S/ Rodriguez admitted to punching him numerous times, although, said he never kicked him.

I asked S/ Rodriguez if he knew who else was involved. He said all he knew was there were three other Hispanic bald Inmates and that one or two of the Inmates involved in the fight had a tattoo across his chest of an eagle.

During the search of the dorm we came in contact with three Inmates who had a tattoo of an eagle across their chest:

I/M Inchausti, Jose #9086652 MH/ [REDACTED]-72, I/M Espinoza, Miguel #9019208, MH/ [REDACTED]-68, and I/M Marquez, Nelson #9045820 MH/ [REDACTED]-68.

The next day (06-18-06) V/ Albino returned from LCMC and added that he believed that he may have been cut with a razor on the side of his face. He said if he saw the suspect again, he believed he could identify the person who cut him.

While speaking with V/ Albino I observed two lacerations approximately 6" in length across the side of his right cheek. It appeared as if it was made by and unknown cutting tool. He also had multiple cuts and redness around his right eye. For further information on his injuries see Inmate Injury report under same URN.

V/ Albino was relocated to another location for his safety.

S/ Rodriguez is currently incarcerated for 10851(a)V.C. with a U.S.Immergration hold.

Sgt. Smitson #410536 was notified of the incident.



✓  
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LOS ANGELES COUNTY SHERIFF'S DEPARTMENT  
INMATE INJURY REPORT

Page 1 of 2

006-00860-5100-082 013  
URN Number

5700-2006-0617-001  
Reference Number

INMATE

ALBINO JOUAN 9039242  
LAST NAME FIRST NAME MI BOOKING NUMBER  
M H 5600  
SEX RACE DOB HOUSING LOCATION  
06-17-06/0615HWS CJ 5600 MCT  
INCIDENT DATE/TIME INCIDENT LOCATION FACILITY HOUSED

MEDICAL SERVICES INFORMATION

DEJASE, R 511626 6/17/06 0730  
TREATED BY (PLEASE PRINT) EMPLOYEE NUMBER DATE/TIME TREATED

DESCRIPTION OF INJURY / MEDICAL DISPOSITION

Y/M #0024, Spanish speaking, respiration even & on labored, noted 2 deep facial lacerations to right cheek area with active bleeding, laceration measuring 10 cm x 14 cm in length. Right bottom eyelid, laceration, right eyelids swollen. Pupil, no eye opening response. 2 lacerations w/ to left side of head with control scant amount of bleeding, measuring 2 cm in length. Left ear swollen & purplish in color. Left & right shoulder abrasion noted, no open wounds. G/O N/V, no severe H/A & dizziness at this time. Bilateral grip even & able to move lower extremities w/ will. Skin warm & dry to touch. V/S 97-8, B/P 127/62, P 130, R HR of 80. O2 100% on room air.

DEJASE, R.  
MEDICAL STAFF SIGNATURE

INCIDENT NARRATIVE

I/M ALBINO P/K # 9039242 WAS INVOLVED IN A FIGHT IN DORM 5600. I/M ALBINO SUSTAINED AN 6" LACERATION TO HIS RIGHT CHEEK. I/M ALBINO ALSO SUSTAINED MULTIPLE SCRATCHES TO THE RIGHT SIDE OF FACE, RIGHT EYE AND A 5" LACERATION TO HIS HEAD. I ESCORTED I/M ALBINO TO THE CLINIC WHERE HE WAS SEEN BY NURSE DEJASE EMP# 511626. I/M ALBINO DID NOT RECEIVE ANY OTHER INJURIES NOR DID HE COMPLAINT OF ANY INJURIES. PER MED. STAFF I/M ALBINO WAS TRANSPORTED LOS ANGELES COUNTY MEDICAL CENTER.

(Attach Additional Pages if Necessary)

LOS ANGELES COUNTY SHERIFF'S INMATE INJURY REPORT

Page 2 of 2

006-00860-5100-052  
URN Number

5100-2006-0617-001  
Reference Number

INMATE STATEMENT

4 Persona me  
gopearon injustamente  
cosas que no le  
el representante le dijo  
que yo habia violado  
a una mujer

SIGNATURE

WITNESS INFORMATION

NONE  
LAST NAME FIRST NAME MI BOOKING HOUSING LOCATION  
SIGNATURE

WITNESS INFORMATION

NONE  
LAST NAME FIRST NAME MI BOOKING HOUSING LOCATION  
SIGNATURE

(Attach Additional Pages if Necessary)

SIGNATURE

JACQUEL H 470556  
SUBMITTED BY EMP. NUMBER  
WATCH COMMANDER #260224

SGT SMITSON 410536  
APPROVED BY  
UNIT COMMANDER

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PAGE 143 COLA 00016

## COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT

#226

A TRADITION OF SERVICE

## INCIDENT REPORT

DATE 07/08/06

PAGE 1 OF 3

|   |      |                                       |   |  |  |      |  |  |                                     |
|---|------|---------------------------------------|---|--|--|------|--|--|-------------------------------------|
| ACTION: <input type="checkbox"/> ACTIVE <input type="checkbox"/> INACTIVE <input checked="" type="checkbox"/> PENDING |      | NON-CRIMINAL <input type="checkbox"/> | # OF ADULT ARRESTS <input type="checkbox"/> | # OF SUBJECT DETENTIONS <input type="checkbox"/> | URN # 0  | 06   | 00981  | 5100   | 144                                 |
| CLASSIFICATION 1 / LEVEL / STAT CODE  |      |                                       |   |  | RETENTION  |      | YEAR   | SEQUENTIAL   | REPORTING DISTRICT                  |
| Battery 242 P.C. / M / 144  |      |                                       |   |  |  |      |  |  | STAT CODE                           |
| CLASSIFICATION 2 / LEVEL / STAT CODE  |      |                                       |   |  |  |      |  |  |                                     |
| CLASSIFICATION 3 / LEVEL / STAT CODE  |      |                                       |   |  |  |      |  |  |                                     |
| DATE, TIME, DAY OF OCCURRENCE   |      |                                       |   |  | PRINTS REQUESTED <input type="checkbox"/>  |      | BY:  | TIME   |                                     |
| 07/08/06, 2100 hrs., Saturday   |      |                                       |   |  | COMPLETED <input type="checkbox"/>   |      |  |  |                                     |
| LOC. OF OCCURRENCE  |      |                                       |   |  | BUS. NAME  |      |  |  |                                     |
| 441 Bauchet St. Los Angeles CA 90012  |      |                                       |   |  | Men's Central Jail   |      |  |  |                                     |
| CODE: V-VICTIM W-WITNESS I-INFORMANT R-REPORTING PARTY P-PARTY  |      |                                       |   |  |  |      |  |  |                                     |
| CODE  | #    | of                                    | LNAME                                       | FNAME  | MNAME  | SEX  | RACE   | ETHNIC ORIGIN  | DOB                                 |
| V   | 1    | 1                                     | Albino                                      | Juan   | Roberto  | M    | H  | Mexico   | 1960 46                             |
| RES. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | VICTIM OF OFFENSE(S) (CLASSIFICATION) #  | RES. PHONE (Area Code)              |
| 1147 Isabella St.   |      |                                       |   |  | Los Angeles  |      | 90065  | 1  | (323)223-8537                       |
| BUS. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | ENGLISH SPEAKING <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | BUS. PHONE (Area Code)              |
| L.A. County Jail Inmate   |      |                                       |   |  | Bk# 9039242  |      |  |  |                                     |
| CODE  | #    | of                                    | LNAME                                       | FNAME  | MNAME  | SEX  | RACE   | ETHNIC ORIGIN  | DOB                                 |
|   |      |                                       |   |  |  |      |  |  |                                     |
| RES. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | VICTIM OF OFFENSE(S) (CLASSIFICATION) #  | RES. PHONE (Area Code)              |
|   |      |                                       |   |  |  |      |  |  |                                     |
| BUS. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | ENGLISH SPEAKING <input type="checkbox"/> YES <input type="checkbox"/> NO            | BUS. PHONE (Area Code)              |
|   |      |                                       |   |  |  |      |  |  |                                     |
| CODE  | #    | of                                    | LNAME                                       | FNAME  | MNAME  | SEX  | RACE   | ETHNIC ORIGIN  | DOB                                 |
|   |      |                                       |   |  |  |      |  |  |                                     |
| RES. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | VICTIM OF OFFENSE(S) (CLASSIFICATION) #  | RES. PHONE (Area Code)              |
|   |      |                                       |   |  |  |      |  |  |                                     |
| BUS. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | ENGLISH SPEAKING <input type="checkbox"/> YES <input type="checkbox"/> NO            | BUS. PHONE (Area Code)              |
|   |      |                                       |   |  |  |      |  |  |                                     |
| CODE  | #    | of                                    | LNAME                                       | FNAME  | MNAME  | SEX  | RACE   | ETHNIC ORIGIN  | DOB                                 |
|   |      |                                       |   |  |  |      |  |  |                                     |
| RES. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | VICTIM OF OFFENSE(S) (CLASSIFICATION) #  | RES. PHONE (Area Code)              |
|   |      |                                       |   |  |  |      |  |  |                                     |
| BUS. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | ENGLISH SPEAKING <input type="checkbox"/> YES <input type="checkbox"/> NO            | BUS. PHONE (Area Code)              |
|   |      |                                       |   |  |  |      |  |  |                                     |
| CODE  | #    | of                                    | LNAME                                       | FNAME  | MNAME  | SEX  | RACE   | ETHNIC ORIGIN  | DOB                                 |
| S   | 1    | 2                                     | Unknown                                     |  |  |      |  |  |                                     |
| RES. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | DRIVER'S LICENSE (STATE & No.)   |                                     |
|   |      |                                       |   |  |  |      |  |  |                                     |
| BUS. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | RES. PHONE (Area Code)   |                                     |
|   |      |                                       |   |  |  |      |  |  |                                     |
| SEX   | RACE | ETHNIC ORIGIN                         | HAIR  | EYES   | HGT.   | WGT. | DOB  | Age  |                                     |
| M   |      |                                       |   |  |  |      |  |  |                                     |
| CHARGE  |      |                                       |   |  |  |      | WHERE DETAINED OR CITE #   |  |                                     |
| AKA   |      |                                       |   |  | MONIKER  |      | BOOKING #  |  |                                     |
| CODE  | #    | of                                    | LNAME                                       | FNAME  | MNAME  | SEX  | RACE   | ETHNIC ORIGIN  | DOB                                 |
| S   | 2    | 2                                     | Unknown                                     |  |  |      |  |  |                                     |
| RES. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | DRIVER'S LICENSE (STATE & No.)   |                                     |
|   |      |                                       |   |  |  |      |  |  |                                     |
| BUS. ADDR.  |      |                                       |   |  | CITY   |      | ZIP  | RES. PHONE (Area Code)   |                                     |
|   |      |                                       |   |  |  |      |  |  |                                     |
| SEX   | RACE | ETHNIC ORIGIN                         | HAIR  | EYES   | HGT.   | WGT. | DOB  | Age  |                                     |
| M   |      |                                       |   |  |  |      |  |  |                                     |
| CHARGE  |      |                                       |   |  |  |      | WHERE DETAINED OR CITE #   |  |                                     |
| AKA   |      |                                       |   |  | MONIKER  |      | BOOKING #  |  |                                     |
| VEHICLE # N/A   |      |                                       |   |  | SUSPECT STATUS <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> LICENSE (STATE & No.) |      | YEAR   | MAKE   | MODEL                               |
|   |      |                                       |   |  | VICTIM <input type="checkbox"/> STORED <input type="checkbox"/> OUTSTANDING                      |      |  |  | BODY TYPE                           |
| REGISTERED OWNER  |      |                                       |   |  | IDENTIFYING FEATURES   |      | CHP 180 SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | GARAGE NAME & PH.  |                                     |
| BY DEP.   |      |                                       |   |  | EMPLOYEE #   |      | VACATION DATES   |  | DEP.                                |
| Espinosa  |      |                                       |   |  | 504665   |      | None   |  |                                     |
| STATION   |      |                                       |   |  | UNIT / CAR #   |      | SHIFT  |  | APPROVED                            |
| MCJ   |      |                                       |   |  | 5800/5900 Title 15   |      | PM   |  | Sgt. S. WATSON 150706 07-07-06 0230 |
| VICTIM DESIROUS OF PROSECUTION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                    |      |                                       |   |  | HO NOTIFICATION REQ. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO         |      | DATE / TIME  |  | SPECIAL REQUEST DISTRIBUTION        |
|   |      |                                       |   |  |  |      |  |  |                                     |
| SUSP / SUBJ RELEASE APPROVED BY   |      |                                       |   |  | TIME   |      | PCD SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO     | TT & C BY  | DATE                                |
|   |      |                                       |   |  |  |      |  |  | TIME                                |
|   |      |                                       |   |  |  |      |  |  | SECTY.                              |

76C300F - SH-R-49 (Rev. 10/99)

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INPUT - LARCIN PAGE 144 COLA 00010

|  |   |  |                             |             |
|--|---|--|-----------------------------|-------------|
| DATE<br>07/08/06   | TIME RECEIVED<br>2110   | TAG #<br>-   | URN #<br>006-00981-5100-144 | PAGE 2 OF 3 |
| INPUT / CHECKED NCIC, CII, ETC.:<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  | EVIDENCE HELD:<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | EVIDENCE ENTERED IN:<br>PATROL <input type="checkbox"/> NARCOTICS <input type="checkbox"/> SAFE <input type="checkbox"/> BY <input type="checkbox"/> |                             |             |
| <div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> BLOOD<br/><input type="checkbox"/> FOOTPRINTS<br/><input type="checkbox"/> OTHER PRINTS<br/><input type="checkbox"/> VEHICLE PARTS         </div> <div style="width: 33%;"> <input type="checkbox"/> BULLET<br/><input type="checkbox"/> FRAUD DOCUMENTS<br/><input type="checkbox"/> PAINT<br/><input type="checkbox"/> WEAPONS         </div> <div style="width: 33%;"> <input type="checkbox"/> BULLET CASING<br/><input type="checkbox"/> GSR<br/><input type="checkbox"/> PHOTOGRAPHS<br/><input type="checkbox"/> </div> <div style="width: 33%;"> <input type="checkbox"/> CHECKS<br/><input type="checkbox"/> HAIR<br/><input type="checkbox"/> RAPE KIT<br/><input type="checkbox"/> </div> <div style="width: 33%;"> <input type="checkbox"/> CLOTHES<br/><input type="checkbox"/> JEWELRY<br/><input type="checkbox"/> RECEIPTS<br/><input type="checkbox"/> </div> <div style="width: 33%;"> <input type="checkbox"/> CREDIT CARDS<br/><input type="checkbox"/> MISCELLANEOUS<br/><input type="checkbox"/> TOOLS<br/><input type="checkbox"/> </div> <div style="width: 33%;"> <input type="checkbox"/> ELECTRONIC EQUIPMENT<br/><input type="checkbox"/> MONEY<br/><input type="checkbox"/> URINE<br/><input type="checkbox"/> </div> <div style="width: 33%;"> <input type="checkbox"/> FINGERPRINTS<br/><input type="checkbox"/> NARCOTICS<br/><input type="checkbox"/> VEHICLE IMPOUNDED<br/><input type="checkbox"/> </div> </div> |   |  |                             |             |

[illegible]

## PART I STATISTICAL INFORMATION

| PROPERTY         |        |           | TYPE OF PROPERTY      |           |    |
|------------------|--------|-----------|-----------------------|-----------|----|
| TYPE OF PROPERTY | STOLEN | RECOVERED | STOLEN                | RECOVERED |    |
|                  |        |           | JEWELRY               | \$        | \$ |
| CLOTHING/FURS    | \$     | \$        | LIVESTOCK             | \$        | \$ |
| CONSUMABLE GOODS | \$     | \$        | LOCAL STOLEN VEHICLES | \$        | \$ |
| CURRENCY/NOTES   | \$     | \$        | MISCELLANEOUS         | \$        | \$ |
| FIREARMS         | \$     | \$        | OFFICE EQUIPMENT      | \$        | \$ |
| HOUSEHOLD GOODS  | \$     | \$        | TV/RADIO/STEREO       | \$        | \$ |

VICTIM OF SEX CRIMES REQUEST FOR CONFIDENTIALITY

PURSUANT TO SECTION 293(a) OF THE CALIFORNIA PENAL CODE, YOU ARE INFORMED THAT YOUR NAME WILL BECOME A MATTER OF PUBLIC RECORD, UNLESS YOU REQUEST THAT IT REMAIN CONFIDENTIAL AND NOT BE A PUBLIC RECORD, PURSUANT TO SECTION 6254 OF THE GOVERNMENT CODE.

I, N/A HEREBY (DO) (DO NOT) ELECT TO EXERCISE MY RIGHT TO PRIVACY.

### SCREENING FACTORS

| YES                      | NO                                  |                                 | YES                      | NO                                  |                                   |
|--------------------------|-------------------------------------|---------------------------------|--------------------------|-------------------------------------|-----------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 1. SUSPECT IN CUSTODY           | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 7. GENERAL SUSPECT DESCRIPTION    |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 2. SUSPECT NAMED/KNOWN          | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 8. GENERAL VEHICLE DESCRIPTION    |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 3. UNIQUE SUSPECT IDENTIFIERS   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 9. UNIQUE M.O. OR PATTERN         |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 4. VEHICLE IN CUSTODY           | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 10. SIGNIFICANT PHYSICAL EVIDENCE |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 5. UNIQUE VEHICLE IDENTIFIERS   | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 11. TRACEABLE STOLEN PROPERTY     |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | 6. WRITER / REVIEWER DISCRETION | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 12. MULTIPLE WITNESSES            |



While I was working as the 5800/5900 Title 15 Deputy I received a call via telephone from the 5800/5900 Dorm Officer (C/A Chen #500041) about an inmate, later identified as V/Albino, Juan Bk#9989242, who was possibly assaulted in dorm 5900. I along with the 5000 floor personnel responded to 5900 and I saw V/Albino standing outside of 5900.

I contacted V/Albino who told me he was punched and kicked numerous times by two inmates. V/Albino stated he could not identify the two suspects and is not desirous of prosecution.

I saw the following injuries on V/Albino: Swelling under his left eye, swelling to his left side of his forehead, and swelling to his right temple. V/Albino complained of pain to his lower back. I saw no other injuries nor did he complain of any. I escorted V/Albino to the Men's Central Jail clinic where he was seen and treated for his injuries by nurse Sazon #485766.

I along with other 5000 floor personnel conducted a search for suspects and/or witnesses which met with negative results.

V/Albino was rehoused for his safety.

V/Albino is in jail for 261(A)(1) P.C. and has a court date scheduled for 07/20/06.

COLA 00012

INPUT-FAST

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT  
INMATE INJURY REPORT

Page 1 of 2

006-00981-5100-144

URN Number

5100-2006-0708-217

Reference Number

INMATE

ALBINO LAST NAME  
JUAN FIRST NAME  
R MI  
9039242 BOOKING NUMBER  
M SEX  
H RACE  
DOB  
5900 HOUSING LOCATION  
07-08-06 2100 Hrs INCIDENT DATE/TIME  
5900 INCIDENT LOCATION  
MCS FACILITY HOUSED

MEDICAL SERVICES INFORMATION

SALON, GENELYN TREATED BY (PLEASE PRINT)  
485766 EMPLOYEE NUMBER  
7/08/06 2220 DATE/TIME TREATED

DESCRIPTION OF INJURY / MEDICAL DISPOSITION

O = Escorted to the clinic by deputy ambulatory. Inmate is awake, alert & oriented. Does not speak English. c Spanish in Spanish. Inmate states he was kicked & punched on his face. Bruised & swelling noted under his @ eye, bruised & scratches on @ face, slight swelling & bruised @ neck, bump @ forehead, redness & bruised @ temple area. Denies any loss of consciousness or dizziness. Pupils checked PERLA. c/o of pain middle lower back but able to ambulate, no slight redness noted. Hx. 144/60 T97. P-99 R-40  
A. Attention in what related to Juan 485766  
MEDICAL STAFF SIGNATURE  
c/o cold compress applied to swollen area. Placed on med. in med. room.

INCIDENT NARRATIVE

1/M ALBINO WAS ASSAULTED BY TWO UNKNOWN INMATES IN DORM 5900. I SAW THE FOLLOWING INJURIES ON 1/M ALBINO: SWELLING UNDER HIS LEFT EYE, SWELLING ON HIS LEFT FOREHEAD, SWELLING ON HIS RIGHT TEMPLE AND MULTIPLE SCRATCHES ON HIS FACE. 1/M ALBINO COMPLAINED OF PAIN TO HIS LOWER BACK. I SAW NO OTHER INJURIES NOR DID HE COMPLAIN OF ANY. I ESCORTED 1/M ALBINO TO THE CLINIC WHERE HE WAS TREATED BY NURSE SALON 485766.

(Attach Additional Pages if Necessary)

LOS ANGELES COUNTY SHERIFF'S INMATE INJURY REPORT

Page 2 of 2

006-00981-5100-1111

URN Number

500-5006-2708-2-7

Reference Number

INMATE STATEMENT

Mr. del Powner 21 Per sara  
de Se duéstrax una mujer  
Esta Cheguando por  
interned - me dijeron  
F/M ALBINO, JUVN # 7039242 STATED HE WAS  
HASSULTED BY NUMEROUS UNKNOWN INMATES. TRANSLATED  
BY DET ORTEGA # 500050

SIGNATURE

WITNESS INFORMATION

LAST NAME FIRST NAME MI BOOKING HOUSING LOCATION

NONE

SIGNATURE

WITNESS INFORMATION

LAST NAME FIRST NAME MI BOOKING HOUSING LOCATION

NONE

(Attach Additional Pages if Necessary)

SIGNATURE

ESPINOSA 504665  
SUBMITTED BY EMP. NUMBER  
SGT. G. HOSAC # 025803  
WATCH COMMANDER

App. 27

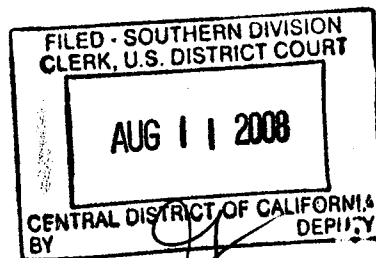
SGT. B. MARTIN # 0706  
APPROVED BY  
UNIT COMMANDER

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Original

*Roberto*  
Juan Alberto Albino  
 FULL NAME

COMMITTED NAME (if different)  
CRC - Dorm 404-14<sup>L</sup> - P.O. Box 3535  
 FULL ADDRESS INCLUDING NAME OF INSTITUTION  
Norco, California 92860-0991  
F96882  
 PRISON NUMBER (if applicable)



UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

*Juan R. Albino*

PLAINTIFF,

v.

*Lee Baca, et al.,*

DEFENDANT(S).

CASE NUMBER

*CN08-3790-GAF(MLG)*

*To be supplied by the Clerk*

*1st Amended*

CIVIL RIGHTS COMPLAINT  
 PURSUANT TO (Check one)

☒ 42 U.S.C. § 1983

☐ Bivens v. Six Unknown Agents 403 U.S. 388 (1971)

A. PREVIOUS LAWSUITS

1. Have you brought any other lawsuits in a federal court while a prisoner: ☐ Yes ☒ No
2. If your answer to "1." is yes, how many? \_\_\_\_\_

Describe the lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on an attached piece of paper using the same outline.)



## I. Jurisdiction

1  
2 1. This action is authorized under 42 U.S.C. § 1983 and  
3 rights secured under the United States Constitution. Jurisdiction  
4 is founded upon 28 U.S.C. § 1331, 1343 and 1367 and the  
5 relevant statutory and constitutional provisions. Plaintiff  
6 further invokes the pendant jurisdiction of this Court to  
7 hear and decide claims arising under state law.

8 2. The amount in controversy exceeds the  
9 jurisdictional minimum excluding interests and cost;  
10

## II. Plaintiff

11  
12  
13 3. Plaintiff is a 48 year old incarcerated  
14 inmate, housed at the California Rehabilitation Center - CRC  
15 at Norco, California.

16 4. At all times relevant to plaintiff's  
17 constitutional and civil rights violations, plaintiff was an  
18 inmate (pre-trial detainee) in the Los Angeles County  
19 Jail - Central Jail.  
20

## III. Defendants

21  
22  
23 5. Defendant Sheriff Lee Baca, in his official  
24 capacity, is the Chief Administrator of the Los Angeles  
25 County Sheriff's Department, and among other things, is

Defendants cont.

1 is responsible for the employment, training, supervision,  
2 control, assignment and discipline of all sworn personnel  
3 of the Los Angeles Sheriff Department.

4 6. Furthermore, he is the Chief Overseer of the  
5 Los Angeles County Jails within its county and its  
6 employees, its inmates, including pre-trial detainees. He  
7 has a duty to protect and prevent harm to citizens,  
8 inmates, pre-trial detainees and property within  
9 Los Angeles County.

10 7. Defendant Los Angeles County, is at all times  
11 herein mentioned, a public entity, made up of elected  
12 officers, It is responsible for the safety and protection  
13 of its residents and citizens, and a duty to protect  
14 and prevent harm, with all the powers specified and  
15 implied by the constitution and laws of the State of  
16 California,

17 8. Defendant Los Angeles County are composed of duly  
18 elected officers, responsible for the exercise and implementation  
19 of policies and procedures for the orderly administration of the  
20 county, its facilities and all of its functionaries.

21 9. Defendant John Doe 1 through 5 is at all  
22 times sued in their individual and official capacities. And at all  
23 times herein mentioned were employed as law enforcement  
24 officers, specifically deputy sheriffs of Los Angeles County. And  
25 were employed at the Los Angeles County Jail where plaintiff was  
housed.

Defendants cont.

10. Defendant John Doe Six is at all times herein, medical staff person at the Los Angeles County Jail where plaintiff was housed.

First Cause of Action  
Violation of Civil Rights  
42 U.S.C. § 1983

11. Plaintiff was arrested on May 11, 2006 for violation of California Penal Code section 288. And booked into the Los Angeles County Central Jail.

12. On June 16, 2006 while plaintiff was housed in module 5600, general population, plaintiff asked defendant John Doe One what was his bail. John Doe One replied, "It is half a million dollars," "You have a lot of money out there," "What did you do?" Plaintiff responded by saying thank you and goodbye repeatedly.

13. On June 16, 2006 shortly, within thirty minutes after plaintiff spoke with John Doe One, the pisa representative approached plaintiff and stated, "the deputy said you committed sex acts with children, that's why you are here." Plaintiff continually denied the accusations.

1 14. Due to defendant John Doe One releasing  
2 to other inmates, plaintiff's case information, on June  
3 16, 2006, no less than two inmates of every race, including  
4 the pisa representative, Southern Mexicans, Mexican  
5 Nationals and black inmates, did maliciously and  
6 violently assaulted plaintiff and repeatedly punched  
7 and kicked plaintiff until he was unconscious.

8 15. Due to defendant John Doe One releasing  
9 to other inmates, plaintiff's case information, on June 16,  
10 2006, inmates maliciously assaulting plaintiff also cut a  
11 deep cross into the right side of plaintiff's face, which  
12 is permanent. These inmates while maliciously and  
13 violently assaulting plaintiff, did violently rape plaintiff  
14 on June 16, 2006.

15 16. Eventually sometime after the violent  
16 assault and rape and plaintiff lying unconscious, jail  
17 employees did transport plaintiff to the University of  
18 Southern California General Hospital on June 16, 2006.

19 17. Plaintiff was left with broken bones, cuts,  
20 bruises and being violently raped.

21 18. Upon plaintiff's return from the hospital,  
22 plaintiff informed defendants John Doe Two and Three  
23 at the Central Jail, that he could not be housed in  
24 general population. Plaintiff requested to be placed, housed  
25 in protective custody, Plaintiff was put in module 5700, general

1 population.

2 19. Defendants John Doe Two and Three just  
3 stated, "no, and that it is the public defenders job to  
4 protect you". And ordered plaintiff to get against the  
5 wall. Defendants John Doe Two and Three with  
6 malicious intent did deny plaintiff safety in the form  
7 of protective custody.

8 20. Due to defendants John Doe Two and  
9 three malicious failure to protect plaintiff, by not  
10 placing him into protective custody, plaintiff was again  
11 violently assaulted by inmates while housed in module  
12 5700 on July 18, 2006.

13 21. Plaintiff was taken to the clinic at the  
14 Central Jail. Where Defendant John Doe Six only gave  
15 plaintiff pain medication. And ignored the fact that some of  
16 the same wounds from the first attack did open. Thereby  
17 defendant John Doe Six was deliberately indifferent to  
18 plaintiff's medical needs.

19 22. Plaintiff after the July 18, 2006 assault, again  
20 asked defendant John Doe Four to be placed in protective  
21 custody. Plaintiff continued to beg defendant John Doe  
22 Four to be placed in protective custody, before reaching  
23 a destination after leaving the clinic. Defendant John Doe  
24 Four stated, "No, it wasn't needed.

25 23. Plaintiff once reaching module 4700 general

1 population, did beg and pleaded with defendant John Doe  
2 Five to be placed in protective custody. Defendant  
3 John Doe Five maliciously refused to put plaintiff in  
4 protective custody.

5 24. Due to defendant John Doe Four and  
6 defendant John Doe Five refusal to put plaintiff in  
7 protective custody, plaintiff was again placed in general  
8 population, module 4700.

9 25. And due to defendant John Doe Four and  
10 defendant John Doe Five malicious refusal to put plaintiff  
11 in protective custody, on or about September 2006,  
12 plaintiff was again violently assaulted while plaintiff  
13 was housed in module 4700 general population.

14 26. Defendant John Doe Six did with deliberate  
15 indifference to plaintiff's medical needs only gave  
16 plaintiff pain medication. Even though there was damage  
17 to old wounds, including plaintiff's right eye, this was at the  
18 medical clinic at the Central Jail.

19 27. After plaintiff left the medical clinic after  
20 the September 2006 attack, defendant John Doe Five  
21 escorted plaintiff to an office. Defendants John Doe  
22 Two through Five were present in the office. Plaintiff  
23 again begged and pleaded to be placed in protective  
24 custody. The defendants intimidated and threaten to put  
25 plaintiff into general population and disclose plaintiff's



1 case information if plaintiff did not withdraw his complaint.  
 2 28. Plaintiff being in fear for his life and safety,  
 3 did sign to withdraw his complaint. As plaintiff knew there was  
 4 no one to protect him from harm.

5 29. Defendant Lee Baca failed to establish proper  
 6 training of his employees, and by so, didn't have standing  
 7 orders that when an inmate, pre-trial detainee request to  
 8 be placed in protective custody, that inmate, pre-trial  
 9 detainee will immediately be placed in protective custody.

10 30. By defendant Baca's failure, plaintiff was  
 11 maliciously beaten three times and violently raped once.  
 12 Defendant Baca knew or should have known that an inmate  
 13 needing, asking for protective custody, would be assaulted  
 14 if left in general population. Plaintiff requested, begged  
 15 to be placed in protective custody no less than ten  
 16 times. And each time he was denied.

## 17 Second Cause of Action

### 18 Deliberate Indifference To Medical Needs

19  
 20 31. Plaintiff hereby incorporates paragraphs 1  
 21 through 30 into this second cause of action, and by this  
 22 reference incorporates the same herein as though set forth  
 23 in full.

24 32. Defendant John Doe Six was deliberately  
 25 indifferent to plaintiff's medical needs, when he failed to