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December 1, 2023

TO: New York City District Attorney's Offices,
Forensic Units and Conviction Integrity Units

CC: New York City Police Department, Police Commissioner Edward Caban
New York City Police Department Latent Print Section, Commanding Officer
Lt. Rosalyn Joseph
New York City Police Department Latent Print Section, Quality Assurance Manager
Jennifer Lady
New York City Police Department Legal Bureau, Neil Fenton

RE: 2023 Belated Disclosure of the NYPD Latent Print Misidentification in 2015

Dear All:

We hope you have enjoyed the Thanksgiving holiday. We, as defenders and advocates for those charged and convicted in the criminal legal system, write to collectively express our concerns regarding the enclosed July 13, 2023, NYPD disclosure letter ("NYPD Disclosure") indicating that three examiners in its Latent Print Section – Detectives Joe Martinez, Gerard Rex, and Edward Sanabria – erroneously identified a particular individual to prints left at a crime-scene in April of 2015.

Specifically, we have two requests: First, we ask that your offices collectively call for a full, transparent, and independent audit of the Latent Print Section and the NYPD Laboratory’s quality assurance and quality control (QA/QC) programs. Learning from the lessons of the D.C.¹ and Houston² crime laboratories, New York City should move immediately to engage in an open and critical assessment of the scientific functioning of its police lab *now* before the issues identified here result in even greater injustices.

Second, to address the harm to individual defendants, we ask your offices to expeditiously engage with us to identify the full body of cases where Detectives Martinez, Rex, or Sanabria were engaged in any way—including as the examiner, reviewer, supervisor, trainer, or QA/QC process staff—in the latent print analysis, properly notify those defendants and their attorneys, and stand prepared to correct the injustices that may have flowed from the scientific and *Brady* disclosure failures here.

An independent audit combined with a strong combined effort to identify any potentially impacted cases is necessary here for a number of reasons. First, the delay in making the disclosure has allowed the impact of this misidentification to fester. It is now apparent³ that at least one New York City prosecutor, Rachel Singer – the chief of the forensic sciences unit at the Kings County District Attorney’s Office – was informed of the misidentification in 2015, but no District Attorney’s Office, including Kings County’s, nor any United States Attorney’s Office made any systemic disclosure to the defense in cases involving the three affected examiners for almost eight years. Even as Detective Martinez was being reassigned from the Latent Print Section and removed from cases, the defense bar and affected defendants were not informed of his error in those cases where he had been the primary examiner or where he had served as a verifier. And despite Detectives Rex and Sanabria being retrained and continuing to work on

¹ [DFS Forensic Laboratory Assessment Report.pdf \(dc.gov\)](#)

² See, e.g., Adam Liptak and Ralph Blumenthal, [New Doubt Cast on Testing Houston Police Crime Lab](#), NYTimes (Aug. 5, 2004) (“The police crime laboratory in Houston, already reeling from a scandal that has led to retesting of evidence in 360, now faces a much larger crisis that could involve many thousands of cases over 25 years.”); Michael R. Bromwich, [Final Report of the Independent Investigator for the Houston Police Department Crime Laboratory and Property Room](#) (June 13, 2007) (summarizing a two-year independent investigation of the Houston Police Department Crime Laboratory and Property Room in its sixth and final report and making recommendations for ensuring the integrity of the criminal legal process in Houston going forward); “[FAQ: Why did the City of Houston establish the Houston Forensic Science Center](#),” Houston Forensic Science Center (last visited Oct. 11, 2023) (“The Houston Police Department, like most others in the country, had long been responsible for the City of Houston’s forensic services, including crime scene investigation, DNA, latent prints and others. Mismanagement, poor training and a lack of resources caused recurring problems that led to wrongful convictions, the shutdown of the DNA laboratory, backlogs and a lack of public trust. In 2012, the City of Houston, at HPD’s behest, created the Houston Forensic Science Center as an independent local government corporation overseen by a nine-member board of directors.”).

³ NYPD Lieutenant Joseph testified before the NYS Commission on Forensic Science on September 22, 2023 and stated that **after the misidentification in 2015, the NYPD notified ADA Rachel Singer**. ADA Singer is currently the Chief of the Forensic Science Unit at the Kings County District Attorney’s Office and held that position in 2015 when these events occurred. Testimony can be viewed on: <https://www.youtube.com/watch?v=YE6J2TQqHUg> (NYPD’s testimony concerning the latent print misidentification issue begins approximately 1:22:30).

cases for another two to four years, the defense bar and affected defendants were not informed of these facts either. More troublingly still, when Detective Rex was made the sole and lead trainer for the entire Latent Print Section, from 2017 to 2019, the defense bar and affected defendants were still not informed that Rex had misidentified a print as recently as 2015.

The misidentification certainly qualified as discoverable information under federal and state constitutional law and statutory authority. It appears, however, that other defendants implicated in cases by these detectives' work entered guilty pleas or proceeded to trial without awareness of this *Brady* information.

Critically, it remains an open question for the NYPD and prosecutors as to how often these three detectives testified misleadingly at trial when asked about prior misidentifications throughout their career, which would raise *Giglio* concerns. We are aware that in at least two federal trials, *United States v. Walker*, 15 CR-388 (EDNY 2016) (Weinstein, J.) and *United States v. Calix*, 13 CR-582 (SDNY 2017) (Preska, J.), Detective Rex had claimed he had never made a misidentification. In *US v. Calix*, Detective Rex further testified he had never verified a print that turned out to be a misidentification. There may be other examples of similarly misleading testimony from the NYPD Latent Print Section and we request that you proactively identify those instances and disclose them to counsel.

This lack of disclosure persisted despite the NYPD Latent Print Section's attempts to get accredited. Indeed, NYPD Lieutenant Joseph conceded that the NYPD Latent Print Section did not even notify its accrediting body, ANSI National Accreditation Board (ANAB), about this serious matter until June of *this* year⁴, despite the NYPD Latent Print Section coming under the jurisdiction of the State's Commission on Forensic Science for the first time in 2021.

Second, the length of time that passed from the misidentification and its discovery has complicated any effort to identify impacted defendants and impacted cases. As you know, the NYPD only made a formal disclosure to all District Attorney's offices in June 2023, and, through those offices, notification reached some trial and appellate defense attorneys of a few potentially implicated clients on or after August 9, 2023. According to the NYPD Disclosure letter, the NYPD, using unidentified criteria, reported that it identified 53 impacted cases and that the District Attorney's offices separately sent disclosure letters to defendants. However, the signatories to this letter collectively received less than a third of that number of case-specific disclosure letters. Our defense community inquiries have not gotten us anywhere close to 53 cases. No full list of the 53 cases has been provided. Even the disclosure notifications that have been issued were piecemeal and without uniformity. It is unclear what criteria were used to select cases for disclosure, whether these criteria were uniformly applied by the different prosecutors' offices, and to whom the disclosures were made. For example, in cases where a client was

⁴ Testimony before the New York State Commission on Forensic Science on September 22, 2023.

presently represented on direct appeal, the disclosure letter might have been sent to the previously assigned and now retired trial attorney. Unlike past practice when disclosures involving similar matters have been made, the disclosures here were not made to the Chief Defender of each office, which has left the defense community scrambling to ensure that none of the disclosures that were sent out did not fall through the cracks.

Leaving aside the question of cases where disclosure was potentially attempted but unsuccessful, it is unclear which cases were even selected for disclosure in the first place. It is our understanding that the NYPD has indicated that they have not conducted and do not intend to conduct a testimony review for any of the three affected examiners or the other Latent Print Section members following the misidentification. They have also indicated that they are not conducting and do not intend to conduct a review of any pre-2015 cases involving the three affected examiners. Given that one of the affected examiners went onto train the entire Section for two years following the misidentification, the NYPD's failure to include a broader Section-wide audit plan in their investigation raises even more questions.

Finally, the lack of transparency surrounding the misidentification itself and the disclosure is disturbing yet tragically not unique. This laboratory error and lack of disclosure is not an isolated occurrence. This incident comes after a long line of serious problems affecting the integrity of forensic results and public trust in New York laboratories including: the 2013 discovery of biological evidence mishandling and faulty DNA examinations that took place for years at the New York City Office of Chief Medical Examiner (OCME) and the failure to disclose to the New York State Commission on Forensic Science that it had not done a validation study before employing low copy DNA technique in casework; the 2015 revelation of cheating on DNA proficiency and competency exams at the State Police DNA laboratory in Albany; NYPD's widespread practice of surreptitiously seizing and conducting dragnets to collect DNA samples from predominately Black and Brown communities in New York City which were uploaded into a rogue DNA index that the OCME operated without oversight and outside the state database regulatory scheme; a coding error at the NYPD's drug laboratory that resulted in incorrect values being placed on printouts, which also went unchecked and undiscovered for years before it was disclosed to the defense in 2021—the same year that possession of marijuana was decriminalized; and the destruction of evidence, including DNA evidence going back 20 or 30 years, in a warehouse fire at Erie Basin in Brooklyn late last year. Only a couple of weeks ago, it was revealed through discovery that three criminalists were taken off casework and under investigation for cheating on an OCME internal promotional exam while another criminalist was taken off due to irregularities in her timesheet. The NYPD Disclosure also comes at the same time as other instances of laboratory failures in Niagara and Erie counties are starting to come to light. The full scope of the errors and true nature of the harms are still unquantifiable based on what little has been disclosed.

The picture is clear: laboratory mistakes, errors and other failures occur but are managed in ways that prevent the system from mitigating the harm, remedying the error, or putting policies in place to prevent the problem from re-occurring. The mere existence of laboratory quality assurance measures and standard operating procedures are not a sufficient safeguard. Neither the accreditation process nor the New York State Commission on Forensic Science provide the transparency necessary to ensure publicly accountable oversight or regulation. We have little confidence that the current oversight infrastructure will remedy the harm and ensure just outcomes. And as history shows with good reason: New York currently ranks third of the states in number of wrongful conviction exonerations to date, and analysis of the root causes of such convictions has repeatedly shown that forensic science errors are endemic to these justice failures. This statistic alone also tells us that the cost in human capital is real and sadly, probably only the tip of the iceberg, and that the current system is perpetuating, not protecting against these harms. Unlike the state of Texas, which possesses the nation's most rigorous and transparent system of forensic science oversight, New York has yet to reckon with how forensic evidence has contributed to irreparable harms to life and liberty when serious problems are not comprehensively reviewed, remediated, and disclosed.

With respect to the 2015 laboratory error at issue in the recent NYPD Disclosure, we are extremely concerned that even one client was wrongfully convicted or denied reliable proceedings as required by Due Process where the accused did not have a meaningful opportunity to explore the *Brady* information in their case when evaluating their constitutional choice to accept a plea or take the case to trial. Therefore, we request that your offices follow the tradition of prosecutors in D.C. and Houston, and join us in calling for a fair, independent, transparent forensic audit. We also will be following up on this letter by jurisdiction to obtain the following critical information and documentation:

- A comprehensive list of all cases in which print evidence was either examined or verified by Detectives Joe Martinez, Gerald Rex, or Edward Sanabria, or anyone else connected to this misidentification;
- A full copy of the NYPD's paperwork documenting the misidentification, any investigation into it, any case review conducted in 2015 or by "the prior administration," and any training or retraining provided to or completed by members of the LPU in the aftermath of this misidentification;
- The answers to the following questions, as well as any documentation relevant to these questions:
 - Background facts:
 - How many cases had Detectives Sanabria, Martinez, and/or Rex worked on as the original examiner or the verifier during their career?
 - Did Detectives Sanabria, Martinez, and/or Rex supervise others in the Latent Print Section?
 - Did Detectives Sanabria, Martinex, and/or Rex hold any quality assurance or quality control positions with the Latent Print Section?

- NYPD internal investigation:
 - The disclosure indicated that NYPD reviewed the criminal identifications of Detectives Sanabria, Martinez, and Rex before April 1, 2015, and concluded there were no discrepancies.*
 - How many such identifications were reviewed?
 - Who conducted the review?
 - And what were the criteria that were used to conclude that there were “no discrepancies”?
- Disciplinary action:
 - Detective Martinez
 - Why did the NYPD choose to reassign Detective Martinez, instead of retrain him?
 - Where was Detective Martinez reassigned?
 - Why did Detective Martinez leave the NYPD shortly after this disciplinary matter?
 - Detectives Rex & Sanabria
 - Why did the NYPD choose to retrain Detectives Rex and Sanabria, instead of reassigning them?
 - How did the NYPD assess that the retraining of Detectives Rex and Sanabria was sufficient to ensure there would not be further misidentifications?
 - How did Detective Rex come to be the Latent Print Section’s lead and sole trainer in 2017?
- Root cause investigation:
 - Did NYPD perform any root cause investigation as to how three of its examiners made the erroneous identification?
 - If so, how did NYPD investigate?
 - And what was identified as root cause(s)?
- Quality assurance/quality control process:
 - In the aftermath of the misidentifications, did the NYPD modify the latent print comparison standard operating procedures or protocols?
 - If so, what new procedures were implemented and when?
- Disclosure
 - 2015 disclosure to the Kings County District Attorney’s Office (KCDA):
 - The disclosure indicated that one month after the misidentification, the NYPD notified the Kings County District Attorney’s Office. At the New York State Commission on Forensic Science meeting on September 22, 2023, the NYPD clarified that they specifically notified ADA Rachel Singer. ADA Singer heads the KCDA’s Forensic Science Unit.*
 - Did the NYPD, in fact, notify KCDA ADA Singer in 2015?

- If so, when and how was that notification made?
 - Did ADA Singer make any further notifications?
 - What did ADA Singer do with the information?
- What training does the KCDA provide to line ADAs with respect their obligation to disclose material that serves to impeach individuals involved in forensic testing of evidence?
- As head of the KCDA's forensic sciences unit, has ADA Singer been involved in preparing training materials and/or training other line ADAs with respect to their disclosure obligations in connection with forensic evidence? If so, what was her role in such training?
- Additional disclosures:
 - Did NYPD make notifications – whether formal or informal – to anyone other than the Brooklyn District Attorney’s Office at any time prior to 2023?
 - If so, who, when, and how?
 - After the 2015 misidentification was discovered, did NYPD investigate and arrest any *other* person for the crime?
- NYPD’s 2023 response:
 - How did the NYPD identify the universe of cases to re-examine?
 - How many cases are being reexamined?
 - If re-examination is not complete, when does NYPD anticipate the re-examination process to be complete?
 - How does NYPD ensure the re-examination will produce unbiased, accurate results?
 - Was any latent print evidence stored at Erie Basin?
- District Attorneys’ response:
 - Case reviews:
 - Is your office conducting an independent assessment of the impact on client cases as a result of the NYPD letter?
 - If so, please provide us with the procedures you are using to conduct this assessment.
 - Testimony reviews:

At the September 22, 2023 meeting of the New York State Commission on Forensic Science, the NYPD indicated that DA’s Offices were conducting testimony reviews for the affected detectives.

 - Is your office conducting a review of trial and hearing testimony of the three implicated latent print section detectives from 2015 to the time of their respective retirements?
 - If so, please provide us with the procedures you are using to conduct this review.

Thank you for your anticipated cooperation.

Sincerely,

Patricia Pazner, *Attorney-in-Charge*

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Encl (1): July 13, 2023 NYPD Disclosure Letter



POLICE DEPARTMENT

July 13, 2023

To Whom It May Concern,

This letter is to provide a formal disclosure by the NYPD Latent Print Section (LPS) to the New York City's District Attorney's Offices, the Family Court Division of the New York City Corporation Counsel's Office and the United States Attorney's Offices for the Eastern and Southern Districts of New York.

On April 1, 2015, Det. Joe Martinez, Tax #924141, of the NYPD Latent Print Section erroneously reported that a known individual was identified as the source of a latent print left at a crime scene in Brooklyn. This identification was then verified by two additional LPS examiners, Detective Edward Sanabria, Tax #902344, and Detective Gerald Rex, Tax #926398. Approximately one month after the fingerprint identification was made and reported, the NYPD confirmed that the known individual could not have been the source of the crime scene latent fingerprint. As a result, the NYPD notified the Brooklyn District Attorney's Office regarding the misidentification. This Latent Print Section examination result never led to the arrest or prosecution of any individual.

The NYPD Forensic Investigations Unit (FIU) initiated an investigation into the misidentification of the crime scene latent print. A review of the documentation of that investigation disclosed that Detectives Martinez, Sanabria and Rex were immediately removed from casework pending further findings of the investigation. All criminal identifications made before April 1, 2015 by Detectives Martinez, Sanabria and Rex since they started working in the Latent Print Section were reviewed by the Latent Print Section; there were no discrepancies found as a result of the re-examinations. Detective Martinez was transferred from LPS without being returned to casework. Detectives Sanabria and Rex received retraining by outside consultants, and returned to casework at the end of 2015. In addition, as a result of the investigation, several changes were instituted by LPS regarding how fingerprint comparisons were conducted, verified and documented, starting in 2015. It should be noted that LPS attained accreditation in 2019.

Detectives Sanabria and Rex remained as LPS Detectives until their retirements in 2017 and 2019, respectively. After the misidentification, any identifications made by Detective Sanabria and Detective Rex that resulted in a conviction by plea or after trial will be reviewed by the Latent Print Section.

Lt. Rosalyn Joseph
Commanding Officer
NYPD, Latent Print Section

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Website: <http://nyc.gov/nypd>