



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

October 13, 2022

Chief Ronald Lawrence
Costa Mesa Police Department
99 Fair Drive
Costa Mesa, CA 92626

Re: Officer-Involved Shooting on February 19, 2021
Fatal Incident involving Jose David Valdez
District Attorney Investigations Case # 21-000554
Costa Mesa Police Department Case # 21-002781
Orange County Crime Laboratory Case # 21-42129
Orange County Coroner's Office Case # 21-01474-AZ

Dear Chief Lawrence,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving on-duty Costa Mesa Police Department (CMPD) Officers Joe Lopez and Eric Molina. Jose David Valdez, age 34, died as a result of his injuries. The incident occurred in the City of Costa Mesa on February 19, 2021.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the February 19, 2021 fatal, officer-involved shooting of Jose David Valdez. The letter includes an overview of the OCDA's investigative methodology and procedures employed, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles applied in analyzing the incident and determining whether there was criminal culpability on the part of the Costa Mesa officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On February 19, 2021, investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, seven (7) interviews were conducted, and fourteen (14) additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: Costa

REPLY TO: ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE

WEB PAGE: <http://orangecountyda.org/>

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Mesa Police Department reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Jose David Valdez; criminal history records related to Jose David Valdez including prior incident reports; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass and body-worn camera videos of the officers.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred, and if the use of force was consistent with the law, on the part of Costa Mesa Police Department officers, specifically Officers Joe Lopez and Eric Molina. The OCDA will not be addressing any possible issues of policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to an experienced deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases, and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review any legal conclusions and resulting memos. The case may often be reviewed by several experienced prosecutors and their supervisors. The District Attorney personally reviews and approves all officer involved shooting and custodial death letters. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Officers Joe Lopez and Eric Molina gave voluntary statements to OCDA Investigators on February 25, 2021.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase accountability, and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to

officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage:
<http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTUAL SUMMARY

On February 19, 2021, CMPD Officers Joe Lopez and Eric Molina were assigned to the Community Policing Unit (CPU) wearing CMPD uniforms and driving a marked CMPD police vehicle. Lopez drove with Molina in the front passenger seat.

At approximately 10:15 a.m., Lopez and Molina were patrolling the parking lot of the La Quinta Inn, located at 1515 South Coast Drive, Costa Mesa. Lopez located an occupied gray 2006 Ford Focus parked in a marked parking stall facing north. Lopez saw Valdez in the driver seat with his head slumped forward on the steering wheel. He believed Valdez had just used drugs, was on "the nod," meaning under the influence of drugs, or had possibly overdosed.

Lopez approached the driver's side while Molina approached the passenger side. Witness 1 was the front passenger with Witness 2 in the left rear passenger seat behind Witness 1. Lopez recognized Witness 2 from prior narcotics investigation contacts. Molina searched Witness 2, while Lopez conversed with Valdez. Valdez's left hand was bandaged. During the investigation, Witness 1 stated she heard Valdez shot himself in the hand. Valdez had told Witness 1 the vehicle they were in was a "G-Ride", which is slang for a stolen vehicle.

Lopez instructed Valdez to keep his hands on the steering wheel, however, Valdez repeatedly moved his right hand toward the center console, his waistband, and the area of his right leg. Lopez was concerned Valdez may have had a weapon and he had not been searched.

Molina located drug paraphernalia on Witness 2 and cuffed his hands behind his back. Molina sat Witness 2 on the asphalt behind the left rear bumper of the Ford Focus. Molina had Witness 1 step out of the vehicle and move behind a vehicle parked east of the Ford Focus where he searched her.

Valdez suddenly started the vehicle, placed it in reverse, and accelerated. Lopez and Molina shouted commands for Valdez to stop. Molina was unsuccessful in pulling Witness 2 from the path of the Ford Focus as it reversed. Witness 2 screamed as the left rear tire ran over his handcuffed hands. Witness 2 was then struck by the open passenger door and the front right tire.

Lopez could hear Witness 2 screaming but could not see him. He described his thoughts, stating "If [Witness 2] isn't already pinned or, or dead under there, he's obviously screaming, he's gonna be soon, um, imminently." He said, "...I had to put a stop to it."

Molina said, "The vehicle was put, or as the vehicle was reversing, I then made the determination to, uh, remove my firearm and fire at the vehicle and, because I believed that he [Valdez] was an imminent threat of death or seriously bodily injury to [Witness 2]. And as the vehicle was backing up, it was positioning itself for it to face me and the woman that was, I was searching who was still standing next to me." Molina stated that he was "unsure of [Witness 2's] condition whether he had sustained a major injury or not."

Molina and Lopez fired their department-issued handguns at Valdez. Lopez fired twice and Molina fired three times. The left rear bumper of the Ford Focus struck the left front bumper of their parked police vehicle. Lopez saw Valdez put the Ford Focus in drive and start moving forward toward Molina and Witness 1.

Molina said, "And as the vehicle was backing up, it was positioning itself for it to face me and the woman that was, I was searching who was still standing next to me. So, the vehicle went from reversing, immediately stopped, jolted and when it stopped, at this point I believed that he was going to start driving in my direction. Uh, I was not sure if he was going to attempt to harm me or flee, uh, but I, I was in fear for my safety and along with the woman's safety who was standing right next to me that, since he had already caused, uh, harm to the subject that was in his vehicle, that he would reasonably do that to us. Um, and I then made a decision. I put out over the radio, shots fired, and decided to discharge more, uh, rounds until the threat was stopped."

Lopez said, "Now he's orientated directly at Officer Molina and the young lady who's just frozen out of, you know, fear presumably, um, 'cause of the incident. Um, and I see him reach down for the, for the shifter as well, and I see him put it in drive, and so to prevent him from again, 'causing any more harm to [Witness 2] or hitting Officer Molina, or running over the young lady who's directly in the line of travel of the vehicle, um, I fire another round."

Molina fired four additional times through the windshield at Valdez. Lopez fired once toward Valdez from the driver's side. Witness 1 heard the police yell at Valdez, "Put the car in park, stop! You're running him over!"

Witness 1 said the officer on the passenger side was doing his best to pull Witness 2 out from under the car. Witness 1 stated, "Valdez is slamming on the gas in reverse and he backs up into the cop car, the one that was parked facing this way that's La Quinta." During this time she heard Witness 2 scream "Stop! You're running me over!" Witness 1 saw Witness 2 under the tire of Valdez's vehicle. Witness 2's left shoulder, left side of his back, and hip were under the tire. She stated Witness 2 was lucky he was not completely run over because the officer had saved him.

Witness 2 heard the vehicle start and one of the police officers say "That's probably not a good idea." Almost immediately, Witness 2 heard the tires screech and the vehicle began to back up. Witness 2 yelled at Valdez to stop and felt Valdez heard him. However, Valdez continued to reverse out of the parking stall and began turning the vehicle. Witness 2 began trying to move away from the vehicle but was dragged approximately 5-7 feet by the vehicle. Witness 2 was eventually able to escape the vehicle's path because the police officer on the passenger side saved him by pulling him away. Witness 2 said, "I thought I was dead" and "as soon as he came from a 90-degree turn to a 360, to a 180 turn, he was going to run over my whole body and potentially drag me super far."

Molina evaluated Witness 2's injuries and then went to help Lopez remove Valdez from the vehicle. CMPD officers provided Valdez with medical aid, which included Cardio Pulmonary Resuscitation (CPR) until Costa Mesa Fire Department (CMFD) paramedics arrived. CMFD transported Valdez by ambulance to Orange County Global Medical Center (OCGMC) where he later died from his injuries. Witness 2 was also transported to OCGMC and treated for non-life-threatening injuries.

The Ford Focus had been reported “missing with the keys” to the Newport Beach Police Department on February 16, 2021.

A Hellcat .380 semi-automatic handgun was located in the left pocket of Valdez’s jacket. The handgun contained a loaded magazine, but there was no round in the chamber.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- (1) Cartridge case, headstamp WIN 9MM LUGER
- (1) Cartridge case, headstamp WIN 9MM LUGER
- (1) Cartridge case, headstamp WIN 9MM LUGER
- Clothing items include a black jacket, black t-shirt, gray plaid shorts, black bandana, and blue baseball hat. In the right pocket of the black jacket was a Hellcat .380 ACP handgun, black, Serial Number 03886, with one (1) magazine containing four (4) rounds inserted into the weapon
- (1) NEBO Flashlight
- (1) Baseball hat
- (1) Passenger side rearview mirror housing from Vehicle
- (1) Cartridge case, headstamp WIN 9MM LUGER
- (1) Cartridge case, headstamp WIN 9MM LUGER
- (1) Cartridge case, headstamp WIN 9MM LUGER
- (1) Cartridge case, headstamp WIN 9MM LUGER
- (1) Cartridge case, headstamp WIN 9MM LUGER
- (1) Cartridge case, headstamp WIN 9MM LUGER
- (1) Cartridge case, headstamp WIN 9MM LUGER
- Apparent bullet fragment
- (1) bullet recovered from the front passenger door
- (1) bullet recovered from the front driver door
- (1) bullet recovered from the rear seat
- (1) bullet recovered from the trunk
- (1) bullet recovered from the rear seat
- (1) bullet recovered from the rear seat
- Bullet fragments recovered from on the rear seat
- Bullet fragments recovered from between the cushion and back of the rear seat
- Bullet Fragments recovered from the driver’s seat near the front driver’s door

AUTOPSY

On February 24, 2021, Forensic Pathologist Dr. Yong-son Kim of the Orange County Coroner’s Office conducted an autopsy on the body of Jose David Valdez. The autopsy found that Jose David Valdez received four (4) gunshot wounds and that the cause of death was gunshot wounds of his left face, right shoulder, and left shoulder.

EVIDENCE ANALYSIS

Firearms Examination

Officer Lopez’s and Molina’s SIG Sauer Model P320 pistols were test fired at the Orange County Crime Lab and fired without malfunction.

Projectile Examinations

The pistol collected from Officer Lopez was determined to have fired three (3) of the ten (10) cartridge cases collected at the scene and the two (2) bullets recovered from Valdez's right chest cavity and middle back. The pistol collected from Officer Molina was determined to have fired seven (7) of the ten (10) cartridge cases collected at the scene.

Toxicological Examination

A sample of Jose David Valdez's blood was collected at the Orange County Coroner Division Facility. An Orange County Sheriff's Department forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

Drug/Alcohol	Matrix	Results & Interpretations
4-ANPP	Postmortem blood	Detected
Acetaminophen (Free)	Postmortem blood	6.24 ± 0.58 mg/L
Amphetamine	Postmortem blood	0.0938 ± 0.0070 mg/L
Beta-Hydroxy Fentanyl	Postmortem blood	Detected
Fentanyl	Postmortem blood	0.0306 ± 0.0029 mg/L
Methamphetamine	Postmortem blood	0.0360 ± 0.0026 mg/L
Norfentanyl	Postmortem blood	Detected

JOSE DAVID VALDEZ'S PRIOR CRIMINAL HISTORY

Jose David Valdez's criminal history was reviewed and considered. Jose David Valdez had a California Criminal History that dates back to 2002. He had previously been arrested for the following charges:

- Assault with a Deadly Weapon Not a Firearm
- Exhibiting a Firearm
- Participation in a Street Gang
- Preventing or Dissuading a Witness
- Possession of an Assault Weapon
- Possession of a Controlled Substance
- Possession of Unlawful Paraphernalia

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when done in compliance with California Penal Code section 835a. California Penal Code Section

197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows a police officer to use reasonable force when necessary in the defense of human life. The decision to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall be taken into account when officers are forced to make quick judgments about using force.

California Penal Code Section 835a further states that a peace officer is justified in using deadly force when the officer reasonably believes that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. Deadly force may also be used to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believed that person will cause death or serious bodily injury if not immediately apprehended.

Consistent with existing law, Penal Code section 835a maintains the principle that a police officer, acting in compliance under this section, who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested, nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code Section 835a also requires that, prior to the use of deadly force, the officer make reasonable efforts to identify themselves and warn that deadly force may be used, when feasible, unless the officer reasonably believes the person is already aware of those facts. In determining whether deadly force is necessary, officers shall evaluate the circumstances of each situation independently, and use other available resources and techniques if reasonably safe and feasible to do so.

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest

convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.)

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.) Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [i.e., his/her weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation" (*Id.* at 396-397.)

The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of CMPD Officers Lopez and Molina with Valdez.

LEGAL ANALYSIS

The facts in this case are determined by considering Officer Lopez's and Officer Molina's statements to the OCDA investigators, which was supplemented by other relevant material and witnesses present at the incident, as well as the officers' body-worn camera videos.

The issue is whether the conduct of Officers Lopez and Molina on February 19, 2021 was without justification resulting in criminal culpability. As stated above, in order to charge Officers Lopez and/or Molina with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officers' conduct. Therefore, in order to lawfully charge these officers with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense. If the actions that day of Officers Lopez and Molina were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held in a recent case, it is well settled that "[u]nlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the [] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler, supra*, 171 Cal.App.4th at p. 528.) Additional analysis, pursuant to California Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

Officers Lopez and Molina were justified in believing that Valdez posed a significant threat of death or serious physical injury to themselves and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Valdez in the moments leading up to the shooting. Valdez was in the process of running over Witness 2 with his car when the officers began firing their pistols. Both officers knew that Witness 2 was behind the car. The officers had already yelled for Valdez to stop the car, and Witness 2 was yelling out for him to stop as well. Officer Lopez could not see where Witness 2 was during this time, but he knew Witness 2 was behind the car and screaming.

Valdez continued to back up the car until it struck the officers' police car, and then he shifted the car from reverse into drive. His car was facing the direction of Officer Molina and Witness 1 when he shifted into drive before he succumbed to the officers' gunshots, which allowed the car to advance forward slowly and avoid hitting Molina and Witness 1.

Both officers were concerned for the safety of Witness 2 - who was screaming in pain from being run over by the car - when the officers began firing their guns. They began firing their guns at Valdez in order to stop the car and protect Witness 2 from death or serious injury. In addition, when the car was shifted to drive, the officers were concerned for the safety of Officer Molina and Witness 1 who were in the pathway of the car.

These concerns were reasonable given that Valdez had refused to stop the car despite being in the midst of running over Witness 2, Witness 2 screaming in pain, and the officers both yelling for him to stop. In addition, Valdez had refused to comply with Officer Lopez's commands to keep his hands on the steering wheel, when he repeatedly moved his right hand toward the center console, his waistband, and the area of his right leg, creating fear that he would reach for a gun. In addition, the officers had reason to believe that Valdez would act erratically due to having observed him slumped over the steering wheel of the car and suspecting him being under the influence of drugs.

It should also be noted that, in order for the officers to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that they did not act in reasonable and justifiable self-defense or defense of another when they shot at Valdez. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for the officers to believe that their lives and the lives of others were in danger.

Therefore, Officers Lopez and Molina were justified when they shot at Valdez. Simply stated, Officers Lopez and Molina did not commit a crime, to the contrary, they carried out their duties as peace officers in a reasonable and justifiable manner.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Officers Lopez or Officer Molina, and there is substantial evidence that their actions were reasonable and justified under the circumstances when they shot Jose David Valdez on February 19, 2021.

Accordingly, the OCDA is closing its inquiry into this incident.

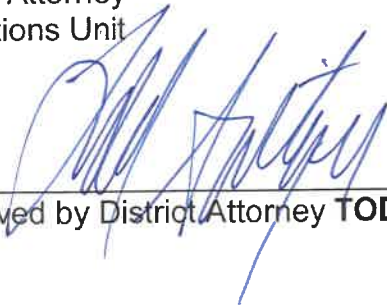
Respectfully submitted,



Steven Bunn
Deputy District Attorney
TARGET/Gangs Unit



Read and Reviewed by **BRETT BRIAN**
Assistant District Attorney
Special Prosecutions Unit



Read and Approved by District Attorney **TODD SPITZER**