



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

February 3, 2023

Chief Jorge Cisneros
Anaheim Police Department
425 S Harbor Blvd
Anaheim, CA 92805

Re: Officer-Involved Shooting on November 9, 2020
Non-Fatal Incident involving Pablo Santos Alferez-Barahona
District Attorney Investigations Case # SA 20-028
Anaheim Police Department Case # APD 20-167629
Orange County Crime Laboratory Case # OCCL 20-53658

Dear Chief Cisneros,

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 Anaheim Police Department (APD) Detective Eddie Delgadillo. Pablo Santos Alferez-Barahona, age 32, survived his injuries. The incident occurred in the City of Anaheim on November 9, 2020.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the November 9, 2020, non-fatal, officer-involved shooting of Pablo Santos Alferez-Barahona. It also 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 Detective Delgadillo. The format of this document was developed by the OCDA, at the request of multiple Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On November 9, 2020, investigators from the OCDA Special Assignments Unit (OCDASAU) responded to this incident. During the course of their investigation, five interviews were conducted, and 40 additional witnesses were contacted. OCDASAU Investigators also obtained and reviewed the following: APD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including DNA reports, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Alferez-Barahona; criminal history records related to Alferez-Barahona; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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 APD officers or personnel, specifically Detective Delgadillo. The OCDA will not be addressing any possible issues of policy, training, tactics, or civil liability.

In a case where there is an officer-involved shooting incident and the OCDA files criminal charges against the individual shot by the police, it is the OCDA's policy not to release the final report regarding the officer involved shooting incident until after the issue of guilt is decided in the underlying filed criminal case. This policy is in place to ensure that OCDA is not releasing any information that may be viewed as prejudicing the right of a defendant to receive a fair trial while his or her case is still pending. On November 29, 2021, Alferez-Barahona pled guilty to human trafficking in Orange County Superior Court case number 20NF3060, and brandishing a firearm at a person in a motor vehicle in Orange County Superior Court case number 21NF2814.

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 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.

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. Thus, when the OCDASAU Investigator has concluded the investigation, the file is turned over to an experienced deputy district attorney for legal review. If necessary, the reviewing prosecutor will send the case back for further investigation.

Throughout the review process, the assigned prosecutor will consult with the Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review any legal conclusions and resulting correspondence. It is also common for the case to be reviewed by several other experienced prosecutors and their supervisors. Ultimately, the District Attorney personally reviews all officer involved shootings and custodial death letters.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Detective Delgadillo gave a voluntary statement to OCDA Investigators on November 16, 2020.

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 November 8, 2020, a reporting party (RP) went to APD and told officers that he paid a man (Suspect) to bring his minor nephew into the United States over the Mexico-United States border. The RP agreed to pay the Suspect, also known as a "coyote," an amount of money for this service. Later, the Suspect contacted the RP and said an additional \$7,000 was needed or the boy would be killed. The RP gave Anaheim Police officers the phone number he used to contact the Suspect.

Based on the phone number provided, Anaheim Police officers obtained search warrants to determine the Suspect's location. Because the investigation involved a minor child being in danger, officers were focused on the safest means to apprehend the Suspect and rescue the child. This included potentially using specially trained officers (SWAT).

Police officers told the RP to call the Suspect and ask to speak with his nephew so they could help determine the child's location. The Suspect did not respond, and instead called the RP back from a new, non-US phone number. The RP was unable to speak with his nephew, and due to the new phone number, officers were unable to verify the Suspect's location.

Further investigation into the original phone number revealed an associated address at an apartment complex near Lincoln Ave and Syracuse Street in Anaheim. On November 8, 2020, at approximately 11:30 p.m., several APD Investigators, including Detective Delgadillo, began surveilling the apartment complex.

The surveillance continued overnight and into the next day, November 9, 2020. On November 9, 2020, at approximately 4:00 a.m., Detective Delgadillo was assigned as the primary observer, watching Apartments 3 and 4 from an undercover police car. Because Detective Delgadillo was working undercover, he was not wearing a police uniform, ballistic vest, or body-worn camera. He did have his duty weapon, a Glock, Model 17, semi-automatic pistol, serial number GCS422, as well as a police radio, close by. His ballistic vest, which has "POLICE" written on it in large white letters, and his body worn camera were in the backseat of his vehicle. Detective Delgadillo had worked undercover surveillance many times before. He knew that "coyotes" are sometimes involved with Mexican cartels, organizations whose members engage in violent acts, including murder.

To conduct surveillance, Detective Delgadillo parked his vehicle across the street from the apartment complex at a shopping center. He put up his window shades so it would be harder to see inside his car from the outside, and sat in the passenger seat which was closer to the apartment complex. He then used binoculars to watch the apartments.

At approximately 4:30 a.m., Detective Delgadillo observed a male subject, later identified as Alferez-Barahona, exit Apartment 4. Detective Delgadillo watched as Alferez-Barahona looked into the cars that were parked along Syracuse Street and then returned inside Apartment 4.

At approximately 5:35 a.m., a black Toyota Camry pulled up to the apartment complex. The driver exited and moved items from the rear passenger seat into the trunk. The driver then approached Apartment 4, and without going inside turned around and got back into the driver seat of the Camry. At approximately 5:50 a.m., Detective Delgadillo then observed Alferez-Barahona get into the front passenger seat of the Camry. The Camry made a u-turn and drove toward Lincoln Avenue.

Shortly thereafter, Detective Delgadillo observed bright lights behind his car. Initially, Detective Delgadillo believed it was another police officer. Surveillance video from one of the shopping center's businesses revealed it was the Camry. At approximately 5:51 a.m., the surveillance video showed Alferez-Barahona exit the Camry and pull a handgun from his right rear waistband.

Alferez-Barahona was then observed on the video placing one hand on the slide of the gun and moving it back and then forward, as if "racking the slide" and placing a round in the gun's chamber. Alferez-Barahona then held the gun to his side as he walked towards the passenger side of Detective Delgadillo's car.

Detective Delgadillo stated that he saw that Alferez-Barahona had a gun and broadcasted over his police radio, "He has a gun." Detective Delgadillo observed Alferez-Barahona approach the vehicle, lean his face towards the passenger window and point his gun towards the passenger door. Detective Delgadillo later told investigators that he felt trapped in the passenger seat of the vehicle and believed he was in a vulnerable position.

Alferez-Barahona then moved towards the rear passenger door and stayed there for a few seconds before moving back to the front passenger door. At that time, Detective Delgadillo pulled his Glock firearm and held it without it being visible to Alferez-Barahona.

At approximately 5:51a.m., Alferez-Barahona was still right by Detective Delgadillo, holding the firearm at a "low ready" position. If Alferez-Barahona pulled the trigger, Detective Delgadillo believed he was "in the line of fire" and would be shot. Detective Delgadillo opened his front passenger door a little bit and said "What's up?" in Spanish. Alferez-Barahona did not reply, and instead he began to slightly raise his gun toward Detective Delgadillo. Detective Delgadillo then yelled "Police" in Spanish. Based on his prior experience conducting undercover surveillance, Detective Delgadillo believed that after identifying himself as a police officer, Alferez-Barahona would run or drop his weapon. Instead, Alferez-Barahona did not respond and continued to point his gun in Detective Delgadillo's direction.

Detective Delgadillo believed that Alferez-Barahona was going to shoot him. Detective Delgadillo also felt he was a "sitting target" in the car, because he was restrained; he could not move away, take cover, or take other defensive measures that he learned during his training as a police officer. Believing Alferez-Barahona was going to shoot him, Detective Delgadillo fired one round through the small opening of his vehicle's door. Alferez-Barahona did not move and continued to point his gun toward Detective Delgadillo. Detective Delgadillo then fired four more rounds while he simultaneously pushed his car door open the rest of the way and got out of the car. Detective Delgadillo stopped firing when Alferez-Barahona turned and ran from the scene.

Detective Delgadillo stated that at the time he was in shock. He looked at the Camry and observed the driver looking back at him. Detective Delgadillo was afraid the Camry would try to run him over, and so he pointed his gun at the Camry. The driver ducked, turned the wheels away from the direction of Detective Delgadillo, and drove quickly out of the parking lot of the shopping center.

At the same time, Alferez-Barahona ran southbound through the parking lot of the shopping center. Surveillance video captured Alferez-Barahona discarding his handgun. The gun was later recovered from a storm drain and determined to be a Polymer 80 semiautomatic handgun. When recovered, the gun was loaded with a bullet in the chamber and a partially seated magazine.

After the Camry drove away, Detective Delgadillo returned to his vehicle, donned his tactical vest and relayed "998" over the radio, advising his fellow officers that an "officer-involved shooting" occurred. Detective Delgadillo then removed the magazine from his gun and put it in his pocket. He reloaded the gun with a fresh, fully loaded magazine.

Officers responded quickly and Sergeant Tony Lee stayed with Detective Delgadillo. Five shell casings were located at the scene. Other responding officers observed Mr. Alferez-Barahona running in the area and ultimately took him into custody near the entrance of a mobile home park located at 2760 West Lincoln Ave. When officers noticed Alferez-Barahona appeared to be bleeding from the abdomen, they requested medical assistance.

At approximately 6:05 a.m., Anaheim Fire and Rescue Department arrived and began administering medical aid to Alferez-Barahona. The treating paramedic found Alferez-Barahona was alert and responsive, however, he had suffered four total gunshot wounds, two to his abdomen, one to his upper left arm, and one to his upper right arm. Alferez-Barahona was transported to University of California, Irvine Medical Center (UCIMC) for further treatment. His wounds were later determined to be non-life-threatening.

At approximately 9:54 a.m., Alferez-Barahona was advised of his Miranda rights and declined to make a statement or provide a DNA sample.

On November 10, 2020, Juan Carlos Ortiz Castaneda responded to APD. He identified himself as the driver of the Camry, stating he knew his car was involved in a shooting because he saw it on the news. After agreeing to be interviewed, Castaneda stated he was at the apartment complex to visit his sister. He agreed to give Alferez-Barahona a ride to the grocery store, even though it was very close to the apartment. When they arrived at the grocery store, it was closed. Alferez-Barahona then told him to stop the car in the pawn shop parking lot across from the apartment complex. Mr. Castaneda said Alferez-Barahona got out of the car and the next thing he knew, he heard gunshots. He was scared so he drove away. He stated he did not call anyone, because he didn't have a cell phone with him at that time. When asked about the location of the Camry, Castaneda said he didn't know the street he parked it on, and that a friend gave him a ride to the police station.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Clothing found on the parkway of 2760 West Lincoln Ave.
- Black jacket found on ground north of 2760 West Lincoln Ave.
- Black folding knife on ground north of 2760 West Lincoln Ave.
- Two black cell phones found on the ground under a 1987 blue motorhome CA license plate 2DYR525 parked at 2760 West Lincoln Ave.
- Silver and gold "Michael Kors" watch near the left front tire of a 1992 beige motorhome with CA license plate 6YES147 parked at 2760 West Lincoln Ave.
- Red and white bandana on the ground east of a 2003 silver SUV CA license plate 5ELW940 parked at 2760 West Lincoln Ave.
- Cartridge case with headstamp "WIN 9mm Luger" on the ground east of the rear passenger tire of Detective Delgadillo's undercover car parked at 2743 West Lincoln Ave.
- Cartridge case with headstamp "WIN 9mm Luger" on the ground east of the rear passenger tire of Detective Delgadillo's undercover car parked at 2743 West Lincoln Ave.
- Cartridge case with headstamp "WIN 9mm Luger" on the ground east of the rear passenger tire of Detective Delgadillo's undercover car parked at 2743 West Lincoln Ave.

- Cartridge case with headstamp "WIN 9mm Luger" on the ground under the front passenger door of Detective Delgadillo's undercover car parked at 2743 West Lincoln Ave.
- Cartridge case with headstamp "WIN 9mm Luger" on right front floorboard of Detective Delgadillo's undercover car parked at 2743 West Lincoln Ave.
- Black radio in northwest parking lot of the pawn shop at 2743 W Lincoln Ave.
- Black plastic clip in southwest parking lot of 2743 W Lincoln Ave.
- Tan "P80" handgun, loaded with a bullet in the chamber and partially seated magazine (serial# 40-23-SS) in the storm drain opening in the southeast corner of the pawn shop parking lot.
- Radio microphone on north sidewalk to the front of the pawn shop.
- Bullet strike mark east of the pawn shop driveway.
- Bullet fragment in the west parking lot of a tattoo shop at 2741 W Lincoln Ave.
- Bullet strike mark to the rear cargo door of 2020 gray minivan CA license plate 8LLH041 parked west of the east North Syracuse Street curb edge, facing north.
- Bullet fragment in the rear cargo door of 2020 gray minivan CA license plate 8LLH041 parked west of the east North Syracuse Street curb edge, facing north.

EVIDENCE ANALYSIS

Firearms Examination

Detective Delgadillo's Glock, Model 17, semi-automatic pistol, serial number GCS422, was test fired at OCCL and operated without malfunction.

It was determined the five "WIN 9mm Luger" cartridges found near the undercover vehicle matched test fired cartridge cases from Detective Delgadillo's gun.

The bullet fragments from the 2020 gray minivan and the bullet fragment in the west parking lot of the tattoo shop at 2741 W Lincoln Ave share class characteristics firing related marks with Detective Delgadillo's gun, but were too impact damaged to determine if each one was fired from his gun.

The Glock style Polymer80 semiautomatic .40 caliber pistol (no serial number) was test fired and operated without malfunction.

DNA Analysis

A DNA sample was later obtained from Alferez-Barahona. The handgun located in the storm drain was tested for DNA and found to have DNA from one major contributor and two trace contributors. Based on a comparison between the DNA sample provided by Alferez-Barahona and the DNA located on the handgun, OCCL determined there was "very strong support that Alferez[-Barahona] is the major contributor" to the DNA found on the handgun.

ALFEREZ-BARAHONA'S PRIOR CRIMINAL HISTORY

Alferez-Barahona's criminal history was reviewed and considered. Alferez-Barahona has a California Criminal History that dates back to 2020. He has previously been arrested for the following charges:

- Inflicting corporal injury on a spouse/cohabitant
- Battery to spouse/ex-spouse

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [California 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.

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

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.

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 APD Detective Delgadillo with Alferez-Barahona.

LEGAL ANALYSIS

The facts in this case are determined by considering all relevant evidence, including Detective Delgadillo's statements to the OCDA investigators, surveillance video, physical evidence collected, and all witness statements to OCDASAU Investigators.

The issue is whether the conduct of Detective Delgadillo on November 9, 2020, was without legal justification and criminally culpable. As previously stated in order to charge Detective Delgadillo with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for his conduct, including self-defense. If the actions of Detective Delgadillo were justifiable as lawful self-defense, then criminal charges will not be warranted.

As the Court of Appeal held, 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 potentially 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 appellate 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 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.

Detective Delgadillo was justified in believing that Alferez-Barahona posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, but mainly the conduct of Alferez-Barahona in the moments leading up to the shooting.

Alferez-Barahona was in a car that approached Detective Delgadillo from behind. Alferez-Barahona got out of his car, retrieved a loaded firearm, and held it in his right hand as he approached Detective Delgadillo. He peered inside Detective Delgadillo's car with the gun at the “low ready” position. When Detective Delgadillo asked Alferez-Barahona “What's up,” Alferez-Barahona ignored him and continued to point his gun toward Detective Delgadillo by raising his hand slightly. After Detective Delgadillo identified himself as a police officer, Alferez-Barahona maintained his position. Believing he was trapped in his car with a man pointing a gun at him and fearing that he would be shot, Detective Delgadillo fired one shot at Alferez-Barahona.

Despite being shot, Alferez-Barahona continued to point the gun at Detective Delgadillo. Detective Delgadillo then exited the vehicle and observed Alferez-Barahona still pointing his gun at him. Detective Delgadillo, continuing to fear for his safety, fired four additional rounds at Alferez-Barahona.

Detective Delgadillo's state of mind immediately prior to the shooting is also legally relevant. Detective Delgadillo was parked in a commercial parking lot conducting surveillance in relation to a reported child kidnapping. The Suspect was believed to potentially be a member or associate of a Mexican cartel. Detective Delgadillo knew cartel members can be very violent with police officers. Detective Delgadillo knew the Suspect had already threatened to kill the child if he didn't receive more money from the child's uncle.

When Alferez-Barahona approached, Detective Delgadillo was parked in an undercover car, and seated in the passenger seat. This significantly limited his movements and obviously prevented him from possibly driving away or escaping from the other side of the vehicle.

Detective Delgadillo believed Alferez-Barahona was associated with the kidnapping because Detective Delgadillo saw him come out of Apartment 4. He also observed Alferez-Barahona with a gun prior to the shooting and pointing it at the car. Detective Delgadillo realized he was in a vulnerable position. Detective Delgadillo knew from experience that when he identifies himself as a police officer, individuals will generally discard their weapons or run away. Alferez-Barahona's

failure to retreat or lower the weapon only raised his fear that Alferez-Barahona was going to shoot him.

Based on the evidence obtained during this investigation, OCDA would be unable to prove that Detective Delgadillo acted unreasonably or unjustifiably in his own self-defense. A jury analyzing these facts would properly conclude that it was reasonable for Detective Delgadillo to believe that his life was in danger. Therefore, Detective Delgadillo appears to have been justified when he shot Alferez-Barahona. Simply stated, Detective Delgadillo appears to have carried out his duties as a peace officer 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 Detective Delgadillo and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Alferez-Barahona on November 9, 2020.

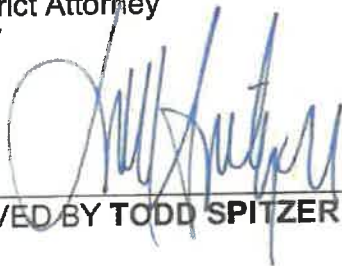
Accordingly, the OCDA is closing its inquiry into this incident.



LISA HARRIS
Deputy District Attorney
Gang Unit



READ AND REVIEWED BY BRETT BRIAN
Senior Assistant District Attorney
Felony Operations IV



READ AND APPROVED BY TODD SPITZER
District Attorney