



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
TODD SPITZER

October 4, 2023

Chief of Police David Valentin
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

Re: Custodial Related Death on April 2, 2022
Fatal Incident involving Luis Guerrero-Amezcu
District Attorney Investigations Case # SA 22-001023
Santa Ana Police Department Case # SAPD 22-07244
Orange County Crime Laboratory Case FR # 22-43984
Orange County Coroner's Office Case # 22-02161-AA

Chief Valentin,

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 the April 1, 2022, arrest and subsequent April 2, 2022, custodial death of Luis Guerrero-Amezcu.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Amezcu. 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 any Santa Ana Police Department (SAPD) personnel or any other person under the supervision of the SAPD in connection with this incident.

On April 2, 2022, OCDA Specials Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, five interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: SAPD reports, SAPD body-worn camera (BWC) video, Orange County Fire Authority (OCFA) reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, and officer processing reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Amezcu; criminal history records related to Amezcu; and other relevant reports and materials including audio recordings of the hotel property canvass that was conducted.

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

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findings of this review are expressly limited to determining whether any criminal conduct occurred, if the use of force was consistent with the law on the part of SAPD personnel, and if a legal duty of care was breached as it relates to Amezcua. 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 custodial deaths within Orange County when an individual dies while in custody. 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, scene processing, evidence collection, 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 memos. It is also common for the case to be reviewed by several experienced prosecutors and their supervisors. Ultimately, the District Attorney personally reviews and approves all officer involved shooting and custodial death letters.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING / USE OF FORCE / OR CUSTODIAL DEATH VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shootings, use of force, 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 shootings, use of force, 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 Friday, April 1, 2022, Security Guards (SG) 1 and 2, employed by Allied Universal Security, were working at the La Quinta Inn and Suites (LQIS), located at 2721 South Hotel Terrace in the city of Santa Ana. LQIS is a three-story building. Each of the rooms face outward to a common exterior walkway. The walkways are 62 inches wide and have a 43 inch-high protective railing. Each floor can be accessed by an elevator or stairs. SG 1 and SG 2 were uniformed and unarmed, and communicated with each other and hotel staff via portable radios carried clipped to their uniforms.

At approximately 11:45 p.m., SG 1 was dispatched to investigate a noise complaint on the third floor near room 336. When SG 1 arrived, he heard loud banging from room 335, followed by glass breaking. SG 1 then saw a male, later identified as Amezcua, climb out of Room 335's now broken window and onto the walkway. Using his radio, SG 1 called SG 2 for assistance.

SG 1 later explained to SAPD officers that after climbing out of the window, Amezcua grabbed him using both hands wrapped around his chest area, and attempted to "flip him" onto the ground. SG 1 said he believed Amezcua was trying to throw him to the ground or may have been trying to "flip him" over the third floor side railing. SG 1 said he felt Amezcua pull him down toward the ground one time. SG 1 believed that Amezcua was attempting to harm him.

After hearing the glass break and SG 1's radio call for assistance, SG 2 responded to the third floor.

When SG 2 arrived, he saw Amezcua running along the walkway, yelling incoherently, and slamming his body against a door. SG 2 then saw Amezcua turn and grab SG 1 from behind. As he did so, Amezcua ripped SG 1's radio off his uniform. SG 2 grabbed Amezcua from behind and was able to free SG 1 from Amezcua's hold. SG 2 then saw Amezcua holding SG 1's radio. While yelling incoherently, Amezcua attempted to bite the antenna off SG 1's radio. At this point, SG 1 and SG 2 backed off to the stairwell at the end of the hallway and awaited SAPD officers who they observed pulling into the parking lot.

SAPD had been notified at approximately 11:47 p.m., by a guest who observed the security guards struggling with Amezcua. The reporting party (RP), who was sitting in his car parked in the LQIS parking lot, said he could hear a security guard yelling, glass breaking, and "a loud sound." The RP could not tell, "if it was a gunshot or not." The RP stated that he exited his car and saw a commotion between Amezcua and two security guards up on the third floor walkway. During the call he yelled at Amezcua to get his hands off the security guard. He then told dispatch, "He's got something in his hand, I don't know what it is. Hey does he have a gun? He's got some kind of weapon in his hands." He then stated that the object was small, so it could be a knife.

In subsequent interviews with SAPD officers, the RP indicated that he thought he saw Amezcua strike the security guard twice in the chest with a closed fist. He did not see any weapons at that time. Shortly thereafter, he noticed something shiny in Amezcua's right hand and thought that he was possibly holding a weapon. In a subsequent interview with OCDA investigators, the RP again described it as a shiny object, possibly a knife. No weapons were found on Amezcua and the security guards did not report that Amezcua was armed.

At approximately 11:51 p.m., SAPD Officers Robert Espinoza and Darren Bland responded to the LQIS. SAPD dispatch informed them there was a report of glass breaking, yelling, and possible shots fired, though no weapon was seen. In addition, they were told a light-complected male Hispanic, wearing no shirt, black pants, possibly in possession of a knife, was pacing back and forth and charging toward the security guards on the scene.

At approximately 11:52 p.m., Officers Espinoza and Bland arrived outside the front lobby of the LQIS. As the officers walked towards the stairs, they could hear screaming and yelling coming from the third floor. A LQIS employee told them, "They're fighting on the third floor."

At approximately 11:53 p.m., Officers Espinoza and Bland ascended the stairs and made contact with SG1 and SG 2 at the staircase on the exterior corner of the 3rd floor walkway. The security guards directed the officers to Amezcua, who was down the walkway outside room 344. Amezcua

was shirtless, shoeless, agitated, and was pacing back and forth while yelling incoherently. The officers noticed that he was sweaty, his hands and arms were covered in blood, and he had a black object in his right hand. When he initially contacted Amezcua, Officer Espinoza stated he was unable to discern what the black object was in Amezcua's hand. However, based on the information provided by dispatch, Officer Espinoza believed Amezcua might be armed with a weapon.

Based on Amezcua's appearance, his profuse sweating (outside temperature was approximately 60 degrees), and his irrational and violent behavior, Officers Espinoza and Bland both believed Amezcua was under the influence of a stimulant.

Officer Espinoza drew his duty weapon and ordered Amezcua to get on the ground. Amezcua refused to comply; instead, he made several random and incoherent statements, then turned and walked away from the officers.

As Amezcua walked away, he threw the black object on the ground. Later determined to be SG 1's radio, it broke into several pieces upon hitting the concrete floor. Amezcua then stopped and picked up a piece of the broken radio.

When Officer Espinoza saw Amezcua pick up the piece of the radio, he transitioned from his handgun to his Taser. Fearing Amezcua might attempt to use the object to assault him, Officer Espinoza ordered Amezcua to drop what he was holding. Amezcua refused to comply.

From a review of Officer Espinoza's and Bland's BWC recordings, Amezcua was ordered to, "Stop" four times and to, "Get on the ground" five times. Amezcua was given approximately 30 commands during a one-minute period. However, Amezcua refused to comply with any of the commands.

John Doe 1, an LQIS employee, witnessed the officers' interactions with Amezcua. In an interview with SAPD officers, he indicated that he heard officers give verbal commands to Amezcua to "deescalate" the situation, however Amezcua did not follow those commands. According to John Doe 1, Amezcua walked towards the officers in an "aggressive way" and looked like he wanted to fight (both arms flexed and both fists clenched).

At approximately 11:55 p.m., Amezcua, who was approximately 10 feet away from the officers, began advancing towards them. Based on Amezcua's aggressive and irrational behavior, his refusal to comply with lawful commands to drop the broken portion of the radio and get on the ground, the possibility that he could have a concealed weapon in his possession, the narrowness of the hallway, and the low height of the railing, and out of concern for his safety and the safety of others in the immediate area, Officer Espinoza fired his Taser at Amezcua.¹ The Taser darts struck Amezcua in the upper torso, and he fell to the ground.

Once on the ground, Officers Espinoza and Bland approached Amezcua to handcuff him. However, Amezcua resisted by refusing to place his hands behind his back. Officers Espinoza and Bland struggled with Amezcua for approximately 55 seconds before SAPD Officer Cesare

¹ SAPD Taser policy allows for the deployment of a Taser when circumstances perceived by an officer indicate it's reasonably necessary to control a person who is violent and/or resisting. Further, officers must call medical personnel to remove the probes where the person is suspected of being under the influence of drugs and/or alcohol.

Marin arrived to assist. As Officer Marin was trying to control Amezcua's legs, he was kicked approximately four times. Additional officers arrived shortly thereafter. Officers Jacob Johnson, Joseph Biebrich, Michael Coleman, and Adrian Contreras all assisted in attempting to restrain Amezcua with a Hobble restraint device.²

Amezcua, however, violently resisted being restrained, kicking at officers and pinning his arm against his body. The struggle to restrain Amezcua lasted approximately three minutes. During this time, several of the officers struck him in the face and chest to try and control him. These blows were ineffective, and Amezcua continued to kick at the officers and resist. Ultimately, Officer Marin elbowed Amezcua in the face, and it was after that that the officers were able to place Amezcua in the Hobble restraint.

However, even upon being restrained, Amezcua continued to squirm his body, spit at officers and attempt to resist. Officers were eventually able to handcuff him.

At approximately 11:59 p.m., just after Amezcua was initially restrained, SAPD Officer Jesse Smith requested OCFA paramedics. This was done pursuant to SAPD Taser Policy that requires officers to notify paramedics after a Taser is deployed.

At approximately 12:04 a.m. on April 2, 2022, Amezcua appeared to calm down and become less resistant. Upon being asked, Amezcua lied about his name and refused to give a date of birth.

At approximately 12:05 a.m., though no holds were used to restrict Amezcua's airway during this struggle, officers asked Amezcua if he could breathe. Amezcua, who never lost consciousness, only continued to make incoherent statements.

At approximately 12:06 a.m., OCFA paramedics arrived. Due to Amezcua's combative and aggressive behavior, they could not obtain his vital signs. Paramedics believed Amezcua was in a state of agitated delirium and a danger to himself and others.

Meanwhile, Officer Johnson monitored Amezcua's breathing, pulse, and consciousness. He asked what drugs Amezcua had taken and Amezcua replied, "You already know." Officer Johnson asked how much he had had to drink, to which he replied, "Everything." Amezcua was asked if he felt "fucked up" and he said "yes." When asked if he was drunk, he replied "no." Officer Johnson did not note anything unusual about his breathing or pulse.

At approximately 12:12 a.m., in an attempt to calm Amezcua, paramedics administered five milligrams of Versed, a sedative and anesthetic, to Amezcua.

At approximately 12:18 a.m., Amezcua had calmed to the point where OCFA and SAPD were able to place him on a gurney for transport to a hospital.

At approximately 12:25 a.m., as OCFA paramedics were loading Amezcua into the Care Ambulance, they observed Amezcua become apneic. At that time, Amezcua went into cardiac arrest.

² A Hobble restraint is device which limits a subject's hand and foot movement while still allowing for a seating position. They are typically a webbed belt with a loop and self-locking clip, long enough to bind the ankles to handcuffed wrists.

Amezcuca was transported to Orange County Global Medical Center (OCGMC). While in transport, paramedics followed advanced lifesaving protocols. They initiated chest compressions, provided oxygen via an airway-bag valve mask, placed an intraosseous line, and administered three 0.1 mg/ml doses of Epinephrine, one 50 mg dose of sodium bicarbonate, and one 2 mg dose of Narcan.

At approximately 12:39 a.m., when the ambulance arrived at OCGMC, Amezcua's heart was in a pulseless electrical activity rhythm. OCGMC medical personnel assumed medical care for Amezcua.

At approximately 12:43 a.m., Amezcua's heart was revived, but then returned to cardiac arrest. Amezcua was again resuscitated, but was deemed by hospital personnel to be in critical condition. Over the next eight hours, Amezcua went into cardiac arrest six more times. Despite all life-saving efforts, Amezcua ultimately could not be stabilized. Doctors pronounced Amezcua deceased at 8:55 a.m. on April 2, 2022.

During Amezcua's treatment, medical staff conducted a Computerized Tomography (CT) scan. Dr. Andrew Breiterman determined that there was no evidence of a brain bleed or any indication of trauma. Dr. Breiterman found that Amezcua had suffered a Hypoxic Brain Injury (HBI), a term used to describe a diffuse brain injury as a result of global, temporary loss of blood supply and oxygen. The most common causes of HBI include cardiac arrest, vascular catastrophe such as an aortic aneurysm, carbon monoxide poisoning, drug overdose, and head trauma.

On April 2, 2022, at 1:18 p.m., SAPD Detective Justo Capacete and OCDA Investigator Claudia McCarthy spoke with Amezcua's mother. Amezcua's mother explained that Amezcua had abused drugs for approximately six years. While Amezcua lived with her, he would experience bouts of paranoia and would imagine smelling gas. In January of 2022, Amezcua's mother moved Amezcua into the LQIS, where she worked. He moved into Room # 335.

While Amezcua stayed at the LQIS, his mother periodically cleaned his hotel room. Occasionally while cleaning Amezcua's room, she would find small plastic baggies containing a white powdery substance, which she believed was cocaine. Approximately one week before this incident, she noticed Amezcua behaving strangely. Amezcua would unplug appliances, complain about smelling gas, and indicated he had ingested an unknown pill.

AMEZCUA'S INJURIES AND CONDITION - ORANGE COUNTY GLOBAL MEDICAL CENTER

On April 2, 2022, personnel from the Orange County Sheriff-Coroner's Office and Orange County Crime Lab entered OCGMC to photograph and process Amezcua's body.

Amezcuca's body was examined and the following observations were made:

- Airway tube with strap, mouth
- Intravenous (IV) line with tubing, left upper arm
- Intravenous (IV) line, right antecubital
- Pulse oximeter lead, right middle finger
- Pulse oximeter lead, right ring finger
- Intravenous (IV) line, right upper thigh near the groin
- Intravenous (IV) line with tubing, left upper thigh near the groin
- Scratches and bruising, forehead and face
- Sutures over the left eyebrow
- Scratches and bruising, left shoulder

- Scratches and bruising, left upper chest
- Scratches and bruising in the center of the chest
- Scratches, cuts, and bruising, right hand and arm
- Scratches, cuts, and bruising on the left hand and arm
- Bruising and swelling, right flank
- Large scrape, right hip
- Large scratch and bruising, left hip
- Scratches and bruising in the center of the back
- Scratches and bruising, the front portion of both legs and feet

SCENE DESCRIPTION - LA QUINTA INN AND SUITES

The following items of evidence were observed SAPD CSI Officer Gabriela Garcia:

- Blood: located on outdoor hallway railing outside room #333
- Furniture damaged and scattered throughout room #335
- Personal belongings scattered throughout room #335
- Air conditioning unit removed from wall; broken into pieces inside room #335
- Electrical sockets from bathroom of room #335 pulled out
- West facing 6' x 6' window of room #335 shattered and window frame torn off
- Shattered glass located on ground outside broken window of room #335
- Blood: on broken window frame of room #335
- Blood: located on ground on hallway outside room #335
- Blood: located on wall outside of broken window frame outside room #335
- Blood: located on ground in hallway outside room #344
- Blood: located on outside vent in hallway outside room #344

EVIDENCE COLLECTED - LA QUINTA INN AND SUITES

The following items of evidence were collected and examined SAPD Sergeant Sergio Gutierrez:

- Black and yellow Taser (serial # X4000404W) with expended wire and cartridge: located on ground in hallway outside room #344
- Navy blue Nike long sleeve shirt: located on ground in hallway outside room #344

AUTOPSY

On April 5, 2022, at approximately 9:06 a.m., Forensic Pathologist Etoi Davenport conducted a post-mortem examination of Amezcua at the Orange County Sheriff-Coroner Forensic Science Center. Dr. Davenport noted that Amezcua's heart was mildly enlarged and that he had external injuries to the body but no significant internal injuries. Dr. Davenport determined the cause of death to be acute cocaine with levamisole³ intoxication and the manner of death was an accident.

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Amezcua's antemortem and postmortem blood was collected. 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:

³ Levamisole is a medication often prescribed to treat parasitic worms in humans and animals. It is also often used as a cutting agent in cocaine to increase bulk and increase the appearance of purity.

Drug/Alcohol	Antemortem Blood	Postmortem Blood
Anhydroecgonine methyl ester	Not Detected	Detected
Benzoylecgonine	4.53 ± 0.37 mg/L	5.55 ± 0.55 mg/L
Cocaine	1.94 ± 0.17 mg/L	0.347 ± 0.025 mg/L
Levamisole	Detected	Detected

Taser Examination

On August 16, 2022, Officer Espinoza's Taser (serial # X4000404W) was removed from evidence at the SAPD. The Taser battery was removed and was placed on a docking station to download the Taser activation information. After the download was complete, a usage summary was generated for the date range of April 1, 2022 through April 2, 2022. During this time frame, Officer Espinoza was in control of Taser (serial # X4000404W) for 10 hours and 7 minutes. The usage summary indicated there was one trigger pull and one cartridge activation from this Taser during the listed time frame.

Serial #	Local Date	Local Time	Duration Time (Seconds)	Battery Power (%)
X4000404W	04/01/2022	11:55:34 p.m.	3.56	95

AMEZCUA'S PRIOR CRIMINAL HISTORY

Amezcu had a California criminal history record dating back to 2005 that revealed arrests for the following violations:

- 2005: Penal Code section 245(a)(1) - Assault with a Deadly Weapon (Conviction: misdemeanor)
- 2016: Vehicle Code section 12500(a) - Driving Without a Valid License (Dismissed)
- 2020: Penal Code section 273.5 – Inflict Corporal Injury on Spouse/Cohabitant (Arrest. No disposition noted)

STANDARD LEGAL PRINCIPLES

I. OFFICER USE OF FORCE CASES

Possible criminal charges against an officer involved in a use of force case 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 the SAPD officers and Amezcua.

II. FAILURE TO PROVIDE LEGAL DUTY CASES

Homicide is the killing of one human being by another. Murder, voluntary manslaughter, and involuntary manslaughter are types of homicide. To prove that a person is guilty of murder, it must be proven:

- a. The person committed an act that caused the death of another human being;
- b. When the person acted he/she had a state of mind called malice aforethought; and
- c. He/she killed without lawful excuse or justification.

There are two kinds of malice aforethought, express malice and implied malice. Express malice is when the person unlawfully intended to kill. Implied malice requires that a person intentionally committed an act, the natural and probable consequences of the act were dangerous to human life, at the time he/she acted he/she knew his/her act was dangerous to human life, and he/she deliberately acted with conscious disregard for human life.

A person can also commit murder by his/her failure to perform a legal duty, if the following conditions exist:

- a. The killing is unlawful (i.e., without lawful excuse or justification);
- b. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
- c. The failure to act is dangerous to human life;
- d. The failure to act is deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

A person can also commit involuntary manslaughter by failing to perform a legal duty, if the following conditions exist:

- a. The person had a legal duty to the decedent;
- b. The person failed to perform that legal duty;
- c. The person's failure was criminally negligent; and
- d. The person's failure caused the death of the decedent.

In *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th231, 251, the court held that there is a "special relationship" between custodian and inmate:

"The most important consideration in establishing duty is foreseeability. It is manifestly foreseeable that an inmate may be at risk of harm....Prisoners are vulnerable. And

dependent. Moreover, the relationship between them is protective by nature, such that the jailer has control over the prisoner, who is deprived of the normal opportunity to protect himself from harm inflicted by others. This, we conclude, is the epitome of a special relationship, imposing a duty of care on a jailer owed to a prisoner, and we today add California to the list of jurisdictions recognizing a special relationship between jailer and prisoner.”

California Government Code 845.6 provides that the special relationship that exists in a custodial setting gives rise to a legal duty, as follows:

“...A public employee and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care.”

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he or she acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor; however, it does not need to be the only factor that causes the death.

LEGAL ANALYSIS

I. OFFICER USE OF FORCE

The facts in this case are determined by considering statements to OCDA investigators, which were supplemented by additional percipient witness statements and relevant physical evidence related to this incident.

The issue is whether the conduct of any SAPD officers on April 1 and 2, 2022, was criminally culpable and without justification. As stated above, in order to charge any SAPD officer with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for their conduct. Therefore, in this case, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense or defense of others. If any SAPD officers' actions on April 1 and 2, 2022 were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the California 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 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.”

(*Id.* at 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.

In this case, Officer Espinoza was justified in believing that Amezcua posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, including what he had been told about Amezcua's conduct before officers arrived, and what he experienced during the course of Amezcua's contact with SAPD officers.

Prior to encountering Amezcua, Officers Espinoza and Bland were dispatched to the scene regarding a possible gunshot. Notably, dispatch also indicated that the suspect was possibly in possession of a knife and was charging at the hotel security guards.

When Officers Espinoza and Bland arrived on scene and made contact with Amezcua, his hands and arms were covered in blood and he had an unknown black object (later determined to be the radio Amezcua took from SG 1) in his right hand. Based on the information provided by dispatch, Officer Espinoza believed Amezcua might be armed with a weapon.

Officer Espinoza drew his firearm and ordered Amezcua to get on the ground. An incoherent Amezcua refused to comply, walked away, and smashed the radio on the ground. The radio broke into several pieces, one of which Amezcua picked up. When Officer Espinoza determined that Amezcua did not have a gun or knife in his hand, he transitioned to less lethal force (holstered his firearm and removed his Taser).

However, Officer Espinoza still feared that Amezcua might attempt to use the broken piece of the radio to assault him. He also knew that Amezcua had not been searched for any additional weapons. Officer Espinoza ordered Amezcua to drop what he was holding but Amezcua refused. Officer Espinoza gave Amezcua approximately 30 commands in an attempt to deescalate the situation. However, Amezcua failed to comply with any of the commands he was given. Instead,

Amezcuca aggressively walked towards Officers Espinoza and Bland. Amezcuca continued to advance and closed to within ten feet of Officers Espinoza and Bland. It was at this point that Officer Espinoza fired his Taser at Amezcuca.

Based on Amezcuca's aggressive and irrational behavior, his refusal to comply with lawful commands to stop, his refusal to drop the object he was holding, or get on the ground, it was objectively reasonable for Officer Espinoza to believe the use of non-lethal force was necessary. Amezcuca posed an imminent threat to the safety of Officer Espinoza and to the safety of others in the immediate area. As a result, Officer Espinoza's response and his use of force was justified.

Furthermore, Officers Espinoza, Bland, Marin, Johnson, Biebrich, Coleman, and Contreras were all justified in believing that force was necessary to subdue Amezcuca and place him under arrest. Amezcuca had successfully prevented Officer's Espinoza, Bland, and Marin from handcuffing him. He was thrashing violently and kicking at the officers. Even when the other officers arrived to help, they could not subdue Amezcuca. This melee was taking place in a very narrow walkway with only a waist high retainer to keep them from falling three stories. It was not unreasonable for the officers to hit, elbow, and knee Amezcuca in their attempts to subdue him. The officers did not employ chokeholds or use batons. The force used was appropriate for the circumstances.

As described above, for any SAPD officer 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 used force on Amezcuca. The prosecution would be unable to carry this burden in this case. Simply stated, Officers Espinoza, Bland, Marin, Johnson, Biebrich, Coleman, and Contreras did not commit a crime, to the contrary, they carried out their duties as peace officers in a reasonable and justifiable manner.

II. FAILURE TO PERFORM A LEGAL DUTY

In the present case, there is no evidence of express or implied malice on the part of Officer Espinoza or any other SAPD officer. Thus, the only possible type of homicide to analyze in this situation is murder or manslaughter under the theory of failure to perform a legal duty.

The SAPD owed Amezcuca a legal duty of care once he was taken into custody, but the evidence does not support a finding that this duty was breached – either intentionally (as required for murder), or through criminal negligence (as required for involuntary manslaughter). California Government Code 854.6 provides that a public employee and the public entity are liable if the employees knows or has reason to know that the prisoner is in need of immediate medical care and fails to take reasonable actions to summon such care.

Officers from the SAPD took reasonable action to summon care for Amezcuca once he was restrained. This request came approximately four minutes after Officer Espinoza had employed his Taser on Amezcuca. OCFA paramedics arrived and made initial contact with Amezcuca on April 2, 2022, at approximately 12:06 a.m., 7 minutes after being called.

The evidence clearly establishes that officers from SAPD promptly requested medical care for Amezcuca. Furthermore, once Amezcuca had been restrained and handcuffed, Officer Johnson monitored Amezcuca's breathing, pulse, and consciousness. Officer Johnson continued to monitor Amezcuca's breathing and pulse even while being tended to by paramedics.

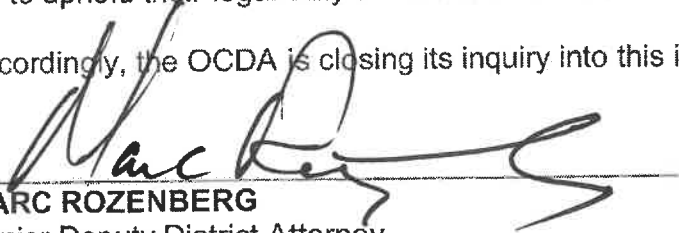
In short, there is no evidence that SAPD personnel failed to provide all reasonable and necessary care to Amezcuca after being restrained.

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 all applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of any SAPD officer.

There is substantial evidence that the SAPD's officers' use of force with respect to Amezcua were reasonable and justified under the circumstances. Amezcua's cause of death was determined to be the result of acute cocaine and levamisole intoxication, a condition completed unrelated to any SAPD use of force. Furthermore, at no time after being restrained did any officer from the SAPD fail to uphold their legal duty of care to Amezcua.

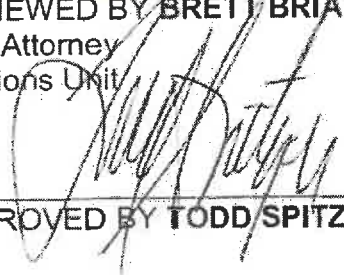
Accordingly, the OCDA is closing its inquiry into this incident.


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READ AND REVIEWED BY BRETT BRIAN

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