



OFFICE OF THE

DISTRICT ATTORNEY

ORANGE COUNTY, CALIFORNIA

TONY RACKAUCKAS, DISTRICT ATTORNEY

February 9, 2016

Sheriff Sandra Hutchens
Orange County Sheriff's Department
550 N. Flower Street
Santa Ana, CA 92703

Re: Officer-Involved Shooting on May 12, 2015
Fatal Incident Involving Alec Vicken Ouzounian
District Attorney Investigations Case # S.A. 15-009
Orange County Sheriff's Department Case # 15-093645
Orange County Crime Laboratory Case # 15-47443

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving on-duty Orange County Sheriff Department Deputies James Pendley and Shawn Murray. Alec Vicken Ouzounian, 40, died as a result of his injuries. The incident occurred in the City of Rancho Santa Margarita on May 12, 2015.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the May 12, 2015, fatal, officer-involved shooting of Ouzounian. 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 Orange County Sheriff's Department (OCSD) deputies 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 May 12, 2015, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 11 interviews were conducted, and 10 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: OCSD reports, audio from the 911 call, dispatch and radio traffic recordings and individual deputy's digital audio recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Ouzounian; criminal history records related to Ouzounian including prior incident reports; the personnel records of Deputies Pendley and Murray; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

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The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and have reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD deputies or personnel, specifically Deputies Pendley and Murray. The OCDA will not be addressing any possible issues relating to 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 a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET, Gang, and Special Prosecution Units review fatal, as well as 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, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. 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 or sheriff's deputies. Deputies Pendley and Murray gave voluntary statements to OCDA Investigators on May 18, 2015.

FACTUAL SUMMARY

During the course of this investigation, 11 interviews were conducted, and 10 additional witnesses were contacted during the supplemental canvass interviews. After reviewing deputy and witness statements, OCSD reports, laboratory and identification reports, audio recordings and communications, radio traffic, incident scene photographs, and other relevant reports and materials, the following summary of events was developed as a result of this investigation:

Ouzounian was a 40-year-old male who was a self-employed toy maker. Ouzounian resided alone in the City of Rancho Santa Margarita. Ouzounian's father believed that Ouzounian had an undiagnosed chemical imbalance. According to the father, Ouzounian had irrational mood changes, was extremely anti-social, and believed he was a "god". The father also noted that for the past four to seven years, Ouzounian frequently talked about committing suicide, including the methods and means in which he would commit suicide. Ouzounian also threatened to kill his parents during this same time period.

As a result of Ouzounian's behavior, his father contacted Orange County Adult Protective Services and requested that a social worker meet and talk to his son. On May 8, 2014, an Orange County Adult Protective Services Senior Social Worker went to Ouzounian's residence in an attempt to speak with him. The social worker attempted to make contact with Ouzounian by knocking on his door several times. Ouzounian never answered the door and the social worker left the location without speaking to him.

On May 12, 2015, at approximately 1:30 p.m., Ouzounian telephoned his parents. During this call, the father attempted to discuss a variety of topics with his son, including Ouzounian's finances, the status of his house payments, and his refusal to cooperate with the social worker they had sent to his house. Ouzounian told his father that he was inside the residence at the time the social worker was knocking on the door. The manner in which the social worker was knocking on the door had upset Ouzounian, so he refused to answer the door. The father tried to explain to Ouzounian why the social worker was sent to his residence. Ouzounian continually interrupted his father and became very angry. This incited a verbal argument and Ouzounian told his father that Ouzounian would kill the social worker if she returned to his residence. Ouzounian also told his father that he was holding a knife to his throat and was going to kill himself. According to the father, Ouzounian said, "I have had enough of all this" and hung up the telephone.

At approximately 2:03 p.m., the father called 911 and during an 8-minute conversation informed dispatchers of his son's perceived chemical imbalance, that he "thinks he is god, among other things" and his threat to commit suicide. Ouzounian's father informed the dispatcher that Ouzounian had recently threatened to kill a social worker, had a history of threatening suicide and had also made threats to kill his parents in the past. The father also told the dispatcher that the police should expect violence from Ouzounian. At approximately 2:04 p.m., OCSD Deputy Susan Krauth and OCSD Deputy Calvin Silva were dispatched to Ouzounian's residence. Both units responded with lights and sirens and arrived at the residence at approximately 2:09 p.m. OCSD Sergeant David Caler responded as the on-scene supervisor. Sergeant Caler was wearing an audio recording device and captured audio of what occurred at the scene.

Within minutes of Deputies Krauth and Silva's arrival, Deputies Justin Mathieson, Shawn Murray, Carlos Barrientos, and James Pendley also arrived on scene. Deputy Mathieson was Deputy Murray's training officer, while Deputy Barrientos was Deputy Pendley's training officer. Deputies Murray and Pendley were both wearing digital audio recording devices that were activated during this call for service. Both deputies' audio recording devices captured audio of the events that took place at the scene. The audio recording devices carried by Sergeant Caler and Deputies Murray and Pendley worked in conjunction with the digital video recorders installed in the OCSD patrol vehicles they were assigned to during their shift.

The deputies knocked on the door and asked Ouzounian, "Please open the door, we're here to help you. [We] just want to see that you are ok, answer the door and speak with us." Ouzounian never responded or answered the door. Based on Deputy Krauth's request, dispatch called Ouzounian's landline phone and his cell phone. Both calls were unanswered. Despite the unanswered calls, Deputy Krauth could hear someone moving around on the second floor of the residence. At approximately 2:14 p.m., Orange County Fire Authority (OCFA) was requested to respond to the scene. When OCFA arrived, they staged outside the residence at a safe distance and prepared to render medical aid if necessary.

Ouzounian's father was also present at Ouzounian's residence but he did not have a key to the premises. However, the father had a garage door remote control at his home. Therefore, the father left the area to retrieve the garage door remote. The father returned to the residence with the remote controlled garage door opener and opened the garage door. The garage led to an unlocked door into the residence. At this point the Deputies told the father that they could not enter the residence because it would infringe on Ouzounian's constitutional rights. The deputies explained that there were no exigent circumstances and without exigent circumstances they had no legal authority to enter the residence. At approximately 2:44 p.m., after deputies informed Ouzounian's father that they had no legal right to enter the residence, the father entered the residence, of his own accord, through the garage. Within seconds of entering, the father screamed for help. Deputies Krauth, Silva, Mathieson, Murray, Barrientos, and Pendley all entered the residence in response to the father's cry for help. When they entered the residence, the deputies saw the father standing at the top of the stairway in front of a closed bathroom door. The deputies observed that the wood flooring on the second level of the residence in front of the bathroom door and into the master bedroom was covered in blood. Due to the sheer volume of blood present on the floor Deputy Krauth believed whoever was bleeding was likely deceased. Deputy Krauth instructed the father to leave the scene, and he complied and went downstairs. Via her radio, Deputy Krauth requested medics to respond to the scene.

Deputy Krauth held a position to the left of the bathroom door. Deputy Murray was on Deputy Krauth's right side and Deputy Pendley was positioned at the right side of the doorway. Deputies Krauth, Murray and Pendley held their positions outside the closed bathroom door while the master bedroom was searched. Deputies Barrientos and Mathieson checked the master bedroom and adjoining master bathroom for any additional subjects that might be inside the residence. No additional subjects were located, however, further blood evidence was observed. Deputies Barrientos and Mathieson then held a position at the entrance to the master bedroom. Deputy Krauth checked the bathroom door and found it was locked so he instructed Deputy Pendley to kick open the door. Deputy Pendley kicked the bathroom door open which allowed the deputy to see that the interior of the bathroom was covered in blood and Ouzounian was seated naked inside the bathtub. The tub was filled approximately $\frac{3}{4}$ of the way full with water that was blood red. Deputy Krauth could see Ouzounian making a stabbing motion toward his torso with his left arm. Deputy Pendley saw a black handled object in Ouzounian's left hand and also observed Ouzounian stabbing at his left side. Deputy Pendley ordered Ouzounian to "drop the knife." Ouzounian looked at the deputies in the doorway, stood up and quickly charged in their direction. At this same time a deputy can be heard on the digital audio recording yelling for Ouzounian to "get down."

Deputies Pendley and Murray both stated that they believed Ouzounian was armed with a knife when Ouzounian charged at them. Based on these circumstances, Deputies Pendley and Murray stated that they believed Ouzounian was trying to kill or hurt them and/or their fellow deputies. Deputy Murray fired one round from his duty pistol as Deputy Pendley simultaneously fired a less lethal bean bag round from his department issued shotgun. Both rounds struck the left side of Ouzounian's chest as he advanced toward the deputies positioned outside the bathroom. Deputy Pendley shuffled to the side as Ouzounian's forward momentum propelled him out of the bathroom and down the staircase where he came to rest on the first landing of the staircase. Deputy Krauth advised dispatch via his radio that shots were fired.

At approximately 2:47 p.m., Deputy Krauth requested OCFA respond inside the residence to provide medical aid to Ouzounian. At approximately 2:50 p.m., OCFA arrived at the residence. At approximately 2:52 p.m., OCFA paramedics made contact with Ouzounian on the stairway landing. Paramedics noticed Ouzounian had an apparent gunshot wound to the left side of his chest and was taking agonal breaths. Paramedics also observed approximately 20-30 puncture wounds on Ouzounian's body. Ouzounian was moved to the first floor of the residence where cardio pulmonary resuscitation (CPR) was performed and oxygen was administered via a bag valve mask. At approximately 2:58 p.m., Ouzounian was loaded into an ambulance and transported to Mission Hospital, in the City of Mission Viejo. At approximately 3:11 p.m., Ouzounian arrived at Mission Hospital and was transferred to the care of the on duty trauma personnel. At this time, Ouzounian was in full cardiac arrest. The attending physicians at Mission Hospital observed numerous stab wounds to multiple areas of Ouzounian's body and a single gunshot wound to the left chest that traveled lateral to the heart and down into the right side abdomen. The attending physicians performed a thoracotomy with inter-cardiac massage and administered several doses of inter-cardiac Epinephrine, saline fluid and 10 bags of blood product. Ouzounian did not respond to the medical treatment and at 3:34 p.m., was pronounced deceased.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- EM #1 – Federal 40SW cartridge case
- EM #2 – Shotgun wad
- EM #3 – Shotgun cup
- EM #4 - Beanbag
- EM #5 – Shotgun wad
- EM #6 – Shotgun cartridge case
- EM #7 – Wet bloody clothing
- EM #8 – Dry clothing
- Black handled steak knife with an approximately 6-inch blade (upstairs bathroom)

- Samsung cellular telephone
- Apple MacBook laptop computer
- Apple desktop computer
- Handwritten notes located inside the residence
- Magazine addressed to Alec Ouzounian
- Yellow t-shirt with multiple holes

EVIDENCE ANALYSIS

Firearms Examination

Deputy Murray's Glock pistol and Deputy Pendley's Remington shotgun were test fired at the Orange County Crime Lab and both operated and fired without malfunction. The fired cartridge case from the scene (EM #1) was determined to have been fired in Deputy Murray's Glock pistol.

Autopsy

On May 16, 2015, a post-mortem examination of Ouzounian was conducted by a forensic pathologist. Following the autopsy, the forensic pathologist concluded that the bullet traveled through Ouzounian's chest, diaphragm, liver, stomach, pancreas, aorta/kidney before lodging in the lumbar area of the vertebrae. The forensic pathologist also noted that Ouzounian also had numerous stab wounds to his upper and lower torso, neck, left and right legs, and left and right arms. The forensic pathologist concluded that Ouzounian's cause of death was due to the penetrating gunshot wound.

Toxicological Examination

A sample of Ouzounian's blood was collected. The OCSO crime laboratory examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Cannabinoids	Postmortem Blood	Presumptive Positive

OUZOUNIAN'S PRIOR CRIMINAL HISTORY

Ouzounian's criminal history was reviewed and considered. Ouzounian had a California Criminal History that dates back to 2004. He has previously been arrested for the following charges:

- Indecent exposure
- Disorderly conduct

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a fatal 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, 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 necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable cause" to believe that the person has committed a felony. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 333.) 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 any police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer “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 reasonable force to effect the arrest or to prevent escape or to overcome resistance.” The Court of Appeal in *Kortum* further held that deadly force against a fleeing felony suspect is justifiable only when the felony “is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.” (*Kortum v. Alkire*, *supra*, 69 Cal.App.3d at p. 333.)

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/herself from attack if, as a reasonable person, he/she had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which he/she 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 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 OCSD Deputies Pendley and Murray with Ouzounian.

LEGAL ANALYSIS

The facts in this case are determined by considering both Deputies Pendley and Murray’s statements to the OCDA Investigators, which were supplemented by other relevant material and witnesses present during the incident.

The issue in this case is whether the conduct of either or both Deputies Pendley and Murray on May 12, 2015, was criminally culpable and without justification. As stated above, in order to charge Deputies Pendley and Murray 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 deputies’ conduct. In order to lawfully charge Deputies Pendley and Murray with a crime, the

prosecution must be able to prove beyond a reasonable doubt that they did not act in lawful self-defense or defense of others. If the actions of Deputies Pendley and Murray were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted. As it should be clear based on all the available evidence, the deputies in this case did not commit any crimes in shooting Ouzounian.

It is well settled that “unlike 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 Court of Appeal has 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.) This is exactly what the deputies were facing as Ouzounian was charging at them inside the bathroom of his residence seconds after they saw him holding a knife and stabbing himself.

Deputies Pendley and Murray were clearly justified in believing that Ouzounian posed a significant threat of death or serious physical injury to them and others. This conclusion is based on the totality of all the circumstances, including the conduct of Ouzounian in the moments leading up to the shooting. When the deputies discovered Ouzounian sitting in the blood filled bathtub, holding a black handled object in his left hand while making a stabbing motion toward his torso with his left arm, the deputies reasonably and accurately believed Ouzounian was armed with a knife and was stabbing himself (the knife was later recovered from the upstairs bathroom). Deputy Pendley ordered Ouzounian to drop the knife two times. After giving this order, Ouzounian looked at the deputies in the doorway, stood up and quickly charged in their direction. As this occurred, a deputy also ordered Ouzounian to get down. Ouzounian did not comply and continued charging towards the deputies.

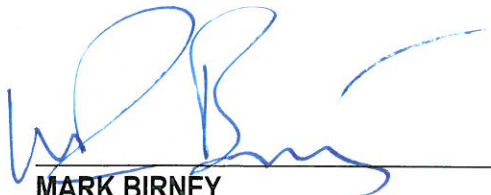
Deputies Pendley and Murray believed Ouzounian was still armed with the knife when Ouzounian charged at them. This is completely reasonable in light of all the circumstances. Ouzounian's father had previously informed the 911 dispatcher that Ouzounian had an undiagnosed chemical imbalance, had threatened to commit suicide, had previously threatened to kill his parents, and had recently threatened to kill a social worker. The father also informed dispatch to expect violence from Ouzounian. Based on these circumstances, Deputies Pendley and Murray believed Ouzounian was trying to kill or hurt them and their fellow deputies. This belief by the deputies was reasonable and justifiable. As such, their actions were lawful and appropriate.

It should also be noted that in order for Deputies Pendley and Murray to be justly and lawfully charged and convicted with a crime in this incident, it would be the OCDA's burden to prove beyond a reasonable doubt that Deputies Pendley and Murray did not act in reasonable and justifiable self-defense or defense of another when they shot at Ouzounian. 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 Deputies Pendley and Murray to believe that their lives or the lives of others in the residence were in danger. Both Deputies Pendley and Murray were justified when they shot at Ouzounian. Simply stated, Deputies Pendley and Murray did not commit a crime. Both Deputies carried out their duties as peace officers in a reasonable and justifiable manner under the circumstances.

CONCLUSION

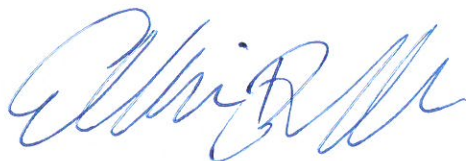
Based upon a review of all of the evidence provided to and obtained by the OCDA and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of either Deputy Pendley or Deputy Murray. On the contrary, there is substantial evidence that the deputies actions were reasonable and justified under the circumstances when they shot Ouzounian on May 12, 2015.

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



MARK BIRNEY

SENIOR DEPUTY DISTRICT ATTORNEY
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READ AND APPROVED BY **EBRAHIM BAYTIEH**

ASSISTANT DISTRICT ATTORNEY

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