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June 9, 2017

Acting Chief James Schnabl
Santa Ana Police Department
60 Civic Center Plaza
Santa Ana, CA 92701

Re: Officer-Involved Shooting on May 24, 2016
Non-Fatal Incident involving Alma Alicia Martinez
District Attorney Investigations Case # S.A. 16-016
Santa Ana Police Department Case # 16-13637
Orange County Crime Laboratory Case # FR 16-48955

Dear Acting Chief Schnabl,

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 Santa Ana Police Department (SAPD) Officer Julio Gallardo. Alma Alicia Martinez, age 27, survived her injuries. The incident occurred in the City of Santa Ana on May 24, 2016.

OVERVIEW

This letter contains a description of the scope and legal conclusions resulting from the OCDA's investigation of the May 24, 2016, non-fatal, officer-involved shooting of Alma Alicia Martinez. 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 SAPD officer 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 24, 2016, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 13 interviews were conducted, and 12 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: civilian surveillance and cellular phone video; civilian social media posts; SAPD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including DNA, officer processing and firearms examination reports; crime scene investigation photographs; photographs related to the injuries sustained by Martinez; criminal history records related to Martinez, including prior incident reports; 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 on the part of SAPD officers or personnel, specifically Officer

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Gallardo. The OCDA will not be addressing any possible issues relating to 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 the OCDA does not release any information that may prejudice the defendant's right to receive a fair trial while her case is still pending.

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/Gangs, and Special Prosecutions 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. Officer Gallardo declined to give a voluntary statement to OCDA Investigators.

FACTUAL SUMMARY

On May 24, 2016, at approximately 7:37 p.m., the SAPD began receiving reports of a woman riding a bicycle while brandishing a knife in the area of First Street and Harbor Boulevard in Santa Ana. The female was later identified as Alma Martinez. Corporal Jaime Rodriguez was dispatched to that location but did not see Martinez.

During this time, Martinez went to the El Rancherito Market located at 4410 West Fifth Street in Santa Ana. Martinez approached 77-year-old John Doe, who was seated with his wife in his parked car in a handicapped space in the market parking lot. Martinez opened the right rear passenger door of John Doe's car and began to throw items from the back seat into the parking lot. John Doe did not know Martinez. Martinez sat down in the backseat and John Doe asked what Martinez wanted. Martinez replied with profanity and said, "Give me the keys. Give me the money," numerous times. John Doe and Martinez got out of the car. John Doe told Martinez he did not have money. Martinez pulled a large kitchen knife out of her waistband and started chasing John Doe. Martinez swung the knife several times at John Doe and stabbed him in the forearm. John Doe and his wife ran into the market and held the door closed so Martinez could not enter. Video surveillance from the market showed Martinez following John Doe to the market, where she stabbed at him multiple times with her knife while he and his wife held the doors closed to prevent her entry.

At approximately 7:48 p.m., SAPD dispatch received reports of the stabbing and possible carjacking attempt at the market. Corporal Rodriguez, in full police uniform and driving a marked SAPD black and white patrol vehicle, arrived and saw Martinez trying to "shove the bike through the open door" of John Doe's car. Martinez looked directly at Corporal Rodriguez and waved what he described as a "large kitchen knife" in the air. Corporal Rodriguez thought

Martinez looked “under the influence” and described a “wicked” look on her face. Martinez then mounted her bicycle and rode eastbound in the middle of Fifth Street, waving the knife above her head.

Additional uniformed SAPD officers arrived to assist, including Officers Julio Gallardo and Otilio Sanchez. As Martinez rode approximately 5 miles per hour on Fifth Street, at least five marked SAPD black and white patrol vehicles followed her from a distance of approximately 20 feet. Some had their overhead red and blue lights activated, and periodically used their sirens and horns. Corporal Rodriguez gave repeated commands to Martinez to stop and drop the knife, using his patrol vehicle’s public address system. Bystanders and other police officers heard the orders clearly. Martinez ignored the directives and continued to look back at the officers and flail the knife above her head.

Martinez continued to ride her bicycle east on Fifth Street, toward Cesar Chavez Campesino Park, located at 3311 West Fifth Street. A motorist driving a Ford Mustang noticed Martinez and the police pursuit coming toward him and pulled over on the north side of Fifth Street, near the entrance to the park. The park was heavily populated with approximately 50 people, including many families with young children in the park and on the adjacent sidewalks near the driveway.

Martinez appeared to be having difficulty with her bicycle and dropped it in the middle of Fifth Street. Officers exited their vehicles and approached her on foot, forming a semi-circle around Martinez. Martinez faced the officers, holding the knife in her right hand. Officers ordered her to drop the knife but she did not comply. While walking backwards toward the park, Martinez put both hands in the air, yelled numerous profanities at the officers, and said, “Come on, come on!” Bystanders and officers described Martinez as “violent,” “extremely agitated,” “angry,” “threatening,” and opined that she appeared to be “under the influence.” Martinez walked backward for approximately eight seconds, making challenging gestures, while the officers advanced toward her with their weapons drawn.

Still brandishing the knife, Martinez began to run sideways toward the entrance of the park and the civilian in the Mustang. Based on Martinez’s refusal to drop the knife, and aware that Martinez had stabbed John Doe minutes earlier, numerous officers expressed their fear that Martinez would get into the park and harm the civilians. They were also afraid she would attempt to harm the occupant of the Mustang or take his car by force. When Martinez was within three feet of the parked Mustang, Officer Gallardo moved rapidly toward Martinez in a crouch, with his knees bent and his handgun extended. Martinez continued to approach the driver’s door of the Mustang with the knife in her hand and arm raised. As Officer Gallardo approached, Martinez made a slashing motion across the front of her body. Officers continued to command Martinez to “drop the knife”. Almost simultaneously, Officer Sanchez fired a Taser and Officer Gallardo fired one round from his handgun at Martinez. The firing of the Taser and handgun occurred approximately seven seconds after Martinez began running toward the park.

Martinez fell to the pavement, and police officers immediately rendered medical aid. Martinez was aggressive and violent, and tried to bite the paramedic while being treated at the scene. Martinez was transported to the hospital, where initial blood tests were positive for amphetamines and THC. Martinez was treated for a gunshot wound to the leg and expected to recover from her injury.

Civilians interviewed expressed their fear that Martinez would run into the park with her knife and harm the children and families playing in the park. The civilian witnesses said the officers took measures to protect the occupants of the park and did a good job.

EVIDENCE COLLECTED

The following items of evidence were collected at the scene:

- Single edge knife with a 6-inch blade and 4-inch black handle
- Glock Model 22 Pistol, .40 Smith & Wesson caliber, including magazine and cartridges [Officer Gallardo’s weapon]
- Winchester brand, .40 Smith & Wesson caliber fired cartridge case
- Taser Model X26P

- Taser cartridge and probes
- Metal narcotics pipe with burnt residue
- Torch style lighter
- Pink container with green leafy substance
- Huffy Southwind bicycle

EVIDENCE ANALYSIS

Weapons Examination

The Glock pistol belonging to Officer Gallardo was test fired at the OCCL and operated without malfunction. The fired cartridge case was determined to have been fired in Officer Gallardo's Glock pistol.

MARTINEZ'S PRIOR CRIMINAL HISTORY

Martinez's criminal history was reviewed and considered. Martinez's California criminal history dates back to 2015. Martinez has been previously arrested for Obstructing, Resisting, or Delaying a Public Officer, Disorderly Conduct, and for being Under the Influence of Drugs.

MARTINEZ'S POST-INCIDENT CONVICTION

On May 26, 2016, the OCDA filed criminal charges against Martinez in Orange County Superior Court case 16CF140. Martinez was charged with one count of attempted carjacking, a felony, in violation of California Penal Code section 664(a)/215(a); one count of second degree robbery, a felony, in violation of California Penal Code section 211/212.5(c); three counts of aggravated assault, a felony, in violation of California Penal Code section 245(a)(1); two counts of elder abuse, a felony, in violation of California Penal Code Section 368(b)(1); and one count of attempted second degree burglary, a felony, in violation of California Penal Code section 664(a)/459-460(b). On May 11, 2017, Martinez pleaded guilty to all counts pursuant to an offer from the court. Over the People's objection, the court reduced all three counts of aggravated assaults to misdemeanors. Martinez was sentenced to 120 days in county jail, three years formal probation, and ordered to complete the Mental Health Court Program.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a non-fatal shooting include attempted murder [Penal Code Section 664/187]; 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 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/she 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 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 interaction of SAPD Officer Gallardo with Alma Alicia Martinez.

LEGAL ANALYSIS

The issue in this case is whether the conduct of Officer Gallardo on May 24, 2016, was criminally culpable and without justification. In order to charge Officer Gallardo with a criminal violation, it is required that the prosecution have the good faith belief in the ability to prove, beyond a reasonable doubt, that no legal justification existed for the police officer's conduct and he did not act in lawful self-defense. If Officer Gallardo's actions were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

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.)

Officer Gallardo was overwhelmingly justified in believing Martinez posed a significant threat of death or serious physical injury to others. The officers were aware that, minutes earlier, Martinez chased and stabbed an elderly man. Martinez's behavior and demeanor were violent and irrational, leading both officers and civilians to suspect she was under the influence. While Martinez led at least five marked police cars down Fifth Street on her bicycle, she continually looked back at the officers, yelled profanities and waved a sharp, 10-inch kitchen knife over her head. Martinez ignored the police cars' lights and sirens, and refused to obey repeated commands to stop her bicycle and drop the knife. Martinez waved the large knife in her hand throughout the entire encounter.

When Martinez got off her bicycle in the middle of Fifth Street, she refused to surrender, and instead faced the officers and repeatedly raised her hands in a gesture of challenge, while shouting profanities and yelling, "Come on, come on!" By this time, she was close to a park full of families and children, and was advancing backward toward them, still facing the officers and brandishing her knife. Officers and civilian witnesses expressed their fear for the children nearby and the harm she could inflict should she enter the park. Martinez continued to ignore requests to drop her knife. Although Officer Gallardo did not give a statement to our office, it is reasonable to infer that he shared the concerns of the officers interviewed and believed that force was necessary to immobilize Martinez and the threat she presented to the public. Officer Gallardo's concern was likely escalated when Martinez began to run toward the park and got within three feet of an occupied vehicle. Officer Gallardo's tactical position, close to Martinez and in a crouch, suggests that he was attempting to shoot at close range to minimize the threat to nearby civilians. Officer Gallardo chose to move closer to Martinez, placing himself in danger, as he would have been well within Martinez's range if she tried to stab him. Furthermore, Officer Gallardo fired only one round, which accomplished the goal of stopping Martinez's progress toward the park.

In order for Officer Gallardo 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 he did not act in reasonable and justifiable self-defense or defense of another when he shot at Martinez. 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 Officer Gallardo to believe that the lives of others were in danger. Officer Gallardo was not only justified when he shot Martinez, but he acted swiftly and placed himself at risk, to protect the members of the community. Officer Gallardo did not commit a crime, but rather carried out his duties as a peace officer in a reasonable and justifiable manner.

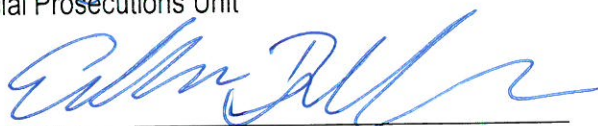
CONCLUSION

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 Officer Gallardo, and there is overwhelming evidence that his actions were reasonable and justified under the circumstances when he shot Martinez on May 24, 2016.

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



Erin Rowe
Deputy District Attorney
Special Prosecutions Unit



Read and Approved by **Ebrahim Baytieh**
Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit