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July 25, 2016

Chief Carlos Rojas
Santa Ana Police Department
20 Civic Center Plaza
Santa Ana, CA 92701

Re: Officer-Involved Shooting on March 11, 2015
Fatal Incident involving Benito Osorio
District Attorney Investigations Case #SA 15-005
Santa Ana Police Department Case #15-06456
Orange County Crime Laboratory Case #FR 15-43742

Dear Chief Rojas,

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 Santa Ana Police Department (SAPD) Officers David Enriquez, David Garcia, Nicole Quijas, Ryan Shifflett, and William Sweet. Benito Osorio, 39, died as a result of his injuries. The incident occurred in the City of Santa Ana on March 11, 2015.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the March 11, 2015, fatal officer-involved shooting of Osorio. 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 officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On March 11, 2015, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 23 interviews were conducted, and 18 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: SAPD reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Osorio; criminal history records related to Osorio including prior incident reports; the personnel records of the involved officers; three cell phone videos from private individuals; 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 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 Officers Enriquez, Garcia, Quijas, Shifflett, and Sweet. 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 shot at, injured or killed 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 Enriquez, Officer Shifflett, and Officer Sweet gave separate, voluntary statements to OCDA Investigators on March 26, 2015. Officer Garcia and Officer Quijas gave separate, voluntary statements to the OCDA Investigators on April 6, 2015.

FACTUAL SUMMARY

On March 11, 2015, at approximately 12:51 p.m., SAPD dispatch received multiple emergency calls requesting the police respond to the area of 819 South Cypress Avenue. Witnesses reported seeing two men fighting, ending in shots fired by one suspect. The shooter-suspect, a male later identified as Osorio, fled the scene in a white Toyota pickup truck toward Main Street.

The first officer on the scene saw the white Toyota pickup truck travelling 50 to 60 mph northbound on Cypress Avenue, which is a 25 mph zone. The officer, riding an SAPD motorcycle, began to follow the white pickup truck. Osorio stopped twice before reaching the area of 300 South Main Street. First, Osorio stopped abruptly in the middle of the intersection of Myrtle Street and Cyprus Avenue and again, at the intersection of Main Street and Myrtle. In his interview, the officer stated that during both stops he feared that Osorio may exit his vehicle and engage in gunfire. However, the Toyota pickup truck started moving again after a few seconds and accelerated onto Main Street, where Osorio stopped in the area of 300 South Main Street at approximately 12:54 p.m.

Shortly after, Officers Garcia and Quijas arrived together in a marked SAPD vehicle, activated their red lights, and pulled up approximately 30 feet behind Osorio's vehicle. Officers Sweet, Shifflett, and Enriquez arrived at around 12:55 p.m. and positioned themselves approximately 15 to 30 feet behind Osorio's pickup truck. Officer Shifflett, along with another officer, took cover behind a tree across the street from the pickup truck where they had a clear view of Osorio sitting on the driver's side. Officer Enriquez stood near Officer Garcia where he had an un-obstructed view of Osorio through the left turn mirror of his truck. Officer Garcia gave numerous commands in English and Spanish, ordering Osorio to put his hands up. Observing Osorio armed with his chrome handgun, Officer Garcia began giving commands in English and Spanish to, "Drop the gun," "Put the gun down," and, "Don't do it." But Osorio did not comply. Instead, Osorio made eye contact with the officers through his mirror and shook his head left and right, indicating a negative response to their commands.

Despite Officer Garcia's continued commands, Osorio pointed his gun toward his own chin. Fearing Osorio may attempt to commit suicide, Officer Garcia began yelling, "Don't do it, don't do it," in English and Spanish. Ignoring their commands, Osorio began squeezing the trigger of his handgun. Osorio's gun did not fire at first. The officers, watching through Osorio's driver's side mirror, saw Osorio bring his gun back down and re-rack it. Osorio then brought the gun back to his chin and fired, self-inflicting a wound to his head. Officers on the scene requested emergency medical services to respond to the area. Officers, including Officers Sweet and Enriquez, approached Osorio's vehicle but retreated to cover positions after they saw Osorio start to move. Osorio then used a cellphone in his right hand, which he pulled to his right ear, to call his wife. According to Osorio's wife, Osorio called her and apologized to her saying, "I'm sorry, I got in trouble."

After Osorio hung up the phone, Osorio slowly stepped out of his truck with his left foot. Osorio still had his cellphone in his right hand and his gun, raised by his abdomen, in his left hand. Osorio then turned counter-clockwise to face south toward Officers Garcia, Quijas, Sweet, and Enriquez and began raising his gun. Fearing for their lives, the lives of their fellow officers and of the pedestrians in the area, Officers Enriquez, Garcia, Quijas, Shifflett, and Sweet fired at Osorio. Approximately nine to 10 shots struck Osorio in the head, nose, chest, abdomen, groin, and upper arm. Osorio fell to the ground next to the left rear passenger door of his vehicle, dropping his weapon. Upon reaching Osorio, Officer Enriquez kicked Osorio's handgun under Osorio's vehicle, in front of the left rear tire, out of Osorio's reach.

Voluntary, Consensual Statement of Officer Enriquez

Officer Enriquez gave a voluntary, consensual statement to the OCDA on March 26, 2015. The following is a summary of Officer Enriquez's statement.

At the time of the interview, Officer Enriquez had been a sworn officer for approximately eight and a half years. On the day of the incident, Officer Enriquez was on patrol in the area of Grand Avenue and McFadden Avenue. At approximately 12:00 p.m., Officer Enriquez received a call that an assault with a deadly weapon had occurred in the area of 800 South Cypress Avenue and South Main Street. Officer Enriquez was notified that after shooting at the victim, the suspect, a male later identified as Osorio, left the scene in a white pickup truck heading northbound on Main Street. Officer Enriquez heard a motor officer advise that he had the suspect vehicle traveling northbound on Main Street from the area of Bishop Street. Officer Enriquez turned onto Main Street and headed northbound where he found the high risk felony car stop of Osorio. Officer Enriquez parked his patrol vehicle to the east curb line and ran up to the patrol cars and officers, including Officer Garcia, behind the white pickup truck. Officers, including Officer Garcia, said, "He has a gun."

Officer Enriquez could clearly see Osorio through Osorio's driver's side mirror. Officer Enriquez saw Osorio grab a semi-automatic handgun and point it under his chin. Officers, including Officer Garcia, began telling Osorio to put the gun down in both English and Spanish. Osorio shook his head left and right, signaling his non-compliance. Officers continued to give verbal commands to put down the gun. Officer Enriquez heard the "click" from the trigger being pulled, but the gun did not fire. Officer Enriquez saw Osorio pull the slide on the handgun back and release it. Osorio pointed the firearm at his chin again, pulled the trigger and the firearm discharged. Osorio slumped down and the pickup truck's engine began to rev. After the engine stopped, Officer Enriquez believed Osorio was dead. Officer Enriquez and two other officers began to approach Osorio's vehicle. Another officer said, "He has a gun, he still has a gun," and "He's still moving." Officer Enriquez retreated back to his original position behind Osorio's vehicle, approximately 35 feet away.

Officer Enriquez saw Osorio, using his right hand, lift his cellphone to his right ear. Osorio's driver's side door began to open slowly. Osorio exited the vehicle facing west, directly across the street. Officer Enriquez immediately saw the gun in Osorio's left hand right on top of his abdomen. Officers repeatedly gave Osorio commands to drop the gun. Osorio turned counter-clockwise to face Officer Enriquez and the other officers. Fearing for his safety and the safety of his fellow officers, Officer Enriquez fired two rounds at Osorio. After firing those two rounds, Officer Enriquez's gun malfunctioned. Officer Enriquez cleared the malfunction but did not shoot again.

Voluntary, Consensual Statement of Officer Garcia

Officer Garcia gave a voluntary, consensual statement to the OCDA on April 6, 2015. The following is a summary of Officer Garcia's statements.

At the time of his interview, Officer Garcia had been a sworn police officer for approximately five years. On the day of the incident, Officer Garcia and his partner, Officer Quijas, were on patrol in the area of Grand Avenue and 17th Street. Around 12:51 p.m., Officer Garcia and his partner, Officer Quijas, responded to a call that shots had been fired in the area of 800 South Cypress Avenue. More calls came in identifying the shooter as a male wearing a red hoodie sweater, later identified as Osorio, who was last seen entering a white Toyota pickup truck. Officers Garcia and Quijas decided to go straight to Main Street where they saw Osorio, alone in his pickup truck, followed by a SAPD motor officer. Officers Garcia and Quijas made a U-turn behind the pickup truck, activing their red overhead lights.

After stopping their vehicle behind Osorio's pickup truck, Officers Garcia and Quijas exited their vehicle. Officer Garcia began giving commands like, "Turn off the car," and, "Let me see your hands," in English and Spanish. Officer Garcia could see Osorio through Osorio's driver's side mirror. Osorio made the cross sign over his body multiple times. Officer Garcia continued to give Osorio several commands including, "Let me see your hands." After three or four commands, Osorio lifted a silver handgun to his chin. Officer Garcia began telling him, "Don't do it." But through the driver's side mirror, Officer Garcia clearly saw Osorio squeeze the trigger two to three times. Officer Garcia continued to say, "Don't do it, don't do it," in English and Spanish. The gun did not go off so Osorio brought the gun back down and re-racked it. Osorio then brought the gun back up to his chin and fired, causing a self-inflicted wound to his head. Osorio's parked vehicle began to rev, likely as a result of Osorio pushing on the gas.

Officer Garcia and other officers started moving toward Osorio's vehicle on the right side. Elevating himself on his passenger door, Officer Garcia saw Osorio begin to move his head back up. Osorio also still had the gun in his left hand. Officer Garcia told the officers to stop moving up. Osorio's engine stopped revving, likely because Osorio had taken his foot off the gas. Officer Garcia then told the other officers Osorio still had the gun. As the officers retreated, Osorio raised his hand and wiped the blood from his face. Osorio then made a motion of the cross sign and picked up his cellphone, dialed a number, and raised it to his ear. Officer Garcia began ordering Osorio to drop the gun, in English and Spanish. Osorio then lowered his phone and began pushing his driver's door open with his right hand.

Osorio exited his vehicle in a crouching-like position, with a cellphone in his right hand and gun still in his left. Osorio squared himself to face toward Officer Garcia's position. Officer Garcia yelled out, "Gun, he's got a gun," "Gun, gun, gun," "Drop it, drop it," "Don't do it." Osorio then began to raise the gun from his left side toward to officers. Fearing for his safety and the safety of the other officers, Officer Garcia fired one shot toward Osorio.

Voluntary, Consensual Statement of Officer Quijas

Officer Quijas gave a voluntary, consensual statement to the OCDA on April 6, 2015. The following is a summary of Officer Quijas' statement. At the time of her interview, Officer Quijas had been a sworn police officer for approximately 14 years. On the day of the incident, Officer Quijas had been on patrol with her partner, Officer Garcia, in the area of First Street and Main Street. A call came in that there had been a shooting. Multiple emergency callers identified the suspect, later identified as Osorio, as a male wearing a red sweatshirt, driving a white Toyota truck. Travelling southbound on Main Street, Officer Quijas identified the white pickup truck and made a U-turn to follow behind Osorio's vehicle, heading northbound. Officer Quijas activated the SAPD vehicle's red lights. Osorio complied and stopped his vehicle. Officer Garcia began commanding Osorio to show him his hands in English and Spanish. Osorio did not comply. Instead, Osorio raised his gun and racked it. Officer Quijas saw Osorio raise the gun toward his upper torso or facial area, but could not see from her line of sight through the driver's side window whether Osorio had raised it to his chin. Another officer on the scene advised that Osorio had raised the gun to his chin. Officer Quijas heard a gunshot and believed that Osorio had self-inflicted a wound. A few officers began moving to the pickup truck to help Osorio, but retreated. Osorio then wiped blood off of his face. Officer Garcia continued to order Osorio to drop the gun in English and in Spanish. Osorio then raised a cellphone.

Less than a minute later, Osorio began to exit his vehicle and face south toward Officer Quijas, and other officers. Officer Garcia continued to give Osorio commands in English and Spanish. Osorio had a gun in his left hand, pointed downward at first. Initially, Officer Quijas believed Osorio might surrender and put the gun down. However, Osorio began to stand upright and point the gun in the direction of Officer Quijas and fellow officers. Fearing for her safety and the safety of her fellow officers and other pedestrians, Officer Quijas fired two rounds in Osorio's direction.

Voluntary, Consensual Statement of Officer Shifflett

Officer Shifflett gave a voluntary, consensual statement to the OCDA on March 26, 2015. The following is a summary of Officer Shifflett's statement.

At the time of the interview, Officer Shifflett had been a sworn officer for approximately seven years. On the day of the incident, Officer Shifflett had been on patrol in the area of First and Main Street. A call came in that an officer was behind a stopped white Toyota pickup truck northbound on Main Street and Pine. When Officer Shifflett arrived at the scene, officers had set up a felony car stop with several police units behind the truck. Officer Shifflett blocked and redirected traffic going southbound on Main Street. After another officer arrived to block traffic, Officer Shifflett drove back past the pickup truck on the driver's side where he had a clear view of the driver, later identified as Osorio.

Osorio had his gun pointed below his chin. Officer Shifflett parked his SAPD vehicle and retrieved his rifle bag from the trunk. While Officer Shifflett took his patrol Colt rifle out of its bag, he heard a gunshot which sounded like it came from inside Osorio's vehicle. After hearing the gunshot, Officer Shifflett relocated to a tree directly across the street from Osorio's driver's side door. Osorio had blood trickling down his forehead. Still inside the truck, Osorio raised a cellphone with his right hand to his right ear. Officer Shifflett yelled, "It's a phone." Officer Shifflett could not tell if Osorio spoke to anyone. Officers ordered Osorio to exit the vehicle and to drop the weapon in English and Spanish. Osorio did not respond to these commands. After officers continued to command Osorio to "drop the weapon," Osorio exited the vehicle through the driver's side door. Officer Shifflett observed that Osorio, in a hunched over position, carried a gun in his left hand and his cellphone in his right. Officer Shifflett announced that Osorio had a gun to the other officers. Osorio began raising his gun toward the other officers behind the truck. Fearing for the safety of his fellow officers and himself, Officer Shifflett fired four to five shots in Osorio's direction.

Voluntary, Consensual Statement of Officer Sweet

Officer Sweet gave a voluntary, consensual statement to the OCDA on March 26, 2015. The following is a summary of Officer Sweet's statement.

At the time of the interview, Officer Sweet had been a sworn officer for approximately 28 years. On the day of the incident, Officer Sweet had been on patrol in the area of Bristol and First Street. Officer Sweet and his partner heard a call come in about a shooting at 800 South Cypress. Officer Sweet heard that the suspect, later identified as Osorio, left the scene in a white Toyota pickup truck. Officer Sweet picked up the vehicle on South Main Street and followed behind Officer Garcia's vehicle which was parked behind Osorio's parked vehicle.

Still inside the vehicle, Osorio had a gun in his right hand and raised it to his chin. Officer Garcia proceeded to order Osorio to "drop the gun," in English and Spanish, but Osorio discharged the gun and shot himself under the chin. Officer Sweet and two other officers set up to check on Osorio from the passenger side of Osorio's vehicle. From the passenger window, Officer Sweet observed Osorio, still conscious, look slightly toward the officers. Osorio still had the gun in his hand. Officer Sweet and the other officers retreated back behind Osorio's vehicle. Osorio then put his gun down and picked up a cellphone and began a conversation with someone for about 90 seconds. Then Osorio picked up his gun, pushed open the door, and exited the vehicle slowly.

Officer Sweet stood approximately 15 feet away from Osorio when he identified a gun in Osorio's left hand. Several officers yelled, "Gun." Fearing for his life and the lives of the other officers and pedestrians, Officer Sweet fired three shots in Osorio's direction.

EVIDENCE COLLECTED

The following items of evidence were collected from the scene and examined:

- One bullet fragment
- One Smith and Wesson semi-automatic .9mm caliber gun [Osorio's weapon]
- One .40 cartridge, head stamp Winchester 40 S&W
- Twelve cartridge cases
- Two bullets
- Wallet, iPhone, red sweatshirt, t-shirt, shorts

CELLPHONE VIDEOS

The following three cellphone videos taken by civilians were collected and considered:

Video #1 was taken through a front apartment window 30-50 feet from Osorio's truck. It was taken with the view of the right rear of the truck at about a 45-degree angle. It shows the police car and officers as well. The audio on this video clip reflects the sound of officers giving commands to drop the gun numerous times. This video shows a police unit drive on Main Street in the opposite direction as the car stop. At one point the audio reflects an officer saying, "Don't do it," and commands to drop the gun. Shortly thereafter, the audio reflects the sound of a single gunshot. Shortly after, officers can be seen approaching on the passenger side of Osorio's truck, then retreat back when they say he is still alive and has the gun. A few minutes after, Osorio gets out of the truck on the driver side, and several shots are heard. Osorio is not visible due to the camera angle. Shortly after that, several officers approach and clear Osorio's truck and tend to Osorio.

Video # 2 appears to have been taken by a phone filming the video being played on the screen of another phone. This video clip was taken from the rear panel outside of Osorio's truck at about a 90-degree angle. The videographer appears to be about approximately 30 feet away from Osorio's truck. This video starts as officers are approaching the truck on the passenger side, then retreating while yelling that Osorio is still alive and has the gun. This video clip captures the same events as described in Video # 1, and it stops after officers clear the truck and appear to be rendering aid to Osorio.

Video # 3 contains four video files and three images. This video clip appears to be taken from about 40 to 50 feet behind and to the right of the officers and Osorio's truck. There appears to be a low red wall in front of the videographer. The video starts about one minute before the single gunshot is heard, then it shows the officers approach on the passenger side of the truck and then retreat. The audio portion of this video reflects the officers yelling, but it is difficult to hear exactly what is being said. This video shows the top of the head of Osorio as he gets out of the truck after opening the door and hesitating for a few moments and the officers can be heard yelling, "Drop the gun." Within moments of Osorio getting out of the truck, the officers begin firing. The videographer and others were speaking mostly in Spanish throughout all four video clips. On one of the video clips, the audio reflect either the videographer or somebody standing around him saying, "He shot first. Yeah, he shot first. He was crazy."

AUTOPSY

On March 13, 2015, Dr. Etoi Davenport, a forensic pathologist with the Orange County Coroner's Office conducted an autopsy on the body of Osorio. Dr. Davenport found 10 gunshot wounds to Osorio's head, nose, right chest, right abdomen and right groin, and upper right arm. Finding that the self-inflicted gunshot wound to Osorio's head was non-lethal, Dr. Davenport determined that Osorio died as a result of multiple gunshot wounds to the head, torso, and right upper arm.

EVIDENCE ANALYSIS
Firearm Examination

Officer Quijas' Glock Model 22 pistol, .40 Smith & Wesson caliber:
Officer Quijas' Glock Model 22 pistol, .40 Smith & Wesson caliber was test fired at the OCCL and fired without malfunction. The Glock pistol was received unlocked and with the magazine removed. Packaged with the pistol were a single cartridge labeled as being from the chamber, an empty fifteen cartridge capacity Glock magazine with 13 loose cartridges and two extra fully loaded 15-cartridge capacity Glock magazines. All 44 cartridges are Winchester brand .40 Smith & Wesson caliber, each with an SXT jacketed hollow point bullet.

One of the cartridge cases collected from the scene [EM #10] was microscopically compared to the test fired cartridge cases from Officer Quijas' weapon. Therefore, the firearm examination confirmed that one of the fired cartridge cases collected from the scene was fired from Officer Quijas' weapon.

Officer Enriquez's Glock Model 22 pistol, .40 Smith & Wesson caliber:
Officer Enriquez's Glock Model 22 pistol, .40 Smith & Wesson caliber was test fired at the OCCL and fired without malfunction. The OCCL received the pistol unloaded and the magazine removed. Packaged with the pistol were a single cartridge labeled as being from the chamber, an empty 15-cartridge capacity Clock magazine with 12 loose cartridges and two extra fully loaded 15-cartridge capacity Glock magazines. All 44 cartridges are Winchester brand .40 Smith & Wesson caliber, each with a T-Series jacketed hollow point bullet.

Two of the fired cartridge cases collected from the scene [EM # 11 & 13] were microscopically compared to the test fired cartridge cases from Officer Enriquez's weapon. Therefore, the firearm examination confirmed that the two fired cartridge cases collected from the scene were fired from Officer Enriquez's weapon.

Officer Sweet's Glock Model 22 pistol, .40 Smith & Wesson caliber:
Officer Sweet's Glock Model 22 pistol, .40 Smith & Wesson caliber was test fired at the OCCL and fired without malfunction. The pistol was received unloaded and the magazine removed. Packaged with the pistol were a single cartridge labeled as being from the chamber, an empty fifteen cartridge capacity Clock magazine with 12 loose cartridges and two extra fully loaded 15-cartridge capacity Glock magazine each loaded with 14 cartridges. The 14 cartridges from one of the extra magazines are federal brand .40 Smith & Wesson caliber, each with a jacketed hollow point bullet. The remaining 27 cartridges are Winchester brand .40 Smith & Wesson caliber, each with an SXT jacketed hollow point bullet.

Three of the fired cartridge cases collected from the scene [EM # 8, 9 & 14] were microscopically compared to the test fired cartridges cases from Officer Sweet's weapon. Therefore, the firearm examination confirmed that three of the fired cartridge cases collected from the scene were fired from Officer Sweet's weapon.

Officer Garcia's Glock Model 22 pistol, .40 Smith & Wesson caliber:
Officer Garcia's Glock Model 22 pistol, .40 Smith & Wesson caliber was test fired at the OCCL and fired without malfunction. The pistol was received unloaded and the magazine removed. Packaged with the pistol were a single cartridge labeled as being from the chamber, an empty 15-cartridge capacity Clock magazine with 14 loose cartridges and two extra fully loaded 15-cartridge capacity Glock magazines. All 45 cartridges are Winchester brand .40 Smith & Wesson caliber, each with an SXT or T-Series jacketed hollow point bullet.

One of the fired cartridge cases collected from the scene [EM # 12] was microscopically compared to the test fired cartridges cases from Officer Garcia's weapon. Therefore, the firearm examination confirmed that one of the fired cartridge cases collected from the scene was fired from Officer Garcia's weapon.

Officer Shifflett's Colt Law Enforcement Carbine Model rifle, 5.56x45mm caliber, #LE059099:
The Colt rifle was test fired at OCCL and fired without malfunction. Packaged with the rifle were three empty magazines and 76 Lake City Arsenal 5.56x45mm caliber cartridges, each with a full metal jacketed bullet.

Five of the cartridge cases collected from the scene [EM #15] were microscopically compared and determined to have been fired from Officer Shifflet's Colt rifle.

Smith & Wesson Model 6906 pistol, 9mm Luger caliber, #VYY9444][Osorio's weapon]:
The pistol was received unloaded and with its magazine removed. Packaged with the pistol were a single cartridge labeled as being from the chamber and a ten cartridge capacity magazine loaded with six cartridges.

Toxicological Examination

A sample of Osorio's blood was collected at Orange County Global Medical Center. An Orange County Sheriff's Department forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Diphenhydramine	Postmortem Blood	Detected
Ethanol/Volatiles	Postmortem Blood	Not Detected

OSORIO'S PRIOR CRIMINAL HISTORY

Osorio's criminal history was reviewed and considered. Osorio had a California Criminal History that dates back to 2008. He has previously been arrested for the following charges:

- Driving under the influence of alcohol
- Driving under the influence of alcohol/.08%

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be required 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's 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 SAPD Officers David Enriquez, David Garcia, Nicole Quijas, Ryan Shifflett, and William Sweet with Osorio.

LEGAL ANALYSIS

The facts in this case are determined by considering the statements of all the involved officers, which are supplemented by other relevant material and statements, including the physical evidence and the cell phone videos.

The issue in this case is whether the conduct of Officers Enriquez, Garcia, Quijas, Shifflett, and Sweet on March 11, 2015, was criminally culpable and without justification. As stated above, in order to charge any of the involved officers with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officer's conduct. Therefore, in order to lawfully charge any of the involved officers with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense. If the actions that day of the involved officers were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted. A reasonable review of all the available evidence clearly shows that on March 11, 2015 Osorio was an armed and dangerous individual who decided to take his own life and then when he didn't succeed he was determined to either engage the police in a shootout, or more likely force them to shoot him. The officers involved in this incident responded reasonably and justifiably to the danger posed by Osorio.

As the Court of Appeal held in a recent case, 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 Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler, supra,* 171 Cal.App.4th at p. 528.) There is no question in this case that each of the involved police officers was in close proximity to an armed suspect whose actions clearly and unmistakably indicated an intent to attack the police officer with deadly force. The statements of the involved officers were corroborated by the physical evidence as well as the cell phone videos.

Officer Enriquez

Officer Enriquez was justified in believing that Osorio posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Osorio in the moments leading up to the shooting. Around 12:51 p.m., Officer Enriquez received a call that the suspect in an assault with a gun was driving a white pickup truck northbound on Main Street. Officer Enriquez arrived at the scene where officers told him that the suspect, later identified as Osorio, had a gun. After numerous commands from Officer Garcia to put the gun down, Officer Enriquez saw Osorio shake his head left and right, signaling his non-compliance. Officer Enriquez then saw Osorio point his gun below his chin and shoot, self-inflicting a wound to his head.

Officer Enriquez and two other officers began to approach Osorio's vehicle to help him. Instead, Osorio began moving. Officer Enriquez retreated. After placing a call on his cellphone, Osorio pushed open his driver's side door and turned to face Officer Enriquez and fellow officers, who were just 35 feet away, with the gun still in his left hand. As Osorio began to raise his gun toward the officers, Officer Enriquez feared for his life and the lives of his fellow officers and fired two shots in the direction of Osorio. Osorio then fell to the ground. Officer Enriquez's conduct in shooting an armed suspect who was approximately 35 feet away from him and who refused to obey commands to drop his weapon was reasonable and justified in light of all the surrounding circumstances.

Officer Garcia

Officer Garcia was justified in believing that Osorio posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Osorio in the moments leading up to the shooting. Around 12:51 p.m., Officer Garcia and his partner, Officer Quijas, responded to a call that shots had been fired by a suspect, later identified as Osorio, in the area of 800 South Cypress Avenue. Once arriving at the scene, Officer Garcia and Officer Quijas activated their red lights and Officer Garcia began ordering Osorio, in English and Spanish, to show him his hands. Osorio did not comply. Instead he pointed his gun below his chin and attempted to shoot, but the gun did not go off. Determined to commit suicide, Osorio re-racked his gun and brought it back below his chin and shot himself in the head. Still alive, Osorio wiped the blood from his forehead and made a phone call.

Unresponsive to Officer Garcia's commands to drop his gun, Osorio exited his vehicle with his gun in his left hand. Officer Garcia ordered, "Drop it, drop it," "Don't do it." But Osorio raised the gun toward the officers. Fearing for his

safety and the safety of the other officers, Officer Garcia fired one shot toward Osorio. Osorio then fell to the ground. Officer Garcia's conduct in shooting an armed suspect who was a short distance away from him and who refused to obey commands to drop his weapon was reasonable and justified in light of all the surrounding circumstances.

Officer Quijas

Officer Quijas was justified in believing that Osorio posed a significant threat of death or serious physical injury to herself and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Osorio in the moments leading up to the shooting. Around 12:51pm, Officer Quijas and her partner, Officer Garcia, heard a call come in that shots had been fired in the area of 800 South Cypress Avenue and responded. Once arriving at the scene, Officer Quijas and Officer Garcia activated their red lights and Officer Garcia began ordering Osorio, in English and Spanish, to show him his hands, but Osorio did not comply. Instead, Osorio raised his gun toward his facial area and Officer Quijas heard a gunshot as Osorio self-inflicted a wound to his head. A few officers began moving to the pickup truck to help Osorio, but retreated due to Osorio's still moving while still holding the gun. Osorio then wiped blood off of his face. Officer Garcia continued to order Osorio to drop the gun.

Less than a minute after using his cellphone, Osorio began to exit his vehicle and face south toward Officer Quijas, and other officers. Officer Garcia continued to command Osorio in English and Spanish. Osorio had a gun in his left hand, pointed downward at first. Initially, Officer Quijas believed Osorio may surrender and put the gun down. However, Osorio began to stand upright and point the gun in the direction of Officer Quijas and fellow officers. Fearing for her safety and the safety of her fellow officers and other pedestrians, Officer Quijas fired two rounds in Osorio's direction. Osorio then fell to the ground. Officer Quijas' conduct in shooting an armed suspect who was only a short distance away from her and who refused to obey commands to drop his weapon was reasonable and justified in light of all the surrounding circumstances.

Officer Shifflett

Officer Shifflett was justified in believing that Osorio posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Osorio in the moments leading up to the shooting. Around 12:51 p.m., Officer Shifflett arrived at the scene of the felony car stop of Osorio. Osorio had a gun pointed below his chin. Before positioning himself directly west of Osorio's driver's side window, Officer Shifflett heard a gunshot come from inside Osorio's vehicle as he self-inflicted a wound to his head. Despite shooting himself, Osorio began moving and made a telephone call. Officers ordered Osorio, in English and Spanish, to exit the vehicle and to drop the weapon, but Osorio did not comply. Instead, Osorio exited the vehicle, carrying a gun in his left hand. Osorio began raising his gun toward the other officers behind the truck. Fearing for the safety of his fellow officers and himself, Officer Shifflett fired his weapon at Osorio. Officer Shifflett's conduct in shooting an armed suspect who was a short distance from him and who refused to obey commands to drop his weapon was reasonable and justified in light of all the surrounding circumstances.

Officer Sweet

Officer Sweet was justified in believing that Osorio posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Osorio in the moments leading up to the shooting. Around 12:51 p.m., Officer Sweet and his partner heard a dispatch call about a shooting at 800 South Cypress Avenue. Officer Sweet heard that the suspect, later identified as Osorio, left the scene in a white Toyota pickup truck. After locating Osorio, the officers initiated a felony car stop. Officer Sweet observed that Osorio had his gun pointed under his chin. Officer Garcia proceeded to order Osorio to "drop the gun," in both English and Spanish. But Osorio discharged the gun and shot himself under the chin. When Officer Sweet approached the vehicle he observed Osorio, still conscious, look slightly toward the officers with a gun still in his hand.

After making a phone call, Osorio picked up his gun, kicked open the door, and exited the vehicle slowly. Officer Sweet stood approximately 15 feet away from Osorio and saw a gun in Osorio's left hand. Several officers yelled, "Gun." Fearing for his life and the lives of the other officers and pedestrians, Officer Sweet fired three shots at Osorio. Officer Sweet's conduct in shooting an armed suspect who was a few feet away from him and who refused to obey commands

to drop his weapon was reasonable and justified in light of all the surrounding circumstances.

As indicated above, in order for any of the involved officers to be justly and lawfully charged and convicted with a crime in this incident, it is the prosecution's burden to prove beyond a reasonable doubt that the officer in question did not act in a reasonable and justifiable self-defense or defense of others when he/she shot at Osorio. Based upon the above-described facts and law, the prosecution would be unable to carry this burden in this case against any of the involved officers. A jury analyzing these facts would likely and justly conclude that every single one of the involved officers acted reasonably when he/she used force to protect himself/herself, his/her fellow officers, and the civilians in that neighborhood from an armed man who demonstrated violent behavior and refused to comply with law enforcement. There is overwhelming evidence that each of the involved officers acted reasonably and lawfully under the circumstances. Simply stated, none of the officers involved in this tragic incident committed a crime, to the contrary, the involved officers carried out their duties as peace office in a reasonable, justifiable and lawful manner.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Officers Enriquez, Garcia, Quijas, Shifflett, and Sweet, and there is substantial evidence their actions were reasonable, lawful and justified under the circumstances when they fatally shot Osorio on March 11, 2015.

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

Gary Logalbo
Senior Deputy District Attorney
TARGET/Gangs Unit

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