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November 6, 2018

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

Re: Custodial Death on December 31, 2017
Death of Inmate Eleazar Cardoza Garcia
District Attorney Investigations Case # S.A. 18-001
Orange County Sheriff's Department Case # 17-051796
Orange County Crime Laboratory Case # FR 18-40001

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the Dec. 31, 2017, custodial death of 26-year-old inmate Eleazar Cardoza Garcia.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Eleazar Garcia. In this letter, the OCDA describes the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to determine whether criminal culpability exists on the part of any Orange County Sheriff's Department (OCSD) personnel or any other person under the supervision of the OCSD.

On Jan. 1, 2018, OCDA Special Assignment Unit (OCDASAU) Investigators responded to University of California, Irvine-Medical Center (UCIMC), where Eleazar Garcia was pronounced deceased while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU conducted 30 interviews and 152 canvass interviews, as well as obtained and reviewed reports from the OCSD and Orange County Crime Laboratory (OCCL), incident scene photographs, and other relevant materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and applicable legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD personnel or any other person under the supervision of the OCSD. 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 custodial deaths within Orange County when an individual dies while in custody. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units.

Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an

hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, scene processing, evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

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 and 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 Senior Assistant District Attorney supervising the Felony Operations II Division of the OCDA, 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.

FACTS

On Saturday, Oct. 28, 2017, Garcia was arrested by the Santa Ana Police Department for being in possession of a stolen vehicle. Garcia was booked into the Orange County Jail (OCJ), Intake/Release Center. On Monday, Nov. 6, 2017, Garcia was transferred from OCJ Main to OCJ Theo Lacy Facility (TLF), H Barracks-West, H-Cubicle.

On Dec. 31, 2017, at approximately 10:14 p.m., a TLF security camera shows Garcia exit G-cube and walk over to the phones located along the wall just outside H-cube. Garcia contacted Inmate 1 who placed something in Garcia's left hand. Garcia then placed his left hand inside the front of his pants and began to walk away, but then suddenly paused, turned around and again spoke briefly to Inmate 1. - Garcia then left and walked to F-Cube, where he met Inmate 2 and asked him if he wanted to "get high". Inmate 2 then accompanied - Garcia to H-Cube to purportedly use narcotics. Several inmates interviewed at the OCJ indicated that H-Cube was a place where inmates commonly went to use narcotics because the security cameras were unable to view portions of that particular cube.

At approximately 10:19 p.m., security cameras depicted Garcia and Inmate 2 walking into G-Cube, and showed Garcia retrieve a book from bunk #9, then walk directly into H-Cube. Garcia sat on bunk #3 with his back to the security camera, while Inmate 2 sat on bunk #5, out of the security camera view. Three more inmates stood between the first and second set of bunks, preventing the security cameras from observing Garcia's actions. Inmate 2 stated during an interview that while in H-Cube, Garcia rolled up a piece of paper, removed a white powdery substance from a plastic bag and snorted the white powdery substance up his nose. Another inmate observed Garcia and Inmate 2 snort a line of what he believed was Fentanyl from the top cover of a book. Several inmates remained in G-Cube standing around as Garcia and Inmate 2 sat on bunk 5. The TLF security video depicts a cinder block wall separating G cube from H cube that does not allow full view of H cube when persons are seated or lying in bunks 3-6 as well as when blocked by other inmates from camera view. Garcia remained seated on bunk #3 and out of view of security cameras for approximately seven minutes.

At approximately 10:27 p.m., Garcia exited H-Cube, along with Inmate 1 and Inmate 2. Inmate 1 carried the book that Garcia had earlier brought with him to H-Cube and appeared to leave the book in G-Cube. As they all leave H-Cube, Inmate 2 discards an object in the area of H-Cube.

At approximately 10:28 p.m., Garcia walked up stairs and into I-Cube. As they walked from H-Cube to I-Cube, security video depicts both Garcia and Inmate 2 wiping their noses with their hands several times. Garcia and Inmate 2 walked up the stairs and sat down on bunk #9 with Inmate 3. There were eight to nine other inmates in and around I-Cube at that time.

At approximately 10:32 p.m., while seated on bunk #9, Garcia took off his shirt, stood up, and began to dance. He then pulled his pants down to his knees, danced around the cubical for approximately 30 seconds, then sat back down on bunk #9. There are approximately six to seven inmates in I-Cube at that time.

At approximately 10:35 p.m., Inmate 3 moved over and allowed Garcia to lay down on the (bottom) bunk. Garcia still had his shirt removed. Inmate 3 described Garcia's behavior as "nodding out". He asked Garcia if he was doing okay at which time Garcia replied, "Yeah, I'm feeling good." Inmate 3 believed that Garcia was under the influence of an unknown drug. Within seconds of Garcia lying down, his left arm fell limp off the bunk.

At approximately 10:37 p.m., Inmate 3 pulled his arm out from under Garcia and climbed off the bunk. Garcia remained motionless while Inmate 3, a large man, climbed up and over him. At this time, there were approximately eight or nine inmates in I-Cube.

At approximately 10:40 p.m., Inmate 3 who had been talking with other inmates away from I-Cube returned and looked back at Garcia and saw that his face was "purple" in color. Inmate 4 shook Garcia, but he did not respond. Inmate 4 retrieved a cup of water and threw it on Garcia in an attempt to wake him up, but he did not respond. Several inmates gathered around Garcia and attempted to revive him at that time, without success.

At approximately 10:45 p.m., Inmate 3 yelled down to Inmate 5 to use the emergency alert intercom and report "man down" in I-Cube. Inmate 5 notified the deputies on duty who immediately responded to assist Garcia. They broadcasted a request for additional deputies to respond.

At approximately 10:46 p.m., the deputies arrived at I-Cube and found Garcia supine on bunk #9 with his arms flared out to his side, his feet were off the side of the bunk and rested on the floor. Garcia was unresponsive and not breathing. There were no visible injuries on his body. When the responding deputy sheriff checked Garcia for a pulse, he noted that it was slight. The deputy then directed another responding deputy to have TLF medical staff and paramedics respond to assist Garcia. The second responding deputy ran from I-Cube to the guard station and retrieved the rescue bag which contained Narcan and emergency medical equipment. The initial responding deputy, with the assistance of several inmates, moved Garcia onto the floor.

At approximately 10:48 p.m., the second deputy returned with the rescue bag and administered one dose (4 mg) of Narcan to Garcia's right nostril, which had no effect on Garcia. Thus, Cardio Pulmonary Resuscitation (CPR) was initiated at that time by the deputies. Approximately five to six deputies rendered emergency medical assistance to Mr. Garcia while he received care and CPR in I-Cube.

At approximately 10:50 p.m., three registered nurses arrived at I-Cube while the OCSD sheriff deputies were administering CPR. An Automated External Defibrillator (AED) was utilized by the deputies. AED pads were placed on Garcia to assist in emergency medical care. At that time a second dose of Narcan was administered to Garcia. He was also provided with oxygen via an air-bag-valve mask. The AED evaluated Garcia approximately three times and provided audible instructions and results of each analysis; each time it recommended no shock, continue CPR. CPR was continued until paramedics arrived.

At approximately 11:00 p.m., Orange City Fire Department (OFD) arrived at I-Cube. They found Garcia was in asystole (total cessation of electrical activity from the heart). Garcia had no respirations, blood pressure, eye movement, or motor response. No visible signs of trauma or physical injury indicative of a physical altercation were observed on Garcia's body. Approximately five paramedics arrived and continued to administer CPR throughout their encounter with Garcia. An intravenous line (IV) was established in Garcia's left forearm and three separate doses (one milligram) of epinephrine were administered. Garcia was placed on a gurney and moved to the ambulance. CPR continued throughout the entire transfer from I-Cube until Garcia was transported into the ambulance.

At approximately 11:20 p.m., the ambulance left TLF and transported Garcia, with emergency lights and sirens, to the UCIMC for further emergency medical care and treatment. While in transport, paramedics continued to administer Advanced Cardiac Life Support to Mr. Garcia. At approximately 11:22 p.m., Garcia arrived at UCIMC, at which time, OFD relinquished emergency medical care to UCIMC emergency room medical personnel.

The two physicians who began to treat Garcia noted he was unresponsive and had no signs of respirations or a pulse. A heart monitor that was attached to Mr. Garcia revealed that he was in asystole. Garcia was given sodium bicarbonate, calcium chloride, and two rounds of epinephrine via and intravenous lines. Advanced Life Support protocol continued for approximately 15 minutes to no avail. At approximately 11:37 p.m., the attending physician pronounced Garcia deceased.

Inmate 1 was interviewed and he admitted having contact with Garcia at the phone, but claimed they only exchanged greetings. He denied giving Garcia any drugs or even seeing him or anyone else in possession of any drugs.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- One OCSD jail issue orange jumpsuit shirt
- Two pair of OCSD issue sandals
- One white towel

AUTOPSY

On Jan. 5, 2018, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Eleazar Garcia. Dr. Luzi opined that the cause of death was determined to be an accidental drug overdose, namely, Fentanyl (Acute Fentanyl Intoxication).

EVIDENCE ANALYSIS

Toxicological Examination

A sample of Eleazar Garcia's postmortem blood yielded the following results:

Drug	Postmortem Blood	Peripheral Blood	Liver
Fentanyl	0.0155 ± 0.0018 mg/L	0.0108 + 0.0013 mg/L	0.0597 ± 0.0068 mg/kg
Drug	Stomach Contents	Brain	
Fentanyl	<0.020 mg	0.0498 + 0.0057 mg/kg	

Fatal blood concentrations from Fentanyl are reported as 0.010 - 0.030.

BACKGROUND INFORMATION

Garcia had a State of California Criminal History record that revealed arrests for the following violations:

- Disorderly Conduct / Under the Influence of Drugs
- Possession of a Concealed Weapon by a Criminal Street Gang Member
- Participation in a Criminal Street Gang
- Violation of Probation
- Possession of Drug Paraphernalia
- Conspiracy
- Vandalism
- Driving Under the Influence of Alcohol
- Provide False Information to a Police Officer
- Burglary – Second Degree
- Transportation of a Controlled Substance
- Destroy / Conceal Evidence
- Felon in Possession of a Stun Gun
- Auto Theft
- Violation of Parole

THE LAW

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

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

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

A person can also commit murder by his/her failure to perform a legal duty, if the following conditions exist:
a. The killing is unlawful (*i.e.*, without lawful excuse or justification);
b. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
c. The failure to act is dangerous to human life; and
d. The failure to act is deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

A person can also commit involuntary manslaughter by failing to perform a legal duty, if the following conditions exist:
a. The person had a legal duty to the decedent;
b. The person failed to perform that legal duty;
c. The person's failure was criminally negligent; and
d. The person's failure caused the death of the decedent.

In *Giraldo v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 250-251, the court held that there is a "special relationship" between jailer and prisoner:

> "The most important consideration 'in establishing duty is foreseeability.' It is manifestly foreseeable than an inmate may be at risk of harm.... Prisoners are vulnerable. And dependent. Moreover, the relationship between them is protective by nature, such that the jailer has control over the prisoner, who is deprived of the normal opportunity to protect himself from harm inflicted by others. This, we conclude, is the epitome of a special relationship, imposing a duty of care on a jailer owed to a prisoner, and we today add California to the list of jurisdictions recognizing a special relationship between jailer and prisoner."

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

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

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he/she acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he/she acts is so different from how an ordinarily careful person would act in the same situation that his/her act amounts to disregard for human life or indifference to the consequences of that act. An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor; however, it does not need to be the only factor that causes the death.

LEGAL ANALYSIS

There is no evidence whatsoever of express or implied malice on the part of any OCSD personnel or any inmates or other individuals under the supervision of the OCSD. Accordingly, the only possible type of homicide to analyze in this situation is murder or manslaughter under the theory of failure to perform a legal duty.

There is no question that the OCSD owed Garcia a duty of care, the evidence in this matter does not support a finding beyond a reasonable doubt that this duty was breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter). It is uncontroverted that Garcia's toxicology results revealed a substantially high concentration of Fentanyl in his blood, which resulted in an overdose causing his death.

There is no evidence in this matter to prove beyond a reasonable doubt that OCSD - TLF administration or staff intentionally allowed drugs or illegal narcotics to enter the jail, nor that it failed to take action to prevent drugs or illegal narcotics from entering the jail. It should be noted that the OCDA reviewed the available evidence and determined there is a lack of evidence to prove beyond a reasonable doubt that Inmate 1 provided drugs to Garcia.

It is apparent from the security video footage and witness statements that Garcia acted on his own accord to procure illegal narcotics. He sought out drugs within the confines of the jail, unbeknownst to TLF administration or staff, took extra precautions to prevent TLF staff from seeing the drugs, and found a location where it would be difficult for TLF staff to see him ingest the illegal narcotics. Once TLF personnel became aware of that Garcia was unresponsive and in medical distress, they immediately took action and administered emergency medical care protocol. Despite OCSD, OFD, and other TLF medical personnel's efforts to revive Garcia, they were unable to reverse the effects of the high intake of Fentanyl.

Thus, there is no evidence in the security video, witness statements, forensic reports or other documents to support a finding beyond a reasonable doubt that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty.

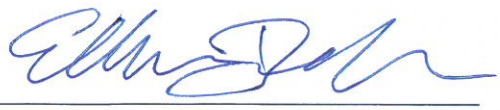
CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA, and pursuant to applicable legal principles, it is our conclusion that there is a lack of evidence to prove beyond a reasonable doubt criminal culpability on the part of any OCSD personnel or any individual under the supervision of the OCSD. The evidence shows that Garcia died as a result of an accidental Fentanyl overdose.

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

Respectfully submitted,

ISRAEL CLAUSTRO
Senior Deputy District Attorney
Target/Gangs Unit



Read and Approved by **EBRAHIM BAYTIEH**
Senior Assistant District Attorney
Felony Operations II