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September 7, 2018

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

Re: Officer-Involved Shooting on Feb. 20, 2015
Non-Fatal Incident involving Francisco Alvarez
District Attorney Investigations Case #SA 15-002
Santa Ana Police Department Case #15-04680
Orange County Crime Laboratory Case #FR 15-42710

Dear Chief Valentin,

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) Cpl. David Lima. The incident involved 51-year-old Francisco Alvarez, who survived his injuries, and occurred in the City of Santa Ana on Feb. 20, 2015.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Feb. 20, 2015, non-fatal officer-involved shooting of Alvarez. This 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 Feb. 20, 2015, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, more than fifty witness interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: SAPD reports, audio dispatch and radio traffic recordings; surveillance and cellphone video recordings; 911 calls; Orange County Crime Laboratory (OCCL) reports, including officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Alvarez; criminal history records related to Alvarez; 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 Cpl. Lima. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

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In an officer-involved shooting where the OCDA files criminal charges against the individual shot by the police, it is the OCDA's policy to release the final report regarding the incident after the issue of guilt is decided in the underlying filed criminal case. This policy is in place to ensure that the OCDA is not releasing any information that may be viewed as prejudicial to the defendant's right to receive a fair trial while his or her case is still pending.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings in Orange County when a person is 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. Further, there are additional OCDA Investigators assigned to other units who are trained to assist when needed. On average, eight Investigators respond to an incident within an hour of getting 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 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.

An important part of the investigation of an officer involved shooting incident is to obtain a statement from the involved officers. Cpl. Lima gave a voluntary statement to OCDA Investigators on March 12, 2015.

FACTUAL SUMMARY

At approximately 12:25 p.m. on Feb. 20, 2015, Alvarez was waiting outside his 21-year-old stepdaughter's place of employment. Alvarez was armed with a 6-inch curved blade knife that had a black handle. When his stepdaughter, Jane Doe, came outside, Alvarez began to stab her repeatedly with the knife. Witnesses saw Jane Doe on the ground in a defensive position being attacked by Alvarez and called 911. Alvarez continued to stab her. When witnesses yelled at Alvarez and told him the police were coming, Alvarez responded, "Let them come, let them kill me." A witness grabbed a 2x4 wooden board and hit Alvarez in the back of the head. Alvarez started to bleed from his head and stopped his attack on Jane Doe.

With his knife still in hand, Alvarez left the area where he stabbed Jane Doe. Alvarez walked in the middle of the street, followed by numerous witnesses, one carrying 2x4 wooden board and another holding a lead pipe. Several nearby businesses locked their doors. Alvarez was walking in the direction of an elementary school, which commenced lockdown procedures. Given the time of day, many witnesses were outside and saw the incident.

A police dispatcher broadcasted the call and Cpl. Lima responded to the scene in his patrol car. Cpl. Lima thought the situation was strange because, in his 18 years of experience, most stabbers did not repeatedly stab their victim. This suggested to Cpl. Lima that Alvarez intended to kill the young woman, and that Cpl. Lima would be contacting an extremely violent individual. Two additional officers responded to the call, but Cpl. Lima was close and knew he would be the first to arrive.

When Cpl. Lima arrived at the scene, he saw Alvarez walking slowly in the middle of a wide street with several civilian witnesses still following him. The civilian witnesses pointed to Alvarez to identify him as the stabber. Cpl. Lima stopped his patrol car behind Alvarez approximately 30 feet away. At that time, Alvarez was walking away from Cpl. Lima. Cpl.

Lima exited his patrol car, drew his firearm, and held it with both hands. Cpl. Lima saw that Alvarez still had the knife in his hand. Cpl. Lima was in full police uniform, next to a black and white patrol car, and was clearly and unmistakably identifiable as a police officer. Alvarez turned around to face Cpl. Lima. Cpl. Lima saw that Alvarez had blood all over his hands and face. Cpl. Lima ordered Alvarez to drop the knife. Alvarez responded, "No, I want to die." Again, Cpl. Lima commanded Alvarez to drop the knife, and again Alvarez responded, "No, I want to die." This exchange happened at least three times. Cpl. Lima advised dispatch of the situation through his radio.

During this time, SAPD Officer Carlos Aguilera arrived in his patrol car and stopped near Cpl. Lima. In addition to commanding Alvarez to drop the knife, Cpl. Lima tried several more non-lethal options to subdue Alvarez. First, he told Officer Aguilera to get the "40 millimeter," a non-lethal weapon that fires rubber bullets, from the trunk of one of the patrol cars. As Officer Aguilera turned to get the non-lethal weapon, Cpl. Lima again commanded Alvarez to drop the knife, and Alvarez again said, "No, I want to die." Cpl. Lima then took his left hand off his gun and unbuckled his Taser holder.

At this time, Alvarez advanced on the officers and swung the knife from side to side, and Cpl. Lima quickly grabbed his gun with both hands again. Officer Aguilera heard Cpl. Lima yelling, "Drop the knife, drop the knife." Officer Aguilera looked up and saw Alvarez in dangerous proximity to Cpl. Lima, so Officer Aguilera quickly drew his firearm and returned to Cpl. Lima's side. Officer Aguilera heard Alvarez say he wanted to die, and believed Alvarez was trying to commit suicide. Officer Aguilera thought Alvarez intended to stab the officers, and posed a danger to the civilians nearby.

As Alvarez advanced, Cpl. Lima took a few steps back to gain distance from Alvarez. Despite Cpl. Lima's efforts, Alvarez was within 15 feet of the officers and advancing. Cpl. Lima and Officer Aguilera were trained that a suspect with a knife within 21 feet could easily close the gap and fatally strike. Alvarez kept walking toward the officers, swinging the knife. Cpl. Lima did not think Alvarez was going to stop and was determined to stab Cpl. Lima. Fearing for his life, Officer Aguilera's life, and those of the nearby witnesses, Cpl. Lima discharged his firearm four times. Officer Aguilera also felt Cpl. Lima had no choice but to shoot to stop the threat. Approximately 30 seconds elapsed from the time Cpl. Lima exited his patrol car to the time shots were fired.

All four bullets hit Alvarez. He was struck twice in the abdomen, once in the right arm, and once in the right leg. He collapsed on the ground and dropped the knife, and Officer Aguilera quickly kicked it away. Cpl. Lima administered first aid to Alvarez until paramedics responded. Civilians noted that the officers were trying to help Alvarez. The Orange County Fire Authority provided additional medical care and transported Alvarez to the University of California, Irvine Medical Center (UCIMC), where he underwent surgery for multiple gunshot wounds. Alvarez survived his wounds. Jane Doe was also transported to the hospital with multiple life threatening stab wounds. Fortunately, Jane Doe survived and is continuously recovering from her injuries.

Numerous civilians saw the entire incident, from the time Alvarez stabbed his stepdaughter, to his confrontation with the police officers. They heard repeated commands from the police officers for Alvarez to stop and drop the knife. The witnesses said the officers were telling Alvarez to put the knife down the entire time, and stated, "He (Alvarez) was so close to them... he just wouldn't stop." Civilian witnesses stated, "I don't think they did anything wrong," and "I was surprised they did not fire sooner, he (Alvarez) was not stopping, he was walking with intention, wasn't slowing down at all." The civilian witnesses expressed fear for the officers' safety and believed the officers' lives were in danger. The civilian witnesses also stated, "There is no doubt in my mind, if they did not shoot him, he was going to stab him (Cpl. Lima)," and, "If the officers had not shot, he would have attacked them."

EVIDENCE COLLECTED

The following items of evidence were collected from the scene:

- One Victorinos Fibrox knife, black handle and 6 inch blade with apparent blood
- Four .40 cartridge casings, head stamp "Winchester 40 S&W"
- One black short sleeve t-shirt with apparent blood and gunpowder particles
- One bullet fragment taken from the black short-sleeve t-shirt

- One pair of Nike sweatpants with apparent blood and gunpowder particles

The following items of evidence were collected from Cpl. Lima:

- Glock Model 22, .40 Smith & Wesson caliber pistol
- Two loaded magazines

EVIDENCE ANALYSIS

Firearms Examination

Cpl. Lima's Glock Model 22, .40 caliber pistol, was test fired at the OCCL and operated without malfunction.

Projectile Examinations:

The four Winchester brand .40 Smith & Wesson caliber cases collected from the scene were analyzed and determined to have been fired from Cpl. Lima's Glock pistol.

Toxicological Examination

A sample of Alvarez's pre-transfusion blood was collected at UCIMC and analyzed by the OCCL. Alvarez's blood tested positive for Nordiazepam and negative for blood alcohol.

ALVAREZ'S PRIOR CRIMINAL HISTORY

Alvarez's criminal history was reviewed and considered. Alvarez had been previously convicted of possession of a controlled substance and driving under the influence.

ALVAREZ'S POST-INCIDENT CONVICTION

On Feb. 23, 2015, the OCDA filed criminal charges against Alvarez in Orange County Superior Court, case #15CF0348, consisting of felony attempted murder of Jane Doe with premeditation, a violation of California Penal Code sections 664-187(a); personal use of a deadly weapon, in violation of California Penal Code section 12022(b)(1), and great bodily injury, in violation of California Penal Code section 12022.7(a). On Dec. 22, 2015, the OCDA presented evidence to the Orange County Grand Jury, which returned an indictment against Alvarez accusing him in Orange County Superior Court, case #15ZF0005, of felony attempted murder of Jane Doe with premeditation, a violation of California Penal Code sections 664-187(a); personal use of a deadly weapon on Jane Doe, in violation of California Penal Code section 12022(b)(1), infliction of great bodily injury on Jane Doe, in violation of California Penal Code section 12022.7(a), and aggravated assault on Cpl. Lima, in violation of California Penal Code section 245 (c). On September 4, 2018, Alvarez plead guilty to all the charges filed against him, and specifically admitted to attempting to murder Jane Doe, and to committing an aggravated assault against Cpl. Lima.

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 for the prosecution 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. 332.)

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest. Similarly, the relevant Criminal Jury Instructions as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent. The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.)

Nevertheless, the above justifications must be interpreted in light of the 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 held 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 bodily 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. Conner* (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 397-398.) Thus, the Court cautioned that the “reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (*Id.* at 396.)

The United States Supreme Court's analysis and teachings in *Graham* are applicable to the circumstances surrounding the interactions of Cpl. Lima with Alvarez.

LEGAL ANALYSIS

The issue is whether Cpl. Lima's conduct on Feb. 20, 2015, was criminally culpable and without justification. Based on the totality of the circumstances, Cpl. Lima was justified in believing that Alvarez posed a significant threat of death or serious physical injury to himself and others. Cpl. Lima was dispatched to a scene where Alvarez was repeatedly stabbing a young woman, later determined to be his stepdaughter. Alvarez assaulted his stepdaughter in the street, in front of numerous witnesses. Alvarez ignored the crowd's pleas to stop, and only did so when a civilian struck him in the head with a 2x4 piece of wood.

When Alvarez stepped away from his stepdaughter, he kept the knife in his hand and continued to walk down the street,

followed by witnesses. Cpl. Lima was the first on scene, and saw Alvarez walking away from him in the middle of the street. Witnesses identified Alvarez as the stabber. When Alvarez turned, Cpl. Lima saw him holding the knife and was close enough to notice blood on Alvarez's hands and clothes. Alvarez walked toward Cpl. Lima, who was clearly identifiable as a police officer, by both his uniform and marked police vehicle. Cpl. Lima told Alvarez to drop the knife, to which Alvarez replied, "I want to die." This verbal exchange happened three times while Alvarez was walking toward Cpl. Lima. The officers thought Alvarez may have been trying to commit suicide by threatening the officers so they would shoot him.

Officer Aguilera arrived and parked near Cpl. Lima. Officer Aguilera tried to get to the weapon in his vehicle that fired rubber bullets, and Cpl. Lima unbuckled his belt to access his Taser, but Alvarez kept advancing. Due to Alvarez's close proximity to Cpl. Lima and his refusal to drop the knife, both Cpl. Lima and Officer Aguilera were in fear for their lives and those of the nearby witnesses. This fear was absolutely reasonable and justified, given Alvarez's stabbing of his stepdaughter moments before.

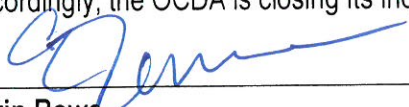
Alvarez advanced toward the officers while swinging the knife from side to side and was within 15 feet of the officers. Cpl. Lima and Officer Aguilera were trained that a suspect armed with a knife can fatally strike anywhere within 21 feet. Cpl. Lima took a few steps back to distance himself from Alvarez, who kept walking toward them. Cpl. Lima believed Alvarez was going to stab him, or harm Officer Aguilera or the nearby civilians, and discharged his weapon. Cpl. Lima fired four shots, all of which struck Alvarez and immobilized the threat posed to the officers and witnesses. Numerous civilians said the officers were in danger because Alvarez was so close to them and would not stop. They believed the officers were justified in shooting Alvarez and felt the officers did what they had to do to protect themselves. Our legal analysis reaches the exact same conclusion, that Cpl. Lima was justified in using the appropriate amount of force to immobilize Alvarez.

In order for Cpl. Lima 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 Cpl. Lima did not act in reasonable and justifiable self-defense or defense of another when he shot at Alvarez. As should be apparent from the above-described analysis, the prosecution would not be able to carry that burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for Cpl. Lima to believe that his life, Officer Aguilera's life, and the nearby witnesses' lives were in danger. Therefore, Cpl. Lima was justified when he shot Alvarez. Cpl. Lima did not commit a crime, but rather carried out his duties as a peace officer in a reasonable and justifiable manner to protect himself, his partner, and the public.

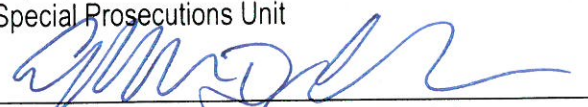
CONCLUSION

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 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 Cpl. David Lima. Instead, there is overwhelming evidence that Cpl. Lima's actions were reasonable and justified under the circumstances when he shot Alvarez on Feb. 20, 2015.

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



Erin Rowe
Deputy District Attorney
Special Prosecutions Unit



Read and approved by **Ebrahim Baytieh**
Senior Assistant District Attorney
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