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August 16, 2017

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

Re: Custodial Death on July 23, 2016
Death of Inmate Humberto Rojas Sanchez, Jr.
District Attorney Investigations Case # S.A. 16-026
Orange County Sheriff's Department Case # 16-184722
Orange County Crime Laboratory Case # FR 16-52168
Orange County Sheriff's – Coroner Case # 16-03270-HO

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's Office (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the July 23, 2016, custodial death of 34-year-old inmate Humberto Rojas Sanchez.

## OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Sanchez. In this letter, the OCDA describes the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to determine whether or not 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 July 23, 2016, OCDA Special Assignment Unit (OCDASAU) Investigators responded to University of California, Irvine-Medical Center, where Sanchez died while in custody after receiving medical treatment at the hospital. During the course of this investigation, the OCDASAU interviewed three witnesses, 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 if 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 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, as well as non-fatal, officer-involved shootings and custodial death cases and determine whether or not the filing of criminal charges is 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.

## FACTS

Humberto Sanchez was a 34-year-old male with a prior medical history which included internal bleeding and hepatic cirrhosis. Sanchez also had an extensive criminal history, beginning with his first arrest at the age of twelve.

On Wednesday, Feb. 11, 2015, Humberto Sanchez was arrested by the Westminster Police Department (WPD) for multiple felonies including robbery. On Thursday, Feb. 12, 2015, Sanchez was booked at the Orange County Men's Central Jail, but eventually was housed at the Orange County Theo Lacy Facility. Sanchez was booked in Module M with inmates that were considered maximum security. Sanchez was housed with one other inmate in Cell # 1, a two-man cell. On May 9, 2016, Sanchez was convicted by a jury of robbery with a prior strike. Sentencing was eventually continued to July 22, 2016. Sanchez was facing between nine and 16 years in state prison.

In the early morning hours of Wednesday, July 20, 2016, OCSD Deputy Andrew Mirth observed Sanchez jumping and skipping around in his cell and appeared to be under the influence of a controlled substance. According to Deputy Mirth, at approximately 4:00 a.m., he and several other deputies contacted and removed Sanchez and his cellmate from their cell. Deputy Tyler Perkins conducted a search of the cell and located a clear plastic bag that contained an unknown orange liquid that appeared to be "pruno," a jail-made alcohol. Pruno is typically made from rotting fruit, juice, bread, and sugar combined in a container or plastic bag. Apparently, Sanchez had made a batch of pruno using oranges, apples, and sugar packets, which he allowed to ferment to create a form of alcohol. Sanchez was physically cooperative with the responding deputies, but denied having any knowledge of the pruno and refused to answer any questions. Sanchez was provided food and later he and his cellmate were rehoused in their cell.

Later that same day of July 20, 2016, at approximately 5:00 p.m., Sanchez was bent over at the toilet coughing and vomiting blood. Sanchez's cellmate observed blood spatter on the ground near the toilet and inside the toilet, and pressed the medical emergency button located inside of his cell. At approximately 5:02 p.m., Deputies Christopher Rosales and Brian Rowe conducted their hourly walk through and went to check on Sanchez. Deputy Rowe observed Sanchez sitting on the toilet and he appeared to be sick. Deputy Rowe did not see any vomit or blood on or around Sanchez. Sanchez's cellmate told the deputies that Sanchez was not feeling well. According to Sanchez's cellmate, Sanchez had been feeling ill all day, while he himself felt fine. The cellmate indicated that he did not have any physical altercations with Sanchez, and both he and Sanchez each had two cups of pruno at around lunchtime the day prior, after which Sanchez's cellmate went to sleep. Deputy Rowe returned to the guard shack and contacted the jail's medical staff.

At approximately 5:10 p.m., the jail's medical staff arrived at Sanchez's cell. Sanchez was conscious and able to answer questions from the medical staff, however, according to Deputy Rosales, Sanchez "mumbled" when speaking. The medical staff determined that Sanchez needed to be transported to the hospital, at which time paramedics from the Orange County Fire Authority were requested to respond. At approximately 5:37 p.m., paramedics from the Orange Fire Authority, Engine #6, and Rescue Team #3, arrived at the jail and provided medical care to Sanchez.

At approximately 5:41 p.m., paramedics transported Sanchez, via ambulance, to University of California Irvine Medical Center (UCIMC), where the hospital medical staff took over care and admitted Sanchez into the Intensive Care Unit. At one point of lucidity, Sanchez told the treating staff that he consumed alcohol daily.

On Thursday, July 21, 2016, at approximately 3:50 p.m., Sanchez became unresponsive and his health continued to deteriorate, with uncontrolled internal bleeding in his esophagus. Sanchez's prognosis for recovery was poor. Sanchez's family was contacted and advised of his medical condition.

On Saturday, July 23, 2016, UCIMC medical staff met with Sanchez's family and the decision was made to withdraw medical intervention and care. At approximately 7:57 p.m., all medical intervention was withdrawn and at 8:15 p.m., the attending physician pronounced Sanchez deceased.

According to the attending physician, Sanchez suffered from a "massive hemorrhage from esophageal-varices related to alcoholic cirrhosis." Furthermore, he reported that Sanchez was resuscitated with multiple units of blood, however it was considered to be "futile care" because he was likely to bleed out again. When asked to elaborate on that, the attending physician explained that Sanchez was a "GI (Gastro-Intestinal) bleeder," and "once they start bleeding, the prognosis is very poor," and that there was "nothing really at that point that could be done that was safe in terms of fixing it," and "since it didn't stop bleeding, the inevitable was that he was going to pass."

According to the attending physician, there are many causes of liver cirrhosis, but the most common and most likely cause is alcohol abuse. The attending physician further elaborated that it was "abnormal" for someone at Sanchez's age to be cirrhotic, however many things may have contributed to the development of the condition such as genetic predisposition and the age at which Sanchez may have started consuming alcohol.

## AUTOPSY

On Saturday, July 30, 2016, independent Forensic Pathologist Dr. Scott Luzi from Clinical and Forensic Pathology Services, conducted an autopsy on the body of Sanchez. Dr. Luzi found no significant injury or trauma. The following diseases and pre-existing conditions were found:

- Pleural effusions
- Pericardial effusions
- Ascites
- Pulmonary congestion and edema
- Hepatic cirrhosis
- Esophageal varices with acute hemorrhage

Dr. Luzi concluded that Sanchez's death was due to cirrhosis of the liver, ruptured (bleeding) varices in his esophagus, and a large amount of blood in his stomach, which was all consistent with complications due to chronic alcoholism.

## EVIDENCE ANALYSIS

### Toxicological Examination

A sample of Sanchez's antemortem and postmortem blood was collected for testing and yielded the following results:

| DRUG | MATRIX | RESULTS & INTERPRETATIONS |
|---|---|---|
| Fentanyl | Postmortem Blood | 0.0082 ± 0.0010 mg/L |
| Midazolam | Postmortem Blood | 0.778 ± 0.032 mg/L |
| Acetaminophen (Free) | Antemortem Blood | 5.75 ± 0.66 mg/L |

| | | |
|---|---|---|
| Ethanol | Antemortem Blood | 0.041 ± 0.003%(w/v) |
| Acetaldehyde | Antemortem Blood | Detected |

Furthermore, Sanchez's blood tested positive for Hepatitis C.

**BACKGROUND INFORMATION**

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

- False information to Police
- Possession of a controlled substance without a prescription
- Possession of burglary tools
- Battery upon a spouse
- Possession of drug paraphernalia
- Possession of Marijuana
- Under the Influence of a Controlled Substance
- Battery
- Aiding a Street Gang
- Child Cruelty/Abuse
- Assault
- Violation of a Protective Order
- Resisting Arrest
- Possession of Stolen Property
- Car Jacking
- Possession of a Dangerous Weapon
- Gang Activity
- Bringing Controlled Substances into Jail
- Possession of Methamphetamine for Sale
- Robbery for the Benefit of a Street Gang
- Violation of Parole.
- Possession of Concealed Dirk or Dagger
- Probation Violation
- Assault with a Deadly Weapon, not a Firearm

**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 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.' [citation] 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 they act 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 in this case 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.

Although the OCSD owed Sanchez a duty of care, the evidence does not support a finding that this duty was breached – either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter). Sanchez's death was the result of a combination of Sanchez's pre-existing medical conditions, hepatic cirrhosis, and his unlawful and intentional ingestion of alcohol, which caused uncontrolled hemorrhaging in his esophagus. The evidence shows that the OCSD deputies responded as soon as Sanchez's cellmate alerted them that Sanchez was vomiting blood. Immediately after the deputies were notified, medical personnel were alerted and responded within eight minutes. The OCSD medical personnel in turn evaluated Sanchez's condition and determined that he required more extensive medical treatment, and requested paramedics to transport Sanchez to a nearby hospital, where he received emergency medical treatment.

Thus, there is no evidence whatsoever to support a finding that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty. Furthermore, according to the attending physician at the hospital, Sanchez's condition was such that there was an inability to stop the esophageal hemorrhaging once it began.

**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 no evidence to support a finding of criminal culpability on the part of any OCSD personnel or any individual under the supervision of the OCSD. The evidence shows that Sanchez died as a result of complications of hepatic cirrhosis and esophageal varices with acute hemorrhage resulting from alcohol abuse.

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

Respectfully submitted,

**NIKKI CHAMBERS**
Deputy District Attorney
Special Prosecutions Unit

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