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October 11, 2016

Chief Raul Quezada
Anaheim Police Department
425 South Harbor Boulevard
Anaheim, CA 92805

Re: Officer Involved Shooting on Oct. 15, 2015
Non-Fatal Incident involving Juan Carlos Linares
District Attorney Investigations Case #SA 15-019
Anaheim Police Department Incident #15-164795
Orange County Crime Laboratory Case #5-56515
Anaheim Fire Department Incident #A1531633

Dear Chief Quezada,

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 Anaheim Police Department (APD) Officers Ryan Nichols and Jose Duran, and Investigator James Rodriguez. Juan Carlos Linares, 23, Anaheim, survived his injuries. The incident occurred in the City of Anaheim on Oct. 15, 2015.

OVERVIEW

This letter contains a description of the scope and legal conclusions resulting from the OCDA's investigation of the Oct. 15, 2015, non-fatal officer-involved shooting of Linares. 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 APD 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 Oct. 15, 2015, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators conducted 20 interviews and 27 canvass interviews and obtained and reviewed the following: APD reports, audio recordings and dispatch including radio traffic recordings; Anaheim Fire Department reports; Orange County Sheriff Crime Lab (OCCL) reports including officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Linares; criminal history records related to Linares, including prior incident reports; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and impartially reviewed all available 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 APD officers or personnel,

specifically Officers Nichols and Duran, and Investigator Rodriguez. The OCDA will not be addressing any possible issues relating to policy, training, tactics or civil liability.

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

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

When the OCDASAU Investigator has concluded the investigation, the file is turned over to a veteran deputy district attorney for legal review. Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal, as well as non-fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Throughout the review process, the assigned prosecutor will be in consultation with the assistant district attorney supervising the Special Prosecutions Unit, who will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation is attempting to obtain a statement from the involved officers. Officer Nichols and Investigator Rodriguez gave voluntary statements to OCDA Investigators on Oct. 16, 2015. Officer Duran gave a voluntary statement to OCDA Investigators on Oct. 26, 2015.

FACTUAL SUMMARY

On Oct. 15, 2015, members of APD's Crime Task Force (CTF) were attempting to locate Linares, who had an outstanding warrant for his arrest for absconding from a drug treatment program. Linares was a known member of a documented criminal street gang, and was on active gang probation stemming from a 2013 conviction for assault with a vehicle on a peace officer and street terrorism. Linares was facing eight years in state prison when apprehended. CTF was surveilling Linares' girlfriend, on West Valdina Avenue, and Linares' parent's residence, on West Juno Avenue, both in Anaheim. Around noon, CTF Investigator Vargas saw two men leave the West Juno address in a blue 2002 Chevrolet Trailblazer. The men returned within half an hour. Investigator Vargas believed the men were Linares and his twin brother (Twin Linares). At approximately 1:00 p.m., Sergeant Delgado saw the Linares twins drive away from West Juno in the Trailblazer. CTF members followed and asked for marked APD patrol units to initiate a car stop. At approximately 1:19 p.m., Officers Duran and Whitehead located the Trailblazer. Officer Duran pulled behind the Trailblazer and activated his emergency overhead red and blue lights to effectuate a car stop. Linares refused to yield and kept driving.

A few minutes later, Linares turned southbound on Walnut Street and pulled to the curb. Twin Linares got out of the Trailblazer and immediately surrendered to a third officer. Linares accelerated away, still followed by Officers Duran and Whitehead. Linares failed to yield and led the officers in a pursuit that lasted approximately seven minutes and

45 seconds. During the pursuit, Linares ran several stop signs, drove through a red light, and reached speeds of 60 miles per hour. During the pursuit, it was broadcast that Linares was on probation for assault on a police officer with a vehicle and street terrorism, and that he had received an 8-year suspended sentence. Additional officers responded and joined the pursuit.

Officer Whitehead transitioned to the primary unit because he was trained and certified in the Pursuit Intervention Technique (PIT). Officer Duran was the secondary unit. Linares drove into his girlfriend's neighborhood, circling three times and slowing when he passed her house on Valdina Avenue, with officers following with lights and sirens activated. Linares drove past his girlfriend, who was standing in her front yard, speaking to him on her cell phone and telling him to stop. Linares blew her a kiss and kept driving. Linares' speed through the residential area and nearby elementary school was approximately 30 to 40 miles per hour.

Due to Linares' failure to yield, permission to use a PIT maneuver was granted. At 1:29 p.m., Officer Whitehead performed a PIT maneuver at the intersection of Valdina Avenue and Geneva Street. The Trailblazer spun 180 degrees, and ended up facing eastbound on Valdina Avenue. Officer Duran turned west onto Valdina Avenue from Geneva Street. Because Officer Duran was following Officer Whitehead, and the Trailblazer had spun facing eastbound, Officer Duran was now facing the front of the Trailblazer. Officer Duran and Linares made eye contact. Linares accelerated east and rammed into the front of Officer Duran's patrol unit. The collision caused Officer Duran's air bag to deploy and produced significant front end damage to both vehicles.

Linares then backed up 20 to 30 feet and accelerated toward Officer Duran a second time, at a speed that caused the tires to lose traction with the pavement. As the Trailblazer accelerated toward Officer Duran, Officer Nichols was approximately five feet from the rear of the Trailblazer. Officer Nichols did not think Linares was going to stop, and was concerned that Linares would hit his fellow officers, or flee and endanger civilians or the children at the nearby school. In an effort to immobilize Linares' vehicle, Officer Nichols fired five rounds into the rear passenger tire.

At the same time, Officer Duran was stunned by the impact of the collision and airbag deployment. As Officer Duran was getting out of his patrol unit, Linares rammed his patrol unit a second time. Officer Duran looked to his right and saw Investigator Vargas in an unmarked SUV, stopped alongside the passenger side of his unit. Investigator Vargas was unable to open the door and was trapped inside the vehicle. To protect Investigator Vargas, Officer Duran exited his vehicle, drew his weapon, and fired approximately seven rounds at Linares as he backed west on Valdina Avenue.

Linares reversed on Valdina Avenue for approximately 50 feet before he sideswiped Officer Whitehead's patrol unit. Linares continued backing up for an additional ten to fifteen feet before he collided with a green Jeep Cherokee parked along the south curb. Linares again accelerated forward on Valdina Avenue toward the officers and their vehicles. Investigator Rodriguez, who was standing on a driveway on Valdina Avenue, saw Linares drive toward Investigator Vargas, who was still trapped in his vehicle. Investigator Rodriguez fired three rounds at Linares through the passenger side window of the Trailblazer. Officer Duran saw Linares traveling east, directly toward Investigator Vargas, and fired approximately seven additional rounds at Linares. After the rounds were fired, the Trailblazer decelerated, but continued rolling until it came to rest against Investigator Vargas' vehicle.

Sergeant Delgado positioned a patrol unit behind Linares' vehicle, pinning the Trailblazer and preventing him from moving. An arrest team was formed and orders were given to Linares to exit the vehicle. Linares did not initially comply but subsequently crawled out of the passenger window and was detained. Officers rendered first aid and paramedics were called to the scene. Linares was transported to the hospital, where he was treated for multiple gunshot wounds and expected to make a full recovery.

Voluntary, Consensual Statement of Investigator James Rodriguez

Investigator Rodriguez gave a voluntary, consensual statement to the OCDA on Oct. 16, 2015. Below is a summary of Investigator Rodriguez's statement:

On Oct. 15, 2015, Investigator Rodriguez conducted surveillance at Linares' girlfriend's house on Valdina Avenue. He parked at the nearby elementary school when he received information that Linares' parents lived on Juno Avenue. Investigator Rodriguez went to the Juno address and saw Linares and Twin Linares leave the residence twice in a blue Trailblazer. The surveillance vehicles followed the suspects' car and asked for a marked police unit to perform a car stop to arrest the suspect.

The marked units reported a failure to yield, and were in pursuit. Investigator Rodriguez heard over the police radio that the suspect has a prior history of assault with a vehicle on a Fullerton Police Department Officer, and was an active gang member. Investigator Rodriguez knew Twin Linares got out of the vehicle and was detained by another officer, so Investigator Rodriguez continued the pursuit.

Linares drove to his girlfriend's house around 1:00 p.m. and Investigator Rodriguez saw her standing in the front yard as Linares and the pursuit team drove past. Investigator Rodriguez realized children would soon be out from the nearby elementary school when Officer Whitehead performed the PIT maneuver on Linares's vehicle. Investigator Rodriguez put on his tactical vest because he realized Linares was not going to give up. As Investigator Rodriguez ran toward the collision, he saw Linares' car backup and crash, then accelerate forward again. It appeared to Investigator Rodriguez that Linares was going to ram the police cars a second time. Investigator Rodriguez believed Linares was going to crash into Investigator Vargas or possibly head toward the school. As Linares drove back a second time, Investigator Rodriguez shot at least twice through the passenger window.

Investigator Rodriguez stopped shooting when he saw Linares buckle-under because he figured he was hit. Linares' vehicle rolled forward until it rested against the damaged police units, and Sergeant Delgado parked behind Linares' vehicle so it was blocked from any further movement. Investigator Rodriguez yelled at Linares, "Keep your hands up, keep your hands up!" After Linares exited the vehicle, Investigator Rodriguez approached to see if anyone else was inside the vehicle. When Investigator Rodriguez looked inside the vehicle, he saw a narcotics pipe on the front seat.

Voluntary, Consensual Statement of Officer Jose Duran

Officer Duran gave a voluntary, consensual statement to the OCDA on Oct. 26, 2015. Below is a summary of Officer Duran's statement:

On Oct. 15, 2015, Officer Duran was working a patrol assignment when he heard dispatch ask for a unit to conduct a traffic stop. Officer Duran saw a blue Trailblazer SUV, occupied by two males which matched the description provided over the radio. Officer Duran waited for more marked units to arrive before he turned on his patrol unit's lights. Officer Duran observed the driver of the Trailblazer looking at the rear view mirror, looking around, and talking to the front passenger. The Trailblazer did not pull over, so Officer Duran broadcast a failure to yield over the radio. The driver of the Trailblazer subsequently stopped, the front passenger got out, and the Trailblazer sped off again.

Officer Duran pursued the SUV and was joined by Officer Whitehead. Officer Whitehead took the lead because he was PIT certified. Linares drove to his girlfriend's neighborhood and drove past her house three times. On the third pass, Officer Whitehead conducted a PIT maneuver. This spun the Trailblazer in the opposite direction, causing Officer Duran to face head on with Linares. Linares made eye contact with Officer Duran and accelerated into the front of Officer Duran's police vehicle, which caused the airbag to deploy. Officer Duran was stunned by the crash and recalled that Linares was wanted for assaulting an officer with a vehicle. Officer Duran placed his car in park, and as he was getting out of the vehicle, Linares crashed into the patrol unit a second time. Linares backed his car up for a third time and Officer Duran realized Linares was going to strike his car again. Officer Duran feared for his life and that of Sergeant Delgado in the white SUV next to him. To protect himself and his fellow officer, Officer Duran

unholstered his gun, aimed for Linares' windshield, and fired approximately six rounds.

Officer Duran heard two more rounds as Linares drove the vehicle toward him and Sergeant Delgado for the third time. Officer Duran said Linares looked alert and controlled and estimated Linares was travelling at 20 to 25 miles per hour. Fearing for his safety and that of Sergeant Delgado, Officer Duran fired additional shots at Linares through the passenger side of the vehicle. Officer Duran thought he hit Linares because he saw blood on Linares' face. Linares stopped moving his vehicle, eventually crawled out of the window of the Trailblazer, and was apprehended.

Voluntary, Consensual Statement of Officer Ryan Nichols

Officer Nichols gave a voluntary, consensual statement to the OCDA on Oct. 16, 2015. Below is a summary of Officer Nichols' statement:

On Oct. 15, 2015, Officer Nichols was at the traffic office when he heard radio transmissions regarding a car stop. Officer Nichols left to assist in the pursuit and staged on Valdina Avenue. Officer Nichols saw Linares circle the area with police vehicles following and thought Linares was going to flee on foot. Officer Nichols was aware of Linares' previous conviction for assault with a vehicle on a police officer. Officer Nichols then saw a black and white police unit administer the PIT maneuver. After being turned around, the Trailblazer accelerated forward at approximately 20 to 25 miles an hour and rammed into a police unit. Officer Nichols saw the Trailblazer reverse and hit another vehicle. Officer Nichols ran along the curb line in the south shoulder of Valdina Avenue to track the driver. As Linares drove forward towards parked officers, Officer Nichols realized Linares was not stopping and was afraid Linares would hit the officers. Fearing for the safety of his fellow officers, Officer Nichols fired at the passenger-side rear tire to stop the vehicle. Officer Nichols then heard more gunshots to his right, and another collision. After the Trailblazer was immobilized, Officer Nichols coordinated an arrest team to apprehend Linares and administer first aid.

Post-Shooting, Voluntary Interviews with Civilian Witnesses in the Neighborhood

Civilians were interviewed and most heard sirens, the sounds of collisions, and gunshots, but did not see the shooting.

Jane Doe 1 was interviewed and said she has known Linares for approximately five years and has been in a dating relationship with him for the past four years. Jane Doe 1 stated that Linares told her he left his sobriety program. On the day of the incident, Linares called Jane Doe 1 on her cellphone. Jane Doe 1 could hear sirens in the background. Jane Doe 1 stated that Linares told her the police were right behind him and he did not know what to do. Jane Doe 1 asked why he did not just stop, and Linares told her he wanted to see her one last time. Jane Doe 1 told Linares she was at home, and Linares stated he was going to pass by her house. Linares slowed down as he drove by her house, while being pursued by approximately seven police cars, and blew her a kiss. Jane Doe 1 stated that she tried to get Linares to stop, however Linares heard the police officer talk to Jane Doe 1, and hung up the phone. Linares drove by Jane Doe 1's home two more times. Jane Doe 1 heard tires screeching and saw the vehicle Linares was driving at the corner of Geneva Street and Valdina Avenue. Jane Doe 1 heard more than five gunshots, but she did not see which officer did the shooting. Jane Doe 1 also said Linares has had a problem with methamphetamine use since she has known him.

Jane Doe 2 was at her kitchen window, which faces Valdina Avenue, when she heard police cars in her neighborhood. Jane Doe 2 walked outside and saw multiple marked and unmarked police cars chasing a vehicle. Jane Doe 2 stated that she saw the vehicle drive several times in a circle in the neighborhood. A marked police car struck Linares's vehicle in the rear, causing the vehicle to turn around and face the opposite direction. Jane Doe 2 heard police officers tell Linares to get out of the car, but Linares was still trying to drive away. Jane Doe 2 saw Linares ram two different police cars trying to get away. Jane Doe 2 heard multiple gunshots, and Linares finally stopped. Jane Doe 2 stated it took Linares a little while to get out of the car, and he collapsed in the street.

Twin Linares knew Linares left his sobriety program and there was a warrant out for his arrest. On the day of the incident, Twin Linares and Linares left their parent's house in a vehicle driven by Linares. Linares told Twin Linares that if the police car turned on its lights, he was going to leave. Twin Linares understood that to mean that Linares was not going to stop and was going to try to evade the police. When the police car lights came on, Linares told Twin Linares to get out of the car. Linares stopped the car, and Twin Linares got out and left his cellphone in the car. Twin Linares stated that Linares uses methamphetamine and he was not sure if Linares was under the influence of drugs or not, but said he probably was.

Linares' Consensual and Voluntary Statement

Linares provided a statement to OCDA investigators. Linares stated that he left rehab because he was caught with a cellphone and was "on the run." During the pursuit, Linares called his girlfriend to tell her that he loved her, and wanted to see her one last time to kiss her because he knew he was going to be arrested and taken into custody. Linares stated that he told the officers that he was trying to see his girlfriend and not trying to run. Linares stated he made three circles around his girlfriend's house, and while on the phone with him she told him to stop.

Linares stated that he smoked marijuana three days prior, as well as drank the night before the incident. On the day of the incident, Linares smoked methamphetamine at approximately 2:00 a.m. Linares stated that he was going to use methamphetamine during the pursuit and was in the process of unwrapping it and taking a hit because it is the only thing that calms him down.

Linares felt a police officer PIT him, and he hit his head on the steering wheel. Linares does not recall if he crashed into another car, and then the shooting just started happening. Linares believes that he was shot at 14 times. Linares recalls that after his car was struck, he passed out, went straight and then he just felt the shots and could not move his arms anymore. Linares stated that he was a member of a documented criminal street gang.

EVIDENCE COLLECTED

The following items were collected by Orange County Crime Lab personnel:

- Nineteen Cartridge Cases
- Five Bullets
- Six Bullet Jacket Fragments
- Glass Smoking Pipe
- Glock Model 17 pistol, 9mm Luger caliber, collected from Investigator Rodriguez
- Glock Model 21 pistol, .45 caliber, collected from Officer Nichols
- Glock Model 17 pistol, 9mm Luger caliber, collected from Officer Duran

FIREARMS ANALYSIS

- The three Glock pistols were examined and test fired by OCCL personnel and each operated without malfunction.
- Four cartridge cases from the scene were determined to have been fired by Officer Nichols's Glock Model 21 pistol.
- Three cartridge cases from the scene were determined to have been fired by Investigator Rodriguez's Glock Model 17 pistol.
- Twelve cartridge cases from the scene were determined to have been fired by Officer Duran's Glock Model 17 pistol.

LINARES' MEDICAL CONDITION

Linares was treated at the Orange County Global Medical Center in Santa Ana, for multiple gunshot wounds and abrasions. Linares underwent surgery and was expected to make a full recovery. Linares' blood tested negative at the hospital for alcohol and a drug screen was not performed.

LINARES' PRIOR CRIMINAL HISTORY

In 2013, Linares was convicted of felony assault with a firearm on a police officer and participation in a criminal street gang, and he was placed on formal probation with gang terms.

LINARES POST-INCIDENT CONVICTION

On Dec. 9, 2015, the OCDA filed criminal charges against Juan Carlos Linares in Orange County Superior Court case 15NF3262, consisting of felony counts including aggravated assault on a peace officer, a violation of California Penal Code section 245(c), and evading while driving recklessly, in violation of California Vehicle Code section 2800.2, with additional allegations for a prior conviction of a serious and violent felony, pursuant to California Penal Code sections 667(a)(1), 667(d)/(e)(1), and 1170.12(b)/(c)(1). On October 7, 2016, Linares pleaded guilty to all the charges and admitted the prior conviction. Linares was sentenced to nine years in state prison, which was a court offer.

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.) Therefore, in order for the OCDA to charge an officer with criminal offenses, it is necessary for the prosecution to have a good faith belief in the ability to prove, beyond a reasonable doubt, that no legal justifications existed for the officer's actions. (*People v. Banks* (1977) 67 Cal. App. 3d 379, 383-84.) 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. (*People v. Kilvington* (1894) 104 Cal. 86, 89.) The felony must involve violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 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." As with Penal Code Section 196, Section 835a only allows use of deadly force by the police officer when the suspect's felony involves violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal. App. 3d 325, 333.) The court 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 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 is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest. Similarly, the relevant Criminal Jury Instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself/herself from attack if, as a reasonable person, he/she had grounds for believing and did believe that bodily injury was about to be inflicted upon him/her or upon another person. In doing so, such person may immediately use all force and means which

he/she believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.)

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 Cal. App. 3d 1111, 1124.) Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others."

This limitation was, however, subsequently clarified 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 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 evolving." (*Id.* at 397.) Thus, the Court cautioned that "[t]he 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, supra*, are very much applicable to the circumstances surrounding the interactions of Officers Nichols and Duran, and Investigator Rodriguez with Linares.

LEGAL ANALYSIS

The issue in this case is whether the conduct of Officers Nichols and Duran, and Investigator Rodriguez, on Oct. 15, 2015, is criminally culpable and without justification. In order to charge Officers Nichols and Duran, and Investigator Rodriguez with a criminal violation, the prosecution must be able to prove beyond a reasonable doubt that no legal justification existed for the police officers' conduct and they did not act in lawful self-defense. However, if their actions are justifiable as lawful self-defense or defense of another, criminal charges will not be warranted. It is abundantly clear in this case based on the totality of the circumstances that all the involved officers and investigators acted reasonably and were merely responding with the appropriate justifiable force as a result of Linares' violent and criminal conduct toward them.

Officers Nichols and Duran, and Investigator Rodriguez, knew Linares was on probation for assaulting a police officer with a vehicle, and had received an 8-year suspended sentence. They were also aware that he had a warrant for his arrest because he absconded from a drug program, and was a member of a criminal street gang. During the pursuit, Linares drove in speeds up to 60 mph and violated numerous traffic laws. Civilians were in danger due to Linares' reckless driving, and Linares led the police on a pursuit in a residential neighborhood, past an elementary school where children were present and due to be released that afternoon.

During the pursuit, Linares stopped so Twin Linares could exit, and slowed his vehicle as he drove past his girlfriend's house three times. Linares had numerous opportunities to surrender but chose to evade the police until the officer deployed the PIT maneuver. After the PIT maneuver, Linares attempted to flee the police and struck another police vehicle head-on, causing the airbag to deploy. Linares then backed his vehicle again, sideswiped another police unit and hit a civilian car parked along the street.

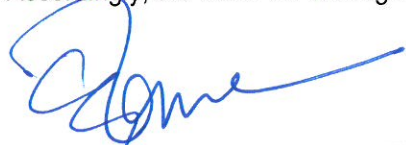
Linares once again placed his car in drive, and drove towards the parked police officers. Multiple officers noted Linares' demeanor and stated that he looked calm, appeared to know what he was doing, and was not going to give up because he knew that if he did, he would be going to jail. After Linares rammed his vehicle a second time into the front end of a police unit and an unmarked police car, Linares once again put his car in reverse. During this time, in an attempt to stop Linares and protect fellow officers and the public, Officer Duran unholstered his weapon and fired approximately seven rounds at Linares as he backed away. Officer Nichols fired rounds at Linares's rear passenger tire to slowdown the vehicle. Investigator Rodriguez fired three rounds at Linares when he was accelerating toward the parked officers, and stopped immediately after he saw that he had struck Linares. Officer Duran saw that Linares was still driving toward him at approximately 20 miles per hour and fired additional shots. Linares' vehicle stopped and was pinned between two police vehicles, and Linares was detained.

As should be apparent from the analysis above, the prosecution would be unable to prove beyond a reasonable doubt that no legal justification existed for the police officers' conduct, and that they did not act in lawful self-defense. A jury analyzing these facts would justly conclude that it was reasonable for Officers Nichols and Duran, and Investigator Rodriguez to believe that their lives, and the lives of others in the area, were in immediate and significant danger. Therefore, Officers Nichols and Duran, and Investigator Rodriguez were justified in the shooting of Linares and carried out their duties as peace officers in a reasonable and justifiable manner. Simply stated, these three peace officers did not commit a crime, on the contrary, they acted lawfully, justly and reasonably.

CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews we reviewed, it is our legal opinion that there is insufficient evidence of criminal culpability on the part of Officers Nichols and Duran, and Investigator Rodriguez, and there is substantial overwhelming evidence that their actions were reasonable and justified under the circumstances when they shot Linares on Oct. 15, 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**
Assistant District Attorney
Supervising Head of Court - Special Prosecutions Unit