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June 23, 2014

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

Re: Custodial Death on October 30, 2013
Death of Inmate Francisco Mendoza
District Attorney Investigations Case # S.A. 13-027
Santa Ana Police Department Case # 13-28992
Orange County Crime Laboratory Case # F.R. 13-54740

Dear Chief Rojas,

Please accept this letter detailing the Orange County District Attorney's (OCDA) Office's investigation and legal conclusion in connection with the above-listed incident involving the Oct. 30, 2013, custodial death of 51-year-old inmate Francisco Mendoza.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Mendoza. 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 Santa Ana Police Department (SAPD) personnel or any other person under the supervision of SAPD.

On Oct. 21, 2013, OCDA Special Assignment Unit (OCDASAU) Investigators responded to the Santa Ana Jail (SAJ) and to Western Medical Center - Santa Ana (WMC-SA), where Mendoza was treated following his collapse at SAJ. Mendoza died while receiving treatment at WMC-SA on Oct. 30, 2013. During the course of this investigation, eight witness interviews and 52 jail canvass interviews were conducted. The OCDASAU also obtained and reviewed reports from SAPD, the Orange County Sheriff's Department, the Orange County Crime Laboratory (OCCL), as well as incident scene photographs, video surveillance tapes and other relevant materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and reviewed all evidence and applicable 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 personnel or any other person acting under the supervision of the SAPD. The OCDA will not be addressing policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating custodial deaths within Orange County. 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 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 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 or Gang Units review 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 his or her supervisor, an Assistant District Attorney who will review any legal conclusions and resulting memoranda. 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 Sept. 30, 2011, approximately 25 months before his death, Mendoza was arrested in San Bernardino County by the United States Marshalls Office for a felony arrest warrant in reference to a violation of a federal offense. Mendoza was transported to SAJ, which provided contract detention services for federal prisoners.

When he arrived at SAJ, Mendoza was asked numerous pre-booking health screening questions by SAPD Custody Officer Nicholas Endara. Mendoza indicated that he did not have any medical problems and that he did not take any prescription medications.

Mendoza was then booked into SAJ and later transferred to housing Module 3B. Mendoza was classified as a low risk, general population inmate. Mendoza remained in Module 3B for the majority of his custody stay, where he was assigned as an inmate worker.

Mendoza maintained a rigorous workout program while in custody at SAJ. According to multiple inmates, Mendoza worked out "extremely hard" every day for approximately one hour, and he was in "top" physical condition. Mendoza's workouts included over 100 "burpees, squats, mountain climbers, and pushups."

A review of Mendoza's SAJ medical records revealed that Mendoza had visited an SAJ nurse on multiple occasions for chronic constipation, for which he was given Metamucil, a laxative. Mendoza also visited an SAJ nurse on multiple occasions for a foot fungus condition, for which he was prescribed Lotrisone, an anti-fungal medication.

Despite Mendoza's consistent exercise regimen, one inmate reported that Mendoza appeared to have lost weight over the last few months prior to his death. Moreover, Mendoza reportedly started to appear pale and malnourished.

On Oct. 11, 2013, Mendoza received an annual, routine chest x-ray at SAJ medical ward. The examination was conducted by Doctor Marc Awobuluyi. Doctor Awobuluyi evaluated the x-ray images and determined that Mendoza had mild cardiomegaly (enlarged heart). Doctor Awobuluyi did not recommend any further treatment or follow-up examinations.

On Oct. 13, 2013, Mendoza received an annual physical examination by SAJ Nurse Practitioner (NP) Isidro Sarmiento. During the external physical examination, NP Sarmiento evaluated Mendoza's skin, neck, joints, extremities, eyes, chest wall, breasts, lungs, heart, and other internal organs. She did not find any abnormalities.

On Oct. 21, 2013, at approximately 3:00 a.m., Mendoza's cellmate noticed that Mendoza appeared restless and needed to use the restroom in the "middle of the night." This was unusual for Mendoza, as he normally slept through the night. At approximately 6:30 a.m., Mendoza reported to the kitchen to transport food carts for "morning chow." At approximately 7:10 a.m., Mendoza drank a cup of milk and coffee. Mendoza did not appear ill, nor did he complain to anyone about feeling sick or injured. At approximately 7:47 a.m., Mendoza entered the recreation yard in Module 3B to work out. He wore an orange jail-issued t-shirt, light colored shorts, and black tennis shoes.

Mendoza's subsequent workout and collapse was captured by a surveillance camera mounted on the south wall of the recreation yard. Mendoza entered the recreation yard holding two cups of coffee. Mendoza placed the cups of coffee on the ground against the north wall, near the northeast corner of the recreation yard. Mendoza then took a drink from one of the cups and began to stretch his upper body and legs.

From approximately 7:47 to 7:54 a.m., Mendoza conducted stretching exercises by himself in the northeast corner of the recreation yard. At approximately 7:54 a.m., several other inmates met with Mendoza near the northeast corner of the recreation yard. Mendoza and four other inmates lined up in two rows, facing each other. Mendoza and the four other inmates commenced stretching exercises and ran in place. Six other inmates also exercised in different locations of the recreation yard.

At approximately 7:57 a.m., Mendoza and the four other inmates began their workout routine. The workout consisted of alternating between burpees and running in place. Mendoza exercised in this manner for approximately 16 minutes. According to one of the four inmates, Mendoza appeared to be extremely fatigued after only 40 burpees. The inmate had worked out with Mendoza on many prior occasions and felt this was unusual because Mendoza usually completed over 100 burpees without difficulty.

At approximately 8:13 a.m., Mendoza took a break from his workout and conversed with several other inmates in a semi-circle near the northeast corner of the recreation yard. At approximately 8:17 a.m., Mendoza looked down and placed his left hand on the west wall of the recreation yard and appeared to be dazed. Mendoza then collapsed onto his right side, in a southern direction, into another inmate's left leg, and then onto his back. Mendoza lay unconscious in a supine position while several inmates summoned help from correctional staff. Approximately 30 seconds later, SAJ Correctional Officer Karina Leon entered the recreation yard and saw Mendoza lying on the ground. Several inmates told Officer Leon that Mendoza was having a seizure. Officer Leon used her radio and called for medical personnel to respond to the recreation yard.

Approximately 30 seconds after Leon's arrival in the recreation yard, SAJ Nurses Lisa Werner and Sandra Paleyo entered the recreation yard. SAJ Nurse Dale Dumas entered the recreation yard shortly thereafter. At this time, all of the inmates in the recreation yard returned to their respective cells.

Nurses Werner, Dumas, and Paleyo assessed Mendoza's condition. Nurse Dumas conducted a "head-to-toe" evaluation of Mendoza and noticed that he was unconscious and unresponsive. Nurse Dumas initiated a "sternum rub" on Mendoza's chest, but was still unable to get a response. Nurse Werner checked Mendoza's vital signs and determined that he was pulseless and not breathing. Nurse Werner attached an Ambu-Bag to Mendoza's mouth and delivered rescue breathes. SAJ Correctional Officer Pedro Jiron arrived on the scene and administered chest compressions on Mendoza.

Nurse Dumas retrieved an automated external defibrillator (AED) device and delivered one shock to Mendoza. The AED device advised Nurse Dumas to initiate cardiopulmonary resuscitation (CPR). Officer Jiron continued with chest compressions while Nurse Werner delivered rescue breathes via the Ambu-bag.

Officer Jiron took turns with Nurses Dumas and Paleyo delivering chest compressions to Mendoza, while Nurse Werner delivered rescue breathes via the Ambu-Bag for approximately 20 minutes, before Orange County Fire Authority (OCFA) and Care Ambulance personnel arrived.

At approximately 8:40 a.m., OCFA and Care Ambulance personnel arrived and began to treat Mendoza. A Care Ambulance emergency medical technician took over chest compressions on Mendoza, while OCFA paramedics unloaded their equipment.

OCFA paramedics attached an electrocardiogram monitor to Mendoza's chest and the readings indicated that Mendoza was asystole (no cardiac electrical activity). An intra-osseous line was established and two doses of Epinephrine (one-milligram each) were administered. An endotracheal tube was inserted in Mendoza's mouth.

OCFA and Care Ambulance personnel performed CPR on Mendoza for approximately 15 minutes until a faint heart rhythm was detected. Mendoza was loaded onto a gurney and wheeled out of the recreation yard and housing unit. Mendoza was asystole as he was transported out of SAJ, and CPR was reinitiated as he was loaded into the ambulance.

At approximately 9:00 a.m., Mendoza was transported by ambulance to WMC-SA. During transport to the hospital, Mendoza received one shock from the AED and a one-milligram dose of Epinephrine. CPR was applied to Mendoza continuously while en route to the hospital.

At approximately 9:09 a.m., Mendoza arrived at WMC-SA and he exhibited a detectable pulse and blood pressure. Mendoza was wheeled into the WMC-SA emergency room (ER). Upon arrival at the ER, Mendoza still had a detectable pulse; however, he quickly deteriorated into ventricular defibrillation. ER personnel initiated CPR per advanced cardiac life support protocol and administered three shocks from the defibrillator. Mendoza was intubated and a central intravenous line was established in his right subclavian area. In addition, Mendoza received the following medications intravenously:

- 200 mg of Amiodarone with a continued drip
- 2 grams of Lidocaine and Magnesium
- 1 amp of Calcium Chloride
- 2 amps of Sodium Bicarbonate

At approximately 12:18 p.m., Mendoza's heart rhythm and blood pressure were stabilized and he was transported to the Intensive Care Unit (ICU). During Mendoza's transport to the ICU, his blood pressure dropped, so he was given a Levophed drip. Upon receiving the drip, Mendoza's blood pressure stabilized in the low 100s and he was placed on a respirator.

At approximately 12:30 p.m., a pulmonologist examined Mendoza in the ICU. The doctor provided the following assessment of Mendoza:

- Respiratory failure requiring mechanical ventilation
- Ventricular fibrillation and asystolic arrest
- Metabolic acidosis
- Probable rhabdomyolysis

The doctor recommended that Mendoza receive intravenous fluids and hypothermia protocol, and also recommended that Mendoza be examined by a cardiologist.

On Oct. 22, 2013, at approximately 8:24 a.m., a cardiologist examined Mendoza in the ICU. The doctor provided the following assessment of Mendoza:

- Ventricular fibrillation arrest
- Cardiomyopathy
- Acute myocardial infarction

The cardiologist performed an echocardiogram on Mendoza and determined that there was an ejection fraction of 31 percent with a dilated and enlarged left ventricle. The doctor described Mendoza's systolic functions as "diminished."

At approximately 6:28 p.m., Doctor J.C. examined Mendoza in the ICU. Doctor J.C. was assigned as Mendoza's attending physician. Doctor J.C. conducted a general assessment of Mendoza's condition and decided to continue with "supportive care."

On Oct. 23, 2013, at approximately 6:39 p.m., Doctor J.C. examined Mendoza in the ICU and determined that Mendoza was in a constant comatose state and needed continued respirator support.

On Oct. 24, 2013, at approximately 7:27 a.m., Doctor J.C. examined Mendoza in the ICU and discovered that Mendoza had lost pupil response and had minimal gag response with decerebrate posturing. Doctor J.C. recommended and ordered an electroencephalogram (EEG) to evaluate Mendoza's brain activity.

On Oct. 25, 2013, at approximately 7:18 a.m., Doctor J.C. examined Mendoza in the ICU. Doctor J.C. noticed that Mendoza remained in a comatose state and had minimal pupillary reaction. In addition, Mendoza had no nasal ciliary, corneals, or withdrawal response to noxious stimuli. Doctor J.C. advised Mendoza's family that Mendoza was in a persistent comatose state and death was imminent.

From Oct. 26, 2013, to Oct. 29, 2013, Mendoza remained comatose with respirator support. Several attempts were made to remove Mendoza from the respirator; however, he was unable to breathe on his own and was placed back on the respirator.

On Oct. 30, 2013, Doctor A.M. was assigned as Mendoza's primary physician. Doctor A.M. requested that Mendoza be examined by a neurologist. On Oct. 30, 2013, at approximately 8:00 a.m., a neurologist examined Mendoza in the ICU. The neurologist assessed Mendoza's brain activity using an EEG and the International 10/20 System of Electrode Placement. After 30 minutes of continued monitoring, no electro-cerebral activity was identified. The neurologist pronounced Mendoza brain dead. At approximately 1:00 p.m., Doctor A.M. concurred with the neurologist's opinion and pronounced Mendoza deceased.

AUTOPSY

On Nov. 5, 2013, Dr. Etoi Davenport, a pathologist with the Orange County Sheriff-Coroner's Office, conducted a post-mortem examination of Mendoza. Doctor Davenport observed that Mendoza's heart was not significantly enlarged, but observed that Mendoza's left descending coronary artery had up to 90 percent atherosclerotic occlusion (blockage), his right coronary artery had up to 40 percent atherosclerotic narrowing, and his brain had swelling and herniation. Doctor Davenport concluded that the cause of death was complications of myocardial infarct (heart attack) due to left anterior descending atherosclerotic occlusive disease.

EVIDENCE ANALYSIS

The following evidence was collected from the recreation yard:

- One pair of black "Croc" sandals, male size nine
- One orange "Gildan" jail-issued T-shirt, size large

Toxicological Examination

A sample of Mendoza's post-mortem blood yielded the following results:

DRUG	MATRIX	RESULT
Sevoflurane	Postmortem Blood	Detected

Mendoza's Criminal History

Mendoza had no criminal history, except for the custody charges underlying his incarceration.

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, it must be proven that:

a. The person committed an act that caused the death of another person;
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 acted he 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;
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.

Legal Duty

In *Girardo v. California Department of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 251, the court establishes that there is a "special relationship" between custodian and inmate:

> "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 provides 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

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he 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 acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.

Causation

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 of express or implied malice on the part of any SAPD personnel or any inmates or other individuals under the supervision of SAPD. 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 SAPD owed Mendoza a duty of care, no evidence supports a finding that this duty was breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter).

Mendoza did not have any signs of injury or trauma to his body. He exercised regularly and vigorously throughout his incarceration at SAJ and was known by other inmates as being quite physically fit. The night before Mendoza's death, his cellmate noticed that Mendoza was uncharacteristically restless. The morning of his death, while resting during his exercise routine, Mendoza collapsed. Immediately upon Mendoza's collapse, his exercise partners notified SAJ correctional officers, who responded within seconds. SAJ correctional officers then immediately notified SAJ medical staff. SAJ medical staff arrived seconds later, assessed Mendoza's condition, and commenced lifesaving measures which they continued until paramedics arrived. Once paramedics arrived, SAJ medical staff relinquished treatment to the paramedics, who then transported Mendoza to a hospital where he died nine days later. There is no evidence to support a rational conclusion that any SAPD personnel or any individual acting under the supervision of SAPD caused or contributed to Mendoza's death or "failed to take reasonable action to summon medical care."

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CONCLUSION

Based on the aforementioned materials and information, and all the available evidence reviewed by OCDA, and pursuant to applicable legal principles, it is our opinion that there is no evidence of criminal culpability on the part of any SAPD personnel or any individual under the supervision of SAPD. Rather, the evidence shows that while engaged in his exercise routine, Mendoza died as a result of complications of myocardial infarct (heart attack) due to left anterior descending atherosclerotic occlusive disease.

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

Respectfully submitted,

Troy Pino
Senior Deputy District Attorney
Homicide Unit

Read and Approved by **Ebrahim Baytieh**
Acting Assistant District Attorney
Head of Court – Special Prosecution Unit