OFFICE OF THE
# DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA
**TONY RACKAUCKAS, DISTRICT ATTORNEY**

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VERTICAL PROSECUTIONS/
VIOLENT CRIMES

**MARY ANNE MCCAULEY**
SENIOR ASSISTANT D.A.
BRANCH COURT OPERATIONS

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SENIOR ASSISTANT D.A.
GENERAL FELONIES/
ECONOMIC CRIMES

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SENIOR ASSISTANT D.A.
SPECIAL PROJECTS

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CHIEF
BUREAU OF INVESTIGATION

**LISA BOHAN - JOHNSTON**
DIRECTOR
ADMINISTRATIVE SERVICES

**SUSAN KANG SCHROEDER**
CHIEF OF STAFF

September 10, 2012

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

Re: Custodial Death on January 31, 2011
Death of Inmate Jose Aguilar-Espinoza
District Attorney Investigations Case # S.A. 11-006
Orange Country Sherriff's Department DR # 11-018926
Orange County Crime Laboratory Case # FR 11-00457

Dear Sheriff Hutchens,

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 Jan. 31, 2011, custodial death of inmate Jose Aguilar-Espinoza.

## OVERVIEW

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

On Jan. 31, 2011, OCDA Special Assignment Unit (OCDASAU) Investigators responded to University of California, Irvine Medical Center (UCIMC) in Orange after inmate Aguilar-Espinoza died while in custody and while being treated at the hospital. The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and impartially reviewed all evidence and legal standards. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred on the part of OCSD deputies or personnel. 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 when an individual dies while in custody. An OCDASAU investigator is assigned as a case agent and supported by additional 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 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 and evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the Orange County Crime Laboratory 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. Prosecutors from the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memos. The case may also 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.

All OCSD personnel contacted during this investigation made voluntary statements to OCDASAU Investigators.

**FACTS**

Aguilar-Espinoza was a 55-year-old male who had a history of medical issues, including hypertension and heart problems. On Jan. 12, 2011, U.S. Immigration and Customs Enforcement (ICE) was notified by the Intensive Supervision Appearance Program (ISAP) staff regarding Aguilar-Espinoza's failure to appear at a hearing on Jan. 11, 2011. As a result, Aguilar-Espinoza was considered an ISAP fugitive.

At approximately 11:30 a.m. on Jan. 12, 2011, Aguilar-Espinoza was arrested by ICE agents for illegal entry into the United States. On Jan. 13, 2011, he was transported to the Theo Lacy Jail Facility, D Barrack, pending an immigration hearing.

During the booking process at the Orange County Jail, jail staff asked a series of medical screening questions. Aguilar-Espinoza indicated to Correction Medical Services (CMS) Intake Screening and Triage that he had heart problems and that he would not be able to work in the jail because of his pacemaker. CMS staff noted in the Clinical Record/Progress Notes that Aguilar-Espinoza had no visible bulge under the dermis of the upper chest to indicate a pacemaker.

Aguilar-Espinoza was subsequently housed in D Barrack, Bunk 5. Deputies perform hourly detainee and safety checks within the bunk for verification that the detainees were awake and conscious. The safety and detainee checks were documented on their respective logs.

On Jan. 31, 2011, at approximately 4:45 a.m., Deputy Sheriff Terrance Burton performed a detainee count within D Barrack and observed Aguilar-Espinoza awake and sitting up in his bunk. Aguilar-Espinoza responded with his name or partial booking number when spoken to, and did not have any questions or complaints. Aguilar-Espinoza had ample opportunity at this time to inform deputies of any medical emergency or complaint.

During the hourly safety checks at approximately 9:00 a.m. and 10:10 a.m., OCSD deputies documented no problems or complaints.

Shortly thereafter, as Federal ICE Detainee #1 was getting ready for lunch in the bathroom of the D Barrack, he observed a pale Aguilar-Espinoza vomiting in the bathroom. Aguilar-Espinoza told Detainee #1 that he was having trouble breathing and he needed his medicine because his blood pressure was dropping. Detainee #1 told Aguilar-Espinoza to lie down.

A few minutes later, Federal ICE Detainee #2, who was assigned to D Barrack, Bunk 4, informed Detainee #1 that Aguilar-Espinoza was turning purple and not breathing.

At 10:50 a.m., Detainee #1 approached the guard station and reported a "man down" to Deputy Sheriff Kenneth Demauro. Deputy Demauro and Deputy Sherriff Chad Ring immediately responded to D Barrack. Aguilar-Espinoza was located lying on his back in Bunk 5, a top bunk. Aguilar-Espinoza was unresponsive to touch and sound. Both Deputies Ring and Demauro

checked Aguilar-Espinoza for a pulse. Aguilar-Espinoza was not breathing and did not have a pulse at this time.

Demauro did not note any blood on the floor of the barrack or any sign that Aguilar-Espinoza may have been involved in a physical altercation.

Deputies Demauro and Ring moved Aguilar-Espinoza from the top of Bunk 5 to the floor in order to perform chest compressions and rescue breaths. Deputy Demauro advised Deputy Sheriff Alonzo Alvarez to notify main control and request paramedics and additional medical personnel. Approximately five to seven cycles of cardiopulmonary resuscitation (CPR) were performed and Aguilar-Espinoza remained unresponsive.

A CMS registered nurse advised deputies to stop chest compressions and rescue breaths while she attached the Automatic External Defibrillator to Aguilar-Espinoza. The deputies stopped and the nurse administered the shock. After the shock was administered, deputies continued CPR. This continued two to three times before Orange Fire Department paramedics arrived.

Paramedics assumed medical aid and placed electrocardiogram pads onto Aguilar-Espinoza's chest, inserted an endotracheal tube, and took over CPR. Paramedics had to defibrillate and administer two rounds of epinephrine and atropine to Aguilar-Espinoza while in the jail facility.

Orange Rescue 5 transported Aguilar-Espinoza to UCIMC in Orange. They did not observe any signs of trauma or any indication that Aguilar-Espinoza was involved in any physical altercation.

At approximately 11:20 a.m., paramedics arrived at UCIMC emergency room with Aguilar-Espinoza. UCIMC emergency room trauma staff took over chest compressions and checked for a pulse. They continued medical treatment through advance cardiac life support for approximately 20 minutes.

At 11:40 a.m., medical staff completed an ultrasound of Aguilar-Espinoza's heart and found it to have no cardiac motion.

At 11:43 a.m., Aguilar-Espinoza was pronounced dead by hospital staff.

## AUTOPSY

On Feb. 2, 2011, at approximately 8:59 a.m., the post-mortem examination of Aguilar-Espinoza was conducted at the Orange County Sheriff-Coroner Forensic Science Center. The autopsy was conducted by Dr. Joseph Cohen. The autopsy revealed Aguilar-Espinoza's heart was slightly enlarged, consistent with hypertension. Most of the arteries showed 20-70 percent blockage. The right posterior artery had a blood clot, which completely blocked the artery. The heart also had irregular scarring from past heart attacks. Dr. Cohen estimated the past heart attacks occurred as recently as six to eight weeks ago, and as far back as a few years ago.

Following the autopsy, Dr. Cohen concluded that the cause of death was sudden cardiac arrhythmia due to heart disease. No non-medical external trauma was located on the body.

## EVIDENCE ANALYSIS

Toxicological Examination:

| DRUG | MATRIX | RESULT |
|---|---|---|
| Lidocaine | Post mortem Blood | Detected |
| Lidocaine Metabolites | Post mortem Blood | Detected |

## BACKGROUND INFORMATION

Aguilar-Espinoza's California criminal history was reviewed. He was a citizen and national of Honduras.

## 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:

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.

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 or she 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.

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 death.

## LEGAL ANALYSIS

Although the OCSD owed inmate Aguilar-Espinoza 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). Therefore, there is no evidence of express or implied malice on the part of any OCSD deputy 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.

Inmate Aguilar-Espinoza had a preexisting medical condition, including hypertension and heart problems at the time he was placed in OCSD custody. Inmate Aguilar-Espinoza went through medical screening at the time he was booked through the OCSD Intake/Release Center. Approximately 18 days later, when it became apparent he needed medical attention, he was

promptly administered CPR, rescue breaths, and further medical aid in D Barrack. He received further medical treatment and was transported to UCIMC, where he was treated by medical staff until ultimately dying as a result of his heart condition. There was no evidence of foul play on the part of any person who came into contact with Aguilar-Espinoza prior to his death.

**CONCLUSION**

Based on all the evidence provided to and reviewed by the OCDA and pursuant to applicable legal principles, 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 OCSD. Evidence shows that inmate Aguilar-Espinoza died as a result of sudden cardiac arrhythmia due to heart disease.

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

Respectfully Submitted,

Paul Chrisopoulos
Senior Deputy District Attorney

Read and Approved,

Dan Wagner
Assistant District Attorney
Head of Homicide Unit