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December 20, 2013

Chief Raul Quezada
Anaheim Police Department
425 S. Harbor Blvd.
Anaheim, CA 92805

Re: Officer-Involved Shooting on February 24, 2012
Non-Fatal Incident involving Gerardo Pineda
District Attorney Case # 12F13338
District Attorney Investigations Case # 12-005
Anaheim Police Department Incident # 12-27279
Orange County Crime Laboratory Case # FR 12-43078

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) Investigator Kelly Phillips. Gerardo Pineda, Anaheim, age 19 at the time of the incident, survived his injuries. The officer-involved shooting incident occurred in the City of Anaheim on Feb. 24, 2012.

OVERVIEW

This letter contains a description of the scope of and the legal conclusion resulting from the OCDA's investigation of the Feb. 24, 2012, non-fatal, officer-involved shooting of Pineda. 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 officer involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Feb. 24, 2012, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. OCDASAU Investigators conducted 91 witness interviews and obtained and reviewed the following: APD reports; audio, dispatch, and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports including toxicology, DNA, officer processing, and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Pineda; records related to Pineda's prior criminal history; and other relevant reports and materials including audio recordings of the conducted neighborhood canvass interviews.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has impartially reviewed all 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 Investigator Phillips. The OCDA will not be addressing issues of policy, training, tactics or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured or killed 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 interviews, 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 primary 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 assigned to the Special Prosecutions Unit review the non-fatal, officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor consults with his supervisor, and this Assistant District Attorney eventually reviews and approves any legal conclusions and resulting memos. The case is often reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff and the District Attorney. If necessary, the reviewing prosecutor sends the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Sergeant Richard Castro, Investigator Mike Brown, and Investigator Jonathan Yepes all provided voluntary statements to investigators shortly after the incident. Investigator Phillips gave a voluntary interview the morning of Feb. 27, 2012.

FACTS

On Friday, Feb. 24, 2012, at approximately 7:00 a.m., the Riverside County Sheriff's Department received notice of a stolen 1996 Honda Accord. At approximately 7:00 p.m., APD dispatch received a call of a suspicious vehicle parked in an apartment complex located at on West Northgate Lane in the City of Anaheim. The vehicle was described as a gold/silver Honda, and a license plate check revealed that the vehicle had been reported stolen from Riverside. The reporting party stated that a Hispanic male, "probably a gang banger," dropped off the vehicle and was standing to the front of the apartment complex.

Around that time, a male resident of the apartment complex was approached by a male Hispanic, later identified as Pineda, who identified himself as "Ghost" from a specific criminal street gang (hereafter "the criminal street gang"). The male resident and Pineda spoke for a few minutes. During that time, the male resident said Pineda moved around frequently and would not stand still. Pineda kept fidgeting and moving his jacket as if he had a gun inside. The resident became concerned for his safety and believed that Pineda was going to hurt or shoot him. The resident made an excuse to get away from Pineda and walked back into the house.

At approximately 7:30 p.m., an APD Gang Unit team, consisting of Investigators Phillips, Brown, Yepes, and Sergeant Castro, received a radio call regarding a stolen vehicle. The call stated that the stolen vehicle was parked on West Northgate Lane, with a possible suspect standing near the vehicle. The location on West Northgate Lane is one block south of the territory claimed by the criminal street gang.

The Gang Unit team advised the dispatcher that they would get an unmarked vehicle and respond to the area to conduct surveillance on the stolen vehicle. All four were dressed in their black Gang Unit polo shirts. An APD Gang Unit polo shirt has a white badge printed on the left breast, the words "Police Gang Unit" in white lettering on the right breast, and the words "Police – Gang Unit" in large, white letters printed on the back.

The dispatcher provided the team with updated information, which revealed that the stolen vehicle had possibly been used in a drive-by shooting earlier that day in the City of Riverside. The suspect was described as a male Hispanic, shaved head, wearing all black. The team retrieved Investigator Yepes' unmarked van. Investigator Phillips took his assigned AR-15 rifle with him, and they made their way to West Northgate Lane. While en route to the location, they requested that all marked police units leave the area, to avoid alerting the suspect to police presence.

As the team drove toward the stolen vehicle's location, they received an update that the suspect was standing near the corner of the apartment complex. As they turned east onto West Northgate Lane, Investigator Brown observed a grey, 4-door, older model Honda parked along the north curb, which matched the description of the stolen vehicle. Pineda stood approximately 10 feet north of that parked vehicle. The team immediately recognized Pineda, by name and by his criminal street gang moniker, "Ghost." Pineda is a documented criminal street gang member. Investigator Phillips also recognized Pineda from prior contacts. He had recent information that Pineda was possibly armed with a gun, and knew Pineda had been in possession of a firearm in the past. Investigator Phillips shared that information with his colleagues as they drove past Pineda.

Pineda was standing alone and adjacent to the west parking lot entrance of the complex on Northgate Lane. Pineda, a Hispanic male, with a shaved head, wearing dark clothing, matched the description of the suspect associated with the stolen car. The team made a U-turn and observed Pineda walking by the possible stolen vehicle. Pineda began walking north. Investigator Brown saw two marked police units nearby and requested via radio that they leave the area. Pineda, presumably upon seeing one of the police units, immediately turned and began walking south. Pineda crossed the street and wove between the buildings of another apartment complex. The team lost sight of Pineda.

The team drove back to West Northgate Lane to investigate the grey Honda. They confirmed with dispatch that the car they were interested in was not the correct car. Investigator Yepes thought a Honda may have driven out of the neighborhood as they had driven in, so they left the complex to investigate. They observed a grey Honda on North Harbor Boulevard, but it was also not the stolen vehicle. The stolen vehicle was later located in the apartment complex, with bullet holes, broken glass, and apparent blood on the seat.

They asked the dispatcher if a witness had observed a suspect matching Pineda's description in the stolen vehicle. The dispatcher confirmed that the suspect, seen inside the stolen vehicle, was a Hispanic male with a shaved head and mustache or goatee who was wearing entirely black clothing. Because Pineda matched that description, they decided to locate and contact him.

Investigator Yepes observed Pineda west of their location and informed the team that he was going to drive up to Pineda. They planned to take him into custody. The van stopped alongside Pineda. Investigator Yepes opened his driver's side door and yelled, "Police, don't move!" Sergeant Castro yelled "Police!" as the other officers exited the van. Pineda was walking with his hands inside of his jacket and looked back over his right shoulder in their direction.

Immediately upon seeing them, Pineda turned and sprinted to the west. Pineda did not remove his hands for the first few steps. Investigators Phillips and Brown, and Sergeant Castro pursued Pineda on foot. Investigator Yepes re-entered his van, flipped down the vehicle's emergency lights, and drove west in an attempt to "cut-off" Pineda.

Pineda turned his head and made eye contact. The team pointed their weapons at Pineda, and Investigator Brown yelled, "Get on the ground!" Pineda placed his right hand in front of him, at the level of his waistband, and continued running west, away from the investigators. Investigators Brown and Phillips chased Pineda. They were approximately 10 feet behind him as Pineda ran across the street to the Annunciation Byzantine Catholic Church, located on N. West Street. Investigators Brown and Phillips continued yelling to Pineda that they were the police and ordering him to stop. Investigator Phillips used Pineda's first name, saying, "Gerardo, I know it's you. Stop, police!" Sergeant Castro heard their yelling and also yelled at Pineda to stop.

According to Investigator Phillips, as Pineda was running, his right hand came away from his waistband area and he was holding a black object. The object extended out across over Pineda's fingers, which caused Investigator Phillips to believe that the object was a handgun. Pineda continued to run and it appeared that he transitioned the object to his left hand.

As Investigators Brown and Phillips crossed the front yard of the church, Investigator Brown heard Investigator Phillips yell, "Gun, gun, gun!" Pineda reached the shrubs along the northern wall of the residence adjacent to the church on N. West Street. Investigator Phillips saw Pineda pause at the wall. Pineda turned his body toward Investigator Phillips and appeared to raise his left arm, leading Investigator Phillips to believe that Pineda was about to shoot. Investigator Phillips, approximately 20 feet away from Pineda, fired one shot from his rifle at Pineda. Pineda was not hit. Pineda scaled the block wall and went into the backyard of the residence.

The home's backyard was unlit and dark. Investigator Phillips looked over the wall and saw Pineda standing in the southeast corner of the yard, partially shielded by vegetation. Investigator Phillips believed that Pineda was again preparing to shoot him, so he fired another gunshot at Pineda. Pineda stepped away from the tree he was using for cover, and it appeared to Investigator Phillips that Pineda was acquiring a better target of him. Investigator Phillips fired two more gunshots at Pineda. Pineda fell to the ground.

Investigator Brown and Sergeant Castro entered the backyard to detain Pineda while Investigator Phillips remained outside the wall and provided cover. Pineda was lying on the ground in the corner of the yard and said he had been shot. Investigator Yepes rolled Pineda onto his stomach and handcuffed him. Investigator Brown and Sergeant Castro found Pineda's black cellular telephone lying next to him.

Investigator Brown requested assistance from paramedics. Paramedics from the Anaheim Fire Department arrived at approximately 7:58 p.m., determined that Pineda had been shot, and provided preliminary treatment. Pineda was transported to the hospital shortly after their arrival, and his vital signs remained stable while in transit.

At the hospital, Pineda underwent surgery. Pineda's surgeon stated that Pineda was in stable condition. As a result of one bullet, Pineda was wounded below his ribcage and on his right flank. The bullet caused damage to part of his liver, colon, stomach, and duodenum, but he was in stable condition and expected to survive his wounds.

Voluntary, Consensual Statements of Officer Phillips

Investigator Phillips gave a voluntary, consensual statement to the OCDA on Feb. 27, 2012. At the time of the incident, Investigator Phillips had been a police officer for 12 years. He had been employed with APD for nine years, and assigned to the Gang Unit for the past three years.

Investigator Phillips recalled receiving the initial phone call from Dispatch regarding the stolen car and the young, Hispanic male loitering near it on West Northgate Lane. Investigator Phillips had personally arrested Pineda twice before this incident. When the team arrived at Northgate Lane, Investigator Phillips immediately recognized Pineda as "Ghost" from the criminal street gang. Investigator Phillips has been assigned to investigate the criminal street gang while in the Gang Unit. Investigator Phillips previously testified in court as a gang expert in a case where Pineda pointed a gun at somebody, and has had numerous contacts with Pineda.

A couple of weeks prior to this incident, Investigator Phillips received information about Pineda from another detective. A criminal street gang member's mother has disclosed that her son and "Ghost" had been spending time together, and that they were in possession of a gun. Dispatch provided additional information that the stolen car had possibly been used in a drive by shooting that day in Riverside.

Investigator Phillips was also aware of a violent feud between the criminal street gang and another gang in Riverside County. There have been shootings, and an Anaheim criminal street gang member killed a member of the Riverside County gang in 2011. Investigator Phillips was aware that the Anaheim criminal street gang members were regularly in

Riverside County committing crimes. When the team heard that the car had been used in a drive-by in Riverside and there might be an Anaheim criminal street gang member associated with the car, Investigator Phillips thought it more likely that Pineda would be armed.

Investigator Phillips and his colleagues received confirmation from dispatch that someone matching Pineda's description exited the stolen car, so they decided to try to find him and stop him. They parked their unmarked van five to 10 feet from Pineda. According to Investigator Phillips, everyone identified themselves loudly and clearly as police officers. Additionally, they ordered Pineda to get on the ground. Pineda ignored their commands and ran away.

As Pineda initially fled, Investigator Phillips saw Pineda was hunched over a little bit and had both hands in his front waistband. Investigator Phillips chased Pineda, and was behind and to the right of Pineda. During the chase, Investigator Phillips saw Pineda's hand come out from his front waistband area with a black object in it. Investigator Phillips believed the object was a gun because it looked like it extended out across over his fingers. Investigator Phillips yelled at Pineda by name, but Pineda did not stop.

Pineda's right hand returned to the center of his waistband, and he appeared to move the object from his right hand to his left hand. As they approached the cinder block wall leading to an adjacent residence's backyard, Pineda paused and turned toward Investigator Phillips. Investigator Phillips thought Pineda's pause was abnormal because Pineda had stopped running. Investigator Phillips thought Pineda was going to shoot him, so Investigator Phillips fired his first round.

Pineda was not hit and scaled the wall. Investigator Phillips, fearful of an ambush, cautiously approached the wall. The church area was well lit, but the residential backyard was very dark. Investigator Phillips was concerned that his body would be backlit and make an easier target. Investigator Phillips observed Pineda in the southeast corner of the yard, obscured by tree branches, and fired another round at Pineda. According to Investigator Phillips, Pineda then, "very deliberately steps out from behind where he was and...moving into a position so he can see me and...acquire me to target shoot." Fearing for his safety, Investigator Phillips fired two more rounds. One round hit Pineda and caused him to fall down. Investigator Phillips maintained cover while his partners scaled the wall and took Pineda into custody.

Pineda's Voluntary, Post-Miranda Statement of Events

On Feb. 27, 2012, investigators from APD interviewed Pineda in the hospital. Prior to the interview, they advised Pineda of his *Miranda* rights. Pineda acknowledged that he understood his rights, waived them, and answered the investigators' questions. According to Pineda, on Feb. 24, 2012, he was walking around the neighborhood when four individuals, who were in a van, surprised him out of nowhere. He claims to have thought that the officers were gang members, a bunch of guys who were trying to kill him, so he fled. Pineda stated that did not hear the officers call him by name, identify themselves, or say anything at all. He did not recall how they were dressed.

Pineda knew who Investigator Brown was based on their previous interactions, and thought Investigator Brown would know who he was and would have tried to call Pineda by name.

Pineda ran to a block wall south of the Annunciation Byzantine Catholic Church on N. West Street. Pineda then heard someone tell him to drop his gun. He claims to have responded that he did not have a gun. Someone shot at him, so he jumped over the block wall into a backyard because he did not want to get shot. He tried to hide in the rear yard, but says that he was shot at again and struck in the stomach. After he had been shot is when he says he realized that the men chasing him were investigators from the APD Gang Unit. Pineda stated that during the incident, his black cellular telephone was in one of his pockets. This is the phone that was recovered at the incident scene.

Investigator Brown questioned Pineda about the stolen vehicle that had been recovered in the area of W. Northgate. The vehicle was riddled with apparent bullet holes and had been identified as being involved in some type of drive-by shooting in Riverside County. Pineda initially claimed not to have been in that stolen vehicle when that vehicle had been

shot, and stated that the car was not shot in the City of Anaheim. Pineda later claimed no knowledge of how that stolen vehicle had been shot, and then disclaimed any knowledge of the vehicle whatsoever. The interview lasted 25 minutes.

EVIDENCE COLLECTED AT THE SCENE

The following items of evidence were collected and/or marked at the incident scene by an OCCL forensic scientist: Pineda's pants; Pineda's wallet and its contents; Pineda's cell phone; four cartridge casings; one apparent bullet fragment; an apparent bullet hole in the south cinder block wall on N. West Street; and an apparent strike mark in the cinder block wall south of the south driveway of on N. West Street.

EVIDENCE ANALYSIS

Weapons Examination

Investigator Phillips' rifle was test fired and operated without malfunction in both semiautomatic and full automatic modes of firing. The four fired cartridge cases were determined to have been fired by Investigator Phillips' rifle.

Toxicological Examination

A sample of Pineda's pre-transfusion blood was taken at the hospital. The sample was tested for methamphetamine and amphetamine. The presence of both drugs was confirmed.

PINEDA'S PRIOR CRIMINAL HISTORY

Pineda's criminal history was reviewed and considered. Pineda is a Gang Registrant pursuant to California Penal Code section 186.30. He is a self-admitted criminal street gang member with the moniker of "Ghost."

PINEDA'S POST-INCIDENT CONVICTION

On April 12, 2012, the OCDA charged Pineda in Case #12NF3339 with one count of violating California Penal Code Section 10851(a), Unlawful Taking of a Vehicle, one count of violating California Penal Code Section 186.22(a), Street Terrorism, and two criminal enhancements under California Penal Code sections 186.22(b), Criminal Street Gang Activity, and 12022.1(b), Crime-Bail-Crime. Pineda plead guilty to all counts and admitted the enhancements as charged on Dec. 18, 2012. He was sentenced to two years in state prison.

Pineda's written plea, made and signed under the penalty of perjury, is as follows:

"On 2-25-12, in Orange County, I knowingly, willfully and unlawfully did the following: drove a car without the consent of the owner & with the intent to deprive him of possession. On 2-25-2012, in Orange County, I knowingly and actively participated in a criminal street gang called *****, which is an informal gang with more than three members, that has, in the last three years, engaged in a pattern of criminal gang activity and which commits, as some of its primary activities, crimes such as auto thefts & felony vandalisms. I willfully promoted, aided and abetted and furthered the interest of that gang and its members by committing the felonious conduct previously described...above. I committed these offense(s) for the benefit of, at the direction of, or in association with the ***** criminal street gang with the specific intent to promote, further, or assist in any criminal conduct by ***** gang members....Further, I committed these crimes while released on bail in Orange County Superior Court Case No. 12NF0284."

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a shooting include attempted murder (PC 664/187), assault with a deadly weapon (PC 245), and assault by a police officer (PC 149). However, in order to convict an officer of any of these charges, it would be necessary to prove beyond a reasonable doubt that no legal justifications applied to the officer's actions. *People v. Banks* (1977) 67 Cal.App.3d 379, 383-84. Several 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 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 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 *Kortum* court 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.

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 from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a reasonable person, if confronted by the appearance of danger which arouses in his mind an honest fear and conviction that he 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 U.S. 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. The U.S. 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.” *Tennessee v. Garner* (1985) 471 U.S. 1, 3.

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*, apply to the circumstances surrounding the interactions between Investigator Phillips, Brown, Yepes, Sergeant Castro, and Pineda.

LEGAL ANALYSIS

Investigator Phillips and his team knew Pineda was a criminal street gang member who had been armed in the past. Investigator Phillips had personally arrested Pineda twice before. The call they received from APD Dispatch identified a stolen car, which had been used in a drive-by shooting earlier that day. Investigator Phillips had recently been made aware that Pineda was in possession of a firearm.

Pineda was dressed in gang attire. The apartment complex where Pineda left the stolen car was one block south of his criminal street gang territory. Upon possibly seeing marked police cars in the Northgate Market parking lot, Pineda left the scene on foot, weaving in between apartment complexes. When the APD Gang Unit team, dressed in their Gang Unit attire, began chasing him and identified themselves as police, Pineda sprinted away. Pineda's hands went to his waistband and maneuvered an object, later revealed to be his cell phone, which Investigator Phillips believed to be a firearm. Based upon Pineda's possible connection to a stolen vehicle and drive-by shooting, Investigator Phillips' observations, Pineda's actions, and Investigator Phillips' prior knowledge of Pineda's criminal history, Investigator Phillips reasonably believed Pineda was going to shoot him. Investigator Phillips' belief that it was necessary to employ deadly force to stop the threat is reasonable under the circumstances.

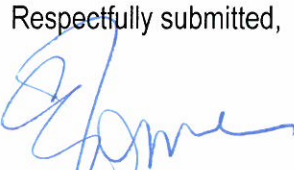
In order for Investigator Phillips to be justly and lawfully charged and convicted with a crime in this incident, it would be the prosecution's burden to prove beyond a reasonable doubt that Investigator Phillips did not act in reasonable and justifiable self-defense, or defense of others, when he shot at Pineda. As should be apparent from the facts of the case and our legal analysis, the prosecution would be unable to carry that burden in this case. A jury analyzing these facts would almost certainly conclude that it was reasonable for Investigator Phillips to use the force that he did in this circumstance. There is significant evidence that Investigator Phillips acted reasonably under the circumstances.

CONCLUSION

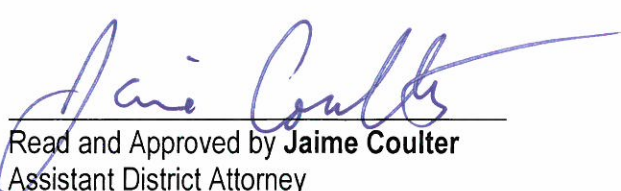
Based upon a review of all of the evidence provided to and obtained by the OCDA, and pursuant to the applicable legal principles, it is our legal opinion that the evidence does not support a finding of criminal culpability on the part of Investigator Phillips. On the contrary, there is significant evidence that Investigator Phillips' actions were reasonable and justified under the circumstances when he shot Pineda on Feb. 24, 2012.

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

Respectfully submitted,



ERIN ROWE
Deputy District Attorney
Special Prosecutions Unit



Read and Approved by **Jaime Coulter**
Assistant District Attorney
Head of Special Prosecutions Unit