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November 6, 2018

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

Re: Officer-Involved Shooting on February 6, 2018
Fatal Incident involving Paul L. Mono
District Attorney Investigations Case # SA 18-005
Orange County Sheriff's Department Case # DR 18-5421
Orange County Crime Laboratory Case # FR 18-42210
Orange County Coroner's Office Case # 18-00721-GE

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving on-duty Orange County Sheriff's Department (OCSD) Deputies Michael Johnson and Anthony Montoya. Paul L. Mono, 65, died as a result of his injuries. The incident occurred in the city of Laguna Woods on Feb. 6, 2018.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the Feb. 6, 2018, fatal officer-involved shooting of Mono. 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 OCSD deputies 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. 6, 2018, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to the scene of this incident. During the course of this investigation, 15 interviews were conducted, and 25 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: OCSD reports, patrol vehicle videos, laboratory and identification reports, radio traffic, incident scene photographs, and other relevant reports and materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has reviewed all evidence and legal standards impartially. 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, specifically Deputy Johnson and Deputy Montoya. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability.

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INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone is injured due to 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 canvassing, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews and the Orange County Crime Lab (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 Senior Assistant District Attorney supervising the Felony Operations II Division of the OCDA, which includes both the Homicide Unit and the Special Prosecutions Unit. The Senior Assistant District Attorney 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 of an incident such as this is attempting to obtain a statement from the involved police officers or personnel. Both Deputy Johnson and Deputy Montoya provided OCDA Investigators with voluntary statements in this case.

FACTUAL SUMMARY

At the time of this officer involved shooting incident, Mono was a 65-year-old male who lived with his wife in a four unit, single story condominium structure in Laguna Woods. Approximately three to four months before the incident, Mono and his wife purchased Unit A of the condominium using Jane Doe as their real estate agent. Around that time Mono also hired a contractor, John Doe, for remodeling. According to both Jane Doe and John Doe, in the months that followed Mono became increasingly agitated and hostile toward John Doe and the subcontractors he hired. John Doe stated that on Dec. 11, 2017, he met with a building inspector at Mono's home for the final inspection. Mono was drinking alcohol and became irate with both of them. He screamed at John Doe and the inspector to get out of his house, yelling that he did not want to see any "fu*****" contractors around. In addition, Jane Doe stated that on Feb. 5, 2018, one day prior to the officer-involved shooting incident, she met with Mono at his home, and heard him threaten to shoot John Doe. Jane Doe observed two handguns in Mono's possession along with bullets in a small plastic bag. Mono told Jane Doe that he would put the bullets in his guns if he needed to.

On Feb. 6, 2018, John Doe and Jane Doe had a scheduled appointment with Mono at his house. Prior to the meeting, Mono told Jane Doe that he no longer wanted John Doe to come to his home. Due to Mono's recent erratic and hostile behavior, John Doe told Jane Doe not to meet with Mono alone because it could be dangerous. Jane Doe ultimately decided to meet with Mono because she thought she could calm him down. As a precaution, Jane Doe called John Doe's cell phone and left the call open so John Doe could remotely listen to the meeting. Jane Doe arrived at Mono's home at approximately 12:36 p.m. Mono was extremely agitated and began "uncontrollably yelling" about his dissatisfaction with the contract work and floor plans. After a few minutes, Mono grabbed a handgun, waived it around, and in reference to John Doe said, "I'm gonna shoot his f***** head off." Jane Doe told Mono to put the gun down. Mono's wife, who was in the house and witnessed Mono's agitated and angry behavior, also told Mono to put the gun down.

Jane Doe then saw Mono put the gun down on the couch in the living room. Mono remained very angry, and was yelling so loud that Jane Doe thought the neighbors were going to call the police. Mono then told Jane Doe that he had just hit

and banged the television in his room. Jane Doe went to the bedroom to see the television, and Mono started hitting it again. According to Jane Doe, "it was like he [Mono] was gonna pull the TV off the wall." Jane Doe left Mono's house shortly thereafter. Meanwhile, John Doe, who had been listening through the open cellphone call, also heard Mono threaten to shoot him, followed by Jane Doe telling Mono to put the gun down. At that point, John Doe disconnected the call and immediately dialed 911. John Doe could still hear Mono screaming from inside his home when he made the call.

At approximately 1:13 p.m., OCSD Deputies Brad Carrington and Brent Lind were dispatched to the location in reference to a "415" (disturbance). Deputy Carrington and Deputy Lind were advised that John Doe reported Mono was threatening to shoot him; that Mono was currently inside Unit A, and John Doe was outside; and that John Doe had not seen a gun, but knew Mono owned guns. Mono was described as a 71-year-old white male, 6'3" in height, with a medium build and long grey hair. Dispatch was unable to locate any guns registered to Mono.

Based on the nature of the call, Sergeant Aaron McFatridge, Deputy Michael Johnson, Deputy Anthony Montoya, and Deputy John Frey elected to respond to the scene. At approximately 1:27 p.m., OCSD units arrived on scene. Deputy Frey made contact with John Doe and Jane Doe in the carports east of Unit A. After speaking with John Doe and Jane Doe, Deputy Frey broadcasted that Mono and his wife were currently inside Unit A, and Jane Doe was inside Unit A when Mono waved the handgun around. Deputies Carrington, Frey, Johnson, Montoya, and Lind approached Unit A from the east. Unit-A was located on the northwest corner of the condominium structure. There were two large dual pane picture windows on the north side of the structure. The picture window to the west belonged to Unit A and the blinds on the window were open. Deputies could clearly see into the living room, dining room, and kitchen of Unit A. Deputy Frey positioned himself approximately 25 feet north of the structure behind a tree. Deputy Carrington took up a position east of the window and up against the house. Deputy Lind and Deputy Johnson stood directly in front of the window. Deputy Johnson was to the left of Deputy Lind and within arm's reach. Deputy Montoya was on the northwest corner of the structure.

At approximately 1:31 p.m., Deputy Frey broadcasted they were unable to see anyone inside the residence. He requested dispatch attempt to locate a telephone number to the residence. A few seconds later, Deputy Lind saw Mono's wife enter the living room from the hallway, and he yelled for her to come to the front door. She did not respond and instead turned and walked down the hallway out of sight. At approximately 1:31 p.m., Deputy Frey broadcasted they could see Mono inside, and they were instructing him to come out, unarmed, with his hands up. Deputy Johnson broadcasted Mono had extended his middle finger at the deputies and walked behind a wall. Mono was described as "completely outraged." Deputies tried to get Mono to communicate with them. They asked Mono to come outside and talk with them or allow them to come inside to talk. They repeatedly reassured Mono they were there to peacefully resolve the incident. Mono refused to comply, and as time passed he became increasingly agitated and animated. At one point, Mono walked to the window, slid it open a few inches and yelled, "Who are you?" Deputy Lind told him, "We're the Orange County Sheriff's Department, come to the door." Mono replied, "F*** the Sheriff's Department." Mono then turned and walked into the kitchen.

At approximately 1:32 p.m., Mono's wife exited the hallway and walked toward the front door. At approximately 1:33 p.m., Deputy Johnson broadcasted that Mono's wife grabbed a belt or holster off the front door and carried it back into the kitchen where Mono was located. Deputies Johnson, Frey, and Lind all described the object she retrieved as a gun belt and holster. Deputy Lind and Deputy Johnson drew their handguns and placed them at the low ready position (pointed down). Deputy Johnson backed away from the window, and feared Mono was now in possession of a weapon or was loading a weapon. Deputy Montoya transitioned from the north/west corner of the residence to the west side, just outside the front door, in an attempt to locate Mono and his wife. The top half of the front door was glass and allowed for an unobstructed view of the living room and dining room.

At approximately 1:33 p.m., Mono came "charging" out of the kitchen and was screaming and cussing. Mono now had a walking cane in his hand and was wearing glasses. Mono yelled and taunted the deputies. He asked the deputies to shoot him. He pulled down his pants, placed his buttocks against the living room window, and spread his buttocks cheeks. Mono refused to comply with the deputies' directions, requests, and commands. He repeatedly asked them, "What are you

going to do shoot a blind man?" None of the deputies on scene believed Mono was blind. Deputies Johnson, Montoya, and Lind each told OCDA Investigators how Mono knew where they were standing, how he tracked them with his eyes as they moved, and how he pointed his cane in the direction of the deputy he was yelling at. At approximately 1:35 p.m., Deputy Frey broadcasted that negotiations with Mono were at a stalemate. Deputy Johnson described Mono's wife as "scared to death" and "petrified." Deputy Johnson recalled asking her to come outside and talk to them, and Mono telling her, "You're not gonna fu***** speak to them." Deputy Johnson feared for Mono's wife and believed Mono would hurt her if she complied with their requests.

At approximately 1:36 p.m., Sergeant McFatridge requested a perimeter be maintained around Unit-A, and that someone contact John Doe and Jane Doe to determine what crime(s), if any, had been committed. Deputy Lind left his position in front of the window to talk with John Doe and Jane Doe. At approximately 1:37 p.m., Deputy Montoya yelled to the other deputies that he could see a handgun on the couch. Deputy Johnson and Deputy Carrington could not see a gun and asked where it was. Deputy Montoya directed their attention to the north end of the couch in a crevice between the armrest and pillow, approximately 3-5 feet south of the large picture window. The gun's barrel was pointed east. Deputy Montoya described the handgun as a revolver and believed it was in a holster with the trigger exposed. Deputy Johnson moved closer to the window in an attempt to see the gun, and he was able to see the butt of a handgun near the armrest. Deputy Johnson indicated that: "It appeared to be either slightly in a holster, or laying on top of a holster."

At approximately 1:37 p.m., Deputy Johnson broadcasted, "We've got a firearm inside on the couch." Immediately after that broadcast Mono's attention was drawn to the gun. Mono started screaming, "I'll show you my gun! You wanna see my gun?!" Deputy Johnson and Deputy Montoya raised their weapons and pointed them at Mono. Deputy Johnson screamed three to six times to Mono, "Don't go near the gun! Do not go near the gun!" Deputy Johnson observed Mono standing upright in front of the picture window while screaming at the deputies. He then saw Mono turn to his right, lean forward, and in a charging motion reach for the handgun. Deputy Johnson described Deputy Carrington as being perfectly parallel with the couch and "directly in the line of sight" of Mono. Deputy Johnson feared Mono would pick up the gun and shoot Deputy Carrington. He believed that Deputy Carrington's life was in imminent danger. Deputy Carrington, only feet from the gun, saw Mono move toward the gun and thought to himself, "Oh sh**!" Deputy Carrington immediately moved back against the wall and away from the window for cover.

Deputy Johnson screamed at Mono not to touch the gun. Mono ignored him and grabbed the gun. Deputy Johnson fired eight times. As Deputy Johnson fired, he moved to his right. He stopped firing when he could no longer see Mono. Deputy Johnson did not wait for Mono to raise the handgun before he fired. He believed any delay could or would result in Mono shooting him, Deputy Carrington, or Mono's wife. Deputy Johnson was unaware Deputy Montoya had also fired.

Deputy Montoya saw Mono standing in front of the picture window approximately 3-4 feet away from the handgun. He saw Deputy Carrington and Deputy Johnson standing just outside the picture window, separated only by the window. Mono turned his back on Montoya and walked toward the holstered handgun. Mono picked up the handgun then simultaneously turned toward Deputy Carrington and Deputy Johnson as he raised the handgun. Deputy Montoya, believing Deputy Carrington and Deputy Johnson's lives were in imminent danger, fired and continued to fire six rounds until Mono fell to the ground. Deputy Montoya was also not aware that Deputy Johnson had fired.

At approximately 1:39 p.m., Deputy Carrington broadcasted "998" (shots fired), followed by a request for paramedics to respond. Deputies Johnson, Montoya, Carrington and Sergeant McFatridge then entered the residence. Deputy Montoya handcuffed Mono's wife and removed her from the residence. Deputy Johnson, Deputy Carrington, and Sergeant McFatridge immediately began to render first aid to Mono who was lying on the living room floor. Mono had sustained multiple gunshot wounds to his head and upper torso. The handgun was on the ground still in the holster. The holster was manufactured with no trigger guard and the gun retention snap was unsnapped.

In the course of the investigation, Jane Doe and Mono's wife told the investigators that Mono was blind. Jane Doe indicated Mono used a walking cane. According to his wife, Mono was able see enough to watch television. She described Mono's sight as being able to see "like in a tunnel" with the ability to see someone in front of him but with no

peripheral vision. Deputies Johnson, Lind and Montoya indicated Mono was able to track their movement as they moved to different locations outside the home. Furthermore, the deputies noted Mono was able to point his cane at each of the deputies who he was yelling at.

At approximately 1:45 p.m., Orange County Fire Authority (OCFA) Engine #22 arrived on scene. A paramedic approached Unit A, and saw several shell casings on the ground below the living room picture window. The paramedic entered the residence and saw OCSD deputies administering first aid to Mono. Mono appeared unconscious and unresponsive. The paramedic examined Mono and found he had sustained several gunshot wounds to his head and upper torso. Mono had a pulse and was breathing on his own. At approximately 2:02 p.m., Mono was transported Code 3 (lights and siren) to Mission Hospital in the city of Mission Viejo. Paramedics provided Advance Life Support to Mono while in transport. At approximately 2:11 p.m., Mono arrived at Mission Hospital. He was released into the care of a trauma surgeon. Mono was taken directly to the operating room. The trauma surgeon opened Mono's chest and manually massaged his heart while another trauma surgeon attempted to control the bleeding in Mono's abdomen. Their efforts were unsuccessful. Mono was pronounced deceased at 3:00 p.m.

EVIDENCE COLLECTED

The following items of evidence were collected and examined under the following evidence marker (EM) numbers:

- EM #1 – (1) cartridge case headstamp “Federal .40 S&W”
- EM #2 – (1) cartridge case headstamp “Federal .40 S&W”
- EM #3 – (1) cartridge case headstamp “Federal .40 S&W”
- EM #4 – (1) cartridge case headstamp “Federal .40 S&W”
- EM #5 – (1) cartridge case headstamp “Federal .40 S&W”
- EM #6 – (1) cartridge case headstamp “Federal .40 S&W”
- EM #7 – (1) cartridge case headstamp “Federal .40 S&W”
- EM #8 – Five cartridge case headstamp “FC 9MM LUGER”
- EM #9 – (1) cartridge case headstamp “FC 9MM LUGER”
- EM #10 – Swab of apparent blood from living room floor, Unit-A.
- EM #11 – (1) bullet.
- EM #12 – (1) walking cane.
- EM #13 – (1) sandwich bag containing (17) cartridges headstamp “FEDERAL .357”
- EM #14 – (1) RUGER, .357 revolver, silver, security-six, no serial number, inside a brown leather holster. “MONO 556-94-0881” was etched on the frame of the gun.
- EM #15 – (1) pair of sunglasses, right lens missing, separate lens.
- EM #16 – (1) bullet, (1) shirt with apparent blood stains, (3) hand towels with apparent blood stains.

The following additional items were collected by OCCL personnel:

- (1) bullet (Unit-B)
- Three swabs of apparent blood from porch area.
- Three swabs of apparent blood from inside residence.

AUTOPSY

On Feb. 13, 2018, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Mono. Dr. Luzi concluded Mono had sustained eight bullet wounds, two of which had been exit wounds. Mono sustained single bullet wounds to the head, neck, chest, and back. Mono sustained two bullet wounds to the abdomen. It was Dr. Luzi's opinion that the wounds to Mono's right kidney, liver, and brain were each potentially fatal. Dr. Luzi concluded the cause of Mono's death was multiple gunshot wounds.

EVIDENCE ANALYSIS

Firearms Examination

An OCCL forensic scientist examined the following firearms:

- Glock, Model 22, .40 caliber, semi-automatic handgun.
- Sig Sauer, Model P226, 9mm, semi-automatic handgun.
- Ruger Security-Six revolver, .357 Magnum caliber.

The Glock 22 pistol was Deputy Johnson's duty weapon at the time of the shooting incident. Prior to the shooting incident, it was loaded to capacity with fifteen cartridges and an additional cartridge in the chamber. After the shooting incident, the Glock 22 pistol was test fired and operated without malfunction. The pistol was determined to have fired seven cartridge cases recovered at the scene; two bullets recovered at autopsy from the upper chest and right flank. The Glock pistol was determined to have fired the two bullets recovered from Unit A (EM #'s 11, 16).

The Sig Sauer pistol was Deputy Montoya's duty weapon at the time of the shooting incident. Prior to the incident, it was loaded to capacity with fifteen cartridges and an additional cartridge in the chamber. After the incident, it was test fired and operated without malfunction in both single and double actions. The pistol was determined to have fired six cartridge cases recovered from the scene and one bullet recovered at autopsy from the left chest.

Toxicological Examination

A sample of Mono's postmortem blood was collected for testing. The blood was examined for the presence of drugs and alcohol. The following results and interpretations were documented:

DRUG	MATRIX	RESULTS & INTERPRETATIONS
Ethanol	Postmortem Blood	0.105 ± 0.004% (W/V)
Hyrozytl-THC	Postmortem Blood	0.0421 ± 0.0051 mg/L
Carboxy-THC	Postmortem Blood	0.110 ± 0.013 mg/L
THC	Postmortem Blood	Detected
Acetaldehyde	Postmortem Blood	Detected
Lidocaine	Postmortem Blood	Detected
Citalopram	Postmortem Blood	Detected
Etomidate	Postmortem Blood	Detected

MONO'S PRIOR CRIMINAL HISTORY

Mono had no criminal history. Law enforcement records indicated that on Aug. 26, 2009, Mono's wife called the Los Angeles Police Department and reported Mono suffered from depression and was threatening suicide. She also reported there were guns inside the residence.

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in an on-duty fatal shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it is 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.) 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 the use of deadly force by a peace 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. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 332.) The felony must involve violence or the threat of violence. (*Id.* at 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 peace 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 peace 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.” The Court of Appeal 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 p. 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/she 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 physical injury to the officer or others.” This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer’s right to use force [*i.e.*, his/her 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 rapidly evolving—about the amount of force that is necessary in a particular situation” (*Id.* at 396-397.)

The United States Supreme Court’s analysis and teachings in *Graham* are applicable to the circumstances surrounding the interaction between Mono and OCS Deputy Johnson and Montoya.

LEGAL ANALYSIS

The facts in this case are determined by considering all the statements made by the OCSD deputies, which were supplemented by other relevant material and witnesses present at the incident.

The issue in this case is whether the conduct of Deputy Johnson and Deputy Montoya on Feb. 6, 2018, was criminally culpable and without justification. As stated above, in order to conclude that the Deputies committed a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the Deputies' conduct. Therefore, in order to lawfully charge Deputy Johnson and/or Deputy Montoya with a crime, the prosecution must prove, beyond a reasonable doubt, that the deputies did not act in lawful self-defense or defense of others. If the actions by Deputy Johnson and Deputy Montoya, on the date of the incident, were justifiable as lawful self-defense or defense of others, criminal charges would not be warranted.

As the Court of Appeal held in *Brown*, it is well settled that "unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effectuate it.' Police officers are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, the police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

Where potentially dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous toward police. The court in *Brown* noted that in effect, "the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack." (*Brown v. Ransweiler, supra*, 171 Cal.App.4th at p. 528.)

It is clear, based on the totality of all the available evidence, that Deputy Johnson and Deputy Montoya were justified in their belief that Mono posed a significant threat of death or serious physical injury to himself and others. This conclusion is supported by all of the circumstances; particularly Mono's conduct leading up to the shooting. The OCSD deputies arrived at Mono's address after being informed that John Doe heard Mono threaten to shoot him, and that John Doe knew Mono owned guns. After speaking with John Doe and Jane Doe, Deputy Frey broadcasted that Jane Doe had been inside the residence when Mono waved the handgun around, and that Mono and his wife were still inside.

When deputies first saw Mono, he appeared "completely outraged". They tried to communicate with him by asking Mono to come outside and talk or to allow them to come inside to talk. They repeatedly reassured Mono they were there to peacefully resolve the incident. Mono refused to comply, and as time passed he became more and more agitated and animated. Mono responded to the deputies by yelling obscenities and then moving out of view. Deputy Johnson described Mono's wife as "scared to death" and "petrified". Deputy Johnson recalled asking Mono's wife to come outside and talk to them, and Mono telling her, "You're not gonna fu***** speak to them." Therefore, in addition to his concern about his own safety and that of the other deputies, Deputy Johnson was concerned for Mono's wife and reasonably believed Mono would hurt her if she complied with their requests.

It was not until deputies observed Mono's wife grab a belt or holster off the front door and carry it into the kitchen, where Mono was located, that Deputy Lind and Deputy Johnson first drew their handguns, which they placed at the low ready position (pointed down). At some point, Mono came "charging" out of the kitchen and was screaming and cussing. Mono yelled and taunted the deputies. He asked the deputies to shoot him. He pulled down his pants, placed his buttocks against the living room window, and spread his buttocks cheeks. Mono refused to comply with deputies' directions, requests, and commands. Both Deputy Johnson and Deputy Montoya observed a handgun on Mono's couch. After

Deputy Johnson broadcasted this fact, Mono's attention was immediately drawn to the gun. He yelled, "I'll show you my gun! You wanna see my gun?!" Deputy Johnson and Deputy Montoya raised their weapons and pointed them at Mono. Deputy Johnson screamed three to six times to Mono, "Don't go near the gun! Do not go near the gun!" Mono then turned to his right, leaned forward, and "in a charging motion" reached for the handgun. Deputy Johnson feared Mono would pick up the gun and shoot Deputy Carrington, who was "perfectly parallel" with the couch and "directly in the line of sight" of Mono. This fear by Deputy Johnson was absolutely reasonable and justified based on all the circumstances. Again, Deputy Johnson screamed at Mono not to touch the gun. Mono ignored him and grabbed the gun. Deputy Johnson fired at Mono eight times. He did not wait for Mono to raise the handgun before he fired because he believed any delay could or would result in Mono shooting him, shooting Deputy Carrington, or shooting his wife. Once again, this conclusion by Deputy Johnson was legally reasonable and justified based on all the circumstances.

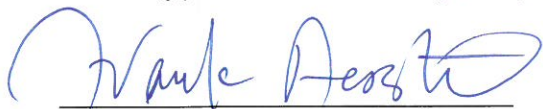
Deputy Montoya was watching Mono from outside the front door during the incident. He saw Deputy Carrington and Deputy Johnson standing just outside the picture window, separated only by the window. Deputy Montoya then watched Mono walk toward the holstered handgun, pick it up and then simultaneously turn toward Deputy Carrington and Deputy Johnson as he raised it. Deputy Montoya, reasonably and justifiably believing Deputy Carrington and Deputy Johnson's lives were in "imminent danger," shot Mono six times until he fell to the ground. It should be noted that while discharging their weapons neither Deputy Johnson nor Deputy Montoya was aware that the other had fired. Both deputies did not resort to shooting Mono until they personally saw him reaching to grab the handgun, and it was clear that Mono posed an imminent threat to his own safety and that of others. Therefore, both Deputy Johnson's and Deputy Montoya's actions were reasonable and justified under the circumstances.

In order for Deputy Johnson or Deputy Montoya to be justly and lawfully charged and convicted of any crime based on this incident, it is the OCDA's burden to prove, beyond a reasonable doubt, that Deputy Johnson and Deputy Montoya did not act in reasonable and justifiable self-defense or defense of another when they each shot Mono. It is apparent based on the above-described analysis and all the known facts that the prosecution would be unable to carry such a burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for both Deputy Johnson and Deputy Montoya to believe that their lives and the lives of others, Mono's wife and other deputies present, were in imminent danger. Therefore, Deputy Johnson and Deputy Montoya were both justified when they shot Mono. Simply stated, Deputy Johnson and Deputy Montoya did not commit a crime, to the contrary, each carried out his duties as a peace officer in a reasonable and justifiable manner.

CONCLUSION

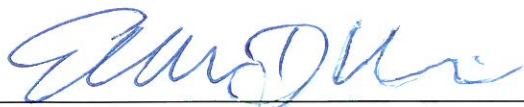
Based upon a review of all of the evidence provided and obtained by the OCDA investigators, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Deputy Johnson or Deputy Montoya. Further, there is substantial evidence that their actions were reasonable and justified, given the totality the circumstances, when they shot and killed Mono on Feb. 6, 2018.

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



FRANK ACOSTA

Deputy District Attorney
TARGET/Gangs Unit



Read and approved by **EBRAHIM BAYTIEH**
Senior Assistant District Attorney
Felony Operations II