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January 10, 2017

Commissioner Joseph A. Farrow
California Highway Patrol
601 North 7th Street
Sacramento, CA 95811

Interim Chief David Hinig
Fullerton Police Department
237 West Commonwealth
Fullerton, CA 92832

Re: Officer-Involved Shooting on July 3, 2016
Fatal Incident involving Pedro Erik Villanueva
Non-Fatal Incident involving Francisco Orozco Jr.
District Attorney Investigations Case S.A. # 16-023
California Highway Patrol Case DR# 0947-509-16
Fullerton Police Department Case DR# 16-43654
Orange County Crime Laboratory Case F.R. # 16-51075

Dear Commissioner Farrow and Chief Hinig,

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 California Highway Patrol (CHP) Sergeant John Cleveland and CHP Officer Rich Henderson. Pedro Erik Villanueva, age 19, died as a result of his injuries. Francisco Orozco Jr., age 18, survived his injuries. The incident occurred in the City of Fullerton on July 3, 2016.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the July 3, 2016, fatal, officer-involved shooting of Villanueva and the non-fatal, officer-involved shooting of Orozco Jr. 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 CHP officers involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On July 4, 2016, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, four interviews were conducted, and 28 additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: CHP reports, Fullerton Police Department (FPD) reports, audio dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, officer processing, vehicle examination,

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and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Villanueva and Orozco Jr.; criminal history records related to Villanueva including prior incident reports; and other relevant reports and materials, including audio recordings of the conducted neighborhood canvass.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and 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 CHP officers or personnel, specifically Sergeant Cleveland and Officer Henderson. The OCDA will not be addressing any possible issues relating to 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 dies as a result of police gunfire. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU Investigators, as well as Investigators from other OCDA units. Six Investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA Investigators assigned to other units in the Office trained to assist when needed. On average, eight Investigators respond to an incident within an hour of being called. The Investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, neighborhood canvass, crime scene processing and evidence collection, vehicle processing, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

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

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. Sergeant Cleveland and Officer Henderson gave voluntary statements to OCDA Investigators on July 4, 2016.

FACTUAL SUMMARY

On April 2, 2016, Villanueva was arrested by the San Jose Police Department for driving under the influence of alcohol, driving with a blood alcohol content (BAC) of 0.08 percent or above, and possession of a controlled substance (cocaine). On June 1, 2016, Villanueva pleaded guilty to one misdemeanor count of driving with a BAC of 0.08 percent or above and a misdemeanor count of possession of a controlled substance. Villanueva was placed on three years of court probation. The California Department of Motor Vehicles (DMV) suspended Villanueva's driver license as a result of the incident.

On July 3, 2016, the CHP received information that several car and truck clubs were traveling to southern California to attend various street sideshows. During the sideshows, the attendees illegally block street intersections, freeways, or parking lots to allow other vehicles to perform various unsafe and/or illegal driving maneuvers (i.e. speeding, donuts, burnouts, etc.). Sergeant Cleveland and Officer Henderson were working together as a 2-officer unit in an unmarked black Ford Taurus. The Ford Taurus was used for undercover assignments and was not equipped with a Mobile Audio Video (MAV) recording system. Sergeant Cleveland and Officer Henderson were not equipped with body-worn cameras (BWC) or digital audio recorders (DAR). At approximately 10:35 p.m., Sergeant Cleveland and Officer Henderson were monitoring a group of motorists in the parking lot of the Santa Fe Springs Swap Meet. Sergeant Cleveland and Officer Henderson observed a red Chevy Silverado pickup truck doing donuts in the parking lot, which was a violation of Vehicle Code section 23109(c). Villanueva was driving the truck with Orozco Jr. in the passenger seat.

Sergeant Cleveland and Officer Henderson decided to conduct a traffic stop on Villanueva. As they entered the Santa Fe Springs Swap Meet parking lot, an unknown car started honking, which Sergeant Cleveland believed was someone alerting the attendees that law enforcement had arrived. At this time, Villanueva drove toward the exit where Sergeant Cleveland and Officer Henderson had just entered. Sergeant Cleveland positioned his vehicle behind Villanueva's vehicle and activated his patrol vehicle emergency lights and began chirping his siren to conduct a traffic stop. Villanueva hit a median and then began backing up toward Sergeant Cleveland and Officer Henderson's Ford Taurus. Sergeant Cleveland placed the Ford Taurus in reverse in order to move out of Villanueva's way. Prior to reaching Sergeant Cleveland and Officer Henderson, Villanueva turned his vehicle and drove towards a different exit. Sergeant Cleveland estimated Villanueva's speed in the parking lot to be approximately 50 mph. Sergeant Cleveland followed Villanueva "Code-3" with full emergency lights and siren out of the parking lot and onto surface streets. As Villanueva exited the parking lot, Sergeant Cleveland turned off his emergency lights and siren because he did not feel comfortable pursuing Villanueva in an unmarked police vehicle.

At approximately 10:42 p.m., Sergeant Henderson advised CHP dispatch that he was following a speeding truck. Sergeant Cleveland requested a marked police car to assist in making a traffic stop on the truck. Sergeant Cleveland continued following Villanueva at what he considered a safe distance as he waited for a marked police unit to arrive. Officer Henderson estimated Villanueva drove in excess of 90 mph at times on surface streets. Sergeant Cleveland followed Villanueva through several surface streets into Fullerton. Villanueva drove through several intersections against red traffic lights. Sergeant Cleveland followed Villanueva north on Pritchard Street toward a cul-de-sac where Villanueva started to make a right turn on MacArthur Avenue, which was also a cul-de-sac. Sergeant Cleveland and Officer Henderson stopped their car on Pritchard Street south of MacArthur Avenue and activated the vehicle's emergency lights and forward facing steady red lamp. Sergeant Cleveland and Officer Henderson stepped out of their vehicle and stood by their respective car doors. Officer Henderson yelled "Police" and ordered Villanueva to show his hands. Villanueva suddenly placed his truck in reverse and backed into a vehicle parked along the west curb of Pritchard Street. The impact was severe enough to cause the rear tires of the truck to be lifted off the ground. Villanueva placed the truck in drive and drove directly toward Sergeant Cleveland. Sergeant Cleveland and Officer Henderson believed Villanueva was going to run over Sergeant Cleveland. Officer Henderson fired twelve shots at Villanueva and Sergeant Cleveland fired two shots as the two officers were moving out of the way. The truck ultimately collided into the driver door of the CHP Ford Taurus where Sergeant Cleveland had just been standing.

At 10:49 p.m., Officer Henderson advised over the radio that shots had been fired and requested paramedics to respond to the scene. Dispatch changed the type of call to "Officer Requires Help EMG by CHP" and requested additional units. At 10:54 p.m., CHP Sergeant Richard Zavala was the first marked CHP vehicle with a MAV recorder to arrive on scene. When Sergeant Zavala pulled up to the scene, he parked directly behind Sergeant Cleveland's unmarked unit, and his vehicle's MAV recorder captured that Sergeant Cleveland's Ford Taurus had visible blue and yellow flashing lights to the rear. The video recording showed Sergeant Cleveland and Officer Henderson standing behind the Ford Taurus with their guns pointed at Villanueva's truck. A police helicopter overhead was shining a search light down at Villanueva's truck. Villanueva's truck was stopped with its front driver side fender against the driver side of the Ford Taurus. Various commands from unknown officers directed at the occupants of Villanueva's truck were broadcast. Approximately one minute after Sergeant Zavala arrived on scene, Orozco Jr. opened the passenger side door and exited the vehicle with his hands up. Approximately four minutes later, several officers approached the driver side of the vehicle to make contact with Villanueva.

At approximately 10:55 p.m., FPD officers began to arrive on scene. FPD Officers Ryan O'Neil, Danielle Riedl, Michael Halverson, Jonathan Munoz, and Matthew Kalscheur were equipped with BWCs which showed officers taking cover behind the Ford Taurus with guns drawn toward Villanueva's truck. The video showed the officers seen approaching the driver side of the truck with their guns drawn. Villanueva's driver door was locked, so one of the officers shattered the driver side window to unlock and open the door. When the officers opened the door, Villanueva was unresponsive. The officers pulled him out of the vehicle to the ground face down, handcuffed him, and patted him down for weapons. When paramedics arrived seconds later, they requested that officers remove the handcuffs so they could assess

Villanueva's injuries. The officers removed the handcuffs as requested and the paramedics began attending to Villanueva.

At 10:59 p.m., FFD Engine 2 personnel arrived at the scene of the incident. At 11:01 p.m., the paramedic attended to Villanueva, who was lying unresponsive on the street. Villanueva was in full cardiac arrest with visible gunshot wounds to his head, neck, and torso. An electrocardiogram test revealed that Villanueva was asystole with fixed and dilated pupils. Villanueva was pronounced dead at approximately 11:15 p.m.

At approximately 11:07 p.m., Orange County Fire Authority Engine 62 arrived on scene and began treating Orozco Jr. At 11:25 p.m., the paramedics transported Orozco Jr. to West Anaheim Medical Center (WAMC) by ambulance. Upon arrival, the paramedics were directed to the University of California, Irvine – Medical Center (UCIMC) due to the injury of a gunshot wound. On July 4, 2016, at approximately 12:01 a.m., Orozco Jr. arrived at UCIMC. The ER physician assumed care of Orozco Jr. The ER physician described Orozco Jr. as alert and oriented at the time of his arrival to UCIMC. The ER physician treated Orozco Jr. for a gunshot wound to the right arm and an X-ray of his right arm indicated a fracture of the elbow.

Voluntary Statement of Sergeant Cleveland Regarding the Incident

Sergeant Cleveland gave a voluntary statement to OCDA Investigators on July 4, 2016. The following is a summary of Sergeant Cleveland's statement.

CHP had received information that a group of people would be involved in street racing, exhibitions of speed and reckless driving during the weekend of July 3, 2016. Sergeant Cleveland and Officer Henderson were one of the two man unmarked units assigned to observe violations of this group. Sergeant Cleveland was the driver and Officer Henderson was the front passenger in an unmarked CHP Ford Taurus. While working in that capacity on July 3, 2016, Sergeant Cleveland and Officer Henderson drove to the Santa Fe Springs Swap Meet parking lot. When they arrived, Sergeant Cleveland observed Villanueva in a red Chevrolet truck doing donuts in the parking lot. Sergeant Cleveland initially thought that since other marked patrol units were occupied, he and Officer Henderson would be able to arrest Villanueva in the parking lot while they were waiting for other units to arrive. As Sergeant Cleveland drove toward the parking lot, an unknown car started honking its horn causing several cars to start backing up and attempting to leave. When Villanueva drove toward a line of cars attempting to exit the parking lot, he drove around to the right side of the vehicles to get out of the parking lot faster.

Sergeant Cleveland turned his vehicle around to get behind Villanueva and to conduct a traffic stop of him for reckless driving and exhibition of speed in the parking lot. During this time, Sergeant Cleveland activated his forward facing red light and emergency lights, as well as began chirping his siren, to attempt to conduct the traffic stop. Villanueva drove his truck into a median and started spinning his tires. Villanueva started reversing his truck toward Sergeant Cleveland and Officer Henderson, which caused Sergeant Cleveland to back up the Ford Taurus. Villanueva then drove forward across the parking lot at an estimated speed of 50 miles per hour (mph) as Sergeant Cleveland followed behind him. Sergeant Cleveland thought that Villanueva was actively attempting to get away but decided not to attempt an enforcement stop because he felt uncomfortable doing so in an unmarked police vehicle. Instead, Sergeant Cleveland followed at a safe distance behind and maintained surveillance on Villanueva. Sergeant Cleveland did not have his forward facing light activated during this time. During this observation period, Sergeant Cleveland saw Villanueva run multiple red lights. At some point, Villanueva slowed down and Sergeant Cleveland followed about one block behind.

After following Villanueva for a while, Sergeant Cleveland observed him turn onto Pritchard Street in Fullerton. Sergeant Cleveland followed Villanueva onto Pritchard Street and observed him turn right at the end of the street and out of sight. As Sergeant Cleveland approached the end of the block, he observed Villanueva's red truck stopped in the middle of the road. Sergeant Cleveland was unsure whether Villanueva was going to run from the vehicle or was giving up, so he activated his police vehicle emergency lights again. At that time, Villanueva started backing up westbound across Pritchard. By this point, Sergeant Cleveland and Officer Henderson had exited and were standing next to their vehicle. Sergeant Cleveland did not believe that Villanueva would be able to drive away because of the manner the

Ford Taurus was positioned in the road. Villanueva backed up quickly and struck a parked car. Sergeant Cleveland believed that one of Villanueva's rear tires lifted off of the ground due to the force of the impact. Officer Henderson yelled to Villanueva to stop the car. Villanueva ignored this command.

Villanueva put the truck in drive and started moving forward. Sergeant Cleveland recalled seeing the truck turn directly toward him. Sergeant Cleveland felt that Villanueva was going to run him over and that he would have been hit if he did not move. Sergeant Cleveland was in fear for his life. Sergeant Cleveland ran westbound away from the Ford Taurus. At this time, Officer Henderson started firing shots at the front of Villanueva's truck. Sergeant Cleveland made it halfway between his vehicle and the west curb when he felt the truck was still pointed toward his direction. Sergeant Cleveland fired two to three rounds at Villanueva in order to stop Villanueva from continuing to drive toward him. Villanueva's truck came to rest against the side of Sergeant Cleveland's car, approximately where Sergeant Cleveland had previously been standing. Prior to the shooting, Sergeant Cleveland was unaware Orozco Jr. was in Villanueva's truck.

Voluntary Statement of Officer Henderson Regarding the Incident

Officer Henderson gave a voluntary statement to OCDA Investigators on July 4, 2016. The following is a summary of that statement.

Officer Henderson rode in the passenger seat of the Ford Taurus with Sergeant Cleveland. When they arrived at the parking lot of the Santa Fe Springs Swap Meet, Officer Henderson observed Villanueva doing donuts in the parking lot. Sergeant Cleveland positioned the Ford Taurus behind Villanueva's vehicle, activated the red light and Code-3 lights, and chirped the siren in an attempt to conduct a traffic stop of Villanueva. Villanueva hit a curb, and then backed up in the direction of Sergeant Cleveland and Officer Henderson's Ford Taurus. Sergeant Cleveland put their vehicle in reverse and backed out of the way of Villanueva's truck. Villanueva then drove out onto the street and drove away. Sergeant Cleveland deactivated the police lights, but drove after Villanueva to maintain observation until a marked patrol vehicle could arrive. Sergeant Cleveland and Officer Henderson continued to surveil Villanueva as he drove through numerous streets. At times, Villanueva drove as fast as 90 mph on surface streets. Ultimately, Sergeant Cleveland and Officer Henderson followed Villanueva onto Pritchard Street in Fullerton. When they reached the end of Pritchard, Officer Henderson observed Villanueva's vehicle stopped in the street. Sergeant Cleveland told Officer Henderson that he believed Villanueva was either going to flee or surrender. Sergeant Cleveland activated the patrol lights on the Ford Taurus again. Officer Henderson and Sergeant Cleveland exited the Ford Taurus and stood by their car. Officer Henderson identified himself as a police officer and ordered Villanueva to show his hands.

Villanueva suddenly reversed his vehicle quickly and collided with a parked car behind him. Officer Henderson then heard Villanueva rev the engine. Officer Henderson then saw Villanueva's truck turn and start driving toward Sergeant Cleveland. Officer Henderson estimated that Villanueva accelerated to approximately 10 mph towards the direction of the Ford Taurus. Officer Henderson did not see Sergeant Cleveland move and believed that he was still standing in the path of the truck when he decided to fire to stop Villanueva from hitting Sergeant Cleveland. Officer Henderson fired 12 rounds at Villanueva. Villanueva's vehicle then began coasting to a stop, ultimately hitting the officers' Ford Taurus. Prior to the shooting, Officer Henderson was unaware that there were any occupants of the red truck besides Villanueva.

Voluntary Statement of Orozco Jr. Regarding the Incident

Orozco Jr. gave a voluntary statement to OCDA Investigators on July 4, 2016. The interview took place at UCIMC. The following is a summary of that statement.

Orozco Jr. remembered Villanueva making three or four donuts with his truck in the parking lot of the Santa Fe Springs Swap Meet. There was another vehicle doing donuts in the parking lot, but the police went directly for Villanueva's truck. A police officer flashed his light at Villanueva and Orozco Jr. and activated his horn or siren. When the officers started chasing them, Orozco Jr. heard the horn or siren, but did not see any emergency lights. Orozco Jr. did not know what got into Villanueva, but he did not want to stop. Orozco Jr. described Villanueva as being "super scared." Orozco Jr. estimated Villanueva's speed reached approximately 70 mph at times. Orozco Jr. said Villanueva failed to stop at three

to four intersections with red lights facing them. Orozco Jr. told Villanueva several times to stop and throw the keys out but Villanueva did not listen to him. Orozco Jr. told Villanueva to pull over and that he would only receive a citation or have his truck taken away. Still, Villanueva did not listen to him.

Villanueva drove into an alley, then panicked and attempted to turn around in the cul-de-sac on Pritchard Street. As Villanueva backed up to make the U-turn, Orozco Jr. saw the red and blue lights of the police car. Orozco Jr. saw Sergeant Cleveland and Officer Henderson get out of their car and noted the interior light to the Ford Taurus was turned on. Sergeant Cleveland and Officer Henderson had the word "Police" on the front of their vests and Orozco Jr. described them as being dressed like a "street tactical unit." Sergeant Cleveland and Officer Henderson yelled, "Police, stop" approximately three times but Villanueva did not stop. Villanueva put the truck into drive and drove forward toward the officers. Orozco Jr. thought that the officers believed Villanueva was going to run them over. The vehicles were approximately eight feet apart. The officers were saying, "Hey, hey!" Orozco Jr. did not know if Villanueva's foot got stuck on the gas pedal, but he hit the police car in a head on collision from a 45 degree angle. Orozco Jr. believed that the officers were behind the car doors when the collision occurred. Both officers had their guns drawn.

Orozco Jr. heard shots being fired and felt the impact. Orozco Jr. thought the police officers were shooting rubber bullets until he felt the impact on his right elbow. Orozco Jr. believed that the bullets were meant for Villanueva. It took three to four minutes for Orozco Jr. to exit the truck.

Voluntary Statement of John Doe 1 Regarding the Incident

John Doe 1 resides in a house near where the incident occurred. John Doe 1 was sitting to the front of his apartment complex with his daughter. John Doe 1 observed a red pick-up truck traveling northbound on Pritchard Avenue at a high rate of speed. John Doe 1 said the red pick-up truck did not have any of the vehicle lights on (no headlights or brake lights). John Doe 1 saw the vehicle make a U-turn at MacArthur Avenue and begin traveling southbound. John Doe 1 saw an undercover police vehicle traveling northbound on Pritchard Avenue as the red pick-up truck made a U-turn. The undercover vehicle had its emergency lights activated, but no siren. John Doe 1 saw the red pick-up truck drive forward towards the undercover police vehicle. John Doe 1 heard a police officer yell, "stop [expletive]!" John Doe 1 did not hear a traffic collision, but as he was going into his apartment, he heard six to seven gun shots. After the gunshots, John Doe 1 heard the officers say, "Two suspects and all of the cops are okay."

Voluntary Statement of John Doe 2 Regarding the Incident

John Doe 2 was near the area where the incident occurred, and he heard cars driving at a high rate of speed on the street, and then he heard someone yelling, "Stop!" John Doe 2 saw a red truck driving toward the police car and then he heard approximately five to six gunshots. John Doe 2 then ran inside his apartment. John Doe 2 did not see emergency lights on the police car, nor did he see the officer shoot his gun.

Voluntary Statement of John Doe 3 Regarding the Incident

John Doe 3 arrived on Pritchard Street with his video camera shortly after the shooting occurred and immediately began recording. The video footage filmed by John Doe 3 was reviewed. It consists of several short video segments cut together. Initially, it shows multiple police vehicles on scene with their emergency lights activated. Several officers are seen taking cover behind various vehicles. Several of the officers were pointing their flashlights in the front windshield of Villanueva's truck with their guns drawn. After a cut, Orozco Jr. is seen being led away from the vehicle by the officer. Ultimately, Orozco Jr. is seen on a stretcher being helped into the back of an ambulance.

Voluntary Statement of John Doe 4 Regarding the Incident

John Doe 4 and his son were standing in the driveway of his apartment complex when they saw a Chevy truck driving at a high rate of speed. John Doe 4 estimated the speed of the truck to be approximately 30-40 mph. Due to the dead end, the truck reversed to proceed southbound on Pritchard. John Doe 4 saw the police officer standing in front of the truck with his weapon drawn. John Doe 4 heard the police officer tell the driver not to move. John Doe 4 saw the truck move forward towards the officer and heard two shots. John Doe 4 saw the truck move forward a second time and then heard more shots (approximately five to six shots). After the shooting, the officer told the passenger not to move several times.

The passenger remained in the vehicle for a few minutes until other officers arrived on scene.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Clothing and Jacket fragment
- Two jacket fragments
- Fourteen cartridge cases with head stamp WIN 40 S&W
- One empty magazine for a 40 caliber S&W

AUTOPSY

On July 6, 2016, Forensic Pathologist Dr. Nicole Ellis of the Orange County Coroner's Office conducted an autopsy on the body of Villanueva. Dr. Ellis determined Villanueva's death was caused by multiple gunshot wounds to the head, right clavicle, and right chest.

EVIDENCE ANALYSIS

Firearms and Projectile Examinations

Sergeant Cleveland's and Officer Henderson's Smith and Wesson pistols were test fired at the Orange County Crime Lab and fired without malfunction. Two cartridge cases collected from the scene were determined to have been fired from Sergeant Cleveland's handgun. A bullet collected from Villanueva's left shoulder during the autopsy was determined to have been fired from Sergeant Cleveland's handgun. Twelve cartridge cases collected from the scene were determined to have been fired from Officer Henderson's handgun. A bullet collected from Villanueva's upper right head during the autopsy was determined to have been fired from Officer Henderson's handgun.

Toxicological Examination

A sample of Villanueva's postmortem blood was collected at the Orange County Coroner's Office. An Orange County Sheriff's Department forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following drugs were detected from Villanueva's postmortem blood sample:

DRUG	RESULTS & INTERPRETATIONS
THC	0.0044 + 0.0006 mg/L
Hydroxy-THC	0.0014 + 0.0002 mg/L
Carboxy-THC	0.0191 + 0.0022 mg/L

VILLANUEVA'S PRIOR CRIMINAL HISTORY & DMV RECORD

Villanueva's criminal history and DMV record were reviewed and considered. According to Villanueva's California Criminal History, he was previously arrested for the following charges in 2016:

- Vehicle Code section 23152(b) Driving with a BAC of .08 percent or above
- Vehicle Code section 23152(a) Driving under the influence drugs/alcohol
- Health and Safety Code section 11350(b) Possess controlled substance

Subsequently, Villanueva was convicted of the following charges:

- Vehicle Code section 23152 (b) Driving with a BAC of .08 percent or above
- Health and Safety Code section 11350(b) Possess controlled substance

As a result, of this conviction, Villanueva was placed on three years of court probation. In addition, his DMV record showed that his driver's license was suspended both because of excessive blood alcohol content (effective May 2, 2016), and because of his driving under the influence conviction (effective June 1, 2016).

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a 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 would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) Several such justifications may apply in any given case and they are set forth in Penal Code sections 196, 197 and 835a.

California Penal Code section 196 provides that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are "charged with a felony" and who are fleeing from justice or resisting such arrest. section 196 applies both where the suspect in question is "charged with a felony" and where the officer has "reasonable cause" to believe that the person has committed a felony. (*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 police officer who has reasonable cause to believe that a person to be arrested has committed a felony [public offense] to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer "who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance." 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 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 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 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 very much applicable to the circumstances surrounding the interactions of CHP Sergeant Cleveland and Officer Henderson with Villanueva and Orozco Jr.

LEGAL ANALYSIS

The facts in this case are determined by considering Sergeant Cleveland’s and Officer Henderson’s statements to the OCDA investigators, which were supplemented by other relevant material and witnesses present at the incident.

The issue in this shooting is whether the conduct of either Sergeant Cleveland or Officer Henderson on July 3, 2016, was criminally culpable and without justification. As stated above, in order to lawfully charge Sergeant Cleveland or Officer Henderson with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officer’s conduct. Therefore, in order to lawfully charge Sergeant Cleveland or Officer Henderson with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense or defense of others. If the actions that day of Sergeant Cleveland and Officer Henderson were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held in a relatively recent case, 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 potential 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 to the 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.)

For purposes of our criminal review, and based on the totality of all the circumstances, Sergeant Cleveland and Officer Henderson were reasonably justified in believing that Villanueva posed a significant threat of death or serious physical injury. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Villanueva in the moments leading up to the shooting, and based upon the independent up close observations made by Orozco Jr. After attempting to evade Sergeant Cleveland and Officer Henderson for several blocks, Villanueva drove down a dead end road. When he backed up and attempted to continue driving, Sergeant Cleveland and Officer Henderson exited their vehicle and gave Villanueva several orders to stop and get out of his vehicle. At this point, Orozco Jr. recalled seeing the police vehicle’s emergency lights and hearing the officers identify themselves as police officers. Rather than obey the commands given by the officers, Villanueva accelerated forward toward Sergeant Cleveland, crashing his vehicle into the driver side of the officers’ Ford Taurus. This is consistent with the undeniable fact that Villanueva was specifically focused on not wanting to get arrested by the police as evidence by him ignoring multiple pleas by Orozco Jr. to stop the car during the chase. This conclusion is strengthened by the fact that Villanueva knew that he was on probation and was driving on a suspended license.

Officer Henderson believed that Villanueva was going to strike Sergeant Cleveland and began firing his weapon at Villanueva. Sergeant Cleveland recalled seeing the truck accelerating towards him and believed that he was going to be

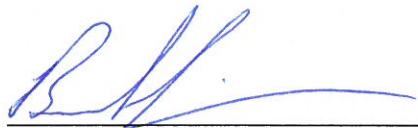
hit. Because the truck was still pointed in his direction, Sergeant Cleveland fired two rounds at Villanueva. It should be noted that neither Sergeant Cleveland nor Officer Henderson intended to shoot the passenger, Orozco Jr. Rather, they fired at Villanueva in an attempt to stop the vehicle from moving forward. Orozco Jr. believed, correctly and reasonably, that Sergeant Cleveland and Officer Henderson thought they were going to be hit. Several witnesses recalled hearing the officers yell, "Police, stop," before Villanueva started driving forward.

It should also be noted that in order for either Sergeant Cleveland or Officer Henderson to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA's burden to prove beyond a reasonable doubt that they did not act in reasonable and justifiable self-defense or defense of another when they shot at Villanueva. As should be apparent from the above-described analysis, the prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for Sergeant Cleveland and Officer Henderson to believe that their lives and the lives of others were in danger. Therefore, Sergeant Cleveland and Officer Henderson were legally justified when they shot at Villanueva. Simply stated, Sergeant Cleveland and Officer Henderson did not commit a crime in connection with this incident.

CONCLUSION

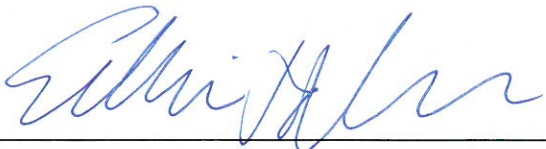
Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence of criminal culpability on the part of Sergeant Cleveland or Officer Henderson, and there is substantial evidence that their actions were reasonable and justified under the circumstances when they shot at the vehicle driven by Villanueva on July 3, 2016 causing Villanueva's death and the injuries to Orozco Jr.

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



Brock Zimmon

Senior Deputy District Attorney
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Read and approved by **Ebrahim Baytieh**

Assistant District Attorney
Supervising Head of Court – Special Prosecutions Unit