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November 27, 2018

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

Re: Cristobal Solano Custodial Death on May 1, 2018
District Attorney Investigations Case # S.A. 18-016
Orange County Sheriff's Department Case # 18-017501
Orange County Crime Lab Case # 18-46156
Orange County Coroner's Office Case # 18-02118-NG

Dear Sheriff Hutchens,

This letter details the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident. It involves the May 1, 2018, custodial death of 37-year-old inmate Cristobal Solano.

OVERVIEW

A description of the scope and the legal conclusions resulting from the OCDA's investigation of the custodial death of Solano is included in this letter. The OCDA describes the investigative methodology employed, evidence examined, witnesses interviewed, facts discovered, and the legal principles applied to determine whether criminal culpability exists on the part of any Orange County Sheriff's Department (OCSD) personnel or any other person under the supervision of the OCSD.

On May 1, 2018, OCDA Special Assignment Unit (OCDASAU) Investigators responded to OCSD Orange County Jail (OCJ) where Solano stopped breathing hours earlier. Solano died after receiving medical treatment at the hospital but while still in custody. During the course of this investigation, the OCDASAU interviewed 25 witnesses, conducted two supplemental canvass interviews, as well as obtained and reviewed reports from the OCSD and Orange County Crime Laboratory (OCCL), incident scene photographs, video recording and other relevant materials.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this event and 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 the OCSD personnel or any other person under the supervision of the OCSD. 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 custodial deaths within Orange County when an individual dies while in custody. An OCDASAU Investigator is assigned as a case agent and is supported by other OCDASAU investigators and 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, scene processing, and evidence collection, 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 and 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, who will eventually review and approve any legal conclusion 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.

DISCLOSURE OF CUSTODIAL DEATH VIDEO & AUDIO EVIDENCE

The OCDA recognizes that releasing video and audio evidence of officer-involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase accountability, and build public trust in law enforcement. Consistent with the OCDA's written policy in connection with the release of video and audio evidence relating to officer-involved shooting and custodial death incidents where it is legally appropriate to do so, the OCDA is releasing to the public video/audio evidence in connection with this case. The relevant video/audio evidence is available on the OCDA webpage <http://orangecountyda.org/reports/videoandaudio/default.asp>.

FACTS

Solano was a 37 year old male, 6'3" in height, and weighed in excess of 350 pounds. On April 30, 2018, Tustin Police Department (TPD) officers responded to the Key Lodge Motel in the city of Tustin reference a male subject wearing a blue hooded sweatshirt banging on doors. Officers made contact with Solano at about 8:13 p.m. in the parking lot of the Key Lodge Motel. Solano matched the description provided by the reporting party. During the contact, the TPD officers realized that Solano also matched the description of a wanted suspect in an armed robbery which occurred on March 30, 2018, at a local 7-Eleven store in the city of Tustin. Solano was detained at that point.

During the initial contact with TPD officers, Solano appeared to possibly be in need of medical attention because he would hunch over himself and moan. Noting this, officers requested paramedics to come tend to Solano's medical needs. At approximately 8:44 p.m., paramedics arrived. After an examination by paramedics, it was determined Solano's blood pressure, heart rate, respirations, and blood oxygen saturation were all in the normal range. Paramedics noted Solano was possibly suffering an anxiety attack, but determined nothing was physically wrong with Solano. Paramedics and several TPD officers asked Solano if he wanted to be transported to the hospital. At first, Solano indicated yes because he wanted to get his prescription medication refilled. After learning his medication would not be refilled at the hospital, Solano refused to be transported. Solano was arrested for the armed robbery at approximately 8:53 p.m. During Solano's booking process while at TPD, Solano spoke softly and appeared tired,

however Solano no longer complained of any medical issues. At approximately 10:37 p.m., a TPD officer transported Solano from TPD to OCJ. Solano did not speak nor interact with the TPD officer during the transport. The TPD officer escorted Solano to the outdoor detention area where they stayed until directed to enter the Intake Release Center (IRC).

At about 11:30 p.m., the TPD officer escorted Solano into the IRC. During the medical screening, the assigned Orange County Health Care Agency (OCHCA) RN described Solano as cooperative and able to answer all questions. The RN further reported there were no indications given to him by Solano of any immediate medical concerns. Solano was medically cleared to proceed to the booking process at approximately 11:40 p.m.

Solano was released to OCSA Deputies Cody Eversgerd and Christian Higuchi for a search of his person prior to being placed into his holding cell. A pat-down for inmate and officer safety was conducted without incident. After the pat-down search, Solano was un-cuffed. Solano then became uncooperative during Deputy Eversgerd's search of Solano's mouth. Although Solano at first partially opened his mouth, but he refused to open his mouth wide as directed by Deputy Eversgerd several times. Solano covered his face when asked not to, and repeatedly ignored requests for cooperation. After numerous attempts, Deputy Eversgerd believed Solano had no intention of completing the search. Because jail procedures call for unsearched and/or uncooperative inmates to be placed in a cell alone for their safety, the safety of other inmates and jail staff, Deputy Eversgerd decided to place Solano in a cell by himself.

In order to alert other deputies Solano was not being a cooperative inmate, Deputy Eversgerd requested Solano to place his hands on the floor. This signals to other deputies that they will likely have to go "hands on" with the inmate and the position puts the inmate at a disadvantage. Solano refused to comply with the order. At approximately 11:43 p.m., Deputy Higuchi and Deputy Eversgerd grabbed both of Solano's arms. Solano was told to stand up, but he refused. Deputies Eversgerd and Higuchi placed Solano's hands behind his back and Deputy Parker assisted them in lifting Solano off of the bench to walk him to cell H-3. At approximately 11:43 p.m., Deputies Eversgerd, Higuchi, and Parker placed Solano against the south window of H-3. Solano continued to struggle and Deputy Eversgerd described Solano's demeanor after being placed against the window next to cell H-3 as follows:

"It seemed like he [Solano] started to ease down. It seemed like whoever was talking to him was getting him calm and then just out of nowhere that's when he just screamed real loud, and I just remember he kind of lifted me to my toes."

At approximately 11:43 p.m., five additional deputies responded to IRC in response to Solano's screams. The deputies surrounded Solano and tried to control him while a search was completed. Sgt. Frazee arrived at approximately 11:44 p.m. and, after observing Solano continue to resist and the deputies struggling to gain control, directed the deputies to move Solano into H-3 where he could be placed on the ground and searched for weapons and narcotics. During the struggle to get Solano into the cell, Solano was able to rip his arms and legs away from the assisting deputies numerous times. Solano thrashed and screamed "Help, please help" and deputies repeatedly told Solano to "stop resisting." Solano denied he was resisting.

At approximately 11:45 p.m., deputies took positions around Solano to lower him to the ground from a bench inside cell H-3 he had leaned on during the struggle. Deputy Johnson held Solano's head to ensure it would not impact the ground. Deputies Leland and Higuchi each placed a knee in the center/upper portion of Solano's back. Deputy Recinos placed his knee on Solano's right shoulder blade and Deputies Parker, Gouirand and Johnson had Solano's legs crossed with his feet bent toward his buttocks. Solano continued to resist, despite repeated requests by deputies to stop resisting. At approximately 11:45 p.m., Sgt. Frazee directed the deputies to "Stop." Solano had not yet been handcuffed nor searched. He continued to resist. A few seconds later Sgt. Frazee directed the deputies to "get the

handcuffs on him," but Solano continued to struggle. A few seconds later, Deputy Recinos announced "cuffs on." At approximately 11:46 p.m., Sgt. Frazee noticed Solano was no longer resisting and asked if Solano was breathing. Sgt. Frazee moved towards Solano's head and examined him. He noted Solano was face down with saliva near his mouth, but had no visible trauma. When Solano was rolled on to his side, Sgt. Frazee noticed Solano was unresponsive. Sgt. Frazee immediately requested an ampule of ammonia (smelling salts) from Medical Triage. The smelling salts were brought over at approximately 11:48 p.m. Sgt. Frazee placed the broken ampule under Solano's nose. Solano took a deep breath followed by a "snoring" sound, however he did not rouse. Sergeant Frazee directed deputies to move Solano into the triage area and requested OCHCA medical staff and paramedics.

OCHCA personnel responded and rendered aid to Solano. Solano was unresponsive with shallow breathing, a faint pulse, and oral secretion around his mouth. One dose of Narcan was administered, but had no effect. OCHCA personnel, with assistance from deputies, initiated Cardio Pulmonary Resuscitation (CPR). The Automated External Defibrillator (AED) was attached and recommended no shock. CPR was continued until Orange County Fire Authority (OCFA) paramedics arrived.

At approximately 11:59 p.m., OCFA paramedics arrived. Solano had no pulse and no respirations by this time. CPR was continued and an Intraosseous (IO) was inserted into Solano's left tibia. One milligram of Epinephrine was administered via the IO. Solano was transported to Orange County Global Medical Center (OCGMC) at approximately 12:10 a.m. on May 1, 2018. While in transport, another milligram of epinephrine was administered, with no effect.

When Solano arrived at OCGMC 10 minutes later, he was under full cardiac arrest asystolic. Solano's drug screens were positive for methamphetamine and negative for alcohol. Computerized Tomography (CT) Scans of Solano's head showed a subarachnoid hemorrhage with a bilateral, middle cerebral artery stroke and thrombosis. The attending physician in charge of Solano observed no signs of trauma and believed Solano had suffered a heart attack. While OCGMC staff was able to get Solano's pulse back, a second attending physician made the first brain death pronouncement at 5:42 p.m. on May 1, 2018. A third attending physician pronounced Solano deceased on May 2, 2018.

EVIDENCE COLLECTED

The following items of evidence were collected and examined:

- Two black socks
- Gray undershirt
- Blue and gray hooded sweatshirt
- Two gray Nike shoes

AUTOPSY

On May 9, 2018, independent Forensic Pathologist Scott Luzi from Clinical and Forensic Pathology Services performed Solano's autopsy. During the autopsy, Doctor Luzi found Solano displayed no signs of major, life-threatening injuries; there was no excess fluid in the pleural, pericardial, or peritoneal cavities, but the heart was enlarged. Doctor Luzi found the following pre-existing conditions: morbid obesity, cerebral edema, pulmonary congestion and edema, cardiomegaly, mild coronary atherosclerosis, and mild peripheral atherosclerosis. There were no outward signs of trauma. Examination of the micro slides revealed pulmonary congestion, pneumonia and cardiomegaly. Dr. Luzi concluded the cause of death was acute methamphetamine intoxication, and the manner of death was determined to be accidental.

Toxicological Examination

Samples of Solano's antemortem and postmortem blood were collected. An OCSD forensic scientist examined the blood samples for alcohol, prescription drugs, and common drugs of abuse. The test results confirmed Solano had amphetamine (antemortem: 0.272 mg/L and postmortem: .526 mg/L) and methamphetamine (antemortem: 1.07 mg/L and postmortem: .818 mg/L) in his system.

BACKGROUND INFORMATION

Solano had a State of California Criminal History record that revealed arrests dating back to 2008 for the following violations:

- Willful Discharge of a Weapon – Negligent Manner
- Burglary and Theft
- Possession of a Controlled Substance
- Assault with a Deadly Weapon – Not a firearm
- Robbery
- Felon in Possession of a Firearm
- Petty Theft with Prior Conviction
- Carry Concealed Weapon in Vehicle
- Take Vehicle without Consent
- Violation of Parole
- Hit & Run – Property Damage
- Grand Theft
- Receive Stolen Property
- Auto Theft with Prior
- Participation in a Criminal Street Gang
- Obstruct/Resist a Police Officer
- Trespassing

THE LAW

Homicide is the killing of one human being by another. Murder, voluntary manslaughter, and involuntary manslaughter are types of homicide. To prove a person is guilty of murder, the following must be proven:

- a. The person committed an act that caused the death of another human being;
- b. When the person acted he/she had a state of mind called malice aforethought; and
- c. He/she killed without lawful excuse or justification.

There are two kinds of malice aforethought: express malice and implied malice. Express malice is when the person unlawfully intended to kill. Implied malice requires that a person intentionally committed an act, the natural and probable consequences of the act were dangerous to human life, at the time he/she acted he/she knew his/her act was dangerous to human life, and he/she deliberately acted with conscious disregard for human life.

A person can also commit murder by his/her failure to perform a legal duty, if the following conditions exist:

- a. The killing is unlawful (*i.e.*, without lawful excuse or justification);
- b. The death is caused by an intentional failure to act in a situation where a person is under a duty to act;
- c. The failure to act is dangerous to human life; and

- d. The failure to act is deliberately performed with knowledge of the danger to, and with conscious disregard for, human life.

A person can also commit involuntary manslaughter by failing to perform a legal duty, if the following conditions exist:

- a. The person had a legal duty to the decedent;
- b. The person failed to perform that legal duty;
- c. The person's failure was criminally negligent; and
- d. The person's failure caused the death of the decedent.

In *Giraldo v. California Dept. of Corrections and Rehabilitation* (2008) 168 Cal.App.4th 231, 250-251, the court held that there is a "special relationship" between jailer and prisoner:

"The most important consideration 'in establishing duty is foreseeability.' It is manifestly foreseeable than an inmate may be at risk of harm.... Prisoners are vulnerable. And dependent. Moreover, the relationship between them is protective by nature, such that the jailer has control over the prisoner, who is deprived of the normal opportunity to protect himself from harm inflicted by others. This, we conclude, is the epitome of a special relationship, imposing a duty of care on a jailer owed to a prisoner, and we today add California to the list of jurisdictions recognizing a special relationship between jailer and prisoner."

California Government Code 845.6 codifies that the special relationship that exists in a custodial setting gives rise to a legal duty, as follows:

"Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but..... a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care."

Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when he acts in a reckless way that creates a high risk of death or great bodily injury and a reasonable person would have known that acting in that way would create such a risk. In other words, a person acts with criminal negligence when the way he acts is so different from how an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act. An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. There may be more than one cause of death. An act causes death only if it is a substantial factor in causing the death. A substantial factor is more than a trivial or remote factor; however, it does not need to be the only factor that causes the death.

LEGAL ANALYSIS

In this present case, there is no evidence whatsoever of express or implied malice on the part of any OCSD personnel or any inmates or other individuals under the supervision of the OCSD. Accordingly, the only possible type of homicide to analyze in this situation is murder or manslaughter under the theory of failure to perform a legal duty.

Solano was remanded into custody of the Orange County Sheriff's Department (OCSD) on April 30th, 2018. During his time in custody, OCSD's personnel had a legal duty to protect Mr. Solano from harm from others and to care for

his medical well-being. None of the evidence collected throughout this investigation indicates, collectively or otherwise, that OCSD personnel or other persons under OCSD's supervision breached the legal duty owed to Solano, either intentionally (as required for murder and voluntary manslaughter) or through criminal negligence (as required for involuntary manslaughter).

Solano showed no internal or external signs of injury or trauma consistent with an attack, assault or any other type of foul play. Deputies who were interviewed following the incident denied any excessive force. The only force applied was force necessary to subdue Solano to ensure the safety of other inmates and deputies at the scene. Video of the struggle corroborates the deputies' statements taken following the incident; there are no signs of any deputy striking, kicking, or using excessive force on Solano's person. Interviews of deputies and two inmates all indicate they did not witness anybody striking, kicking or otherwise assaulting Solano. Medical reports from the jail also do not indicate any signs of trauma, injury, lacerations or abrasions at the time of intake at TPD jail nor that at IRC.

Medical reports from OCGMC also mention no signs of trauma were observed. Furthermore, Solano's autopsy did not reveal any signs of external or internal injuries or trauma other than a minor 0.9 by 0.6 cm abrasion on the left forehead.

The evidence also indicates that upon contact with Solano on April 30, 2018, and throughout the booking and medical clearance stages, TPD and OCJ staff attended to any medical complaints by Solano in a timely and reasonable manner. On April 30, 2018, TPD Officers first contacted Solano at the Key Lodge Motel and upon detaining Solano, officers at the scene noticed Solano appeared to be in distress. Solano was hunching over and moaning repeatedly. However, when paramedics arrived, Solano refused to go to the hospital and his vital signs were all within the normal range. Paramedics informed officers Solano was in well enough health to continue with the booking process.

Once at the TPD on April 30, 2018, Solano no longer complained about physical health issues. Solano was cooperative and gave officers no notification of being in physical distress. Officers at the scene reported Solano was compliant, but appeared very tired. TPD Officers reported seeing Solano behave in a manner consistent with other individuals who were coming off of long "meth-binges" where such individuals had stayed awake for days at a time. The symptoms that TPD Officers witnessed: being tired, cooperative, and soft spoken, did not alert the officers to any potential health problems.

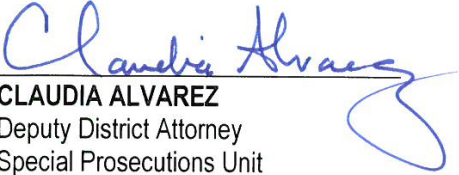
Once at OCJ on April 30, 2018, OCJ staff reported a cooperative Solano up until the search of his mouth. This is when the OCJ staff was put on alert for uncooperative behaviors, not health issues. Not once during the struggle with Solano did he report health problems. Solano struggled and resisted the officers up until the point where he fell unconscious. As soon as Solano stopped resisting the OCSD deputies, Sergeant Frazee immediately recognized Solano was no longer conscious and requested "smelling salts," a commonly used method to rouse unconscious inmates. When the "smelling salts" did not rouse Solano, the deputies began administering CPR and called for an ambulance without any undue delay.

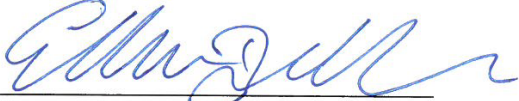
CONCLUSION

Based on all the evidence provided to and reviewed by the OCDA, and pursuant to applicable legal principles, it is our conclusion there is no evidence to support a finding of criminal culpability on the part of any OCSD personnel or any individual under the supervision of the OCSD. Solano's cause of death was acute methamphetamine intoxication, and the manner of death was determined to be accidental.

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

Respectfully submitted,


CLAUDIA ALVAREZ
Deputy District Attorney
Special Prosecutions Unit


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