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December 4, 2018

Chief David Valentin  
Santa Ana Police Department  
60 Civic Center Plaza  
Santa Ana, CA 92701

Re: Officer-Involved Shooting on September 28, 2017  
Non-Fatal Incident Involving Timothy Espinoza  
District Attorney Investigations Case # SA 17-027  
Santa Ana Police Department Case # 17-26517  
Orange County Crime Laboratory Case # 17-56856

Dear Chief Valentin,

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 Santa Ana Police Department (SAPD) Officer David Fernandez. Timothy Espinoza, 48, survived his injuries. The incident occurred in the City of Santa Ana on Sept. 28, 2017.

### **OVERVIEW**

This letter contains a description of the scope and legal conclusions resulting from the OCDA's investigation of the Sept. 28, 2017, non-fatal, officer-involved shooting of Espinoza. 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 SAPD officer involved in the shooting. The format of this document was developed by the OCDA, at the request of many Orange County police agencies, to foster greater accountability and transparency in law enforcement.

On Sept. 28, 2017, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of this investigation, 17 interviews were conducted, and four additional witnesses were contacted during the supplemental canvass interviews. OCDASAU Investigators also obtained and reviewed the following: SAPD reports, audio dispatch and radio traffic recordings, Orange County Fire Authority (OCFA) reports, Orange County Crime Laboratory (OCCL) reports, crime scene investigation photographs, medical records and hospital photographs related to the injuries sustained by Espinoza, criminal history background information related to Espinoza, including prior incident reports, and other relevant reports and materials including audio recordings of interviews conducted, and video recordings of surveillance of the area of the incident, as well as body worn camera videos relating to the officers initially at the scene, and those who responded throughout the course of the investigation.

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 SAPD officers or personnel, specifically Officer Fernandez. The OCDA will not be addressing any possible issues relating to policy, training, tactics, or civil liability. In a case where there is an officer-involved shooting incident and the OCDA files criminal charges against the individual

shot by the police, it is the OCDA's policy not to release the final report regarding the officer involved shooting incident until after the issue of guilt is decided in the underlying filed criminal case. This policy is in place to ensure that OCDA is not releasing any information that may be viewed as prejudicing the right of a defendant to receive a fair trial while his/her case is still pending.

### **INVESTIGATIVE METHODOLOGY**

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured 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 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 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. Officer Fernandez declined to give a voluntary statement to OCDA Investigators following this incident.

### **FACTUAL SUMMARY**

On Sept. 28, 2017, at approximately 10:00 a.m., Corporal Jose Mendoza and Detective Andy Garcia of the SAPD Robbery detail briefed SAPD gang detectives on information regarding twin brothers Thomas and Timothy Espinoza, and requested their assistance in trying to locate them. Between April 19, 2017, and Sept. 27, 2017, Timothy and Thomas Espinoza were believed to be responsible for a series of armed robberies occurring in the city of Santa Ana. The robberies were committed with what was believed to be a semi-automatic handgun. Thomas Espinoza was suspected to be the one committing the robberies, while Timothy Espinoza was suspected of driving the getaway vehicle, described as a 1997 Ford Explorer with California license plate number 6XXXXXX. The vehicle was registered to Timothy Espinoza.

Corporal Mendoza and Detective Garcia shared intelligence and identifying information, including Thomas and Timothy's photos, descriptions, gang history, violent criminal history, recent violent tendencies during the robberies, their last known location, vehicle information, and the cellular telephone number Thomas Espinoza was using. It was explained that the Espinoza brothers had been in and out of prison their entire lives, and were extremely violent. Timothy Espinoza was on parole, but had absconded and had an active warrant out for his arrest, making him a "parolee at large."

Detective David Thai, using the cellular telephone number provided by Corporal Mendoza and Detective Garcia during the briefing, wrote and obtained a search warrant to get the GPS coordinates of Thomas Espinoza's phone so they could locate and "follow" the phone, and thus also possibly locate and follow Thomas Espinoza. Once they learned the general location of the phone, SAPD Gang Detectives Greg Beaumarchais, David Fernandez, and Elias Martinez checked local Santa Ana motels in the area of the GPS coordinates using an undercover vehicle in order to attempt to locate the Espinoza brothers. Also in the area were Detectives Ernesto Solorio and Nicholas Lopez, together in a marked patrol vehicle, and Detective Thai and Corporal Matthew Lemmon, together in another marked patrol vehicle. Both marked vehicles were black and white police vehicles with "Santa Ana Police" clearly marked on each front door panel, and "Gang

Unit" on each rear quarter panel. Additionally, each vehicle was equipped with emergency lights and sirens. Detectives on scene (with the exception of Detective Fernandez) were dressed in SAPD gang suppression uniforms, consisting of an SAPD badge, dark blue polo shirt with "SANTA ANA POLICE" written on the front and "POLICE GANG DETAIL" on the back, dark blue jeans, and a duty belt holding police equipment. Detective Fernandez was in civilian attire.

The detectives checked a local motel called the "Civic Center Inn and Suites." The motel clerk identified one of the Espinoza brothers as staying in room 75 of the motel. The detectives began to surveil the motel to see if the Espinoza brothers would return. Due to the Espinoza brothers' long history of criminal activity and gang membership, it was decided the officers would not attempt to detain the Espinoza brothers at the hotel due to the possibility of their being armed with one or more handguns and the potential for a hostage situation. It was decided to detain the brothers away from the motel room, if possible, because the officers believed the Espinoza brothers would not surrender peacefully.

Detective Thai again sought and obtained contemporaneous location information for Thomas Espinoza's cellular telephone. It indicated that the phone was now in the parking lot of "Keystone Uniforms", located at 2525 North Grand Avenue in the city of Santa Ana. While Detectives Beaumarchais, Fernandez, and Martinez began to respond to the area, Detective Thai received an updated location for Thomas Espinoza's cellular telephone at the southwest corner of Fairhaven Avenue and Grand Avenue in the city of Santa Ana, at a Chevron gas station. Detective Thai broadcast the updated information to the rest of the officers. Detectives in the unmarked vehicle proceeded to the Chevron gas station, while the marked police vehicles continued to surveil the hotel. The Chevron gas station and the Civic Center Inn and Suites are approximately one block away from each other on Grand Avenue.

As Detectives Beaumarchais, Fernandez, and Martinez arrived at the Chevron location in their undercover vehicle, they saw Timothy Espinoza's Ford Explorer was parked on the south side of the parking lot to the west of the convenience store in a parking stall. The detectives were able to confirm by their observations that the individuals in the vehicle matched the description and photographs of the Espinoza brothers given to them during the briefing that morning. The officers in the marked police vehicles, who were monitoring the Civic Center Inn and Suites, were advised over the police radio that the suspects' vehicle was in the lot and it was occupied by the two suspects. At this time, Timothy Espinoza emerged from the vehicle and was seen standing outside the driver's door, looking "nervously" around the area.

It was determined that Thomas Espinoza's girlfriend, Jane Doe 1, had rented room 75 at the hotel for the Espinoza brothers. The officers in the marked police cars monitoring the motel room observed Jane Doe 1 repeatedly stepping outside the room while on a cell phone. The officers relayed this information to the detectives at the Chevron gas station, thus leading them to believe that Jane Doe 1 was calling the Espinoza brothers to warn them of police activity in the area. The officers thought that was why Timothy Espinoza appeared to be looking around "nervously" – they believed at that point Timothy Espinoza realized the police were looking for him.

Once the officers in the marked police cars learned the Espinoza brothers were at the Chevron station, they both made their way to the scene. As the marked vehicles began to approach the Chevron lot, one of the units activated a horn burst to alert traffic to allow them to proceed. Immediately thereafter, Timothy Espinoza leaned into his vehicle and appeared to be digging around inside. As the marked police vehicles entered the gas station at a high rate of speed, Timothy Espinoza looked up and appeared to reach back into his vehicle and continue digging or searching his vehicle.

The patrol units stopped close to Timothy Espinoza's vehicle. Detective Solorio exited the patrol car and pointed his handgun at Timothy Espinoza, and gave commands for him to remain where he was. Detective Lopez exited the patrol car with a semi-automatic rifle and also issued commands to freeze. Timothy Espinoza looked at the officers, not once but twice, and failed to comply with the commands given. Instead, Timothy Espinoza shut the driver's side door and started running southbound, away from the officers. Directly south of where the suspect's car was parked was a self-service car wash attached to the Chevron station. It is the type of car wash where one would drive up, enter a code, drive into it, and place the car in park while the automated wash cleaned the car. Timothy Espinoza began running into the empty car wash, while Detective Solorio pursued him. Witnesses and officers on scene reported hearing the officers giving commands for Timothy Espinoza to stop.

The detectives in the unmarked vehicle emerged and began running towards the area where Timothy Espinoza was running. Thomas Espinoza, who had been previously seated in the passenger side of the vehicle, jumped out and began to run. Detective Lopez fired one shot in his direction, while Corporal Lemmon fired his handgun in the same direction. Thomas Espinoza then dropped to the ground, and was quickly detained. Thomas Espinoza was not hit by either shot.

Detectives Beaumarchais and Fernandez ran around the front of the Chevron, towards the exit of the car wash, in an attempt to intercept Timothy Espinoza as he ran through the car wash. Due to the low level of light inside the car wash, Detective Solorio could not see Timothy Espinoza's hands and did not know if he was armed as he was pursuing him. Timothy Espinoza was running through the car wash towards the open exit of the car wash. Detective Beaumarchais and Detective Solorio later stated it was at this point in the pursuit they heard a gunshot. Detective Beaumarchais said he observed Detective Fernandez run past him towards the exit of the car wash. Detective Fernandez had discharged his firearm in Timothy Espinoza's direction as Espinoza emerged from the exit of the car wash. Timothy Espinoza was struck in the right ankle.

Detective Solorio exited the car wash and assisted Detectives Beaumarchais and Fernandez in handcuffing Timothy Espinoza. They began to assess the injury to Timothy Espinoza's ankle and provided preliminary emergency care, while waiting for paramedics they called with their hand-held radios. At approximately 5:31 p.m., OCFA personnel arrived at the scene. Timothy Espinoza was treated for a gunshot wound to the right ankle. He was also checked for additional gunshot wounds and injuries, but none were found. Timothy Espinoza was then transported to the Orange County Global Medical Center (OCGMC), where he received treatment for the gunshot wound and was eventually medically cleared to be transported to jail.

The OCCL responded to the scene for investigation and evidence collection. During the investigation, bullet fragments were found, as well as damage to a wall near the entrance of the car wash apparently caused by two bullet strikes. While numerous civilians were on the scene, most reported not having noticed anything until after the shooting occurred. John Doe 1, who was fueling his car at the gas station at the time of the incident, did report being able to see the clearly marked police vehicles enter the gas station parking lot, and said he witnessed both uniformed and (what appeared to be) undercover officers yell commands consistent with "commanding the suspect to give up." John Doe 1 also witnessed an officer fire his weapon and watched as one of the suspects dropped to the ground.

During a canvas of the nearby apartments, none of the witnesses saw the shooting, however many did report hearing what sounded like "pops" or "gun shots".

### **EVIDENCE COLLECTED**

The following items of evidence were collected and examined at the OCCL:

- One .223 cartridge case
- One apparent bullet fragment
- Two apparent jacket fragments
- Bullet fragments
- One cartridge case head stamped WIN .40 S&W
- A driver's license not belonging to either Timothy or Thomas Espinoza
- Miscellaneous cards, glass pipe, and folding knife
- One pair black sneakers and one white sock
- One white sock with apparent blood and bullet hole
- One cartridge case head stamped WINCHESTER .45 AUTO
- Driver's license belonging to Thomas Espinoza
- Bandana, miscellaneous cards, lighter
- One orange and blue striped short-sleeved shirt
- Driver's license belonging to Timothy Espinoza in a wallet

- Address book and drug paraphernalia in a grey case
- One black short-sleeved shirt
- Brown paper bag containing: items of clothing (black jean pants, dark blue shirt, white t-shirt, black cloth belt), and a "76 Gas" gift card.
- Buccal swab

## **EVIDENCE ANALYSIS**

### **Firearms and Projectile Examination**

Officer Fernandez's Glock pistol was test fired at the OCCL and fired without malfunction. The fired cartridge case recovered from the scene near where Timothy Espinoza was hit was determined to have been fired from the Glock pistol of Detective Fernandez.

### **TIMOTHY ESPINOZA'S PRIOR CRIMINAL HISTORY**

Timothy Espinoza's criminal history was reviewed and considered. Timothy Espinoza has a lengthy California criminal history that dates back to 1987. He has previously been arrested on numerous occasions, including arrests for the following charges:

- Robbery
- Kidnapping
- False Imprisonment
- Burglary in the first degree
- Burglary in the second degree
- Possession of burglary tools
- Vehicle Theft
- Petty Theft
- Petty Theft with a prior theft conviction
- Receiving stolen property
- Possession of narcotics
- Being under the influence of narcotics
- Driving under the influence
- Possession of a hypodermic syringe
- Possession of narcotics paraphernalia
- Loitering
- Trespassing
- Parole Violation
- Failure to appear on written promise

### **TIMOTHY ESPINOZA'S POST-INCIDENT CONVICTION**

On Oct. 2, 2017, the OCDA filed criminal charges against Timothy Espinoza in Orange County Superior Court Case # 17CF2411. Timothy Espinoza was charged with two felony counts of Robbery in violation of Penal Code sections 211/212.5; one felony count of being an Accessory After the Fact in violation of Penal Code section 32; and one felony count of Receiving Stolen Property Valued over \$950.00 in violation of Penal Code section 496(a),. Also alleged were enhancements based upon Timothy Espinoza having three prior strike convictions, two prior serious felony convictions pursuant to Penal Code section 667(a), and three prison prior allegations pursuant to Penal Code section 667.5(b).

On Jan. 25, 2018, Timothy Espinoza pleaded guilty to all of the charges and admitted two prior serious felony convictions pursuant to Penal Code section 667(a). The Court sentenced Timothy Espinoza to 12 years in state prison.

## STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a non-fatal shooting include attempted murder [Penal Code Section 664/187]; 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.

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.)

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.

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/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, 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 interactions of the SAPD officers with the Espinoza brothers, including the interactions of Detective Fernandez with Timothy Espinoza.

## **LEGAL ANALYSIS**

The main issue in this case is whether the conduct of Detective Fernandez on September 28, 2017 was criminally culpable and without justification. As stated above, in order to charge Detective Fernandez, or any other SAPD officer, with a criminal violation, it is required 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 Officer Fernandez with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense or defense of others. If the actions that day of Officer Fernandez 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 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 has noted 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).

Officer Fernandez, as well as all of the SAPD officers involved in this incident, were justified in believing Timothy and Thomas Espinoza posed a significant threat of death or serious physical injury to themselves and/or others. This conclusion is based on the totality of the circumstances, but mainly based on the information the officers at the scene were given earlier in the day during briefing about the Espinoza brothers, coupled with the conduct exhibited by Timothy Espinoza in the moments leading up to the shooting.

At the briefing with the robbery detectives, the gang officers were made aware of the crimes the brothers were accused of, their criminal histories, and their violent gang associations.

At the briefing, the robbery detectives described the string of crimes the brothers were suspected of committing, all with a semi-automatic handgun, and some of the particular circumstances of the robberies, including the suspects having pistol whipped a victim at the scene of one robbery. The robbery detectives indicated in all suspected robberies, the brothers were known to be armed with real firearms. The Espinoza brothers were also involved in many violent crimes in the past, yet they had just recently begun to escalate their violence in the robberies occurring from April through

September, the same month as the incident at issue. Also during the briefing, the robbery detectives explained the Espinoza brothers were involved in a criminal street gang notorious for committing violent crimes in furtherance of, and for the benefit of, the gang.

This information had a reasonable effect on the officers. When the robbery detectives described the more violent robberies took place around the same time the officers were attempting to make contact with the suspects, it was reasonable for the officers to conclude the suspects were more likely to be armed and dangerous. Also, for at least one of the brothers (Timothy Espinoza), this type of conviction would mean a potential life sentence, thusly increasing the likelihood he may use violence to avoid apprehension.

Further, the detectives were told by the officers surveilling the Civic Center Inn and Suites that Thomas Espinoza's girlfriend was on the phone while watching the police activity outside the motel. It reasonably appeared to the trained officers that the girlfriend could be informing the Espinoza brothers of the police activity in the area. Concurrently, the observations of Timothy Espinoza while the girlfriend was being observed on the phone led the officers to believe he was becoming increasingly nervous. They described Timothy Espinoza as "having his head on a swivel" and appearing "nervous".

Multiple officers interviewed after the Sept. 28 incident reported believing, based upon their background, training, and experience the Espinoza brothers were not going to cooperate. Detective Thai described in his interview that the Espinoza brothers would probably shoot someone and that every officer on the scene had the same mindset because of the criminal history and violence in the backgrounds of both Espinoza brothers. Additionally, multiple officers interviewed stated the officers were told to expect the brothers to be armed and dangerous because of the recent robbery activities (one armed robbery occurring just the day before). Multiple officers also reported they believed the Espinoza brothers would not go peacefully because of their long criminal histories and the fact that being convicted of armed robbery would mean sending the 48 year old brothers to jail for a significant amount of time, which officers believed would be motivation for a gun fight to ensue. Additionally, the Espinoza brothers were known for violent crimes and due to their extensive criminal histories, officers believed the brothers would not be arrested without incident. In the totality of the circumstances, their beliefs were reasonable.

Finally, prior to attempting to flee from the police through a drive-through car wash, Timothy Espinoza was seen by officers digging around in the car, looking nervous, looking at the officers at least twice, digging in the car once again, and then suddenly fleeing. Officers reported being unsure if Timothy Espinoza was either hiding a firearm or retrieving one. Upon the chase, Timothy Espinoza went into a poorly lit car wash, and the officers who gave chase stated they could not see Timothy Espinoza's hands while he was running. Officer Solorio reported Timothy Espinoza was running in an abnormal fashion, one that reminded him of the way suspects usually run when trying to carry a weapon in his waistband. Officer Martinez stated in his interview that at the time of the shooting, he was frightened for the community, his fellow officers, and civilians in the area because he knew how violent these brothers were and could be.

Certainly, it would have been preferable if the OCDA were able to obtain a voluntary statement from Detective Fernandez regarding his state of mind at the time of the shooting. However, Detective Fernandez's decision to decline to give the OCDA a voluntary statement may not legally and ethically be used to draw negative evidentiary inferences regarding the conduct and the state of mind of Detective Fernandez.

It should also be noted that in order for any of the SAPD officers involved in this incident, including Detective Fernandez, 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 such officer, including Detective Fernandez, did not act in reasonable and justifiable self-defense or defense of another when he shot at either one of the Espinoza brothers. 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 it was reasonable for Detective Fernandez to believe his life and the lives of others in the surrounding residences were in danger. The same conclusion is equally applicable to all the other SAPD officers involved in 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 a lack of sufficient evidence to prove criminal culpability on the part of Detective Fernandez when he shot Timothy Espinoza on Sept. 28, 2017, and there is substantial evidence that the actions of all the other involved SAPD officers were reasonable and justified under the circumstances.

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



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**NIKKI CHAMBERS**  
DEPUTY DISTRICT ATTORNEY  
SPECIAL PROSECUTIONS UNIT



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READ AND APPROVED BY **EBRAHIM BAYTIEH**  
SENIOR ASSISTANT DISTRICT ATTORNEY  
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