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May 19, 2014

Chief of Police Carlos Rojas
Santa Ana Police Department
20 Civic Center Plaza
Santa Ana, California 92701

Re: Officer-Involved Shooting on May 30, 2013
Fatal Incident involving Gerardo Ayala
District Attorney Case # S.A. 13-011
Santa Ana Police Department Case # 13-15237
Orange County Crime Laboratory Case # FR 13-47558

Dear Chief Rojas,

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 Santa Ana Police Department (SAPD) Detective Sergio Gutierrez. Gerardo Ayala, age 26, died as a result of his injuries. The incident occurred in the City of Santa Ana on May 30, 2013.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the May 30, 2013, fatal, officer-involved shooting of Ayala. 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 May 30, 2013, Investigators from the OCDA Special Assignment Unit (OCDASAU) responded to this incident. During the course of the investigation, 12 interviews were conducted, and 56 additional witnesses were contacted during the supplemental canvass interviews. In addition, the OCDASAU Investigators obtained and reviewed the following: SAPD reports, audio recordings, dispatch and radio traffic recordings; Orange County Crime Laboratory (OCCL) reports including toxicology, forensic alcohol examination, latent print, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Ayala; criminal history records related to Ayala including prior criminal history records and prior incident reports; the personnel records of Detective Gutierrez; 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 has impartially reviewed all evidence and legal standards available. 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

Detective Gutierrez. The OCDA will not be addressing issues of policy, training, tactics, or civil liability.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured 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 or Gang Units review fatal, officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Deputy District Attorneys assigned to the Special Prosecutions Unit review the non-fatal officer-involved shooting cases for possible criminal filings. Throughout the review process, the assigned prosecutor will be in consultation with his or her supervisor, and this Assistant District Attorney will eventually review and approve any legal conclusions and resulting memos. The case may often be reviewed by multiple veteran prosecutors, their supervisors, the Chief of Staff, and the District Attorney. If necessary, the reviewing prosecutor may send the case back for further investigation.

An important part of the investigation of an incident such as this is attempting to obtain a statement from the involved officers. The only officer that fired his weapon, Detective Gutierrez, voluntarily spoke to OCDA Investigators on July 24, 2013.

FACTS

On May 30, 2013, SAPD Detective Gutierrez was partnered with SAPD Detective Pedro Duran. Both detectives were members of the SAPD Gang Suppression Team. They were dressed in the SAPD Gang Suppression uniforms and drove a black and white Ford Crown Victoria marked with several SAPD "Gang Unit" logos. Detective Duran was the driver and Detective Gutierrez was the passenger.

At approximately 11:40 a.m., Detectives Gutierrez and Duran decided to patrol a residential area in the City of Santa Ana known as "the Apple" due to its circular shape and single road for entrance and exit (Rosewood Court). The Apple is located on the north side of West Central Avenue between Bristol Street and Shelton Street, and the Apple contains multi-unit and multi-story apartment dwellings. There is a parking lot near the center of the Apple that is accessible from both the east and west, and a courtyard on the south side of the lot.

Detectives Gutierrez and Duran had conducted patrol checks and made numerous arrests in the Apple in the past, and they were aware that it was the "claimed territory" of a specific criminal street gang (hereafter referred to as "the gang.") Gang members from the gang had been involved in numerous violent incidents including shootings of rival gang members. Detective Duran had mentioned to Detective Gutierrez that he intended to look for a specific male subject, Giovanni Bahena, who had a warrant for his arrest. Detective Duran knew Bahena to be an active member of the gang.

Upon entering Rosewood Court from West Central Avenue, the road turns right for one-way traffic and circles the Apple in a counterclockwise direction; however, at approximately 11:42 a.m., Detective Duran turned left upon entering Rosewood Court. As the detectives neared the parking lot, Detective Duran observed a white 2007 Dodge Charger parked north east of the lot facing north. The Charger was idling illegally in the middle of the street and partially blocking vehicle access.

Detectives Gutierrez and Duran decided to investigate, and based on their knowledge of the neighborhood, they expected

to come into contact with known gang members. Detective Duran turned right into the parking lot and drove east toward the rear of the Charger. As they approached the Charger, Detective Gutierrez saw a male subject in the driver's seat, later identified as Sanchez. Bahena was in the passenger-side front seat of the Charger, and Jesse Christopher Segura was in the passenger-side rear seat. Sanchez appeared to be speaking with a male subject, later identified as Ayala, who was standing outside the passenger-side front door of a silver 2002 Dodge Ram truck. The Ram was parked facing north, east of the curb line on Rosewood Court, and west of the Charger. Detective Gutierrez estimated that the driver's door of the Charger was approximately five to six feet from the passenger-side front door of the Ram. The Charger was idling approximately two to three feet south of the Ram.

Detective Gutierrez informed Detective Duran that he would contact Ayala at the Ram and Detective Duran would contact the occupants of the Charger. As Detective Duran began to drive north to set up behind the Charger, he saw Sanchez look back toward the police unit. Detective Gutierrez observed what he believed to be a "hand-to-hand" transaction between Ayala and Sanchez. Ayala looked in Detective Gutierrez's direction with a surprised expression. Detective Duran stopped behind the Charger and Detective Gutierrez exited the vehicle. Detective Gutierrez walked around the back (south) of the police unit and then proceeded north toward Ayala.

As Detective Gutierrez approached Ayala, he observed a female subject sitting in the passenger-side front seat of the Ram. She appeared to be Hispanic, approximately 5'4", between 140 and 150 pounds, with what appeared to be blonde hair. Detective Gutierrez gave commands to Ayala, who was still standing next to the open passenger-side front door of the Ram. Detective Gutierrez said, "What's going on? Let me see your hands," as Ayala turned toward the Ram. Ayala then leaned into the open door of the Ram and moved his hands to his waistband. Detective Gutierrez thought that Ayala had a gun or narcotics on his person and that Ayala was either reaching for the weapon or intended to hand it off to the female subject.

Detective Gutierrez instructed Ayala to show him his hands several more times, but Ayala did not respond or comply, so Detective Gutierrez approached Ayala to pull him away from the Ram. As Detective Gutierrez was about to make physical contact with Ayala, Detective Gutierrez heard the Charger accelerate rapidly and he saw Detective Duran engage in pursuit.

Detective Gutierrez grabbed onto Ayala's shoulders with both of his hands, near his upper triceps, and began to pull him away from the Ram. Detective Gutierrez slid his arms down to the middle of Ayala's triceps in an effort to gain control, and he told Ayala to place his hands behind his back. Ayala did not comply with the request and Ayala moved his hands toward his front waistband area. Detective Gutierrez pushed Ayala to the front of the Ram and onto a grass area to the west.

Detective Gutierrez attempted to force Ayala's hands behind his back, but Ayala continued to resist. Ayala was tense and would not look at Detective Gutierrez, nor would he respond verbally. Detective Gutierrez pushed Ayala down to his knees while maintaining control of Ayala's triceps area. Ayala then swung back with his left elbow towards Detective Gutierrez's head. Detective Gutierrez moved his head and avoided the strike.

Ayala's right hand was still near his waistband, and Detective Gutierrez pushed Ayala forward onto his hands. Ayala "braced himself" momentarily by placing both of his hands on the ground. Detective Gutierrez positioned himself on Ayala's back and forced him down to the ground. Ayala placed his forehead and shoulder on the ground to provide leverage and he continued to reach for his waistband.

The female subject exited the Ram, walked toward the grass area, and began pacing in a concerned manner. One of Detective Gutierrez's magazines had fallen out during the struggle and the female subject pointed to it and yelled, "Look, your clip, your clip." Detective Gutierrez believed that she was trying to distract him.

Detective Gutierrez ignored the female subject and attempted to grab Ayala's left forearm with his left hand, and Ayala's right wrist with his right hand. Detective Gutierrez continued to instruct Ayala to put his hands behind his back, and he asked Ayala why he was fighting. Ayala did not comply or respond, and he continued to reach for his waistband.

As Detective Gutierrez grabbed onto both of Ayala's wrists, he heard over the police radio that Detective Duran was pursuing the Charger and heard other units offer assistance. Detective Gutierrez attempted to request assistance at his location, but due to the large volume of radio traffic, he was unable to do so immediately.

Detective Gutierrez considered striking Ayala, but he was reluctant to release his grip on him because it would provide an opportunity for Ayala to access his waistband. After struggling for approximately two minutes, Detective Gutierrez was able to broadcast a transmission over the radio and request assistance. He heard SAPD Dispatch communicate that it would send units to his location.

Detective Gutierrez determined that he needed to use his Taser to subdue Ayala. Considering Ayala's persistent use of his right hand to reach for his waistband, Detective Gutierrez believed that whatever Ayala had on his person was on the right side of his waistband. Accordingly, Detective Gutierrez released his grip on the left side of Ayala's waist and brought both of his hands to Ayala's right side. Detective Gutierrez removed his Taser with his right hand and fired the Taser darts into Ayala's upper mid back area with a contact shot.

Ayala "flattened out" and fell forward. Detective Gutierrez knew that he had five seconds via the cycle of the Taser to move Ayala's right hand away from his waistband. As the Taser was cycling, Detective Gutierrez dropped the Taser onto the grass and reached into Ayala's waistband with his right hand. Detective Gutierrez grabbed onto an object that felt like a handle of a gun. At this point, the Taser stopped its interval cycle and Ayala latched onto Detective Gutierrez's right hand which was gripping the object in Ayala's waistband. Ayala tried to "yank" or pull on Detective Gutierrez's hand and a struggle for the object ensued.

Detective Gutierrez began to feel the object coming out of Ayala's waistband, and Ayala tried to turn to his right, toward Detective Gutierrez. Given Ayala's determination to access the object that felt like a gun, Detective Gutierrez believed that his only option was to shoot Ayala. Detective Gutierrez sat back, drew his gun with his left hand, and shot Ayala twice in the right upper torso area.

Ayala let go of Detective Gutierrez's right wrist and Detective Gutierrez was able to remove the object from Ayala's waistband. Detective Gutierrez looked at the object and verified that it was a gun; he described it as a dark colored, semi-automatic pistol. He threw the gun approximately six to seven feet west to prevent Ayala's access.

As Detective Gutierrez attempted to handcuff Ayala, the female subject moved south onto the grass area to where Detective Gutierrez had thrown the gun. Approximately 10 to 15 seconds later, Detective Gutierrez was able to place Ayala's hands behind his back and handcuff him. Upon securing Ayala, Detective Gutierrez looked up to locate the female subject and saw the top of her head as she ran in a southeasterly direction, away from the scene. He then returned to where he had thrown the gun and it was no longer there. At approximately 11:45 a.m., Detective Gutierrez advised SAPD dispatch of the incident and waited for their arrival.

At approximately 11:51 a.m., Orange County Fire Authority (OCFA) Firefighter/Paramedic Bret Clark arrived on scene and saw Ayala, who was handcuffed and seated on the curb. Ayala was combative, complained of pain, had difficulty breathing, and asked Clark to take him to the hospital. Due to Ayala's combative behavior, Clark was unable to obtain his vital signs initially. As Ayala was moved during medical treatment, a black holster was located underneath the right side of his body.

Ayala was placed into an ambulance and Clark was able to obtain Ayala's vital signs. Clark noted that Ayala was tachycardic, his respiratory rate was high, his blood pressure was low, and he was going into shock. Ayala was provided high flow oxygen, an intravenous line was established in his left arm, and normal saline was administered. No other medications were administered.

At approximately 12:05 p.m., Ayala was transported to Western Medical Center-Santa Ana (WMCSA). While en route to the hospital, Ayala's condition deteriorated and his respiratory rate became agonal. An oropharyngeal airway was inserted and Ayala was ventilated with a bag valve mask. At approximately 12:15 p.m., Ayala arrived at WMCSA and his care was relinquished to the on-duty trauma team. During medical assessment and transport, Ayala did not make any statements about the shooting incident.

Ayala was transferred from the WMCSA emergency room to the operating room (OR) with two apparent gunshot wounds. One of the wounds was described as a "through and through" on the back of the right arm that re-entered the body at the axilla. The projectile traveled from the axilla into the right chest, continued through the right lung, diaphragm and liver, and then lodged in the subcutaneous fat.

The second projectile entered the right flank into the retroperitoneal, space behind the abdominal cavity, continued through the portal vein and liver, into the pancreas and eventually lodged in the stomach. Due to the extensive internal organ damage, the treating physician was unable to stabilize Ayala's blood pressure or control his bleeding. Ayala had what the doctor described as two fatal gunshot wounds; the right liver lobe laceration and the portal vein injury which caused a large amount of blood loss.

Emergency surgery was performed on Ayala. The operating surgeon observed one bullet in Ayala's subcutaneous fat and opined that one could possibly be inside the stomach. The surgeon further observed a laceration in the back of the stomach wall and could not locate a laceration anywhere else on the stomach indicating a projectile was possibly inside the stomach. The surgeon performed life saving measures for almost three hours to control Ayala's bleeding and raise his blood pressure; however, his efforts were unsuccessful. After surgery, Ayala was moved from the OR to the intensive care unit (ICU). At approximately 4:00 p.m., Ayala was transferred from the OR to the ICU. The attending registered nurse (RN) was informed that Ayala had received several units of blood during surgery and was suffering from "perfusion," a lack of blood traveling through an organ or tissue.

At approximately 4:05 p.m., the RN noted that, although there was a heart rhythm on the monitoring device, Ayala had no palpable pulse. Due to Ayala's condition, a "Code Blue" medical emergency was initiated. One of WMCSA emergency room physicians responded to Ayala's room and administered Epinephrine in an attempt to stabilize Ayala's blood pressure. Medical staff performed cardiopulmonary resuscitation continuously during the "Code Blue," and Ayala was ventilated via an Ambu-bag. Medical staff performed advanced life saving measures for approximately 16 minutes; however, their efforts were unsuccessful. Ayala was pronounced deceased by the attending physician at approximately 4:21 p.m.

Post-Shooting, Voluntary Interviews with Civilian Witnesses in the Neighborhood

The statements of John Doe and Jane Doe are consistent with the facts stated above.

Statement of John Doe

A maintenance man, John Doe, gave a voluntary, consensual statement to the OCDA on May 30, 2013. Earlier that day, John Doe was outside repairing a sprinkler near the park area in the center of the Apple. He heard two gunshots; then, he saw a female running southbound with a black handgun in her right hand. The unknown female was crying as she fled the scene. John Doe described her as a female Hispanic about 5'6" and 140 pounds. She was light-skinned and had brown hair. He estimated that she was about 24 or 25 years old.

Statement of Jane Doe

A resident of one of the apartment complexes in the 1000 block of West Central Avenue, Jane Doe, gave a voluntary, consensual statement to the OCDA on May 30, 2013. Earlier that day, Jane Doe was in her kitchen and heard two gunshots. She looked out of her window and saw a female running near a pine tree located at the north end of the parking area for the apartment complex at 1021 West Central Avenue. Based on where Jane Doe was standing in her apartment, she could see the female as she ran for approximately 15 to 20 feet in a southerly direction. Jane Doe described the female as being in her late teens or early 20s, light-complexioned, and heavy set. The female was wearing a black short-sleeve blouse, black pants, and slightly wavy blonde hair about one-third of the way down her back. As the female ran south from the pine tree, Jane Doe saw a black object in the female's left hand, which based on the way she was holding it, appeared to be a gun. After the female ran out of view, Jane Doe looked north on Rosewood Court and saw a police officer struggling to hold an unknown subject down on the ground.

EVIDENCE COLLECTED AT THE SCENE

- Two silver cartridge cases, Winchester .40 S&W
- A Glock .40 caliber magazine, loaded
- A black gun holster, empty
- An expended Taser cartridge, two Taser wires, and two expended Taser doors
- Pieces of a grey shirt and tank top stained with apparent blood
- Grey shorts
- A belt
- A maroon and black ball cap
- A Silver Dodge Ram truck

EVIDENCE ANALYSIS

Ayala's Prior Criminal History

Ayala had a State of California Criminal History Record dating back to 2005, including but not limited to carrying a loaded firearm and participating in a criminal street gang.

Toxicological Examination

A sample of Ayala's post-mortem blood was tested. The following results were obtained:

Drug	Matrix	Results
Ethanol	Postmortem Blood	0.01 % (w/v)
Methamphetamine	Postmortem Blood	0.32 mg/L
Amphetamine	Postmortem Blood	0.046 mg/L
Ephedrine,	Postmortem Blood	Detected
Midazolam	Postmortem Blood	Detected
Methamphetamine	Brain	Detected
Amphetamine	Brain	0.11 mg/kg
Ephedrine	Brain	Detected

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against the officer involved in the fatal shooting include murder (PC 187), manslaughter (PC 192), assault with a deadly weapon (PC 245), and assault by a police officer (PC 149). However, in order to justly charge and convict an officer of any of these offenses, it would be necessary for the prosecution to prove beyond a reasonable doubt that no legal justifications apply for the officers' actions. (*People v. Banks* (1977) 67 Cal.App.3d 379, 383-84.) Several justifications may apply; they are provided by Penal Code sections 196, 197, and 835a.

California Penal Code section 196 states that use of deadly force by a public officer is justifiable when necessarily used in arresting persons who are “charged with a felony” and who are fleeing from justice or resisting such arrest. Section 196 applies both where the suspect in question is “charged with a felony” and where the officer has “reasonable cause” to believe that the person has committed a felony. (*People v. Kilvington* (1894) 104 Cal. 86, 89.) The felony must involve violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.)

California Penal Code section 197 provides that use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code section 835a allows any police officer who has reasonable cause to believe that a person to be arrested has committed a felony to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. The section further provides that a police officer “who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.” As with Penal Code section 196, section 835a only allows use of deadly force by the police officer when the suspect’s felony involves violence or the threat of violence. (*Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.) The *Kortum* court further held that deadly force against a fleeing felony suspect is justifiable only when the felony “is of the violent variety, i.e., a forcible and atrocious one which threatens death or serious bodily harm, or there are other circumstances which reasonably create a fear of death or serious bodily harm to the officer or to another.” (*Kortum v. Alkire, supra*, 69 Cal.App.3d at 333.)

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care should have knowledge, that he is being arrested by a peace officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant Criminal Jury Instructions 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 mind, as a reasonable person, an honest fear and conviction that he or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.)

Nevertheless, the above justifications must be interpreted in light of U.S. Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.) The U.S. Supreme Court ruled that a police officer is entitled to use deadly force only when “the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others.” (*Tennessee v. Garner* (1985) 471 U.S. 1, 3.) This limitation was, however, subsequently clarified by the United States Supreme Court. The Supreme Court stated that any determination about the reasonableness of force used by an officer “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.” (*Graham v. Connor* (1989) 490 U.S. 386, 397.) Thus, “the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (*Id.* at 396.)

As the California Court of Appeal held in a recent case:

“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 effect 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 defendant 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.... “The test is highly deferential to the police officer’s need to protect himself and others. . . .

“The question is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required....

“We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.”

(Brown v. Ransweiler (2009) 171 Cal.App.4th 516, 527-528.)

LEGAL ANALYSIS

In order for Detective Gutierrez to be justly and lawfully charged and convicted with a crime in this incident, it is the prosecution’s burden to prove beyond a reasonable doubt that Detective Gutierrez did not act in reasonable and justifiable self-defense or defense of others when he shot Ayala.

As applicable to the facts in this case, the justification of self-defense has several legal elements:

1. Detective Gutierrez actually believed himself to be in imminent danger of being killed by Ayala;
2. Detective Gutierrez reasonably believed that the immediate use of force was necessary to defend himself against Ayala; and
3. Detective Gutierrez used no more force than was reasonably necessary to defend himself against the danger posed by Ayala.

We will analyze these elements one at a time.

1) Actual Belief in Necessity of Self-Defense

The question here concerns Detective Gutierrez’s state of mind – did he actually believe that Ayala posed a danger to him? Certainly, Detective Gutierrez claimed to have so believed: in his statement to Investigators, Detective Gutierrez said that he shot Ayala because he believed Ayala had a gun and was about to shoot at him. Of course, a person’s statement about their own actions – especially after there has been time to reflect – could be the product of self-serving motives. Therefore, it is important to consider other sources of evidence to see whether they are consistent with the claims of Detective Gutierrez. Here, we find the following evidence corroborates Detective Gutierrez’s claim of self-defense:

- The area in which the incident took place is known for violent, gang-related activity.
- Ayala refused to comply with requests to place his hands behind his back.
- Ayala attempted to strike Detective Gutierrez in the head.
- Ayala continued to reach for his waistband, which is a common location for concealed weapons.
- Ayala continued to resist arrest after being tased.
- Detective Gutierrez felt a gun in Ayala’s waistband.

2) Reasonableness of Belief that Ayala Posed Imminent Danger

The second requirement for establishing the justification of self-defense is proof that Detective Gutierrez's belief that Ayala posed an imminent danger was reasonable under the circumstances. The following evidence supports the reasonableness of Detective Gutierrez's belief:

- The area in which the incident took place is known for violent, gang-related activity.
- Ayala refused to comply with requests to place his hands behind his back.
- Ayala attempted to strike Detective Gutierrez in the head.
- Ayala continued to reach for his waistband, which is a common location for concealed weapons.
- Ayala continued to resist arrest after being tased.
- Detective Gutierrez felt a gun in Ayala's waistband.

3) Reasonable Force

The third element required to establish the justification of self-defense is that the force used is no greater than necessary to deal with the apparent danger. Here, the danger reasonably apparent to Detective Gutierrez was that Ayala was beginning to remove an object resembling a gun out of his waistband and he was turning to shoot at Detective Gutierrez. Under these circumstances, it was not disproportional force for Detective Gutierrez to respond with deadly force. Moreover, Detective Gutierrez already had attempted to subdue Ayala with a non-lethal weapon – his Taser – and this effort was unsuccessful. As the Court of Appeal held: "The test is highly deferential to the police officer's need to protect himself and others. . . In calculating whether the amount of force was excessive, a trier of fact must recognize that peace officers are often forced to make split-second judgments, in tense circumstances, concerning the amount of force required." (*Brown v. Ransweiler* (2009) 171 Cal.App.4th 516, 527.)

In addition to all the above listed facts corroborating the statement of Detective Gutierrez, it should also be noted that the statements of the two civilian witnesses described above, in addition to the fact that a holster was located underneath the right side of Ayala's body, provide further corroboration to the conclusion that Ayala was reaching for a gun while struggling with Detective Gutierrez, and that Detective Gutierrez was justified in using the lethal force he used.

As should be apparent from the above-described legal analysis and legal conclusion, the prosecution would be unable to prove beyond a reasonable doubt that Detective Gutierrez was not acting in lawful self-defense. A jury analyzing these facts would likely and justly conclude that it was reasonable for Detective Gutierrez to use the force that he did in these circumstances. There is significant evidence that Detective Gutierrez acted reasonably under the circumstances.

CONCLUSION

In order to justly charge and convict Detective Gutierrez of a crime, it would be the prosecution's burden to prove beyond a reasonable doubt that he did not act in self-defense or defense of others when he shot at Ayala. In accordance with the foregoing discussion, the prosecution would be unable to carry such a legal burden in this case. A jury analyzing these facts would likely and justly find that it was reasonable for Detective Gutierrez to use deadly force.

If he were to wait to see exactly what Ayala was reaching for in his waistband and exactly what Ayala intended to do with the object, Detective Gutierrez would be risking his life by leaving himself unguarded in the face of apparent deadly danger.

Therefore, based upon a review of all of the evidence provided to and obtained by the OCDA, and pursuant to the applicable legal principles, it is our legal opinion that the evidence does not support a finding of criminal culpability on the part of Detective Gutierrez, and that there is significant evidence that the detective's actions were reasonable and justified under the circumstances when he shot and killed Gerardo Ayala on May 30, 2013.

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

Respectfully submitted,

Ebrahim Baytieh

Senior Deputy District Attorney

Assistant Head of Court - Homicide Unit

Read and Approved by **Dan Wagner**

Assistant District Attorney

Head of Court - Homicide Unit