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December 5, 2018

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

Re: Post-Custodial Death on September 6, 2017
Death of Inmate Adiel Rivera-Barrios
District Attorney Investigations Case # S.A. 17-025
Orange County Sheriff's Department Case # 15-215369 / 17-036176
Orange County Crime Laboratory Case: FR # 15-55513 / 17-56005 / 17-56619

Dear Sheriff Hutchens,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving the Sept. 6, 2017, post-custodial death of 27-year-old former inmate Adiel Rivera-Barrios. Rivera-Barrios was injured on Sept. 28, 2015, while in the custody of the Orange County Sheriff's Department (OCSD). Rivera-Barrios received continuous medical treatment at a long-term medical facility from the date of his injury until his death on Sept. 6, 2017.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the post-custodial death of Rivera-Barrios. 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 OCSD personnel or any other person under the supervision of the OCSD.

On Sept. 13, 2017, OCDA Special Assignment Unit (OCDASAU) Investigators received notification of the death of Rivera-Barrios, who died after receiving medical treatment at West Anaheim Medical Center (WAMC). Rivera-Barrios was originally treated for an apparent self-inflicted laceration to the neck while in the custody of the OCSD on Sept. 28, 2015. During the course of this investigation, the OCDASAU interviewed 10 witnesses, as well as obtained and reviewed reports from OCSD and Orange County Crime Laboratory (OCCL), incident scene photographs, 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 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.

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, as well as Investigators from other OCDA units.

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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, 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 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.

DISCLOSURE OF OFFICER-INVOLVED SHOOTING VIDEO & AUDIO EVIDENCE

The OCDA recognizes 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

On June 24, 2010, Rivera-Barrios was a victim / witness to a gang related crime (conspiracy to commit burglary, robbery, and assault with a deadly weapon) in Fullerton. On June 4, 2015, Rivera-Barrios was arrested in the Orange County Superior Court (OCSC) North Justice Center, Department N12, for a Probation Violation Warrant and probation violation. Between June 4, 2015, and Sept. 28, 2015, Rivera-Barrios, a witness, and two defendants in the gang related crime were all in the custody of the OCSD. Rivera-Barrios was booked at the OCSD Intake/Release Center (IRC) on June 4, 2015. On June 7, 2015, he was transferred to the OCSD Theo Lacey Facility (TLF). The two defendants were never housed with Rivera-Barrios. The witness to the gang related crime was released from custody prior to the incident on Sept. 28, 2015.

On Aug. 17, 2015, Rivera-Barrios requested to be moved to Protective Custody. Rivera-Barrios told an OCSD deputy he believed he had a "Rat Jacket" and was in fear for his safety. Rivera-Barrios stated he had heard there had been an inmate written communication indicating he would be assaulted while in custody. Rivera-Barrios was reclassified to Protective Custody-Mainline and moved TLF Module-I, Tank-5, Cell-4.

In September 2015, Rivera-Barrios was visited by his girlfriend, Jane Doe 1, and his mother, Jane Doe 2. During this visitation, Jane Doe 1 and Jane Doe 2 noticed Rivera-Barrios had an injury to his lip and a black eye. However, Rivera-Barrios stated that he could not tell them what was wrong, but not to worry. On Sept. 27, 2015, during Jane Doe 1's last visit with Rivera-Barrios at TLF, Rivera-Barrios told Jane Doe 1 and Jane Doe 2 "they" were out to "get" him, but did not specify who "they" were. Jane Doe 1 felt as though Rivera-Barrios was telling them goodbye and to take care of the kids for him.

On Sept. 28, 2015, at approximately 7:30 a.m., Dayroom began for Rivera-Barrios' cell and another cell in his Module and Sector. Dayroom is a specified time in which inmates are allowed out of their cells, allowed to talk with other inmates, make telephone calls, and take showers. According to deputies at the scene and reports from the incident, the only inmate that was let out of his cell for Dayroom on Sep. 28, 2015, at approximately 7:30 a.m. was Rivera-Barrios; the three other inmates had declined Dayroom. When an inmate declines Dayroom, the protocol is to not open their cell and the inmates do not have the ability to leave their cells once Dayroom has been declined. According to deputy interviews, protocol was followed during Dayroom on the morning of Sept. 28, 2015, for Rivera-Barrios' Module and Sector.

On Sept. 28, 2015, at approximately 8:10 a.m., Medication and Commissary Distribution began in Module-1. An inmate, Inmate 1, housed in the same Sector as Rivera-Barrios, was returning to his cell after receiving his Commissary, when he noticed blood on the shower floor. Inmate 1 notified OCSD Deputy Corrales and OCSD Deputy Tangonan. It was at this time a handheld video camera was activated. According to the handheld video, three officers respond to Inmate 1's notification, Deputies Alvergue, Corrales, and Tangonan.

Deputies Alvergue, Corrales, and Tangonan discovered Rivera-Barrios in the shower surrounded by blood and feces. He was conscious and responsive, but did not say anything. When asked what had happened, Rivera-Barrios responded with a grin on his face. Deputies observed a ½ inch laceration to the left side of his neck that was bleeding, but not spurting blood. Rivera-Barrios was asked to step out of the shower and Rivera-Barrios was able to stand up on his own and walk out of the shower to the deputies. Deputies laid Rivera-Barrios on the floor and began to administer aid.

While additional deputies responded to assist in administering aid to Rivera-Barrios, OCSD Sergeant Corwin can be heard on the handheld video talking to OCSD Lieutenant Hernandez about Rivera-Barrios' injury, and describing it as self-inflicted. During the course of the investigation and interviews conducted on this incident, all parties involved, including responding deputies and other inmates who were around Rivera-Barrios leading up to this incident, believed the wound was self-inflicted. The inmates who were interviewed described Rivera-Barrios as being a "weird dude" who would scrape his name into the walls in the middle of the night. Deputy Corrales stated during his interview the only individuals that would have had access to the shower were those who were going to receive Medication and Commissary, and Deputy Corrales did not see any inmates go into the shower stall where Rivera-Barrios was found.

Orange City Fire Department (OCFD) transported Rivera-Barrios to the University of California, Irvine-Medical Center (UCIMC). He arrived unresponsive and pulseless. There was a transection of the carotid artery, a laceration of the jugular vein, and he was in hypovolemic shock. Cardio Pulmonary Resuscitation (CPR) was performed and Rivera-Barrios was revived. Rivera-Barrios underwent surgery, which found a penetrating neck injury with damage to the carotid artery, veins, and nerves in his neck. He was quadriplegic, comatose, and needed a respirator to breathe.

On Oct. 7, 2015, Rivera-Barrios was granted a Compassionate Release in OCSC Department C-5 in Case numbers 12NM09884 and 15NM08298. On Oct. 16, 2015, Rivera-Barrios was admitted to a long-term care facility, Knott Avenue Care Center, Buena Park. On Aug. 31, 2017, Orange County Fire Authority (OCFA) paramedics were called to the Knott Avenue Care Center and transported Rivera-Barrios to WAMC because he had been acting "less than normal," had low oxygen saturation, and cold extremities and body core temperature.

On Sept. 6, 2017, Rivera-Barrios' family decided for terminal extubation due to his extremely poor prognosis for recovery. At approximately 4:59 p.m., Rivera-Barrios was pronounced deceased at the WAMC.

EVIDENCE COLLECTED

The following items of evidence were collected and examined on Sept. 28, 2015:

- Razor blade and piece of comb with apparent blood
- White boxers and sandals with apparent blood

AUTOPSY

On Sept. 14, 2017, independent Forensic Pathologist Dr. Scott Luzi from Clinical and Forensic Pathology Services conducted an autopsy on the body of Rivera-Barrios. During the autopsy, Dr. Luzi made the following observations of Rivera-Barrios:

- Skin erosions, back and sacrum
- Right pleural and pericardial effusions
- Purulent ascites consistent with peritonitis
- Muscular atrophy of the extremities
- Status post-surgical repair of the left carotid sheath
- Pulmonary congestion and edema with focal consolidation

- Hepatic steatosis
- Clinical history of ischemic bowel.

Dr. Luzi concluded the cause of Rivera-Barrios' death was multiple system organ failure due to sepsis as a result of incised wounds of the neck. Dr. Luzi also concluded the manner of Rivera-Barrios' death was a suicide.

BACKGROUND INFORMATION

Rivera-Barrios had a State of California Criminal History record that revealed arrests for the following violations:

- Inflicting Corporal Injury on a Spouse or Cohabitant
- Violating a Domestic Violence Restraining Order
- Assault with a Deadly Weapon/Force – Likely Great Bodily Injury
- Battery with Serious Bodily Injury
- Assault
- Possession of a Controlled Substance
- Possession of Controlled Substance Paraphernalia
- Probation Violation
- Driving Without a License

THE LAW

Homicide is the killing of one human being by another. Murder, voluntary manslaughter, and involuntary manslaughter are types of homicide. To prove that 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 that 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:

"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/she 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

There is no evidence in the present case 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.

While the OCSD owed Rivera-Barrios a duty of care, the evidence does not support a finding that this duty was in any way breached -- either intentionally (as required for murder) or through criminal negligence (as required for involuntary manslaughter). A review of video surveillance and all other available evidence revealed OCSD personnel and other individuals under the supervision of the OCSD responded to the scene effectively and appropriately in response to Rivera-Barrios' self-inflicted wounds.

Prior to the incident, Rivera-Barrios notified Deputy Flores he was wearing a "Rat Jacket" and thus Rivera-Barrios was moved into protective custody. This transfer was done in an effort to protect Rivera-Barrios from any attacks that Rivera-Barrios felt might be coming. This housing location of the jail is specifically for those who are in need of protective custody and Rivera-Barrios was moved without incident into the Protective Custody Module of the TLF.

Additionally, all custodial housing protocol was being followed when the incident occurred. Protocol was being followed according to each deputy on duty for Dayroom for Module-I, Sector 5, for Cells 2 and 4 on Sept. 28, 2015. This meant each inmate in those cells was asked if they wanted to leave their cells for Dayroom. Only Rivera-Barrios stated he wanted to participate in Dayroom; he was the only one out of his cell during that time. The other three inmates that could have chosen to be on Dayroom, all stayed inside their cells. This meant each cell door was closed and locked during this time. There is no way for an inmate to move about freely after refusing Dayroom. Due to the inmates being locked in their respective cells at the time of the incident, there were three inmates on either side of the shower when the incident occurred and none reported seeing or hearing anything suspicious.

According to the surveillance footage, OCSD personnel responded to the shower Rivera-Barrios was in as soon as they were notified. There were no other inmates observed outside of their cells on the available video surveillance. Multiple

deputies on the scene provided appropriate medical aid without delay or hesitation. Pressure was applied to his injury with a towel as soon as possible and was held there while medical staff arrived on scene, helping to prevent any further blood loss.

During the investigation, deputies at the TLF were interviewed and each deputy stated he believed this was a self-inflicted wound by Rivera-Barrios. Rivera-Barrios believed he was in danger. Rivera-Barrios told deputies at the TLF in August 2015, and his girlfriend and mother in September 2015, about his belief of being in danger from other inmates. Deputies at the TLF had no other additional information indicating Rivera-Barrios was in any kind of danger. Inmates that were housed both with Rivera-Barrios and near Rivera-Barrios' cell believed this was a self-inflicted wound. One of the inmates stated he believed Rivera-Barrios to be paranoid, weird, and suicidal. An inmate stated he knew Rivera-Barrios had razors and he would be "grinding 'em like on the bed like making noises". None of the individuals interviewed, neither deputies nor inmates, believed Rivera-Barrios had been attacked; instead all believed Rivera-Barrios' wounds were self-inflicted. This belief is supported by both deputies and inmates being on scene and not seeing anyone enter Rivera-Barrios' shower other than Rivera-Barrios.

Thus, there is no evidence currently available to support a finding that any OCSD personnel or any individual under the supervision of the OCSD failed to perform a legal duty.

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 substantiate a finding beyond a reasonable doubt of criminal culpability on the part of any OCSD personnel or any individual under the supervision of the OCSD. The evidence corroborates Rivera-Barrios died on Sept. 6, 2017, from multiple system organ failure due to sepsis that resulted from complications of self-inflicted incised wounds of the neck that occurred on Sept. 28, 2015,

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

Respectfully submitted,



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TARGET/Gangs Unit



Read and Approved by **EBRAHIM BAYTIEH**
Senior Assistant District Attorney
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