



OFFICE OF THE  
**DISTRICT ATTORNEY**  
ORANGE COUNTY, CALIFORNIA  

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TODD SPITZER

November 30, 2022

Chief Brad Butts  
Placentia Police Department  
401 E. Chapman Avenue  
Placentia, CA 92870

Re: Officer-Involved Shooting on May 29, 2021  
Fatal Incident involving Matthew Wong  
District Attorney Investigations Case # SA 21-001941  
Placentia Police Department Case # 21-02049  
Orange County Crime Laboratory Case # 21-46815  
Orange County Coroner's Office Case # 21-03356-AA

Dear Chief Butts,

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 Placentia Police Department Sergeant Frank Garza and Officers Austin Martinez and Mac Navarro. Matthew Wong, age 33, died as a result of his injuries. The incident occurred in the City of Placentia on May 29, 2021.

### OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the May 29, 2021, fatal, officer-involved shooting of Mr. Wong. 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 Placentia Police Department officers involved in the shooting. The format of this document was developed by the OCDA at the request of many Orange County police agencies to foster greater accountability and transparency in law enforcement.

On May 29, 2021, investigators from the OCDA Special Assignments Unit (OCDASAU) responded to this incident. During the course of their investigation, thirteen interviews were conducted. OCDASAU Investigators also obtained and reviewed the following: Placentia Police Department reports, audio 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 Mr. Wong; criminal history records related to Mr. Wong including prior incident reports;

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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 reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred, and if the use of force by Placentia Police Department officers or personnel, specifically Sergeant Garza and Officers Martinez and Navarro, was consistent with the law. The OCDA will not be addressing any possible 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, 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.

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. Thus, when the OCDASAU Investigator has concluded the investigation, the file is turned over to an experienced deputy district attorney for legal review. If necessary, the reviewing prosecutor will send the case back for further investigation.

Throughout the review process, the assigned prosecutor will consult with the Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review and approve any legal conclusions and resulting correspondence. It is also common for the case to be reviewed by several other experienced prosecutors and their supervisors. Ultimately, the District Attorney personally reviews all officer involved shootings and custodial death letters.

### **DISCLOSURE OF OFFICER-INVOLVED SHOOTING 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 at: <http://orangecountyda.org/reports/videoandaudio/default.asp>

## FACTUAL SUMMARY

On Saturday, May 29, 2021, at approximately 1:01:07 a.m., Matthew Wong drove his 2002 Honda Civic, 2-door, California License #5AMS437, through the parking lot behind Ralph's Grocery at the Village Center at Rose Shopping Center, 860 North Rose Drive, Placentia. Mr. Wong then parked behind the Total Woman Gym and Day Spa, located within the same shopping center.

At approximately 1:09:02 a.m., Officer Eriksen was on patrol in the rear parking lot of the shopping center. He was driving a marked black and white Ford SUV, a Placentia Police Department (PPD) police vehicle (Unit #15). Officer Eriksen's patrol vehicle was equipped with overhead emergency lights, side spotlights, and a Patrol Video System (PVS). The PVS was not activated during the incident. Officer Eriksen wore a PPD police uniform and carried a Body Worn Camera (BWC) clipped to his uniform shirt at chest height. The BWC was activated throughout the incident.

As Officer Eriksen was northbound through the rear parking lot of the shopping center with his vehicle lights off, he saw the Honda parked in the northernmost marked parking stall behind the Total Woman Gym and south of a cinderblock dumpster enclosure. The vehicle was parked head in, facing west. Officer Eriksen thought it was suspicious that a car would be parked behind a shopping center at that time when no businesses were open. He estimated he patrolled behind the shopping center three times per week and had only once before found a car at that hour parked there. Officer Eriksen noted that on that occasion the occupants were "engaging in criminal activity."

Officer Eriksen pulled in behind the gray Honda and illuminated it with his spotlights. He was unable to see inside the vehicle due to the dark tint on the rear and side windows. He approached the driver's door and illuminated the interior of the Honda with his handheld flashlight. He saw Mr. Wong seated in the driver's seat. Because of the window tint and numerous objects in the car's back seat, he could not see if there were other occupants.

At approximately 1:10:37 a.m., Officer Eriksen radioed PPD dispatch that he was conducting a vehicle check behind the Ralph's. He spent several minutes trying to convince Mr. Wong to open the door or roll down the window so he could speak with him. Officer Eriksen repeatedly knocked on the window and implored Mr. Wong to roll down the window or unlock and open the door, but he refused.

At approximately 1:11:45 a.m., he told Mr. Wong, "Don't reach for anything and open the fucking door right now." Mr. Wong replied, "Why?" Officer Eriksen identified himself as a police officer and told him to open the door. Mr. Wong did not comply. Officer Eriksen repeatedly asked Mr. Wong to open the door and ordered him not to reach for anything. Officer Eriksen tried to open the door, but it was locked.

At approximately 1:12:44 a.m., Mr. Wong started the engine. Officer Eriksen yelled at him to roll down the window and requested "Code 1" assistance (non-emergency response). At approximately 01:13:13 a.m., Mr. Wong lowered the driver's door window 2-3 inches and asked Officer Eriksen, "How's it going?" Officer Eriksen responded, "It's going alright man. Can you roll down the window all the way?" Mr. Wong did not comply. Shortly thereafter, Mr. Wong turned off the engine.

At approximately 1:14:47 a.m., Mr. Wong rolled the driver's door window down all the way. When he did, Officer Eriksen stated, "There you go." Mr. Wong then immediately began to roll the window back up. As the window went up, Officer Eriksen repeatedly said, "Leave it." Each time he said, "Leave it," Mr. Wong would roll the window up further until it was closed.

At approximately 1:16:13 a.m., Officer Eriksen told Mr. Wong, "Roll down the fucking window, now." Mr. Wong responded by rolling the window down approximately four inches, then immediately rolling it back up within an inch of closed. Mr. Wong then re-started the engine and put the car in reverse. Mr. Wong did not attempt to back up, and after a few seconds, he put the car in park.

At approximately 1:16:37 a.m., Officer Eriksen broadcasted, "Vehicle is trying to leave," followed by, "Boxed in, trying to leave." Officer Navarro arrived and parked his marked PPD patrol vehicle, Unit #13, perpendicular to the driver's side of the Honda. He approached the driver's side of the Honda while Officer Eriksen went around to the passenger side and unsuccessfully tried to open the door. Officer Eriksen returned to the driver's side and covered Mr. Wong while Officer Navarro moved both patrol vehicles closer to the Honda to prevent escape.

Officer Navarro's vehicle was equipped with a PVS camera which was activated and recorded the entire driver's side of the Honda during the rest of the incident. Officer Navarro returned and went to the passenger side of the Honda near the front windshield. Both officers repeatedly warned Mr. Wong to stop reaching and verbalized that they could not see what Mr. Wong was reaching for. Officer Navarro asked Mr. Wong, "What are you fucking reaching for?" Officer Eriksen yelled, "I don't know what you're reaching for, but you need to not be reaching for that shit. I don't know what the fuck that is."

Officer Eriksen said he was now on "high alert" based on Mr. Wong's refusal to comply, furtive movements, reaching for things, and the window tint obstructing his vision. Officer Eriksen said, "I don't know if he is arming himself. I don't know what's going on." Officer Eriksen told Officer Navarro he was going to use his department-issued asp to break out the window. Officer Navarro recommended they wait for additional officers.

Over the next nearly three minutes, PPD Officers Larissa Perez, Austin Martinez, Fabian Valdez, Nathan Iniguez, Sergeant Frank Garza, and Acting Sergeant Joseph Gillis arrived on the scene. During that time, Officer Eriksen and Officer Navarro remained near the Honda with their handguns drawn and repeatedly told Mr. Wong to roll the window down and keep his hands where he could see them. Mr. Wong refused to comply with those commands.

At approximately 1:20:47 a.m., Sergeant Garza ordered Mr. Wong to turn off the car; Mr. Wong refused. Officer Eriksen briefed Sergeant Gillis on the circumstance surrounding his contact with Mr. Wong. They agreed that the only crime Mr. Wong had committed was Penal Code 148, willfully resisting, obstructing or delaying a police officer in the lawful performance of their duty.

K-9 Officer Martinez, a member of the Placentia SWAT team, directed officers to back away from the Honda and take up positions of cover near police vehicles. He directed Officer Iniguez to use the Public Address System to communicate with Mr. Wong and "get him to come out."

At approximately 1:21:42 a.m., PPD Dispatch notified officers that the Honda was registered to Matthew Wong. At the conclusion of that broadcast, Mr. Wong rolled the driver-side window down halfway, then immediately rolled it right back up. Before stopping, he placed the car in reverse and backed up a few inches.

At approximately 1:21:55 a.m., Officer Iniguez ordered Mr. Wong to "turn the car off." Mr. Wong complied by setting the parking brake and turning off the engine. Officer Martinez placed Officer Valdez with a 40mm Less Lethal launcher behind the open driver door of Unit #13 and approximately 10-15 feet south of the Honda. He told Officer Valdez that if he had to deploy the launcher, he should aim at the lower-left corner of the driver's door window near the side-view mirror.

Officer Iniguez repeatedly gave Mr. Wong commands for the next three and a half minutes. The commands included, "Driver keep your hands up where we can see them." "Driver, put both hands above your head, touching the vehicle's ceiling." "Show us your hands put them up above your head." "Driver, put your hands up where we can see them." "Driver, step out of the vehicle, face away from us and keep your hands above your head." "We are the Placentia Police Department. You are currently being detained." Mr. Wong refused to comply and instead kept his hands below the window frame and out of sight of the officers. He moved around inside the vehicle and looked side to side and behind him.

At approximately 1:25:20 a.m., Officer Valdez alerted officers that Mr. Wong was "digging around" inside the car. Officer Iniguez told Mr. Wong to place his hands above his head and stop moving around inside the vehicle. Mr. Wong looked south toward the officers, then turned toward the passenger side of the Honda, leaned to his right and toward the passenger floorboard.

At approximately 1:25:27 a.m., Officer Navarro, who was behind the open passenger door of Unit #13 armed with his handgun, announced that Mr. Wong was reaching around inside the vehicle. Immediately after that announcement, Officer Martinez directed Officer Valdez to "Forty the window." Officer Valdez called out, "Forty Mike-Mike. Forty Mike-Mike. Forty Mike-Mike" as a warning to fellow officers that he was going to fire the 40mm Less Lethal launcher. As the warning was given, Mr. Wong turned his upper torso to his right and then reached with his left arm toward the passenger floorboard.

At approximately 01:25:30 a.m., Officer Valdez fired the first 40mm Less Lethal projectile into the lower-left corner of the driver's side window, near the side-view mirror. The projectile penetrated the window and shattered the glass. However, the glass remained in place due to the window tint, obscuring the officers' ability to see inside the Honda.

Officer Valdez described Mr. Wong as appearing "startled" by the projectile and said he immediately began reaching around the back seat and under the seat. Officers continued to give Mr. Wong commands.

At approximately 1:26:48 a.m., Sergeant Gillis requested PPD Dispatch contact paramedics and have them stage nearby. At approximately 1:27:32 a.m., PPD Dispatch advised the officers that multiple firearms were registered to Mr. Wong. Upon being told Mr. Wong had firearms registered to him, Officer Martinez directed Officer Valdez to fire another 40mm Less Lethal projectile into the driver's door window.

At approximately 1:27:42 a.m., Officer Valdez fired a second 40mm Less Lethal projectile into the driver side window. The projectile penetrated the window slightly above and to the right of the first impact site.

The projectile hit the window, Officer Valdez noted that it was more difficult to see inside the Honda. Immediately after the second projectile was fired, Officer Iniguez resumed commands in English and Spanish, and Officer Martinez returned to Unit #K2 to arm himself with his rifle.

At approximately 1:28:11 a.m., Mr. Wong started the engine. Officer Iniguez announced, "Turn off the car right now. You are being detained." Mr. Wong did not turn off the car. Officer Martinez positioned himself behind the driver's door of Unit #13, pointed his rifle at the Honda, and directed Officer Iniguez to address Mr. Wong by his first name, Matthew. For the next three minutes, Officer Iniguez tried to convince Mr. Wong to comply with his orders and surrender. Mr. Wong was repeatedly told that he was being detained and that he should put his hands above his head, exit his vehicle, and surrender. Mr. Wong was told that they wanted the incident to be resolved peacefully, and they did not want to use force to remove him from the car.

At approximately 1:30 a.m., Lynch Ambulance Paramedics were dispatched and directed to stage near the Ralph's supermarket.

At approximately 1:32:19 a.m., Officer Valdez fired the third 40mm Less Lethal projectile into the driver side window. The projectile penetrated the top of the driver door window near the A-pillar but did not remove the glass.

Approximately one second after Officer Valdez discharged the Less Lethal projectile, Mr. Wong fired two rounds in quick succession through the driver door window, shattering the Honda's driver door window. The first round fired by Mr. Wong struck the driver's side of the windshield of Unit #13, within feet of Officers Valdez, Navarro, Perez, and Martinez, as well as Sergeants Garza and Gillis. It penetrated the windshield, traveled through the driver compartment between the driver and passenger front seats, and struck the prisoner divider behind the front seats.

Officers Navarro and Martinez and Sergeant Garza returned fire. Within 3 seconds, Sergeant Garza fired 9 rounds from his Glock .40 caliber, semi-automatic handgun in a west by slightly northern direction. Officer Navarro fired 3 rounds from his Glock .40 caliber semi-automatic handgun in a northern direction. Officer Martinez fired seven rounds from his SIG Sauer rifle in a northern direction. Officers Navarro and Martinez and Sergeant Garza each elected not to provide voluntary statements.

Sergeant Gillis provided a voluntary statement in which he indicated that he was on the driver side of Unit #13, behind Officers Martinez and Perez, when he heard the 40mm fired. Within seconds of the 40mm deployment, he heard 2-3 gunshots. Upon hearing that gunfire, Sergeant Gillis stated that he thought, "That guy was trying to kill us." He retreated to the rear of Unit #13, where he saw Officer Valdez fall to the ground. Sergeant Gillis feared Officer Valdez had been shot.

Officer Perez provided a voluntary statement. She was standing between Units #13 and #23 when the third 40mm projectile was fired. A "couple of seconds" after, she heard a single gunshot followed by the round striking the front windshield of Unit #13. Officer Perez said it was "clear as day" it was a firearm. "There was no second-guessing the sound." She retreated and took cover behind Unit #13, where she remained until the gunfire ceased.

At approximately 1:32:33 a.m., Officers Martinez, Perez, and Iniguez approached the driver's side door. Mr. Wong had sustained multiple gunshot wounds and was slumped over toward the center console. Officer Martinez reached through the window frame and recovered a Polymer80, 9mm semi-automatic handgun from Mr. Wong's lap area. He placed the gun on the asphalt. Officer Eriksen later rendered the gun safe by removing the magazine from the well and ejecting a live cartridge from the chamber. Officer Eriksen placed the handgun, magazine, and the ejected cartridge on the sidewalk.

At approximately 1:33:37 a.m., Mr. Wong was removed from the car, and paramedics were cleared to enter the scene. Officer Valdez immediately began chest compression. Officer Perez placed an occlusive dressing over a left chest wound. Officer Navarro placed a tourniquet on Mr. Wong's left arm. Officers continued to provide medical care to Mr. Wong until the paramedics arrived.

At approximately 1:36:52 a.m., paramedics arrived and saw Mr. Wong supine on the ground and officers administering chest compressions. They examined him and determined he was pulseless and apneic. A Basic Life Support airway was established, and electro-cardiogram pads and a pulse oximeter were attached. A rigid collar was placed on his neck. Mr. Wong's oxygen saturation was normal, and his Pulseless Electrical Activity was in the 50's. A needle thoracotomy was performed on both sides of the chest due to penetrating chest trauma. An intravenous line was placed in his right arm, and an automatic chest compression device was attached. He had sustained gunshot wounds to his left axillary region, left buttocks, and left upper arm.

At approximately 1:50:10 a.m., Mr. Wong was loaded into the ambulance and transported "Code 3" (lights and siren) to UCI Medical Center (UCIMC). Paramedics rode with Mr. Wong and continued patient care. An intraosseous was placed in his left tibia, and an advanced airway was established. No medications other than normal saline were administered during transportation, and his condition remained unchanged.

At approximately 2:06:05 a.m., Mr. Wong arrived at UCIMC, and patient care was relinquished to UCIMC Trauma Team personnel. He had sustained gunshot wounds to the left side of his face, left chest, and left arm. CPR was stopped, and an ultrasound was performed on his heart. No cardiac activity was detected. Advanced lifesaving protocols were followed but proved futile.

At 2:17 a.m., a UCIMC Trauma Surgeon pronounced Mr. Wong deceased.

### **EVIDENCE COLLECTED**

- EM 1 - One (1) 9 mm semiautomatic ghost handgun, PF940C frame kit, flat dark and earth bronze color, no serial number; (1) P-Mag magazine; (1) cartridge headstamp "FC 9MM LUGER."
- EM 2 - One (1) Less Lethal rubber projectile
- EM 3 - One (1) apparent bullet fragment
- EM 4 - One (1) Grey tennis shoe
- EM 5 - One (1) apparent bullet fragment
- EM 6 - One (1) pair of torn grey pants
- EM 7 - One (1) cartridge case headstamp "FC 9MM LUGER."
- EM 8 - One (1) apparent bullet fragment
- EM 9 - One (1) 5.56x45mm rifle cartridge case headstamp "WCC 14+."

- EM 10 - One (1) 5.56x45mm rifle cartridge case headstamp "WCC 14+."
- EM 11 - One (1) Less Lethal 40mm cartridge case
- EM 12 - One (1) Less Lethal 40mm cartridge case
- EM 13 - One (1) 5.56x45mm rifle cartridge case headstamp "WCC 14+."
- EM 14 - One (1) apparent bullet fragment
- EM 15 - One (1) apparent bullet fragment
- EM 16 - One (1) 5.56x45mm rifle cartridge case headstamp "WCC 14+."
- EM 17 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 18 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 19 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 20 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 21 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 22 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 23 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 24 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 25 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 26 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 27 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 28 - One (1) cartridge case headstamp "WIN 40 S&W."
- EM 29 - One (1) apparent bullet fragment
- EM 30 - Three (3) 5.56x45mm rifle cartridge cases headstamp "WCC 14+."
- EM 31 - One (1) apparent bullet fragment
- EM 32 - One (1) apparent bullet fragment
- Plumbtesmo tests were completed on PM A-H. The results were positive for lead.

## AUTOPSY

On Thursday, June 3, 2021, at approximately 8:40 a.m., Orange County Coroner (OCCO) Forensic Pathologist Sigmund Menchel conducted the post-mortem examination of Mr. Wong at the Orange County Sheriff-Coroner Forensic Science Center, 1071 West Santa Ana Boulevard, Santa Ana. The autopsy was documented under OCCO case number 21-03356-AA.

Menchel concluded Mr. Wong had sustained the following eight (8) gunshot wounds:

- Left anterior chest.
- (2) Left upper arm and shoulder.
- (2) Left side of the face.
- (3) Left lateral thorax.

The internal injuries associated with the gunshot wounds included injuries to the pulmonary artery, the aortic arch, entry and exit wounds to the right upper lobe of the lung, a large contusion to the posterior aspect of the left upper lobe of the lung, and a circular defect to the posterior ribcage on the right side. There was extensive brain injury with disruption of large portions of the cerebral hemisphere and brainstem. There were extensive skull fractures.

## FIREARMS EXAMINATION



The Polymer80 pistol carried by Mr. Wong was test-fired. One cartridge failed to feed, but the pistol fired all other test-fired cartridges. The Polymer80 pistol was determined to have fired the single cartridge case (EM 7) recovered from the scene.

### **TOXICOLOGICAL EXAMINATION**

A sample of Mr. Wong's blood was collected at the Orange County Sheriff-Coroner Forensic Science Center. An Orange County Sheriff's Department forensic scientist examined the blood sample for alcohol, prescription drugs, and common drugs of abuse. The following results were obtained:

<b>DRUG</b>	<b>RESULTS &amp; INTERPRETATIONS</b>
Acetaldehyde	Detected
Amphetamine	0.194 ± 0.015 mg/L
Methamphetamine	3.88 ± 0.28 mg/L

### **MR. WONG'S PRIOR CRIMINAL HISTORY**

Mr. Wong's criminal history was reviewed and considered. Mr. Wong had a California Criminal History that dates back to 2014. He has previously been arrested for the following charges:

- Possession of a Controlled Substance
- Possession of Controlled Substance Paraphernalia
- Possession of a Controlled Substance while Armed with a Firearm
- Carrying a Switchblade Knife on his Person

### **STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES**

Possible criminal charges against an officer involved in a shooting include murder [Penal Code Section 187]; manslaughter [Penal Code Section 192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) Several such justifications may apply in any given case and they are set forth in Penal Code Sections 196, 197 and 835a.

California Penal Code Section 196 provides that use of deadly force by a public officer is justifiable when done in compliance with California Penal Code section 835a. California Penal Code Section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

California Penal Code Section 835a allows a police officer to use reasonable force when necessary in the defense of human life. The decision to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall be taken into account when officers are forced to make quick judgments about using force.

California Penal Code Section 835a further states that a peace officer is justified in using deadly force when the officer reasonably believes that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. Deadly force may also be used to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believed that person will cause death or serious bodily injury if not immediately apprehended.

Consistent with existing law, Penal Code section 835a maintains the principle that a police officer, acting in compliance under this section, 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 objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code Section 835a also requires that, prior to the use of deadly force, the officer make reasonable efforts to identify themselves and warn that deadly force may be used, when feasible, unless the officer reasonably believes the person is already aware of those facts. In determining whether deadly force is necessary, officers shall evaluate the circumstances of each situation independently, and use other available resources and techniques if reasonably safe and feasible to do so.

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

Similarly, the relevant criminal jury instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.)

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.) Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer's right to use force [*i.e.*, his/her weapon] is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The Supreme Court further stated that the determination of the reasonableness of an officer's use of force "must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation" (*Id.* at 396-397.)

The United States Supreme Court's analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of Placentia Police Department Officers Garza, Martinez, and Navarro with Mr. Wong.

### LEGAL ANALYSIS

The facts in this case are determined by the relevant evidence collected and witnesses present at the incident.

The issue is whether the conduct of Sergeant Garza and Officers Martinez and Navarro on May 29, 2021, was criminally culpable and without justification. As stated above, in order to charge Sergeant Garza and Officers Martinez and Navarro with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officers' conduct. Therefore, in order to lawfully charge Sergeant Garza and Officers Martinez and Navarro with a crime, the prosecution must prove beyond a reasonable doubt that they did not act in lawful self-defense. If the actions that day of the officers 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

"[u]nlike 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 potentially dangerous, emergency conditions or other exigent circumstances exist, the California Courts of Appeal have noted that the United States Supreme Court's definition of reasonableness is comparatively generous to the police. The court in *Brown* noted that in effect,

"the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer's use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may

reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”

(*Brown v. Ransweiler, supra*, 171 Cal.App.4th at p. 528.) Additional analysis, pursuant to California Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

Sergeant Garza and Officers Martinez and Navarro were justified in believing that Mr. Wong posed a significant threat of death or serious physical injury to himself and others. This conclusion is based on the totality of the circumstances, but mainly based on the conduct of Mr. Wong in the moments leading up to the shooting. Mr. Wong refused numerous commands by the officers to exit his vehicle and then discharged his firearm at the officers. Officers believed Mr. Wong’s intent was to kill.

Based on their experience and the circumstances, the evidence supports the conclusion that Sergeant Garza and Officers Martinez and Navarro exercised reasonable judgment when they decided it was necessary to use deadly force against Mr. Wong. When Mr. Wong brandished his firearm and discharged it directly at the officers, they reasonably believed that deadly force was necessary to defend themselves. Mr. Wong refused to peacefully comply after multiple commands and after less lethal force was used by the officers.

Officers simultaneously fired at Mr. Wong in order to protect the lives of one another. Therefore, the evidence supports the conclusion that the officers reasonably believed that Mr. Wong posed an imminent threat of death or serious bodily harm to the officers.

It should also be noted that in order for Sergeant Garza and Officers Martinez and Navarro 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 the officers did not act in reasonable and justifiable self-defense or defense of another when they shot at Mr. Wong. The prosecution would be unable to carry this burden in this case. A jury analyzing these facts would justly conclude that it was reasonable for the officers to believe that their lives and the lives of others were in danger. Therefore, Sergeant Garza and Officers Martinez and Navarro were justified when they shot at Mr. Wong and carried out their duties as a peace officer in a reasonable and justifiable manner.

## 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 insufficient evidence to prove criminal culpability on the part of Sergeant Garza and Officers Martinez and Navarro, and there is substantial evidence that their actions were reasonable and justified under the circumstances when they shot Mr. Wong on May 29, 2021.

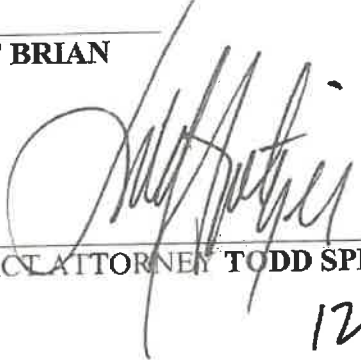
Accordingly, the OCDA is closing its inquiry into this incident.



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READ AND REVIEWED BY **ROBERT GOODKIN**  
Senior Deputy District Attorney  
Homicide Unit



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READ AND REVIEWED BY **BRETT BRIAN**  
Assistant District Attorney  
Special Prosecutions Unit



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READ AND APPROVED BY DISTRICT ATTORNEY **TODD SPITZER**

12-04-2022