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November 22, 2021

Sheriff Donny Youngblood
Kern County Sheriff's Office
1350 Norris Road
Bakersfield, CA 93308

Re: Officer-Involved Shooting of Justin Esqueda by Deputies Christopher Gonzalez, Vidal Contreras, Miguel Orozco on October 28th, 2020, at West Point Drive and Dartmouth Street and at 3018 Dartmouth Street in Bakersfield CA.

Dear Sheriff Youngblood,

The Kern County District Attorney's Officer-Involved Shooting Committee has reviewed the reports and other materials submitted by your agency regarding the shooting noted above. The Officer Involved Shooting Committee reviews cases for criminal liability under state law. The Committee has completed its review. The findings are noted below.

Summary

Justin Esqueda and Serena Rodriguez engaged in a confrontation with civilian David Stagg on Water Street in Bakersfield, CA. During the confrontation, Esqueda produced a .223 AR-15 style rifle and fired multiple times at Stagg wounding him in the leg. Stagg returned fire from his own pistol but did not strike Esqueda. Esqueda and Rodriguez fled the scene. Witnesses called 911 and Kern County Sheriff's Deputies responded, including Deputies Christopher Gonzalez and Miguel Orozco. Deputies Gonzalez and Orozco were briefed on the circumstances of the shooting, Stagg's gunshot wound, that multiple firearms were involved, a description of the suspect, and that the suspect was at large. They also contacted Stagg, spoke to him, and observed his gunshot wound. Deputy Gonzalez immediately began to canvass the area to locate the suspect. Deputy Orozco remained and continued to investigate the shooting.

Deputy Gonzalez encountered Esqueda and Rodriguez at West Point Drive and Dartmouth Street. Esqueda matched the description of the suspect and was acting suspiciously. Deputy Gonzalez attempted to contact and then detain Esqueda by issuing verbal commands which were ignored. Deputy Gonzalez followed Esqueda on foot into an alley off Dartmouth Street just south of West Point Drive. Once in the alley, Esqueda suddenly produced his rifle and discharged two rounds at Deputy Gonzalez. Deputy Gonzalez drew his service weapon and

returned fire, shooting 7 rounds, but did not strike Esqueda. Esqueda and Rodriguez escaped. The shooting was captured on Deputy Gonzalez's body worn camera.

Deputy Gonzalez radioed in the officer involved shooting and more Kern County Sheriff's Deputies responded along with the officers in the Bakersfield Police Department and California Highway Patrol. Deputy Orozco and Deputy Vidal Contreras joined the search for Esqueda after he attempted to shoot Deputy Gonzalez. Deputies and Officers began securing a perimeter in the area around Dartmouth Street and the Air 2 Kern County Sheriff's helicopter was called for assistance. Air-2 was being piloted by civilian Daniel Gates and Deputy Caughron. While pursuing Esqueda he discharged his rifle several times at the Air-2 helicopter.

While fleeing from the police through the residential neighborhood around Dartmouth Street, Esqueda assaulted several civilians by pointing his loaded rifle at them. One of the civilians was a mother holding her infant son. Esqueda attempted to enter several homes to escape police. Police continued to actively search for Esqueda and began evacuating homes. Esqueda fled from deputies until he ultimately got to the backyard of 3018 Dartmouth Street. Kern County Sheriff's Deputies and Officers from the Bakersfield Police Department began to close in on Esqueda's location at 3018 Dartmouth Street.

By the time Esqueda reached the backyard of 3018 Dartmouth Street, Detective Vidal Contreras and Deputy Miguel Orozco had taken positions at the neighboring residence to the south, 3012 Dartmouth Street. Detective Contreras took a position at the backdoor of the residence giving him a vantage into the backyard of 3018 Dartmouth Street and Deputy Orozco took a position inside the kitchen of 3012 Dartmouth Street looking out a window into the backyard of 3018 Dartmouth Street. Once Esqueda entered the backyard, Detective Contreras and Deputy Orozco engaged Esqueda discharging their service rifles. One round struck Esqueda in the right eye and exited just below his right ear. Esqueda was then apprehended in possession of his loaded .223 rifle and treated at Kern Medical Center. He died 18 days later from the gunshot wound he sustained to his head. At the time Esqueda was fatally shot, he was running towards Detective Contreras and Deputy Orozco's position with his .223 rifle in hand. Both Detective Contreras and Deputy Orozco stated at the time they fired their rifles they were in fear for their lives, the lives of fellow officers surrounding the home, as well as the civilians in the area. Detective Contreras and Deputy Orozco were both aware Esqueda had attempted to shoot Deputy Gonzalez, the Air-2 helicopter, in addition to committing numerous other crimes.

Legal Principles and Analysis

In this case, there were two officer involved shootings. The first was Deputy Gonzalez who returned fire in self-defense after Justin Esqueda fired two rounds at him. The second was Deputy Orozco and Detective Contreras who fired on Esqueda while he was in the back yard of 3018 Dartmouth Street. This occurred to defend against the threat Esqueda posed to Deputy Orozco and Detective Contreras, the surrounding officers and civilian community, in addition to apprehending an active shooter and fleeing felon who was an immediate danger to surrounding citizens. An officer with reasonable cause to believe a crime is committed or a person is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. *Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386; *see also* Penal Code section 835a(b). Deputy Gonzalez acted in self-defense of his life. Deputy Orozco and Detective Contreras had reasonable cause to arrest Esqueda for the assault on Stagg,

the attempted murder of Deputy Gonzalez, the attempted murder of the deputy and pilot manning Air 2, as well as a host of other crimes and assaults.

An officer may use deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. (CA Penal Code section 835a(c)(1)(A).) When evaluating the use of deadly force, one must decide whether the officers' beliefs and action were objectively reasonable under all the circumstances known to him or her, as they appeared at the time. "The calculus of reasonableness must embody allowance for the fact that peace 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." *Graham v. Connor*, supra at pp.396-397. The law does not impose a duty to use less lethal options. "Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. (*Scott v. Henrich* (9th Cir.1994) 39 F.3d 912, 915). The appearance of danger is all that is necessary; actual danger is not. (*People v. Toledo* (1948) 85 Cal.App.2d 577 (*overruled on other grounds*); *People v. Jackson* (1965) 233 Cal.App.2d 639.) "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." (*Graham v. Connor*, supra, 490 U.S. at p. 396.)

Deputy Gonzalez faced an immediate deadly threat to his life when Esqueda fired two rounds from a .223 rifle at him. Deputy Gonzalez's decision to return fire with his service weapon in defense of his own life is reasonable. Esqueda presented him with the quintessential display of deadly force.

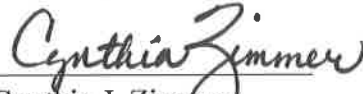
Deadly force was an objectively reasonable response to apprehend Esqueda who was a fleeing felon, active shooter, and immediate danger to numerous civilians, officers, and deputies in the area. Penal Code section 835a makes clear and officer may use deadly force to apprehend a fleeing person "for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts." (CA Penal Code section 835a.) Once the decision to use deadly force is made and justified, officers may use the necessary force needed to stop the threat. *Plumhoff v. Rickard* (2014) 572 U.S. 765 explained: "It stands to reason that if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." *Id.* at 777. The decision by Detective Contreras and Deputy Orozco to

shoot Esqueda to protect their personal safety, safety of their fellow officers, the safety of the public, and to stop an active shooter was a reasonable one.

Conclusion

Based upon a review of the evidence submitted by the Kern County Sheriff's Department, Deputies Christopher Gonzalez, Miguel Orozco, and Detective Vidal Contreras responded reasonably in self-defense, defense of others, and to apprehend a fleeing felon who was an immediate danger of death or great bodily injury to the community. There is no state criminal liability for his use of deadly force under the circumstances of this case and the shootings are legally justified.

Sincerely,


Cynthia J. Zimmer
District Attorney