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Chief William Lansdowne
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Re: Non-fatal shooting of Mr. Regino Hector Aguilar on December 25, 2007 involving San Diego Police Officer Tony Naputi and California Highway Patrol Officer Eliazar Colunga; San Diego Police Case No. 07-075119; DA Special Operations Case No. 07-147PS; Deputy District Attorney assigned: Damon Mosler

Dear Chief Lansdowne:

We have reviewed the materials compiled by your department concerning the non-fatal officer-involved shooting of Mr. Regino Hector Aguilar. A District Attorney investigator responded to the scene soon after the incident and was briefed by your investigators.

Persons Involved
Mr. Regino Hector Aguilar was 26 years old, stood 5'9" tall, weighed 180 pounds and was living in San Jose.

San Diego Police Officer Tony Naputi was assigned to routine patrol duties. He was in full uniform, operating a marked San Diego police car and armed with a department issued Sig-Sauer 9 mm semi-automatic pistol.

California Highway Patrol Officer Eliazar Colunga was assigned to routine traffic duties. He was in full uniform, operating a marked CHP patrol car and armed with a department issued Colt AR-15 .223 rifle.

Background
On December 23, 2007, two days before this incident occurred, Mr. Aguilar was stopped by U.S. Customs and Border Patrol officers when he entered the United States at the San Ysidro Point of Entry driving a stolen van. The van had been reported stolen from a gas station in North Hollywood that same day.

The investigating officers determined Mr. Aguilar was disabled, had a low level of intelligence and drove the van back into the U.S. from Mexico when the people he was with never returned to the van. They also determined there wasn't enough evidence available to prosecute Mr. Aguilar for auto theft, so they arranged for the van to be returned to its owner. They also arranged for Mr. Aguilar, through his relatives, to get a bus ride back to San Jose.

Theft of LA County Sheriff's Patrol Car

Between 5:30 and 6:40 in the morning on December 25, 2007, a marked Los Angeles County Sheriff's patrol car was stolen from the 1600 block of East Florence Avenue in Los Angeles. The keys had been left in the ignition and the engine running. The patrol car was equipped with an Ithaca .12 gauge pump shotgun loaded with four rounds of ammunition. The shotgun was mounted in a rack with an electronic lock release button on the driver's dashboard. Additional shotgun ammunition was in the trunk.

At 8:38 that morning, the CHP began receiving calls indicating the stolen patrol car was seen at a gas station in Leucadia. Nine minutes later it was seen being driven erratically south on Interstate 5 near Main Street. At 8:57 that morning, the car was reported unoccupied at a Mc Donald's restaurant at Palm Avenue and Interstate 805.

When CHP units arrived at the Mc Donald's, they saw Mr. Aguilar running towards the stolen patrol car and ordered him to stop. Mr. Aguilar refused, got into the driver's seat of the stolen patrol car and drove away. Officers from both the CHP and San Diego Police Department chased the stolen patrol car as Mr. Aguilar fled west on Palm Avenue from I-805 at between 80 and 90 miles per hour.

CHP Officer Eliazar Colunga and SDPD Officer Tony Naputi were two of the five uniformed officers involved in the pursuit of Mr. Aguilar. Both officers chased Mr. Aguilar as he drove at high speed west on Palm Avenue, running red lights and then travelling south on Interstate 5.

Shooting

As Mr. Aguilar fled south on Interstate 5, the stolen patrol car ran out of gas. Mr. Aguilar drove the stolen patrol car into the center median of the freeway and stopped. The CHP and SDPD officers pulled in and stopped behind Mr. Aguilar and began conducting a felony car stop.

Officer Naputi exited his patrol car, drew his weapon and took up a position near his car's left front fender. He then began ordering Mr. Aguilar out of the stolen patrol car and told him to put his hands in the air. Officer Colunga also exited his patrol car, armed himself with his Colt AR-15 rifle and took up a prone position on the west shoulder of the freeway perpendicular to the stolen patrol car.

Mr. Aguilar exited the patrol car from the driver's door, but then re-entered it. When he began reaching for the shotgun, both Officers Naputi and Colunga fired twice at Mr. Aguilar. One of Officer Naputi's shots penetrated the stolen patrol car and struck Mr. Aguilar causing a grazing

wound to his head. Naputi's second shot and both of Officer Colunga's shots missed Mr. Aguilar. Mr. Aguilar was taken into custody and transported to the UCSD Medical Center for treatment of a minor gunshot wound to his head. He was later released and booked into county jail for auto theft, felony evading and resisting an executive officer.

Investigation

The scene was secured and an investigation was conducted. The investigation revealed Officer Naputi fired two (2) rounds at Mr. Aguilar from a standing position in front of his patrol car in the number one lane of Interstate 5 freeway. Officer Colunga fired two (2) rounds at Mr. Aguilar from a prone position along the west shoulder of the freeway. Two (2) expended .9 mm and two (2) expended .223 shells casings were recovered at the scene. All four (4) expended shell casings were located in areas consistent with the firing positions of both officers.

Trajectory and ballistic findings revealed both shots fired by Officer Naputi struck the stolen Los Angeles County Sheriff's patrol car. One shot struck the rear window, penetrated it and then hit Mr. Aguilar, causing the grazing wound to the top of his head. Naputi's second shot struck the inside of the open driver's door. One of Officer Colunga's shots struck the stolen patrol car's right front passenger door, penetrated and came to rest inside the patrol car. His second shot missed the patrol car and struck the concrete center divider of the freeway.

Inside the stolen patrol car, the Ithaca .12 gauge shotgun was mounted in a rack next to the driver's seat. It was equipped with a key lock that was in the ***"unlocked"*** position. The shotgun's electronic release button was located on the driver's side dashboard above a yellow ***"Pursuit Instructions"*** label. Pushing the electronic release button allowed instant access to the loaded shotgun.

Toxicological tests were also conducted on Mr. Aguilar. Those tests were negative for the presence of drugs or alcohol in his system.

SDPD Officer Naputi's Statement

Officer Naputi supplied a voluntary and recorded statement. Naputi was one of the five officers involved in the pursuit of Mr. Aguilar. Naputi said when the stolen patrol car stopped, he got out of his car, drew his weapon and ordered Mr. Aguilar to, ***"Put your hands up!"*** Naputi saw Mr. Aguilar open the driver's door, get out of the car and begin spinning around in circles.

Naputi said, ***"Then he just went straight for the car! ... He was going for the shotgun. He had one hand on it. He was manipulating something. He was trying to pull the shotgun out with all his might! I was scared for my safety and the other officer's safety... I kept giving him orders. I was afraid he would get the shotgun out and shoot me or the other officers. So I fired two rounds through the*** (rear) ***windshield."***

CHP Officer Colunga's Statement
Officer Colunga also supplied a voluntary and recorded statement. When Colunga arrived at the McDonald's restaurant he saw the stolen patrol car driving out of the parking lot. Colunga said he pursued the stolen car west on Palm Avenue and then south on Interstate 5 at high speed. At one point, Colunga saw Mr. Aguilar drive into the oncoming traffic lanes on Palm Avenue. When the stolen car stopped in the center median of the freeway, Colunga heard other officers ordering Mr. Aguilar from the car. Colunga armed himself with a rifle and ran to a position along the west shoulder of the freeway and laid prone on the ground.

Colunga first thought Mr. Aguilar was going to give up. However, he saw Mr. Aguilar getting back into the car and heard an officer yelling, ***"He's going for the shotgun!"*** Colunga recalled, ***"...his left hand was on the shotgun!"*** Fearing Mr. Auiglar was going to obtain the shotgun and start shooting at them, Colunga said he fired twice at Mr. Colunga from his prone position on the west shoulder of the freeway.

Witnessing Officer's Statements
CHP Officer Talavera was first to arrive at the McDonald's. He saw the stolen Los Angeles County Sheriff's patrol car parked unoccupied in front of the restaurant with its driver's door open. As Talavera approached on foot, he saw Mr. Aguilar sprinting towards the stolen car. Talavera ordered Mr. Aguilar to stop and put his hands in the air. Talavera saw Mr. Aguilar jump in the driver's seat, look back at him, spin the tires as he backed up, and peel out of the parking lot. Talavera re-entered his patrol car and began chasing Mr. Aguilar as he fled at high speed west on Palm Avenue at between 80-90 miles per hour. Talavera saw Mr. Aguilar blowing through intersections, run red lights, and at one point, go airborne as he went over some railroad tracks.

After Mr. Aguilar stopped in the center median of the freeway, Talavera thought he was going to give up. Talavera heard officers yelling, ***"Hands in the air! Hands in the air!"*** He then saw Mr. Aguilar reach inside the car and try to remove the shotgun from the rack. He heard officers yelling, ***"Let go of the gun! Show us your hands!"*** and then the sounds of four shots being fired.

SDPD Officer Meyers reported seeing Mr. Aguilar go back inside the stolen patrol car and grab the strap for the shotgun. Meyers said she yelled out to the other officers, ***"He's getting the gun! He's getting the gun!"*** Meyers said she wasn't able to shoot at Mr. Aguilar because she didn't have a clear shot.

From where CHP Officer Metzler was positioned, he could see Mr. Aguilar yanking on the shotgun. He heard shots being fired while he was taking cover behind a patrol car.

Mr. Aguilar's Criminal Conviction
Mr. Aguilar refused to supply a statement when he was interviewed. On December 28, 2007, the District Attorney's Office charged Mr. Aguilar with one count each of auto theft, felony evading and resisting an executive officer.

On May 21, 2008, Mr. Aguilar pled guilty to one count of resisting an executive officer. The auto theft and evading charges were dismissed. Mr. Aguilar was sentenced to 110 days in county jail with credit for 110 days served, placed on three years formal probation and ordered to pay a fine of $1,054 and restitution to Los Angeles County in the amount of $1,117.80.

Legal Analysis

This review was conducted pursuant to the joint protocol between this Office and all San Diego County law enforcement agencies calling upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force. The review does not examine such issues as compliance with the policies and procedures of any law enforcement agency, ways to improve training or tactics, or any issues related to civil liability. Accordingly, such a review should not be interpreted as expressing an opinion on these matters.

In this case, San Diego Police Officer Tony Naputi and California Highway Patrol Officer Eliazar Colunga were in hot pursuit of an individual who had stolen a Los Angeles County Sheriff's patrol car that was equipped with a loaded .12 gauge shotgun. During the ensuing car stop, Mr. Aguilar failed to heed the officer's commands to put his hands in the air and surrender, and instead reached for and tried to remove the shotgun from the rack. At that point, both Officers Naputi and Colunga feared Mr. Aguilar was going to arm himself and begin firing at them. In defense of themselves as well as in defense of one another, both officers fired twice at Mr. Aguilar.

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he had reasonable cause to believe has committed a public offense. That section states the officer need not retreat or desist his effort to affect an arrest because of that person's resistance.

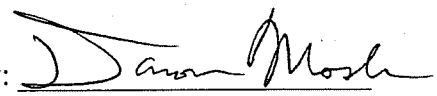
In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers. The U.S. Ninth Circuit Court of Appeals, in the case of Scott v. Henrich (9th Cir. 1994) 39 F.3d 912, delineated those circumstances under which deadly force may be used:

> '[P]olice may use only such force as is objectively reasonable under the circumstances. An officer's use of deadly force is reasonable only if 'the officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officer or others.' All determinations of unreasonable 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.'" [Citations omitted.]

Under the standard of review outlined by Penal Code section 196 and the facts of this case, San Diego Police Officer Tony Naputi and California Highway Patrol Officer Eliazar Colunga bear no criminal liability for the actions they took during this incident. A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,

BONNIE M. DUMANIS
District Attorney

By: 
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