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MEDIA ADVISORY
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FOR IMMEDIATE RELEASE

Approved by

Officer:

Delano Police Department Officer Pedro Mendoza

Investigating Agency:

Bureau of Investigation, Kern County District Attorney's Office

Location:

Norwalk Street, Delano

FACTS:

On December 31, 2017, Delano Police officers, Rommel Bautista and Pedro Mendoza, were on routine patrol in a neighborhood known for a high level of criminal and gang-related activity. While doing so, they saw a truck illegally parked in an alley. The vehicle was occupied by one person, the driver, later identified as Ernie Macias. Standing at the passenger door was an Hispanic male adult.¹

Officer Bautista drove into the alley and parked his patrol vehicle in front of Macias' truck as Officer Mendoza pulled into the alley from the opposite direction, parking his patrol vehicle to the rear of Macias' truck. As Officer Bautista got out of his patrol car in order to make contact with Macias, Officer Mendoza made contact with the other male. Officer Mendoza completed a pat down search of this male and, not finding any weapons, walked around the rear of the truck to approach Macias. The other male subject remained at the rear of the truck.

As Officer Mendoza was walking up to the driver's side of the truck, Macias started the truck's engine and

¹ The other man's name is withheld because he is currently pending prosecution in multiple felony cases unrelated to this incident.

began to pull forward in the direction of Officer Bautista. Both officers drew their firearms and ordered Macias to stop, which he did. Suddenly, Macias put the truck in reverse and began backing away from Officer Bautista and towards Officer Mendoza. Both officers continued to order Macias to stop, and while making eye contact with Officer Mendoza through the side mirror, Macias continued to back his vehicle in the direction of Officer Mendoza.

Macias refused the officers' commands to stop and continued to back up in the direction of Officer Mendoza. Officer Mendoza was now trapped between Macias' truck and a cinderblock and wooden fence. As Macias continued to approach the officer, Officer Mendoza, fearing that he was going to be run over and with Macias refusing his commands to stop, was now in fear for his life. Officer Mendoza fired four times through the back window of the truck. Three of those rounds struck Macias and he died at the scene. Immediately following the shooting, the other male subject, a documented gang member, fled. This subject was later located along with additional methamphetamine inside of a nearby residence.

Located on the seat next to Macias was a loaded handgun. A small amount of methamphetamine was also located in the truck. It was later determined that Macias had methamphetamine in his system.

LEGAL ANALYSIS:

An officer who has reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to affect arrest or detention, to prevent escape, or to overcome resistance. A peace officer who 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.² California law permits the use of deadly force if the officer actually and reasonably believed he was in imminent danger of death or great bodily injury.³ An officer who uses deadly force must actually believe that the force is necessary. The appearance of danger is all that is necessary, actual danger is not.⁴ The law does not impose a duty to use less lethal options.⁵ Under California law there is no duty to retreat from danger.⁶

When analyzing the reasonableness of the force, careful attention must be paid to the facts and circumstances of each particular case, "including [1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officer or others, and [3] whether he is actively resisting arrest or attempting to evade arrest."⁷

As to the first factor, this case initially involved a minor offense—illegal parking in an alley. However, it occurred in a neighborhood known to Officer Mendoza to have a high amount of crime and gang activity. Mendoza was personally aware of a murder case committed at that location, as well as several other crimes committed in the area. He knew gang members resided in two residences connected to the alley. His suspicion that something more than just illegal parking was occurring was confirmed by the two baggies

² California Penal Code section 835a

³ California Penal Code sections 196, 197

⁴ *People v. Toledo* (1948) 85 Cal.App.2d 577; *People v. Jackson* (1965) 233 Cal.App.2d 639

⁵ *People v. Collins* (1961) 189 Cal.App.2d 575, 589

⁶ *People v. Hughes* (1951) 107 Cal.App.2d 487, 493; *People v. Hatchett* (1942) 56 Cal.App.2d 20, 22

⁷ *Hayes* at 1232; citing *Graham v. Connor* at 396.

of methamphetamine, the loaded firearm, and the gang status of the man interacting with Macias. Macias was in violation of numerous crimes by being in possession of methamphetamine, possessing a loaded firearm as a convicted felon, and being under the influence of methamphetamine while driving. While the initial offense was minor, concern for more serious crimes was both warranted and confirmed.

As to the second and third factors, Macias posed an immediate threat to Officer Mendoza and actively resisted a lawful detention. Macias' truck was positioned so that Officer Bautista's patrol vehicle was parked in front of it, and Officer Mendoza's patrol vehicle was parked behind it. The room to drive around the parked patrol vehicles was limited due to the width of the alley. As Officer Mendoza approached Macias's truck on foot from the rear of the truck on the driver's side, Officer Bautista approached Macias on foot towards the front of the truck. Macias started the truck and drove towards Officer Bautista. Both officers drew their firearms and ordered Macias to stop, while moving from the truck. Macias initially obeyed their orders to stop. However, Macias then drove in reverse, turning his truck towards Officer Mendoza. Officer Mendoza could see Macias looking at him in the side mirror as he turned and drove towards him. Officer Mendoza saw the rear of the moving truck coming towards him and knew there was a fence behind him. Macias created an immediate threat and was actively resisting the officers' lawful commands when he chose to drive his truck at Officer Mendoza.

The evidence does appear to support an argument that Officer Mendoza could have retreated to the side in order to avoid being hit by the truck. However, under California law there is no duty to retreat from danger.⁸ Nor does the law require an officer to use less lethal options during a split-second reaction to being put in harm's way.⁹ From his point of view, Officer Mendoza did not believe he had any other option under the circumstances. When asked what would have happened if he had not fired, Mendoza responded, "I would be dead." Officer Bautista also stated that, in his opinion, Officer Mendoza would have been hit by the truck had he not fired his service weapon.

CONCLUSION

Officer Mendoza chose to use the force described above because he was afraid Macias was going to back his truck into him causing him great bodily injury or death. Macias was actively resisting a lawful detention. Macias put Officer Mendoza in harm's way. Mendoza was entitled to stand his ground and defend himself. The shooting is legally justified.

⁸ *People v. Hughes* (1951) 107 Cal.App.2d 487, 493; *People v. Hatchett* (1942) 56 Cal.App.2d 20, 22

⁹ *People v. Collins* (1961) 189 Cal.App.2d 575, 589