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**MEDIA ADVISORY  
OFFICER INVOLVED SHOOTING REVIEW**

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FOR IMMEDIATE RELEASE

Approved by

**Officer:**

Bakersfield Police Officer Christian Hernandez

**Investigating Agency:**

Bakersfield Police Department

**FACTS:**

On December 19, 2016, at approximately 11:38 p.m., Bakersfield Police officers, Christian Hernandez and Anthony Berumen, initiated a traffic stop for excessive speed and a license plate violation in the 1300 block of Oswell. The vehicle was being driven by Jose Cortez Vaca (a Colonia gang member) who had a right-front passenger, Rogelio Machuca. Due to the dark tint of the windows the officers were initially unable to determine how many people were in the car.

After pulling the vehicle over, Officer Hernandez, who was the passenger in the patrol vehicle, got out and stood on the sidewalk next to his open door. At that time, he saw the driver's door opening slightly. He immediately yelled 2 or 3 times for Vaca to stay in the car. The door quickly opened and Vaca got out holding a rifle. Officer Hernandez, upon seeing the rifle, drew his duty weapon. Vaca pointed the rifle in the direction of Officer Berumen, and Officer Hernandez fired two shots, but they appeared to have no effect on Vaca. Vaca continued to advance towards the officers while pointing his rifle at Officer Berumen.

Officer Hernandez thought Vaca was firing at Berumen and began firing additional rounds at Vaca. Vaca turned the rifle towards Officer Hernandez who fired another two shots, then an additional shot, at which point Vaca fell to the ground. A total of nine shots were fired by Officer Hernandez. Medical aid was summoned and Vaca was taken to Kern Medical. He spent seven days there and subsequently made a full recovery.

Jose Vaca gave an interview to the media from jail on December 27, 2016. During the interview Vaca acknowledged getting out of the vehicle with the loaded rifle and that it was a bad idea to do so. He also stated that “the officers were just doing their job.” When he was asked if they were good cops, he replied, “Yeah cuz they didn’t know what to expect.”

Jose Cortez Vaca was charged with multiple felonies, and on September 26, 2017, he pled guilty to Assault on a Peace Officer with a Semi-Automatic Firearm and a gun-use enhancement. He was sentenced to a stipulated term of 10 years in state prison.

### **LEGAL ANALYSIS:**

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of others. Additionally, 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. *Tennessee v. Garner* (1985) 471 U.S. 1; *Graham v. Connor* (1989) 490 U.S. 386; Penal Code section 196.

In deciding whether an officer who fired his or her weapon did so lawfully, one must consider what a reasonable person would have done in a similar situation with similar knowledge and experience. One must decide whether the officers’ beliefs and actions were objectively reasonable under all of 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. In order for the use of deadly force to be “objectively reasonable,” the officers must have probable cause to believe that the suspect posed a significant threat of death or serious physical injury to an officer or others.

During a lawful vehicle stop, Officer Hernandez ordered Jose Vaca to remain in the vehicle. Despite these warnings, Mr. Vaca, quickly got out of his vehicle with a loaded rifle, pointed it at the officer’s partner in a “ready to fire” position and began advancing. Officer Hernandez feared for his partner’s life and believed that Vaca was firing on his partner.

Based on that fear and the necessity to defend his partner, Officer Hernandez fired at Jose Vaca until the rifle and Vaca had gone to the ground and the threat of death or great bodily injury to his partner or himself was gone.

### **CONCLUSION**

The officers had a duty to enforce the laws of the State of California that evening and the traffic stop that was initiated was appropriate and lawful. When Jose Vaca ignored the lawful commands of a peace officer and began advancing on Officer Hernandez’ partner with a loaded rifle, Officer Hernandez made a decision to protect his partner from deadly force. He acted reasonably in defense of others and himself, and therefore his shooting of Jose Vaca was justified.