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Barbara LaWall

Pima County Attorney

August 14, 2014

Detective Ryan O'Connor
Pima County Sheriff's Department
1750 E. Benson Hwy.
Tucson, AZ 85714

Re: Agent Involved Shooting: Pima County Sheriff's Department Case Number 140530157

Dear Detective O'Connor:

As you are aware, on May 30, 2014, Border Patrol Agent Daniel Marquez shot and killed Jose Arambula while on duty with the United State Border Patrol. The Pima County Sheriff's Department responded to the scene of the shooting and conducted a criminal investigation regarding the incident. That investigation was submitted to me for review. Specifically, I have been asked to determine whether any criminal charges should be filed against Agent Marquez in connection with the shooting.

As part of my review, I have read and reviewed the police reports and statements submitted to me by the Pima County Sheriff's Department. Based on this review, it is my understanding that on May 30, 2014, at approximately 2:20 in the afternoon, Agents Marquez #N572 and Palmer #N574 responded to investigate sensor activation in the area of CLL Tres and Interstate 19. The sensor activation suggested a vehicle attempting to evade a Border Patrol checkpoint. Agents Marquez and Palmer were together as a two-member unit in a marked Border Patrol vehicle with Agent Palmer driving.

Agents Marquez and Palmer responded to a desert area west of I-19 known as the "shot up Suburban" to investigate the sensor activation. Shortly after arriving to the area, Agents Marquez and Palmer saw an ATV. Agent Palmer, who was driving the patrol vehicle, stopped to speak with the person on the ATV. While speaking to the person on the ATV, a Jeep approached from the opposite direction. The ATV drove away quickly, and the Jeep slowed next to the agents' vehicle. Agent Palmer attempted to talk to the driver of the Jeep, but the Jeep sped away.

Agent Palmer turned his patrol vehicle around, activated his lights and siren, and pursued the Jeep. The Agents pursued the Jeep northbound on the I-19 frontage road to the traffic circle at I-19 exit 56, where the Jeep proceeded eastbound under I-19 without obeying the yield or stop signs. The Jeep then proceeded northbound on I-19 with Agents Marquez and Palmer in pursuit. Tucson Station Border Patrol Agent Greyson joined the pursuit as a secondary unit. The pursuit arrived at exit 63, which is associated with Esperanza Boulevard. The Jeep exited I-19 by crossing the gore area immediately past

exit 63. Agents Marquez and Palmer were unable to immediately pursue; however, Agent Greyson was far enough back that he was able to take over as the primary unit at that time.

The Jeep proceeded westbound on Esperanza Boulevard to La Canada Drive, where it made a U-turn and proceeded back eastbound with Agent Grayson in pursuit. Agents Palmer and Marquez drove a short distance north on I-19 and turned around before exiting southbound I-19 to re-join the pursuit behind Agent Grayson.

The Jeep continued eastbound on Esperanza Boulevard to Abrego Drive where it turned southbound. During this point in the pursuit, information was provided over the radio that someone associated with the Jeep had a history of aggravated assault on a peace officer with a deadly weapon.

The pursuit continued southbound on Abrego Drive until the Jeep arrived at the section of Torres Blancas Golf Course immediately east of 2709 S. Greenside Place. The Jeep drove south-east over a golf cart path and over a section of the golf course before proceeding eastbound off an embankment into a dry river bed.

The driver of the Jeep, later identified as Jose Arambula, got out of the Jeep and fled on foot. Agent Marquez jumped out of the passenger side of the patrol vehicle and gave chase. Agent Palmer also exited the patrol vehicle, but took time to investigate whether there were any other people in the Jeep. Agent Grayson stayed with the Jeep. There were no other people in the Jeep, but agents did discover that the Jeep contained just over five hundred pounds of marijuana.

By the time Agent Palmer joined the foot pursuit, both Mr. Arambula and Agent Marquez were a substantial distance ahead of him. As Agent Palmer ran after the suspect and Agent Marquez, he saw Mr. Arambula turn toward Agent Marquez and punch his hand out as if he were about to shoot a weapon. Mr. Arambula turned back around and continued to run. Agent Marquez continued in pursuit.

Mr. Arambula and the two agents ran into a pecan grove. Agent Palmer could see that Agent Marquez was approximately 30 yards behind Mr. Arambula. Agent Palmer indicated he was approximately 30 yards behind Agent Marquez. Agent Palmer indicated that at that point, he saw Mr. Arambula turn around and punch both hands out as if he was about to shoot at Agent Marquez. Agent Palmer heard shots immediately thereafter.

Agent Palmer un-holstered his own weapon and sprinted to catch up to Agent Marquez. When he caught up to him, he saw that Agent Marquez was uninjured, and that Mr. Arambula was lying on the ground wounded. He appeared to be deceased. Other agents and deputies from the Pima County Sheriff's Department arrived on scene shortly after the shooting. Mr. Arambula had been struck once in the head just behind his left ear. He died at the scene.

Agent Marquez invoked his right against self-incrimination and declined to make a statement to the Pima County Sheriff's Department during the investigation.

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A.R.S. §§ 13-404, 405 and 406 allow a person to use deadly physical force against another when he believes deadly physical force is immediately necessary to protect himself or third parties from another's use of deadly physical force. Additionally, A.R.S. §§ 13-409 and 410 permit the use of deadly physical force in law enforcement when an officer believes such force is necessary to protect himself or third parties against another's imminent use of deadly force. There is no duty to retreat before using deadly physical force in these circumstances. In a criminal prosecution regarding the use of force, the State must prove beyond a reasonable doubt that the use of force was not justified under the applicable statutes.

Given all of the facts and circumstances here, a jury in a criminal trial would most likely find that Agent Marquez' actions were justified under the circumstances. Given Mr. Arambula's actions, a jury would likely conclude that Agent Marquez reasonably believed that deadly physical force was immediately necessary to protect himself from Mr. Arambula's apparent attempt to use deadly physical force.

For the foregoing reasons, the Pima County Attorney's Office declines to file criminal charges against Agent Marquez in connection with this incident.

If you have any questions or need anything else in connection with this matter, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kellie Johnson', with a long horizontal flourish extending to the right.

Kellie Johnson
Chief Criminal Deputy

cc: Manuel Padilla, Chief Patrol Agent: Tucson Sector,
United States Border Patrol

Sheriff Clarence Dupnik
Pima County Sheriff's Department