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November 9, 2021

Chief Roxana Kennedy
Chula Vista Police Department
315 Fourth Avenue
Chula Vista, CA 91910

Re: In-custody death of Mr. Oral Nunis on March 13, 2020, involving Chula Vista Police Officers/Agent Evan Linney, Manuel Padilla, Brian Olson, David Rivers, and Jordan Salvador; CVPD Case No. 20-03641; DA Special Operations Case No. 20-038CD; Deputy District Attorney assigned: David Grapilon

Dear Chief Kennedy:

We have reviewed the materials compiled by the Chula Vista Police Department's Crimes of Violence Unit concerning the detention of Mr. Oral Nunis and his subsequent death. This case was initially presented to the District Attorney's Office on March 17, 2020 and the initial reports were received in June of 2020. The reports from the San Diego County Medical Examiner's Office were delivered to the District Attorney's Office for review on May 4, 2021, and the final investigative reports were received on September 2, 2021.

Summary

On March 12, 2020 at approximately 11:53 p.m., Chula Vista Police dispatch received a call from a woman who said her father was attempting to jump out of a two-story window. The woman's boyfriend was restraining the male. Agent Linney and Officer Padilla were dispatched to the scene at 11:54 p.m. Agent Linney arrived first. The woman led Linney upstairs where Oral Nunis was seated on the floor in a doorway to one of the bedrooms with the woman's boyfriend positioned next to him. Linney attempted to handcuff and detain Nunis by grabbing onto his arm. Nunis pulled his arm away from Linney and told him he did not want to be handcuffed. Linney backed off to de-escalate the situation and called for assistance. He continued to speak with the woman about what occurred earlier. Nunis stood up and tried to walk past Linney. Linney grabbed Nunis' arm to handcuff him but Nunis pulled away and ran down the stairs. Nunis ran out the front door and onto the street. Agent Linney tackled him and a struggle ensued. Padilla arrived to assist. Nunis actively resisted both officers. The officers were ultimately able to place Nunis' hands behind his back and handcuffed.

Officers Olson, Rivers and Salvador arrived on scene after Nunis was handcuffed. Nunis was placed in a maximum restraint WRAP device. A mesh material "spit sock" was placed over Nunis' head after he began spitting onto the ground. Paramedics arrived on scene and loaded Nunis into an ambulance. While in the ambulance, Nunis stopped breathing and went into cardiac arrest. The WRAP device was removed and paramedics began CPR. Nunis was transported to Sharp Chula Vista Medical Center, where he was pronounced deceased on March 13, 2020 at 1:16 a.m. An autopsy was performed and the cause of death was determined to be sudden cardiorespiratory arrest while restrained in police custody. The manner of death is "Undetermined." The medical examiner was unable to identify why Nunis went into cardiorespiratory

arrest, but opined it was likely an excited delirium-type scenario. Toxicology testing of the blood sample taken from Nunis detected no alcohol or common drugs of abuse.

Persons Involved

Oral Nunis was a 56-year-old resident of Manteca, California. All officers involved in this incident were employed by the Chula Vista Police Department. The approximate time each officer had been employed at the time of the incident was as follows: Linney: six years; Padilla: 13 years; Olson: two years; Rivers: 14 years; and Salvador: four years.

Civilian Witness One (CW1)

CW1 is Nunis' daughter and the reporting party. CW1 said Nunis had been going through financial and marital issues in the months leading up to this event. He recently learned he owed more money on his home than what he had initially thought. As a result, Nunis was denied a loan to purchase a home in Florida. Nunis began calling CW1 several times a day because he was so upset and stressed about these problems. CW1, CW2 and Nunis went to Jamaica for 12 days over the Christmas holiday and Nunis seemed to be doing well. When they returned, Nunis appeared stressed again and began exhibiting signs of paranoia.

In February of 2020, Nunis told CW1 that CW3 (Nunis' wife) had recently placed a life insurance policy on him and was afraid she was going to do something to him. Nunis did not feel safe around CW3 and her parents. A few days before this incident, Nunis told CW1 during a phone conversation that CW3 and her parents were following him and trying to kill him. CW1 told Nunis not to go back home and to stay in a hotel room.

On Saturday, March 7, 2020, Nunis called CW1 via Facetime and told her his truck had been "voodooed" and that people were coming for him. Nunis drove to a nearby gas station and told the attendant to call the police because people were following him and trying to kill him.

On Wednesday, March 11, 2020, CW1 received a voicemail from a gas station attendant near Bakersfield. The message stated Nunis was trying to get in touch with her. CW1 called the gas station and the attendant handed the phone to Nunis. During the conversation, Nunis became paranoid and did not believe it was CW1 on the phone. Nunis asked CW1 to call him back on Facetime so that he could confirm it was really her on the phone. CW1 called Nunis on Facetime and told him she would go to Bakersfield to pick him up.

CW1 met with Nunis on Wednesday, March 11, 2020 at approximately 6:00 p.m. Nunis did not feel comfortable with CW1 and told her she had "changed her face" and again questioned if it was actually her. Nunis began running away, stating she was not his daughter. CW1 had to yell at Nunis to get him to stop from running away. CW1 sat Nunis down and had him talk to his other son and daughter to calm him down. CW1 drove Nunis to get food and noticed he was tired and nodding off in the car. CW1 and Nunis stayed in a hotel for the night. Nunis fell asleep at approximately 8:00 p.m. and did not wake up until 11:00 a.m. the next morning. Nunis was still paranoid and began telling CW1 that he was scared for his life because people were trying to kill him. Nunis talked to CW1 about all the things CW3 had done to him during their relationship and CW1 felt it was only causing more stress to Nunis.

CW1 and Nunis remained at the hotel talking and calling other family members to calm him down. Nunis' paranoia would fluctuate. He would be okay one minute and then he would get anxious and feel like he had to leave the hotel. At approximately 2:00 a.m., CW1 called the police for help. CW1 told the responding deputies that Nunis was stressed and anxious and she did not know where to take him. According to CW1, deputies spoke to Nunis and determined there was nothing they could do. CW1 and Nunis talked for a few more hours and left the hotel at 9:00 a.m. to drive back to San Diego. During the drive, the check engine light to CW1's vehicle came on. Nunis and CW1 arrived in San Diego at approximately 1:00 p.m. and took

the vehicle to a mechanic. Nunis was doing well and was not showing any signs of anxiety or paranoia. CW2 picked up CW1 and Nunis and they went to get something to eat.

They returned home briefly before going to Walmart to purchase some juice for Nunis. Nunis asked them to take him to the hospital so that he could get a checkup. CW1 and CW2 drove Nunis to Sharp Hospital in Chula Vista. CW1 told the medical staff that Nunis was having chest pains, suffering from stress, anxiety, and fatigue. CW1 overheard Nunis tell the medical staff he last had chest pains approximately one week ago. Medical staff performed an EKG and told CW1 the results appeared fine. Nunis asked the medical staff to check his blood because he wanted to make sure he was not being poisoned. Nunis also stated he did not want CW1 to be blamed for his death. While waiting for test results, Nunis' anxiety continued, Nunis stood up several times to leave. CW1 had to calm Nunis down to keep him from leaving. Nunis was eventually cleared from the hospital and was provided anti-anxiety medication.

They returned home and Nunis took a shower so they could relax and watch a movie. When they were getting ready for bed, CW1 knocked on the guestroom door to say goodnight. Nunis slammed the door and yelled at CW1 not come in because he was trying to protect her. CW1 told Nunis she was tired and asked him to calm down.

CW1 went to bed and later woke up to Nunis calling her name. CW2 told Nunis that CW1 had to work early that morning. CW2 got up and went into the guest bedroom to check on Nunis. CW1 also got up and followed to check on Nunis and CW2. CW1 looked into the room and saw Nunis looking out of the bedroom window. Nunis was asking CW2 who was outside. CW2 was telling Nunis there was nobody outside and nobody was out to get him. Nunis began to question CW2 if it was really him. Nunis tried to go through the window. CW2 had to grab Nunis to keep him from going through. CW1 entered the room and tried to calm Nunis down. Nunis briefly calmed down but became paranoid again. Nunis began telling CW2 to protect CW1 because they were coming to get her. Nunis tried to jump out of the window again and CW2 had to take him down to the ground. CW2 held Nunis down on the ground while CW1 tried comforting Nunis by talking to him. CW1 called 911. CW1 eventually met with an officer at her front door. CW1 led the officer upstairs to where Nunis and CW2 were located. CW1 tried comforting Nunis again. The officer immediately took out his handcuffs. Nunis saw the handcuffs and began telling the officer not to use handcuffs. The officer only kept telling them that it was policy and that he had to handcuff him.

Nunis began standing up and told the officer that he would go with him as long as he did not handcuff him. Nunis stood up and began to walk past the officer. The officer grabbed Nunis' hand to handcuff him. Nunis pulled away from the officer and began running down the stairs. CW1 and CW2 ran downstairs and found the officer on the ground with Nunis. The officer had his knee on Nunis' back. Nunis called out to CW1 and she knelt next to Nunis to tell him to please stop fighting. The officer told CW1 to get away and step back.

CW1 stated the officers never explained anything to Nunis or her. CW1 told the officers they were being too aggressive with Nunis. CW1 questioned why the officers had to place Nunis in the restraint. CW1 stated she was only told that it was their policy. Once Nunis was in the restraint, they sat him up and had no control of his neck. The officers placed a bag over his head because he started spitting. CW1 said no one would tell her where they were transporting Nunis to.

Civilian Witness Two (CW2)

CW2 is CW1's boyfriend. CW2 heard Nunis get up to use the restroom. Nunis stepped into CW2's room and asked if CW1 and CW2 were okay. CW1 was asleep because she had been up all day. CW2 told Nunis they were fine and asked how he was doing. Nunis told CW2 he was fine and asked him to protect CW1. Fifteen or twenty minutes later, Nunis returned to their room to check on them again. Nunis slept from approximately 10:00 p.m. to 11:00 p.m. CW2 heard Nunis call out to CW1. CW2 explained to Nunis that

CW1 had to get some sleep because she had to work a 24-hour shift later that day. CW2 went into Nunis' room and asked him what was wrong. Nunis opened the blinds on the window and pointed at a car parked on the street. Nunis told CW2 the car had come to get him. Nunis went on to tell CW2 a person from the car had gone into a house and they were looking at him. CW2 tried to calm Nunis down by telling him to lay down. CW2 sat on the edge of the bed with Nunis and rubbed his leg trying to calm him down. Nunis briefly calmed down but became paranoid again telling CW2 he needed to protect CW1. Nunis began screaming and CW1 walked into the room. Nunis jumped backwards towards the bedroom window. CW2 grabbed onto Nunis' shirt to keep him from falling through the window. CW2 pushed Nunis onto the bed and told Nunis to stop. Nunis began saying he was scared because they were coming. CW2 told Nunis to look at CW1 so he could calm down. Nunis calmed down for a few seconds and jumped back up and began screaming. CW2 again grabbed Nunis and took him to the ground. CW2 held Nunis down to the ground by holding onto his shirt, which caused it to rip. Nunis continued saying "they" were coming. CW1 put her head on Nunis' lap to try to calm him down. CW2 told CW1 to call an ambulance for help. CW1 used Nunis' phone to call her sister so she could talk to Nunis and calm him down. Nunis sat up and appeared to calm down. CW2 let go of his hold on Nunis and stood next to him.

CW1 briefly went downstairs and returned with the police officer. The officer immediately took out his handcuffs and told Nunis he was going to have to handcuff him. Nunis became agitated again and stood up. The officer told Nunis that he had to place him in handcuffs. Nunis told the officer he would go with him if he did not place handcuffs on him. Nunis tried to walk with the officer and the officer grabbed Nunis' hand. Nunis slipped away from the officer and ran down the stairs.

CW2 followed outside and saw Nunis on the ground with the first responding officer. The officer had managed to get one handcuff on Nunis. Nunis' other hand was under his body. Another officer ran past CW2 to assist. This officer, who was heavy-set, got on the top half of Nunis' body and had his knee to his back while trying to pull Nunis' other arm out from under him. CW2 tried telling Nunis to relax so the officers could handcuff him. Nunis called out to CW1, who approached and tried to calm him down. The officers were close to gaining control of Nunis' other hand, but when they told CW1 to move away, it agitated Nunis again. CW2 said the officers were not giving Nunis verbal commands. Once Nunis was handcuffed and placed into the restraint, CW2 went back into the house to grab his shoes. CW2 went upstairs and found the Body Worn Camera which had fallen off the initial responding officer. CW2 said Nunis had marks and bruises on his face after the incident that were not there prior to the struggle, aside from scrape or two from his face being placed against the ground and believed Nunis' neck appeared to be broken.

Civilian Witness Three (CW3)

CW3 and Nunis had been married for 25 years and had three children together. CW3 stated she and Nunis were not separated or in the process of getting a divorce. CW3 and Nunis owned a trucking company together. CW3 handled the administrative portion of the business while Nunis did the truck driving. CW3 first began to see a change in Nunis' behavior after he returned from Jamaica in January of 2020. Prior to January, Nunis did not show any signs of mental illness. CW3 called CW1 after returning from Jamaica to ask what had happened during their trip because Nunis was not acting like himself. Nunis began talking to himself, was paranoid, and often thought someone was chasing him. Nunis was not sleeping and eating like he was supposed to. CW3 believed Nunis was having a mental breakdown.

CW3 tried admitting Nunis to a hospital for help, but he would not agree to go. CW3 did not want police in Manteca to take Nunis to the hospital because she knew he had a fear of being handcuffed. Earlier in the week, Nunis became paranoid and ran from her car as it was stopped at a red light. CW3 located Nunis talking to police in a store parking lot. Nunis told the officers that people were tracking him and that CW3 and their seven-year-old son were trying to kill him.

CW3 felt the mental breakdown was caused by his children from his previous marriage and due to financial troubles. CW3 and Nunis owed money in back taxes and the mortgage payment for their home had recently increased. This caused them to sell their home to CW3's parents. Nunis did not use illegal drugs and only consumed alcohol while on vacation in Jamaica.

Statement of Agent Evan Linney

Agent Linney responded to a radio call with his emergency lights and siren activated involving a suicidal male attempting to jump out of a second story window. While en route, he received an update from dispatch that family members were restraining the subject, Oral Nunis, and Nunis' family had attempted to commit him to a hospital earlier in the day, but he was rejected. When Linney arrived on scene, dispatch advised Nunis was still being actively restrained. Linney was concerned based on the information that Nunis may still attempt to jump out of the window and for the family members who may be struggling with Nunis near a second story window. Based on these concerns, Linney made the decision to go into the residence.

As Linney approached he noticed the front door was open. A female came to the door and identified herself as the reporting party. Linney followed her upstairs. Linney got to the top of the staircase and observed Nunis sitting on the ground in the door frame to one of the rooms. Another male was directly behind Nunis. Linney noticed the front portion of Nunis' shirt was ripped which indicated to him a struggle had occurred.

Linney decided to place Nunis in handcuffs based on his safety concerns. Linney described Nunis as being calm when he first arrived but added that based on his training and experience, he knows individuals suffering from a breakdown can often quickly change their demeanor from calm to manic. Linney was also concerned about being on the second floor and near several windows.

Linney grabbed Nunis' left arm to handcuff him, but Nunis pulled away and said he did not want to be handcuffed. Nunis told Linney he would go with him without handcuffs. Linney explained to Nunis he was not in trouble and that the handcuffs were only for safety reasons, but Nunis refused. Linney decided not to force Nunis into handcuffs because at this point, he was alone and felt Nunis may be experiencing a mental breakdown. Linney attempted to engage Nunis in conversation to de-escalate the situation. Shortly thereafter, Nunis attempted to get up. Linney and the female told Nunis to stay seated. Nunis sat down for a few seconds before standing up again. Nunis walked past Linney and started going towards the staircase. Linney was concerned that Nunis may be trying to access a weapon in the house or attempt to locate another window to jump out of. Linney walked towards Nunis and met up with him at the top of the stairs. Linney grabbed Nunis' arm to handcuff him but Nunis again pulled away from Linney and ran down the stairs.

Linney informed dispatch Nunis was running and fighting. Linney chased after him. Nunis stumbled as he made it near the bottom of the stairs and fell to the ground before getting back up and running out the front door towards the sidewalk. Nunis fell onto the street next to the curb and between two parked cars. Linney caught up and was able to get on top of him. Linney tried to roll Nunis over to get him handcuffed but Nunis actively resisted with abnormal strength. At one point during the struggle, Nunis grabbed a hold of Linney by wrapping his arm around his upper back and neck area. Nunis would not let go and Linney felt that Nunis was no longer trying to get away and may now be trying to hurt him. Linney was able to free himself from Nunis' grasp. Nunis stood up and began running towards the intersection. Linney ran after Nunis for approximately 20 to 30 feet before tackling him around his legs and taking him to the ground, but Nunis continued to actively resist.

Officer Padilla arrived to assist Linney. Despite Padilla's large physical size and strength, they still had a difficult time gaining control of Nunis. During the struggle, Linney focused on gaining control of Nunis' legs while Padilla attempted to gain control of his upper body. Linney eventually handcuffed one of Nunis' arms, but Nunis kept the hand that was handcuffed wedged in between his side and the asphalt, preventing Linney

and Padilla from getting his arm behind his back. At one point during the struggle, Padilla was lying flat on top of Nunis to keep him down on the ground, but Nunis was strong enough to do a push up with Padilla on top of him. After struggling with Nunis for about one to two minutes, Linney and Padilla managed to handcuff him. Linney advised dispatch to have responding units continue to assist and cleared paramedics to come in and evaluate Nunis. Linney could not recall whether he gave Nunis verbal commands or warnings during the actual struggle. He said he was focused on the physical fight and his safety. Linney directed other officers to get the WRAP restraint out of his patrol vehicle. Linney feared Nunis would again become aggressive and felt the WRAP restraint was the safest way to contain Nunis and prevent him from hurting himself or other officers. It was not until Nunis had been placed in the WRAP that Linney realized his Body Worn Camera was no longer affixed to his uniform. Linney did not know when or how his BWC had fallen off his person. The BWC was returned to him by another officer.

Statement of Officer Manuel Padilla

Padilla received a radio call regarding a male trying to jump out of a second story window. Padilla responded to the location with his emergency lights and siren activated. While Padilla was driving to the location, he heard over the police radio that Linney had arrived on scene and was contacting the reporting party. While driving to the location, Padilla had a heightened concern that Linney was contacting someone at the residence. Linney broadcast the subject was being uncooperative. Padilla was three to four blocks away when he heard Linney say the subject was fighting him and trying to run towards the door. Padilla was concerned and had a sense of urgency because he believed Linney may have been assaulted.

Padilla parked on the street behind Linney's patrol vehicle and began looking for Linney and the address of the radio call. Padilla ran on the sidewalk along the condominium units when he heard sounds of a struggle where there were several cars parked on the street. Padilla ran over to the last vehicle parked at the end of the street and saw Linney fighting with Nunis on the ground. Nunis was on his back and Linney was on top of Nunis' lower torso area. Padilla went over to the right side of Linney near his head area. Padilla could see Nunis had a cellular phone in his left hand. Padilla grabbed Nunis' left hand, pulled it towards him to roll Nunis onto his stomach. Padilla was able to get Nunis onto his side and place his left arm behind his back. Nunis was very rigid and tense and Padilla was not able to fully roll Nunis onto his stomach. Padilla used his right arm to reach under Nunis' left armpit to pin Nunis' shoulder and move his arm to his back. Padilla felt Nunis pushing himself off the ground from a push-up position. Padilla could feel himself rising off the ground. Nunis then began to turn onto his right side. At this time Padilla felt his elbow and hands scraping on the ground. Padilla also felt a sharp pain on the right side of his rib area. Padilla repositioned himself due to the pain he felt and that allowed Nunis to reposition himself onto his back. Nunis had his left arm extended out with the cellular phone still in his hand. Padilla noticed a young man and woman standing nearby. Padilla did not know who they were, but assumed they were Nunis' family members. Padilla grabbed the cell phone from Nunis' hand and handed it to one of them.

At this time, Padilla and Linney were in a holding pattern with Nunis and catching their breath. Nunis was still on his back, with his head turning side to side and he was still breathing. While in this holding position, Padilla looked down and noticed his BWC was off. Padilla immediately used his hand to re-activate it. While holding Nunis down, the female family member approached them. It appeared to Padilla that the female wanted to talk to and comfort Nunis. Padilla allowed her to approach so that she could assist them in calming Nunis down. The female got down close to Nunis, caressed his face with her hand and talked to him. Padilla could feel Nunis' body relax. Padilla asked the female to step away so that he could use the opportunity to handcuff Nunis now that he had relaxed. Padilla pulled on Nunis' arm to roll him onto his stomach. Nunis rolled onto his side and Padilla was able to maneuver Nunis' arm onto his back. Linney was able to handcuff Nunis.

Once handcuffed, Padilla and Linney were no longer holding Nunis down and were no longer on top of him. Padilla had Nunis on his side and monitored his breathing. A few seconds later, Olson, Rivers and Salvador arrived to assist. Arriving officers applied the WRAP device on Nunis as Padilla was collecting himself after the struggle with Nunis. While officers applied the WRAP device, Padilla assisted Olson in prying a pill bottle from Nunis' hand. Padilla grabbed the prescription bottle from Nunis and placed it on top of a vehicle. Padilla never saw Nunis in distress or have difficulty breathing as officers were applying the WRAP device. Once Nunis was in the WRAP device, a spit sock was placed over Nunis' head after he was observed spitting on the ground. Soon after the spit sock was placed over Nunis' head, paramedics arrived. Padilla last saw Nunis as he was being wheeled on the gurney towards the ambulance.

Statement of Officer Brian Olson

Olson received a radio call of a male being restrained by family to keep him from jumping out of a second story window. While on his way to the call, Olson heard Linney over the police radio advise he had arrived on scene and was speaking to the reporting party. Linney stated the subject was running away. Olson activated his BWC and emergency lights and siren on his patrol vehicle. Moments later, Padilla transmitted over the radio he had arrived on scene. Linney broadcast the subject was resisting and that he only had one handcuff applied. Once Olson arrived on scene, Padilla broadcast the subject had been handcuffed.

Olson directed Rivers to grab a WRAP device and ran towards Linney and Padilla to offer assistance. Linney and Padilla were holding Nunis down on the ground. Nunis was handcuffed and partially lying on his right side. Linney and Padilla appeared to be winded and out of breath. There was no longer an active struggle with Nunis. Olson asked Linney and Padilla if Nunis had been patted down and they stated he was not. Olson noticed Nunis was fidgeting with his cargo pants pocket. Olson reached into Nunis' cargo pocket and pulled out a wallet. Olson held Nunis down with his hands and noticed Nunis was clenching a pill bottle. Nunis was very rigid and it took hand strength to pull the bottle from his hand.

Olson used his hands to apply light pressure on Nunis as the WRAP was being applied. Nunis was having a conversation with a female family member and he did not appear to be in distress. Once Rivers applied the lower half of the WRAP to Nunis' legs, Olson applied the upper portion of the WRAP onto Nunis' upper body. Olson placed Nunis into a sitting position. Olson could feel Nunis was very rigid and was pushing back to keep himself from being in a sitting position. Olson used his body to lean up against Nunis' back to keep him in a sitting position. This allowed officers to attach the upper portion of the WRAP to the lower portion. Rivers pointed out Nunis spitting. Due to the coronavirus outbreak, a spit sock was placed over Nunis' head. Rivers provided Olson with the spit sock and Olson placed it over Nunis' head. Paramedics arrived with a gurney. Olson picked Nunis up from his armpits while someone held Nunis' legs and placed him on the gurney. Nunis was wheeled into the ambulance. Several minutes later, a paramedic ran up to Olson and the other officers to let them know Nunis no longer had a pulse. Olson saw paramedics administering chest compressions. Olson removed the WRAP device from Nunis and handcuffed him to the gurney. Medics continued CPR on Nunis.

Statement of Officer David Rivers

Rivers was dispatched to assist Linney and Padilla on a call of a male who was being restrained by family after attempting to jump out of a window. While on his way to the call, Rivers heard over the police radio that Linney had contacted the reporting party. Rivers later heard Linney say over the radio the subject was not cooperating. Rivers heard Linney advise the subject was fighting and running. Rivers could hear the stress in Linney's voice at this point. As Rivers was arriving to the scene, he heard Linney advise he and Padilla had one handcuff on and were trying to get the other handcuff on the subject. A short time later, Rivers heard Linney broadcast the subject was handcuffed and requested a WRAP restraint. Rivers arrived on scene just as Olson was arriving. Olson directed Rivers to get the WRAP restraint. Rivers went to Linney's patrol vehicle, obtained it from the trunk, and brought it to the other officers. Rivers could see

Padilla and Linney were winded, so he began removing the WRAP from the bag. Rivers placed the ankle restraint around Nunis' ankles. Nunis' legs were then lifted so that the leg portion of the restraint could be applied. After repositioning and adjustments, Rivers secured the bottom two leg restraints while Linney secured the top two leg restraints. The upper body portion of the WRAP was placed by other officers. Rivers saw Nunis spit to his right near Rivers' boot. Olson handed the spit sock to Rivers so that it could be applied. Olson held Nunis' head in place while Rivers applied the spit sock over Nunis' head. Rivers did not want to take a chance that Nunis would next spit on him or one of the officers. Nunis' daughter said that she did not agree with them placing a spit sock over Nunis' head. It was politely explained to Nunis' daughter that the sock was made of mesh, was breathable and it was applied so that no one could potentially be exposed to infectious diseases. At this point, paramedics arrived on scene and Nunis was placed onto the gurney and transported to the ambulance.

Statement of Officer Jordan Salvador

Salvador heard the radio call while on his way home after completing his work shift. Salvador was dressed in his full police uniform and driving his marked patrol K-9 vehicle equipped with lights and siren. Salvador later heard Linney on the police radio advise that he had arrived at the location. Shortly after, Salvador heard Linney broadcast the subject was running and fighting. Salvador felt Linney could be in trouble and decided to respond to the scene. Salvador heard Linney state over the radio he had one handcuff on the subject and he was still resisting. Just prior to Salvador's arrival to the scene, Linney advised over the radio the subject was handcuffed and they were preparing to apply the WRAP restraint on the subject. Salvador arrived on scene and approached a group of officers located on the north end of the block.

Nunis was handcuffed, in a prone position and appeared to be moving around and struggling. Linney, Padilla and Olson had already began applying the WRAP restraint on Nunis. Salvador assisted the officers by obtaining the vest portion of the WRAP from the bag. Once the leg portion of the WRAP was applied, Salvador handed the vest portion of the WRAP to Olson. Salvador attached the left buckle on the vest portion of the WRAP and allowed the other officers to continue applying the WRAP. Once the WRAP was applied, Nunis spit onto the ground next to Salvador. Due to coronavirus and other concerns of infectious diseases, Salvador grabbed the spit sock that was stored in the WRAP restraint bag and handed it to Olson. Medics soon arrived and Nunis was placed onto the gurney for hospital transport.

Investigation

The audio recordings from 911 dispatchers, witness interviews, officers' Body Worn Cameras (BWC), patrol reports, statements, AMR reports, hospital reports and medical examiner reports were reviewed. Many of these items provided evidence which corroborated the officers' and witness statements.

The audio and log of CW1's call to police dispatch was reviewed. Medics had been notified and were staged to respond shortly after the 911 call was received. Throughout the call, Nunis can be heard yelling in the background and pleading with CW2 to let him get up. CW1 advised the dispatcher that CW2 was holding Nunis down to keep him from jumping out of a window. Nunis can be heard saying "don't do that to me," and told CW2 several times to ease up on him. Nunis sounded out of breath. CW1 advised Nunis several times to breathe. At one point Nunis told CW2 to move because he was "on his heart," and asked to be let up. Nunis continued to plead with CW2 to "ease up." Nunis was heard numerous times saying, "let me sit up." CW2 responded by saying, "No, I let you sit up the first time and you tried to jump out of the window." Nunis began screaming hysterically to let him sit up. CW1 pleaded with Nunis to be quiet and calm down. Nunis told CW1 that he was just trying to protect her. Nunis yelled at CW2 throughout the rest of the call to let him sit up. When Nunis' other daughter spoke with him over another phone/device in the background while CW1 was on the line with the dispatcher, Nunis continued to ask to be let up and not be held down.

Linney, Padilla, Olson, Rivers and Salvador were each wearing Chula Vista Police Department uniforms. They carried less lethal weapons with them during the incident to include an expandable baton, Mag flashlight, conducted energy weapon (TASER) and oleoresin capsicum (OC) spray. None of the equipment was used during the incident. Each of the officers were driving a marked black and white Chula Vista Police Department patrol vehicle.

Olson, Rivers and Salvador were each equipped with a BWC. They each activated their respective BWC prior to arriving at the location and captured the moments leading up to and including their involvement in the incident. Linney and Padilla were also equipped with BWC. They each activated their BWC prior to arriving to the scene.

Linney's BWC was active at the time he first contacted Nunis. At some point while in the residence, Linney's BWC fell off his uniform and inadvertently shut off. Linney's BWC did not capture his initial struggle with Nunis. It was later found by CW2 and returned during the incident.

Padilla's BWC inadvertently stopped recording at time stamp 00:03:02 hours (using the BWC timestamp from the video footage) while he and Linney were on the ground struggling with Nunis. As described in his statement, Padilla noticed during the struggle that his BWC was not recording and reactivated his BWC by pressing the record button. The recording resumed at time stamp 00:04:36 hours. There is approximately one minute and 34 seconds of time that Linney's and Padilla's struggle with Nunis is not captured on BWC.

Linney's BWC shows he arrived on scene and met with CW1 at approximately 00:00:35 hours. CW1 told Linney they were upstairs and he followed CW1 into the house and to the second floor. They walked towards one of the bedrooms and Nunis can be seen sitting on the floor and in the doorway to one of the bedrooms. CW2 is kneeling on the ground next to Nunis. Nunis is wearing brown colored khaki shorts and a red short-sleeved t-shirt. A large tear is on the left shoulder of Nunis' shirt. The collar to Nunis' shirt appeared pulled and torn down towards his torso.

Linney retrieved his handcuffs and held them in his right hand. CW1 pleaded with Linney not to handcuff Nunis. Linney told CW1 that he had to handcuff Nunis and went to grab Nunis' left wrist. Nunis responded by saying, "No, No, No." Linney advised Nunis he was not in trouble and it was for everyone's safety. Nunis pulled his left arm away from Linney's grasp and told Linney that he would come with him; not to place handcuffs on him. Linney again attempted to grab Nunis' left wrist and explained he had to go in handcuffs and again told Nunis he was not in trouble. Nunis told Linney he will go with him, but without handcuffs. Nunis again pulled his left arm away from Linney and leaned on his right side as if wanting to stand up. Linney advised Nunis to stay seated and would talk it through.

At 00:01:27 hours, Linney advised on the radio that the subject was being uncooperative and refused to be handcuffed. Nunis continued to repeatedly state he did not want to be placed in handcuffs. CW1 told Nunis to calm down and he needed to cooperate. Nunis quickly got onto both knees and appeared to want to stand up. CW1 held Nunis' left arm and told him to stay seated. Linney placed his left hand on Nunis' left shoulder and advised him to stay seated. Linney's BWC footage ends at 00:01:40 hours. When Linney's BWC ended, his hands were down and out of camera view and not up near the BWC which would be indicative of Linney either accidentally or purposely turning off the BWC.

Padilla's BWC showed he was in his patrol vehicle driving to the location with his emergency lights and siren active. At approximately 00:02:12 hours, Linney can be heard on Padilla's police radio stating the subject was running away. Padilla arrived on scene at approximately 00:02:17 hours. Padilla exited his patrol vehicle and ran west. At approximately 00:02:47 hours, Padilla contacted Linney and Nunis struggling on the ground in the street next to a parked vehicle. BWC briefly showed Linney's upper torso on top of Nunis.

Linney's legs are extended outward next to Nunis. Nunis' exact positioning is unclear in the BWC due to the lighting conditions and the movement of the BWC.

Padilla grabbed one of Nunis' arms and rolled Nunis onto his stomach. Nunis appeared to use both of his hands to prop himself up in a push-up position and did not appear to be completely prone on the ground. Nunis can be heard calling out to CW1 just before Padilla's BWC video stops recording at 00:03:02 hours. Padilla reactivated his BWC at 00:04:35 hours. There is no audio for first 30 seconds once the BWC is reactivated. This is a standard setting with all Chula Vista Police BWC's.

BWC showed Nunis on his back and he appeared to be talking. Padilla was on top of Nunis and had his left hand pinned to the ground up near his shoulder. CW1 crouched down next to Nunis and caressed his face. Nunis looked over at CW1 and had a conversation for approximately 20 seconds. The audio from the BWC comes on and Nunis can be heard telling CW1 "God bless" her and that he will be going to heaven. Padilla rolled Nunis over onto his stomach. Nunis tensed up and said, "You cannot do that." CW1 can be heard in the background pleading with him to listen. Linney grabbed Nunis' right arm and placed it behind his back. Padilla and Linney handcuffed Nunis at 00:05:30 hours. As Nunis is being handcuffed he is heard saying, "Where is the paramedic?"

Once handcuffed, Padilla used his right hand on the lower portion of Nunis back. Nunis' head is turned to the side and he continues talking. Nunis can be heard telling CW1, "You cannot do this to daddy." Linney maintained control of Nunis' legs with his knee. Both Padilla and Linney are clearly out of breath and can be heard breathing heavily. Linney cleared medics to enter the scene at 00:05:52 hours.

Olson's BWC shows he arrived and contacted Linney and Padilla at 00:06:25 hours. At 00:06:45 hours, Olson searched Nunis' pockets. Padilla placed his right knee on Nunis' left arm and shoulder. During this time, Nunis is having a clear conversation with CW1 and does not appear to be having any respiratory difficulties. Padilla lifted his knee off Nunis' arm and shoulder after approximately 20 seconds once Olson is done searching Nunis' pockets. At no point does Padilla's knee move to the center back, neck or head of Nunis. Padilla advised Olson he needed to catch his breath and stepped away from Nunis. Olson maintained control of Nunis' upper torso by placing both hands on Nunis' left shoulder. Nunis appeared to be partially lying on his right side with his head turned to his left. Nunis continued talking to CW1 about money and does not appear in distress or having respiratory difficulties.

At 00:08:30 hours, the lower portion of the WRAP restraint is placed on Nunis' legs. At 00:08:55 hours, Olson attempted to remove a pill bottle from Nunis' left hand. Nunis refused to let go of the bottle and can be heard saying "no" numerous times. Olson and Padilla pried the pill bottle from Nunis' hand. CW1 can also be heard telling Nunis to just let go of the bottle and not to fight.

At 00:09:30 hours, the upper portion of the WRAP restraint was applied. Nunis is moved to an upright seated position. The lower portion and the upper portion of the WRAP are then attached and Nunis remained in the upright seated position. Nunis is heard saying "no" several times along with other words that are unintelligible. He is not resisting the officers during this process and does not appear to be having difficulties breathing. At 00:10:51 hours, Nunis began to spit onto the ground three separate times. At 00:11:25 hours, a spit sock is placed over Nunis' head. Nunis does not appear to have an adverse response to the application of it. CW1 can be heard telling the officers to remove the spit sock from Nunis' head. Officers explained to CW1 that the spit sock was to keep Nunis from spitting, it is made of mesh and he can breathe with it on. Medics arrived as the spit sock was placed over Nunis' head. At 00:12:20 hours, Nunis is placed onto the gurney in an upright seated position. Nunis appeared to be breathing and moving his head while seated on the gurney and under the care of medical personnel. Nunis was wheeled away from the officers towards the ambulance. At approximately 00:20:52 hours, medics advised officers that Nunis was no longer breathing on

Sgt. Hicks' BWC. CPR by paramedics began at approximately 00:21:03 hours. Olson begins to remove the WRAP device from Nunis at approximately 00:21:25 hours. Nunis was transported to Sharp Hospital in Chula Vista where he was ultimately pronounced deceased at 1:16 a.m.

The American Medical Response (AMR) patient care report for Nunis was reviewed. Vital signs were first obtained from Nunis at approximately 12:12 a.m. Records show Nunis had a pulse rate of 100 beats per minute with a regular pulse rate and normal pulse strength. The report also stated respiratory depth and effort both appeared normal. AMR records show Nunis no longer had a pulse at approximately 12:19 a.m.

According to a prior incident report the day before the incident on March 12, 2020 from Arvin, California, Kern County Sheriffs responded to check his welfare at approximately 4:00 a.m. The call details indicated Nunis was calm at the time, but he was having psychological issues, was hallucinating, and had been yelling and running through a parking lot prior to the reporting party's call to law enforcement. There were no further details given in the report.

Autopsy

On March 14, 2020, an autopsy was performed. The cause of death was sudden cardiorespiratory arrest while restrained in police custody, and the manner of death is "Undetermined." There were multiple anterior ribs fractured and a fracture to the sternum which occurred post cardiopulmonary resuscitation. Injuries included abrasions of the head, face, torso, and upper and lower extremities. Toxicology testing of the blood sample taken from Nunis detected no alcohol or common drugs of abuse. The medical examiner was provided all BWC video on November 9, 2020. The medical examiner indicated it was unclear why Nunis went into cardiorespiratory arrest as there was no evidence of significant natural disease, trauma, drugs of abuse, or obesity to explain the death. Nunis was alive and responding during the time he was placed on a gurney for transport to the hospital. Dr. Stabley opined it is possible Nunis had "some type of undiagnosed disorder that altered his mental state enough to agitate him to the point of an excited delirium-type episode where he would be susceptible to a sudden cardiac arrhythmia during the post-excitement phase of his heightened or altered sensorium." Nunis "did not appear to have had respiratory difficulties during the time he was initially handcuffed and when the wrap and spit sock were placed on him." Nunis "seemed to tolerate those actions without undue significant concerns."

Legal Standards of Criminal Liability

In analyzing the potential criminal liability of the officers involved in the contact of Nunis, there must first be a determination of causation. For charges of either murder or manslaughter, there must be an act or acts that cause the death of another. The medical examiner determined Nunis' death was a result of a sudden cardiac arrhythmia due to a likely excited delirium type scenario. There was no evidence of significant acute trauma identified by the medical examiner that would have been a contributing factor in Nunis' death.

Linney and Padilla responded to a radio call of a male attempting to jump out of a second story window. Linney had an obligation to detain Nunis who was a danger to himself and potentially a danger to others attempting to restrain him. Linney attempted to de-escalate the situation upon his arrival when Nunis protested being handcuffed and tried to wait for additional units. Linney did not continue to try and handcuff Nunis. Linney was forced to pursue Nunis when he ran away and made it outside the residence. He had to forcibly detain him after he was able to tackle Nunis. Padilla was within his right to use reasonable force to effect the detention when Nunis resisted Linney's initial attempts to restrain him. Both officers encountered unnaturally strong resistance from Nunis, despite his relatively small physical size. Medics had been alerted and staged prior to the officers' arrival and during the incident and they were cleared to enter the scene as soon as Nunis was secured. Their use of physical restraint techniques and application of the WRAP device assisted by Olson, Rivers, and Salvador was reasonable under the circumstances. After the various

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applications of force were made during the incident, Nunis was breathing and still able to talk. There were no obvious signs of distress until he was being prepared for transport to the hospital inside the ambulance.

Conclusion

Based upon our review of the facts and circumstances surrounding Nunis' death, the law enforcement personnel involved in his restraint acted reasonably under the circumstances and bear no state criminal liability for their actions. A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,


SUMMER STEPHAN
District Attorney

SS:gm

cc: Captain Phil Collum
Chula Vista Police Department
315 Fourth Avenue
San Diego, CA 91910