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MEMORANDUM FOR RECORD: Review of the Officer Involved Shooting (**OIS**) by San Antonio Police Department (**SAPD**) Officers A. Rule #1215, G. Vallas #1543 and J. Quintanilla #735, resulting in the death of Kevin D. Johnson on March 14, 2022.

1. Standard of Review: The District Attorney’s Office reviews all officer-involved shootings for presentation to a Grand Jury and to determine whether there is sufficient, admissible evidence to prove a criminal offense under state law. To successfully prosecute any case in court, our office must prove every element of a charge beyond a reasonable doubt and overcome all potential defenses and/or justifications also at a beyond a reasonable doubt standard. Our decisions, based on standards of Texas criminal law do not address or limit administrative action by the employing law enforcement agency where tactical or procedural issues may be reviewed. Neither does our decision address or limit other civil actions or federal criminal action, where other laws, rules and/or lower levels of proof may apply.

2. Summary of facts: When quotation marks (“...”) are used in this document, the language within is taken directly from evidence contained in the investigative file and/or judicial proceedings. The source for these quotes are witness statements (oral or written), and or sworn testimony if available; oral statements which are captured on either audio or video recordings (public or private). This memorandum contains both Body Worn Camera (BWC) and Mobile Video Recording / “COBAN” video clips which are each timestamped and reflect Bexar County local time. Events as described below happened both sequentially and simultaneously.

a. Background of events leading up to the OIS.

(1) Officers assigned to the Street Crimes Unit of the SAPD attempted to execute a warrant for the arrest¹ of Kevin D. Johnson on the afternoon of Monday March 14th, 2022. Intelligence indicated that Johnson lived in the Lincoln Heights Courts Community and police deployed to the area to conduct surveillance and a unit was deployed in the vicinity of the 1200 block of Lombrano at approximately 3:14pm. At

¹ See Warrant of Arrest CM096573, issued by the Magistrate Judge of Bexar County, March 7, 2022. Beyond the warrant, Street Crimes Officers also developed field intelligence on Mr. Johnson’s location between February 22nd and March 9th, 2022 and Johnson’s own social media posts which were provided to the officers who executed the warrant on March 14, 2022.

approximately 3:40pm, Johnson was “...observed in the quad area ... wearing a black tank top, black shorts, white shoes and a Du-rag. I alerted [uniformed] ... officers that I’d observed the wanted male and continued to conduct surveillance on the male and observed him at Hamilton and Menchaca. I observed the male get on a bicycle and head towards Hamilton. The male rode his bicycle on Hamilton Street and the[n] proceeded to turn right when I lost sight of him. I alerted the officers that I had lost sight of the wanted male as he was getting closer to Lombrano Street. ”²

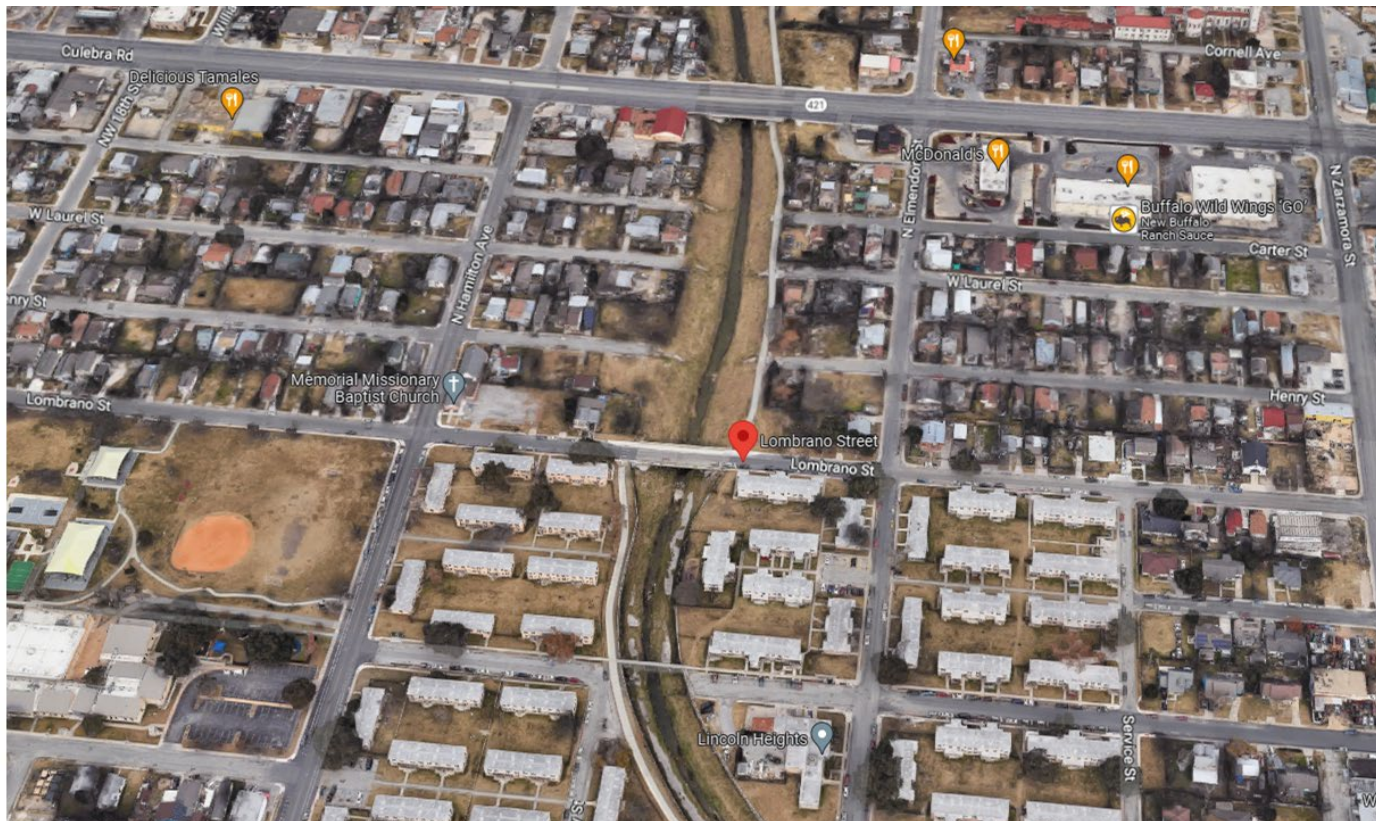


Figure 1 - Overview of Lincoln Heights Courts Community

(2) Officers’ G. Vallas (driver) and A. Rule (passenger) who were both assigned to unit # 7762 were parked in a hide position vicinity of 1202 Culobra Road. Officer Quintanilla was located with them in unit # 7776; both of the patrol units were black marked subdued SAPD vehicles, and all three officers were wearing standard SAPD uniforms. Ofc. Vallas had received information from another SAPD Officer that “...Johnson was being violent and always carried a gun.”³ All of the Officers were familiar with Johnson’s photograph and aware that he was known to carry a handgun.⁴

² See Sgt Pryde’s written statement given to Det. C. Ferguson on March 14th, 2023.

³ See Ofc G. Vallas written statement, given to Det. B. Rey on March 14, 2022.

⁴ See Ofc Vallas’ written statement supra, Ofc A Rule’s written statement given to Det. Martinez on March 14, 2022 and Ofc Quintanilla’s written statement given to Det. Duke on March 14, 2022.

(3) Both patrol units received the alert from SGT Pryde at 3:41pm and moved out of their hide position vicinity of the alley directly across from the McDonalds at Culebra and North Elmendorf, driving south on North Elmendorf towards Lombrano Street.

(4) Unit #7762 pauses at the intersection of North Elmendorf and Carter St; and then continues south approaching W. Laurel St. At 3:41:57pm, the dash cam video for the patrol unit captures a figure dressed in black riding on a bicycle, traveling north on Elmendorf towards the patrol unit. Ofc Vallas observed the figure on the bike, “...confirmed via radio with SGT Pryde how Johnson was wearing white shoes ... and was 100% positive the male riding towards us on the bike was Johnson.”⁵ As the two parties approached each other, Vallas turned on the flashing lights of his patrol unit at 3:42: 01pm to initiate the detention and affect Johnson’s arrest vicinity of the NE corner of the intersection Henry Street and North Elmendorf. See: [Dashcam Video Unit #7762](#). Officer Vallas observed “Johnson veered to the left side of my vehicle, the driver side of the vehicle. Johnson tried to get past us as I opened the driver door. Johnson dropped his bike near the front left corner of my vehicle and began running northbound. Ofc Rule and I began to chase Johnson on foot. During our chase, I saw Johnson actively reaching for his waistband, and at times it appeared he had both hands in his front waistband area Because of this and the information I received from the SAPD Officer that Johnson always carried a firearm I drew my issued firearm. As I continued to chase Johnson I thought to myself I needed to ensure I kept a safe distance from Johnson because I believed he was reaching for a gun.”⁶ Ofc Vallas’s BWC fell off of his uniform during his pursuit of Johnson. It was recovered after the incident on North Elmendorf with apparent vehicle damage.⁷



Figure 2 - Dashcam Video Unit #7762

(5) Ofc. Rule also recognized that it was Johnson riding the bike on Elmendorf Street as “ ... Kevin began pedaling faster to evade us. Officer Vallas and I opened our vehicle doors and yelled for Kevin to stop. Kevin fell off his bike and began to run north on Elmendorf. I ... began chasing him on foot ... Officer Vallas and I chased Kevin for approximately 2 blocks. I was yelling stop, police, and watch his hands because I know he carries a handgun. I could see Kevin was using his hands to hold up his pants and I believe to hold a handgun. Kevin ran westbound on W. Laurel before he reached Alazan Creek. Kevin jumped over a retaining wall and ran down to the creek. We were approximately 30 feet behind him at this point.”⁸ See: [Ofc Rule BWC](#).

⁵ See Vallas written statement supra.

⁶ Supra.

⁷ See Ofc Kavanaugh #1087 Written Report, and BWC Footage.

⁸ See Rule’s written statement supra.



Figure 3 - Quintanilla BWC of KJ on West Bank

(6) Officer Quintanilla also received SGT Pryde’s alert and “ ... moved in the direction of Officer’s Rule and Vallas. As I was traveling on Elmendorf I observed the wanted person running on foot from officers Rule and Vallas. The wanted person matched the description originally put out by SGT Prye. I turned on the street one block north [Carter Street] of where I observed the officers chasing the wanted person on foot to cut him off. I exited my vehicle and ran towards the creek and observed the wanted person running down the creek embankment. I

observed the wanted person crossing the creek on foot. The creek was about knee deep to the suspect. Officers Rule and Vallas were to my left and we were all three chasing the wanted person. As the wanted person made it across the creek and was making his way up the embankment, I observed a handgun in his right hand. I yelled “gun, gun” to notify Officers Rule and Vallas that the wanted person was armed. As the wanted person was running up the embankment he stumbled and fell forward. When he fell forward, he rotated to his right side and hit the ground. As the wanted person was attempting to get up, he faced our direction and pointed the handgun at us extending his right arm. Fearing for my safety as well as officers Rule and Vallas’ safety, I fired my city issued handgun at the wanted person multiple times. After the wanted person was thought to no longer be a threat, officers Elderkin and Babb approached the wanted person from the side of the creek the wanted person was on. As the officers approached, they kicked the wanted person’s handgun out of his reach and handcuffed him.”⁹ See [Ofc Quintanilla BWC](#).

(7) Officers Elderkin (driver) and Babb (passenger) were also assigned to the SCU and occupied SAPD patrol unit #7774. They monitored SGT Pryde’s initial alert and the updates from Officer Rule that Johnson was running north on Elmendorf, then west towards Alazan Creek, and Ofc Rule’s transmission that “... the suspect was reaching into his waist area grabbing what appeared to be a firearm.”¹⁰ Officers Elderkin and Babb dismounted from their patrol unit and ran north towards Johnson on the western bank of the Alazan Creek, and were the first personnel to make contact with Johnson after the shooting at 3:43:50pm. They secured a



Figure 4 - Ofc Babb retrieves handgun vic of Kevin Johnson

⁹ See Ofc Quintanilla’s written statement supra.

¹⁰ See Ofc Babb’s Report #SAPD22053083 - Offense/Incident Report, dated Mar 14, 2022 1600.

handgun found within his reach, handcuffed him and began to provide tactical first aid. See: [Ofc Babb BWC](#).

b. Uniformed Officers performed tactical first aid until relieved by Emergency Medical Services Personnel at 3:55pm. Simultaneous with the arrival of EMS, civilian on-lookers began to accumulate on the western bank of Alazan Creek requiring additional SAPD personnel to be assigned to protect the integrity of the crime scene and provide crowd control. EMS personnel declared Kevin Johnson deceased at 1558 hours.¹¹

c. SAPD Investigation. Detective Morales #2091 of SAPD Homicide was assigned as the lead investigator, assisted by Detective Goodwin #2322.

(1) Detective Morales arrived at the location and ensured that Officer's Rule, Vallas and Quintanilla were segregated and assigned cover officers. He also had the responsibility to ensure security was adequate to withstand a volatile crowd, protect the crime scene and the integrity of the investigation. Investigation identified a fact witness to the foot chase who was transported to Public Safety Headquarters to give a statement and surveillance video from her home security system.

(2) The body worn cameras of Officer's Rule and Quintanilla were downloaded and segregated. Officer Vallas' camera was recovered from North Elmendorf with visible damage, that made attempts to retrieve video unsuccessful.¹² The investigation determined that Officer Rule fired 11 rounds, Officer Vallas 10 rounds and Officer Quintanilla 7 rounds for a total of 28 rounds fired.

(3) The weapon recovered by Officer Babb within the immediate vicinity of Mr. Johnson was a Black Taurus G3 9x19 Pistol (SN: ABD448484) which was loaded with 17 live 9mm Luger rounds. Testing concluded that the weapon was in working order and the unfired rounds were suitable for use with the pistol.¹³ When the weapon was recovered the initial visual inspection revealed that one round was jammed in the gun slide and partially ejected. Gun Shot Residue Test Results concluded that "*...Kevin Donel Johnson may have discharged a firearm, handled a discharged*



Figure 5 - Jammed Round on the Taurus

¹¹ See Bexar County Medical Examiner's Office Investigative Report Case #22-00697 – Kevin Donel Johnson, dated 3/17/22.

¹² See Detective Morales' Investigations Supplement – 1 Report SAPD22053083, Aug 17, 2022, Ofc Vallas' BWC was recovered on North Elmendorf, and from visual inspection it appeared to have been run over by a motor vehicle. The investigation also addressed allegations from Mr. Johnson's family, that the weapon recovered by Officer Babb was planted at the crime scene. The family met and their attorney met with SAPD Officials on March 28, 2022 to view portions of the applicable BWC Video.

¹³ See Det. Morales' Investigations Supplement – 1 supra, and see Bexar County Criminal Investigation Laboratory Fire Arms Report CIL Case #: 22-01601, dated May 27, 2022.

firearm or was in close proximity to a discharging firearm.”¹⁴ The weapon was also swabbed to determine if it contained any DNA samples for comparison with Mr. Johnson’s genetic profile. The testing concluded that “...*there was insufficient quality/quantity of human DNA on the Taurus to develop a genetic profile suitable for forensic DNA comparisons.*”¹⁵ Ultimately this weapon had been reported stolen on December 29th, 2020.¹⁶ The investigation also discovered a video recorded by Mr. Johnson and posted on his social media pages. The video is time stamped “8:57” and it displays both the black Michael Kors backpack, which Mr. Johnson was wearing when he rode his bicycle past patrol unit #7762, and abandoned on North Elmendorf when he ran from Vallas and Rule and a black handgun with a silver slide which resembles the gun recovered near his body by Officer Babb. See: [Social Media Clip](#).

(4) On March 15, an autopsy was performed on Mr. Johnson’s body. The examination confirmed twelve gunshot wounds. The report concluded that he died as a result of multiple gunshot wounds, and that the manner of death was homicide.¹⁷

(5) The investigation was completed, and the case file submitted to the Civil Rights Division of the District Attorney’s Office on September 27th, 2022.

3. District Attorney Actions.

The case file was received by the District Attorney and the Civil Rights Division in October 2022. Mr. Johnson’s family met with the Civil Rights Division to view all of the evidence on March 29th, 2022, and again on July 21st, 2023. The file along with all accompanying photos, videos and reports were reviewed and evaluated in accordance with applicable Texas Law to determine whether a crime was committed.

Applicable Law.

a. Texas Penal Code.

(1) Chapter 9 Justification Excluding Criminal Responsibility chapter 9 of the code and all of its subchapters and sections provide the statutory basis to examine and assess an actor’s use of force and deadly force to determine whether criminal charges – for any use of force – are viable. **§ 9.02 Justification as a Defense** specifically states, “**It is a defense to prosecution that the conduct in question is justified under this chapter.**”

¹⁴ See Bexar County Criminal Investigation Laboratory Primer Gunshot Residue Report, CIL Case #: 22-01601, dated June 8, 2022. The same report concluded that “it is indeterminate if Officer G. Vallas discharged a firearm, handled a discharged firearm or was in close proximity to a discharging firearm.

¹⁵ See Bexar County Criminal Investigation Laboratory Forensic DNA Report CIL Case# 22-01601, dated May 2, 23022.

¹⁶ See Bexar County Sheriff’s Office SPEARS Incident Summary: BCS200258504 - Burglary of a Vehicle. The investigation also requested a gun trace for the Taurus which determined a match with shell casings recovered in SAPD 21/243828 on December 5th, 2021.

¹⁷ See Bexar County Criminal Investigation Laboratory Autopsy Report, Case No. 2022-0697, dated 15 Mar 2022 @ 9:45 am. Johnson was positively identified by fingerprint comparison.

(2) **§ 9.31 Self-Defense** a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.

(3) **§ 9.32 (a) (2) Deadly Force in Defense of Person** the use of deadly force is justified where the actor(s) reasonably believe that deadly force is immediately necessary to protect the actor(s) against another person's use or attempted use of unlawful deadly force.

(4) **§ 9.33 Defense of Third Person** a person is justified in using deadly force against another to protect a third person is justified if:

(A) ...under the circumstances as the actor **reasonably believes them to be**, the actor person would be justified under §§'s 9.31 and 9.32 in using deadly force to protect himself against the unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(B) The actor reasonably believes that his intervention is **immediately necessary** to protect the third person.

(5) **§ 9.51 Arrest and Search (a)** a peace officer ... is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest if:

(1) The peace officer reasonably believes the arrest is ... made under a **warrant** which the officer reasonably believes is valid; and

(2) Before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer ... unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

(c); A peace officer is justified in using deadly force against another when and to the degree the officer **reasonably believes** that deadly force is **immediately necessary** to make an **arrest** or prevent escape after arrest if the use of force would have been justified under subsection (a) and:

(1) The actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or.

(2) The actor reasonably believes there is a **substantial risk** that the person to be arrested will cause **death or serious bodily injury** to the actor or another if the arrest is delayed.

(e) There is **no duty to retreat** before using deadly force justified by section (c).

(6) **§ 19.02 (b) Murder.** A person commits murder if he **intentionally or knowingly** causes the death of an individual or with the intent to cause serious bodily injury, commits an act clearly dangerous to human life that causes the death of an individual.

(7) In addition to the statutory law above, Texas case law has expanded the body of legal justifications to address situations where an actor's reasonable belief is proven factually wrong¹⁸ referred to as the doctrine of "**Apparent Danger**". The Texas Pattern Jury Charge for Apparent Danger instructs jurors.

(A) When a person is attacked with unlawful deadly force, **or he reasonably believes he is under attack or attempted attack** with unlawful deadly force...

(B) ...and there is created in the mind of such person **a reasonable expectation or fear** of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, **viewed from his standpoint at the time** to protect himself from such attack or attempted attack...

(C) ...it is not necessary that there be an actual attack or attempted attack, as **a person has a right to defend his life from apparent danger as fully and to the same extent as he would, had the danger been real**, provided he acted upon a reasonable apprehension of danger...

(D) ...as it appeared to him from his standpoint at the time, and that he reasonably believed such deadly force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

(E) ...if you (the jury) have a reasonable doubt as to whether or not the defendant was acting in self-defense on said occasion and under the circumstances, **then you should give the defendant the benefit of that doubt and say by your verdict "not guilty"**.

b. Application of Law to Facts and Results of the Investigation.

(1) Officers from the SAPD Street Crimes Unit were executing an arrest warrant wherein they were directed to bring Kevin Donell Johnson before the magistrate of Bexar County for the felony offense of Felon in Possession of a Firearm.¹⁹ Officers were also aware that Johnson was known to carry a weapon and had previous convictions for the offenses of Assault on a Public Servant and Felony Evading Arrest. These facts; the warrant itself, the charge which was clearly stated in the warrant and Johnson's criminal history contributed to a heightened awareness on behalf of each officer that deadly force might be necessary to arrest Mr. Johnson and to prevent his escape from arrest. When Officers Rule and Vallas – both wearing SAPD uniforms, and riding in a marked SAPD with flashing lights, they identified themselves as law enforcement, attempting to place Johnson under arrest as ordered by the court. When

¹⁸ See *Valentine v. State*, 587 S.W. 2d 399, Tex. Court Crim. App, 1979.

¹⁹ See Warrant of Arrest CM096573 *supra*.

Mr. Johnson evaded their lawful efforts by riding past the driver's side of the patrol unit, and fled north, both officers followed. Both officers observed that Johnson ran while holding his pants with both hands which confirmed their previous information that Johnson was known to carry a firearm. Officer Rule responded by yelling "...watch his hands!", and Officer Vallas – who was ahead of Rule and closer to Johnson – responded by drawing his service weapon during the pursuit. At this point it was reasonable for each officer to believe that force would be immediately necessary to execute Johnson's arrest and to prevent his escape after arrest in accordance § 9.51 (a).

(2) As Mr. Johnson emerged from Alazan Creek and began to traverse up the western bank, the officers can see a black object in his right hand – which appears to resemble a gun and all three officers considered it to be a gun. The gun is clearly visible to Officer Quintanilla who was positioned to Mr. Johnson's right rear quadrant to the northeast. As Mr. Johnson stumbles up the west bank, he falls forward, rolling onto his right upper back, tucking his right arm – with the gun in his right hand – underneath his body. As Johnson completes the movement, rotating from his right side to being flat on his back, the gun, which is now visible to both Officer Rule and Quintanilla, is pointed in Quintanilla's direction. Rule and Quintanilla both yell "...GUN! GUN! GUN!..." At that point it was reasonable for all three officers to reasonably believe that deadly force was immediately necessary to execute Johnson's arrest and to prevent his escape from arrest in accordance with § 9.51(c)(2). It was also reasonable for Officer Quintanilla as an individual to believe that deadly force was immediately necessary to protect himself from Mr. Johnson's attempted use of unlawful deadly force towards him in accordance with § 9.32. Likewise, Officers' Rule and Vallas could each reasonably believe that their use of deadly force was immediately necessary to protect Officer Quintanilla from Mr. Johnson's attempted use of unlawful deadly force in accordance with § 9.33.

(3) In addition to the direct justifications that would preclude prosecution, were a case prosecuted under these facts, the State could reasonably expect the trial court to provide a written jury instruction that "... if you have a reasonable doubt as to whether or not the defendant was acting in self-defense on this occasion ... then you should give the defendant the benefit of that doubt and say by your verdict not guilty. It is doubtful that the State could overcome this instruction and secure a guilty verdict.

c. The above facts, statements of law and analysis were presented to the Bexar County Grand Jury on August 31st, 2023, and after deliberation, it declined to return a true bill of indictment. Although the Mr. Johnson died at the hands of Law Enforcement, that fact alone does not mean that an officer committed a crime. "Any officer's engagement with a person who presents a legitimate danger to himself, or others contributes to the ultimate outcome of that interaction, but if the officer's actions are appropriate and in accordance with their agencies' policy and applicable law, he or she is not presumed to have committed a crime, even if the eventual outcome is undesired."²⁰

²⁰ Report of the Tucson Sentinel Event Review Board (SERB) on the Deaths in custody of Mr. Damien Alvarado and Mr. Carlos Adrian Ingram-Lopez, Sep 18, 2020

Submitted by:



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Chief, Civil Rights Division

Approved by:



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