

ROB BONTA
Attorney General



State of California
DEPARTMENT OF JUSTICE

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May 11, 2022

Ben Nisenbaum
Law Offices of John L. Burris
Airport Corporate Centre
7677 Oakport St., Ste. 1120
Oakland, CA 94621

RE: Review of District Attorney's Decision Regarding Death of Agustin Gonzalez

Dear Mr. Nisenbaum:

This is in response to your request on behalf of the family that the Attorney General's Office review the November 15, 2018 shooting death of Agustin Gonzalez by Hayward Police Officers Phillip Wooley and Michael Clark. The Alameda County District Attorney had reviewed the matter and determined that criminal charges should not be filed against the officers.

Under California law, a District Attorney is given broad discretion to determine whether criminal charges are appropriate in a particular case because she is the official who has been elected by that County to act as its public prosecutor. When the Attorney General's Office agrees to review a District Attorney's decision not to file charges, we ask whether the District Attorney's Office abused its discretion under all the circumstances in the case. Our focus is on whether the District Attorney's decision not to file charges was reasonable based on the facts and the law.

In making crime-charging decisions, prosecutors must believe that the admissible evidence is of such convincing force that it would warrant a conviction of the crime charged by an objective fact finder beyond a reasonable doubt after hearing all of the evidence and considering the most reasonably foreseeable defenses. In this case, the Alameda County District Attorneys' Office did not believe a prosecution would result in a conviction.

We have carefully reviewed the investigative materials regarding the shooting, the District Attorney's Report on this fatal shooting, and your additional submissions. Based on that review and taking all of the circumstances into consideration, we cannot say that the Alameda County District Attorney's Office abused its discretion in declining to file criminal charges against Officer Wooley or Officer Clark.

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Our hearts go out to the Gonzalez family, including his mother and his two children, for their loss. Thank you for bringing this matter to our attention.

Sincerely,

A handwritten signature in black ink, reading "Geoffrey S. Lauter". The signature is written in a cursive, flowing style.

GEOFFREY S. LAUTER
Deputy Attorney General

For ROB BONTA
Attorney General