October 20, 2021

VIA EMAIL

U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505

Re: OSC File No. DI-21-000069, Response of [redacted]

Dear Ms. Bradley:

Ms. [redacted] appreciates the opportunity to respond to the delegated authority’s response for the Secretary of the Army (SA) to her Office of Special Counsel complaint. The evidence submitted by the Army supports Ms. [redacted] complaint that the Presidio of Monterey Police Department’s (hereinafter “POM PD”) Police Officers, employed as Army Civilian Federal Police subject to Army Regulation (AR) 190-56, are “arresting” civilians under the authority of California Penal Code 830.8; and have been doing so since before her employment of 22 November 2004.

Ms. [redacted] goal in raising these complaints through her chain of command and to the Office of Special Counsel was for the U.S. Army to seek and be granted the delegation authority required by Department of Defense policy, DODI 5525.13. Without such authority, officers making such arrests are placed at untenable risk, especially when a use of force is required; and civilian civil rights are being abridged. This also places convictions based on these arrests at risk.

Ms. [redacted] again seeks a remedy for this wrong of the US Army to be provided with such arrest delegation authority in compliance with Department of Defense policy and any necessary remedial measures taken to address the time periods when no such arrest authority existed.

A. Admissions by the Former Police Chief and Assistant Operations Officer Confirm POM PD Officers Are Making Arrests.

There are a number of admissions made within the statements of witnesses to the investigating officer for the U.S. Army that demonstrate that POM PD officers are making arrests of civilians, including statements from the former Chief of Police and CID Officer.
Chief [redacted] was a former Presidio of Monterey Police Chief from July 1, 2013 to October 27, 2015. Chief [redacted] testified as follows:

While I was the Police Chief from 01 July 2013 until on/or about 27 October 2015, under an agreement with the Monterey County District Attorney [redacted] POM officers arrested and processed civilian offenders within the military jurisdiction of POM. Apprehensions were made of active-duty military personnel.

Chief [redacted] confirmed that 10 U.S.C. Section 809 refers to military personnel, not civilians on Presidio of Monterey property. Chief [redacted] stated “that rule applies to military personnel.” [emphasis added]. Chief [redacted] further explained the legal differences between arresting civilians and apprehending military members was part of the training of officers and in the “POM PD SOP.”

Chief [redacted] described the job duties performed by POM PD officers when performing arrests of civilians. The “police arresting officer would process the suspect at the police department and transfer as soon as possible to the Monterey County Sheriff’s Office Jail in Salinas, California.” Chief [redacted] further testified there was no request for authority, pursuant to DODI 5525.13 to receive approval to use deputized law enforcement powers.

Chief [redacted] correctly identified that there are different sets of laws that apply when the person who is alleged to have committed a crime on Presidio of Monterey property is a member of the armed forces, versus when the individual is a civilian. Chief [redacted] stated that the Uniform Code of Military Justice applies to members of the military and does not apply to civilians. “While I had the honor of serving as the POM Police Chief, there was a signed, written agreement in place with the Monterey County District Attorney’s Office where the DA [redacted] agreed to process civilians arrested within the federal (concurrent) jurisdiction of POM in the Monterey County Courts. That agreement was in place when I assumed the position and when I departed. The term “arrest” with regards to military personnel is different than that of the arrest of a civilian, as described in 809.”

Chief [redacted] testimony is further confirmed by the following booking numbers of civilian suspects arrested by POM PD in the time period that Chief [redacted] served as the Chief of POM PD. There were at least 24 felony arrests by POM PD and 14 misdemeanor arrests, making a total of 38 arrests during Chief [redacted] tenure as the Chief of Police at Presidio of Monterey Police Department. See TAB 24, booking numbers:

**Misdemeanors**
1. FN1306188, 10 JUL 2013
2. FN1306993, 3 AUG 2013
3. FN1309376, 13 OCT 2013
4. FN1310276, 10 NOV 2013
5. FN1400817, 26 JAN 2014
6. FN1400843, 28 JAN 2014
7. FN1400928, 30 JAN 2014
8. FN1403195, 9 APR 2014
9. FN1403424, 16 APR 2014
The statement by [REDACTED], Deputy Chief of Police, TAB 4, succinctly stated the underlying reason why arrests by POM PD officers were occurring, rather than being performed by local (non-federal) police forces with concurrent jurisdiction. “Bottom line is this: We can’t call a cop to respond to incidents in our jurisdiction. The agencies around us are smaller than ours and grossly understaffed. Their primary responsibility is their jurisdiction...possessing this authority would solidify standing... and the advantages would definitely outweigh the disadvantages, in my opinion.” (TAB 4).

Mr. [REDACTED], Assistant Operations Officer for the 22d MP BN, supervisor of the Presidio of Monterey CID office (TAB 10) confirmed Ms. [REDACTED] complaints that POM PD officers were arresting civilians and that he informed her this violated Department of Defense policy.

Many years ago during a review of a CID case, I noted in the case file the Presidio of Monterey Department of Army Police arrested the suspect in the case, transported the suspect to the local county jail for booking and then completed felony arrest documents
for the arrest. It was also noted the incident occurred within concurrent jurisdictional area and there was no civilian police involvement with the arrest or investigation. I found this unusual and asked the Special Agent-in-Charge about it and he related the Presidio of Monterey Department of the Army Police have stated in the past they are recognized California Peace Officers by the state of California and they exercise that authority to make arrests. Shortly thereafter I had a discussion with Ms. [redacted] wherein she ask [sic] about the arrest authority utilized by Presidio of Monterey Department of the Army Police and I informed her they may be in possible violation of DoD and Army policy by exercising authority granted by the state of California without the Secretary of the Army approval. Ms. [redacted] requested any documents stating such policy and I subsequently provided her both the DoD and Army policy. I believe I provided her with DoDI 55525-13, AR 190-56 and a copy of an OTJAG opinion memo pertaining to Department of Army Police Authority.

Assistant Operations Officer for the 22d MP BN, supervisor of the Presidio of Monterey CID office (TAB 10).

This is not the first case involving POMPD arresting a civilian within Army CID’s investigative purview. POMPD Police Report 00499-2018-MPC036, dated 12 AUG 2018, noted an arrest with four felonies (Cal. Penal Code Secs. 261.5, 288(a)(b)(2), 286(b)(2), and Health and Safety Code Sec. 11361(b), related to allegations of rape, oral copulation, sodomy, furnishing illegal drugs to a minor, and two misdemeanor charges, Monterey County Jail booking Number 1807639, State Court Record 18CR007673, subject plead guilty in arraignment. The civilian subject arrested in this case was represented by the Public Defender’s Office. See Exhibit A, attached Probable Cause record of the Superior Court of California, County of Monterey redacted of identifying information, and court record of case.

Officers interviewed described the duties they currently perform, the content of which verifies that civilians are being arrested by POM PD officers and then brought to county jail, exactly as testified by Chief [redacted] and Mr. [redacted], Assistant Operations Officer for the 22d MP BN, supervisor of the Presidio of Monterey CID office.

a traffic Collision Investigator (TAB 7), while using the term “apprehend” details that most of the calls for service that he receives “mainly involve the civilian populace that reside on Ord Military Community Jurisdiction and La Mesa Village.” Officer describes:

If we respond to a call for service at a residence of a civilian, the Watch Commander notifies Seaside Police Department and asks them if they would like to assume the case as we are under concurrent jurisdiction with the Seaside Police Department. Seaside Police Department usually says no and we continue with the investigation. Upon completing the investigation, the Watch Commander and the officer conducting the investigation determine to cite and release the suspect or to transport the suspect to Monterey County Jail to be turned over.

1 Ms. [redacted], as set forth in her reports to the OSC and in the AR 15-6 investigation, confirms these statements were made to her by Mr. [redacted].
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Id. at TAB 7.

Officer testimony that POM PD officers solely “apprehend” civilians is belied by documents provided by Ms. to the investigating officer. On January 5, 2021, at 13:31 hours there was an arrest for California Vehicle Code section 23152, POMP Case Number 00010-2021-MPC036, in which Officer is shown as the arresting officer.

On November 11, 2020, at 07:05 hours an arrest for California Penal Code Section 273.5 Felony Corporal Injury on a Spouse, POMP Case Number 00466-2020-MPC036. The supervisor who approved the report is Lieutenant Watch Commander interviewed at TAB 9. The police report uses the word apprehend however Officer made a Probable Cause declaration as the arresting officer as shown in TAB 23. The importance of the Probable Cause declaration is that officers must submit under penalty of perjury that they are the arresting police officer and arresting agency. Thus, for each case where a POM PD provides a probable cause declaration, for which there are hundreds over time, they are verifying under penalty of perjury that POM PD officers arrest civilians.

Since Officer statement to the investigating officer, he has arrested four additional persons, case numbers 00440-2021-MPC036 dated 16 APR 21; Case No. 00298-2021-MPC036 dated 18 JUN 21; Case No. 00501-2021-MPC036 dated 20 JUN 21; Case No. 00440-2021-MPC036 dated 21 AUG 21. This is information is available at POM PD and through Superior Court of California, County of Monterey court records.

Officer (TAB 8) further described being asked to use the term “apprehend” and not “arrest” in reports. However, review of Officer testimony makes clear solely POM PD is arresting civilians.

Officer testified:

Every police report in which an individual is apprehended is reviewed by the Desk Sergeant and Watch Commander. If a POM Police Officer were to use the verbiage, “Arrest” in a police report, the report would be rejected, and sent back to the police officer for correction. The correct verbiage would be, “Apprehended.”

Officer then described at length the duties he performs. He described being called of service or “on-view criminal activity.”

The officer must determine all elements of the crime have been completed by the offender… the officer would them [sic] handcuff the subject.” The officer would “conduct a search of the person” for “weapons or contraband.” “The subject may or may not be admonished of their Miranda Rights or Article 31 Rights, depending on if the subject will be interrogated prior to lodging in the county jail. The subject is then placed in the back of the patrol vehicle and seat belted for their safety… Often times [sic] the subject is transported to the POM Police Department for processing prior to being transported to the Monterey County Jail for lodging…. The police officer then removes the subject from the back of the patrol vehicle and escorts them to the entrance of the building, where they are admonished verbatim a statement asking them if they
have any weapons or contraband concealed on their person, not previously
discovered…. The subject is escorted inside the detention cell area…. If they are
cooperative, and the officer fingerprints the subject and completes necessary paperwork
prior to transporting the subject to the Monterey County Jail for lodging.

*Id.*

Officer then recounts handcuffing the “subject” again, taking the subject’s
personal property and bringing the suspect to the Monterey County Jail. Officer described waiting for “booking officers (deputies) at the intake section of the jail to approach
the officers and the POM Police Officer escorts the subject into the intake area of the Jail, with
the Monterey County Sherriff’s deputies.” In short, Officer describes an arrest of a
civilian, where POM PD officers take all steps related to the arrest (not any other law
enforcement agency), including notifying the civilian suspect of their legal rights, handcuffing
the civilian suspect, transporting in a police vehicle, fingerprinting the civilian suspect, taking
the civilian’s personal property and finally placing the civilian at the county jail. Nowhere in
the statement of job duties is a description of a short detention and hand off to another non-
federal police force for the arrest. See TAB 8.

As Ms. described, and as confirmed by Chief of Police and Mr. Assistant Operations Officer for the 22d MP BN, supervisor of the Presidio of Monterey CID office, these are the same job duties that have been performed by officers at POM PD, for decades, including during the time frame that Chief of Police admitted that officers were arresting civilians. The sole difference is that administration of POM PD has coached officers to not use the term “arrest,” but to instead use the term “apprehend” with no other meaningful differences in what is actually accruing on a daily basis at the POM PD.

Indeed, had the investigative officer performed a POMPDM Records Check at the Army Crime Records Center Quantico, Virginia of POMPD Police Reports dating prior to October 2020, back to Ms. pre-employment, said search would have shown civilians as “arrested” in the police reports verses the now coached verbiage of “apprehension” used in today’s POM PD’s reports.

Further, the Operations Officer for the Presidio of Monterey Police Department (TAB 11) recounted efforts stretching back to 1989 to seek depatization status including through the United States Marshals Service, the Chief of Police, Captains and other representatives, but no such status was ever obtained. “Although there were numerous internal discussions within the department since 1989, the aforementioned actions are the only ones I recall that made it outside of the organization to a higher level of review. The bottom line that I am aware, is that no law enforcement deputation was approved.” See TAB 11.

**B. Officers are Concerned of Retaliation and Harm to the Department If they Provide Truthful Testimony.**

The investigating officer included at TAB 12 a “Memorandum for Record,” dated January 22, 2021. It stated that the investigating officer interviewed a witness on January 19, 2021, and the witness subsequently indicated that he did not wish to be a part of the investigation. The investigating officer stated that he was informed by legal counsel for the Army to not include the interview that he already conducted in the investigatory report. No
legal authority was provided to omit the testimony of the witness that was already recorded by the investigating officer.

The reasoning for the failure to include this testimony became apparent. Ms. [redacted] received a text message on her personal cell phone on January 21, 2021 at 1:00 pm from the witness. The witness texted the following:

[redacted] after speaking with Mr. [redacted] I came to the realization that he is not the OSC as you pointed out. He is part of Garrison. He may have been tasked by higher to do this investigation but he is still not an OSC investigator which matters.

In my time at POM, I have seen this too many times where Garrison is involved and the outcomes are relatively the same-nothing significant comes out of it because of the establishment/so called leaders do not want to disrupt the norm or simply don’t want to deal with it. You and I know that they do not want to entertain change. It’s easier to maintain status quo. I am referencing those in positions higher than the chief.

It seems the chief has little support still... I have concluded, based upon the specific questioning of whether POM PD had authority to make arrests, that POM was not specifically authorized by statute to do so. WE all knew that. Hence, the reason for suggesting deputization and debating the issue many times with JAG as you have too. To me it is very questionable whether DA has PCA authority over DACPs. I SENSE THIS ISSUE COULD POTENTIALLY HARM THE CHIEF AND I DON’T WANT TO DO THAT AND WON'T. His predecessors refused to address the same issue but there was no real consequence for not doing that. That involves the DES’ and DGCs. Moreover, I am no longer employed there and I rightfully think I really don’t have any influence in this matter anymore after carefully reconsidering the scope of this inquiry. Having said all of the above, I honestly do not trust the process or the people involved (not you, [redacted] I trust you but not them) with this inquiry. After speaking with Mr. [redacted] and going through some of the Q&A, I have decided to withdraw from participating further in this investigative process as a witness. I have a strong conviction about this and sincerely do not feel led to continue.

This text message is attached as Exhibit B for your consideration.

Other witnesses simply refused to cooperate. (TAB 12). This makes clear that officers, even former officers, are concerned about retaliation and harm to the current Chief of Police and police department and have a “distrust of the process and people involved” such that truthful testimony is being withheld that supports that POM PD is arresting civilians without legal authority.

C. Department of Defense Reclassification Decision Ruled POM PD Officers Do Not Have Arrest Authority; the U.S. Army has not Appealed this Decision.

Ms. [redacted] position was reclassified in 2017 from a GS-1811 position to a GS-0083 position. Ms. [redacted] appealed the decision to reclassify her position. The Department of
Defense issued a ruling regarding Ms. appeal, upholding the decision. See TAB 28, page 5. The decision states that there is a requirement for “statutory arrest authority or deputization,” which Presidio of Monterey Police Department “does not” possess. Id.

The appeal decision further states, “[t]he agency is responsible for ensuring that its employees do not assume or exercise authorities that are not specially permitted by relevant statute and DOD policy as described by AR 190-56.” The Department of Defense appeal decision states on page 2, “[t]he agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with the decision.” (Emphasis added).

Therefore, the Department of Defense has already determined that POM PD did not have statutory arrest authority, or otherwise had such delegated authority. In light of this finding, the decision directed that POM PD must review its classifications to “ensure consistency with the decision.” Rather than seek delegation authority or otherwise comply with the directives of the Department of Defense decision, POM PD has simply ignored the appeal decision, except as it relates to Ms. a whistleblower. POM PD continues to hire officers in the same classification that the Department of Defense has already ruled there was no arrest authority and therefore, the position needed to be reclassified. The last such hirings by POM PD have occurred as late as 2021. Meanwhile, Ms. is directed to continue to perform the same job duties, albeit at a lower pay and benefits, in a reclassification of one whistleblower.

Given this decision, Ms. was concerned that she and others were unlawfully arresting civilians. She reported that this practice continues to the present, that POM PD was violating Department Defense policy and procedures and violating the civil rights of civilians.

Ms. further reported her concerns that POM PD officers were being put in an untenable situation, placing them at physical and legal risk by continuing to require POM PD officers to perform arrests of civilians, when Department of Defense had already indicated POM PD officers had no such authority, and furthermore never had such authority.

Ms. further reported that civilians who engaged in serious violations of criminal law and were convicted based on the arrests by POM PD officers, that these convictions could be affected and possibly overturned. Ms. as a decorated veteran and law enforcement officer, also felt compelled to report violations of law and policy, as she understood

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was her legal and ethical duty. For these reasons, Ms. explained, she raised concerns through her chain of command to the highest levels and thereafter to the OSC.

Despite these reports, and in direct contravention to the Dept. of Defense reclassification decision, no action has been taken to address the fact that POM PD officers do not have statutory arrest authority and no delegation of such authority has been provided by the Secretary of Defense. Ms. asked her immediate chain of command at the Presidio of Monterey for assistance to understand how it is that she the only person reclassified to a non-police GS position when the entire POM PD police officers are in the same position GS-0083 and remain in their GS-0083 position. The responses she has received were, “I do not understand your situation,” “they just want you out of here,” “its retaliation for trying to get the department deputized” and “it’s appalling but its higher than me.”

The AR 15-6 investigation notably failed to address the Department of Defense classification decision in any way. This is despite the fact that Ms. provided testimony about the decision, provided the decision as evidence, and her entire chain of command was made aware of the Department of Defense decision. Again, the U.S. Army pretends as if the decision, which directly belies the legal positions taken before the OSC, does not exist.

D. Public Records Demonstrate Arrests of Civilians are Continuing to Occur by POM PD Officers.

Ms. provided records demonstrating that POM PD officers are performing arrests and are testifying in Court as the arresting officer that span at least a sixteen-year period. Ms. provided these records, which were included in the AR 15-6 report at TABS 23-25, that demonstrates Superior Court of California, Monterey County, Probable Cause documents of arrests that lists the arresting officer as a Presidio of Monterey Police Officer by name; and lists the Arresting Agency as the Presidio of Monterey Police Department; and Police Report Number as 00010-2021-MPC036 which is a Presidio of Monterey Police Report Number.

Notably, as late as October 4, 2021, records of arrests list the “arresting officer” as a “POM PD”, in this instance Officer with his badge number related to violations of the California penal code for domestic violence and possession of a false ID. Similarly, the Superior Court of California, in its records regarding probable cause listed the Officer’s name as and the “Arresting Agency: Presidio of Monterey Police Department.” The records further indicate the status as “submitted to judge.” These records in redacted form are provided as Exhibit C.

There are many cases in which civilians are subjects investigated for crimes committed in the Presidio of Monterey jurisdiction that are prosecuted without arrest. These cases generally are done by the POM PD investigations section and submitted to the County District Attorney. The Department of Defense also requires SECDEF approval in getting civilian search warrants. A current case in which a POM PD police officer obtained a state approved search warrant

3 TABS 23-25 to the AR 15-6 were initially provided by Ms. as exhibits to her statement to the investigator. Inexplicably, these exhibits were detached from Ms. statement and included without explanation as TABS 23-25.
TAB 30 are documents related to a Pitchess motion request (and other emails regarding arrests) for arresting officer records that were made in the Superior Court of California. The motion related to a complaint for excessive use of force. It was received by the United States Army Installation Management Command responsible for the day-to-day management of Army Installations around the Globe. The Commander is a 3-star General. The motion was also received by the Presidio of Monterey Deputy Garrison Commander [Redacted], and the County Public Defender’s Office of Monterey County. The “arrest” in question was in relationship to POM PD Police Report Number 00111-2017-MPC036. TAB 30 shows “two civilian subjects arrested” by POM PD Police Officers. The Complainant was then assigned as the internal investigating officer who conducted the administrative investigation, acquired the anonymous letter from the DGC Mr. [Redacted] and reported the findings to the POM PD Chief of Police and the Monterey County District Attorney Office, D.D.A [Redacted]. The District Attorney’s interest was related to if there was a Brady issue on truthfulness (Brady vs. Maryland). Brady addresses evidence affecting the credibility of the police officer as a witness may be exculpatory evidence and should be given to the defense during discovery. (TAB 30, August 21, 2017, email Subject: RE: SUSPENCE 21 AUG 2017: Pitchess Motion for Discovery).

The questions asked in the investigation by the U.S. Army investigating officer were not crafted to get to the factual heart of the matter. Rather, the questions were conclusory and slanted with a particular result clearly intended. Witnesses were notably not asked about public records where POM PD is listed as the arresting agency and POM PD officers as the arresting officers. No effort was taken to address in any manner the many public records submitted to the Superior Court of California designating POM PD as the arresting agency. No actions were taken to address the probable cause declarations that specify under penalty of perjury that POM PD officers were the arresting officers and POM PD is the arresting agency. (TABS 23-26, 30)

No witnesses from the District Attorney’s Office, Sheriff’s Office, the Public Defender’s Office, arrested civilians by POM PD, or any review of public records which plainly set forth that POM PD effectuated arrest of civilians was undertaken. Especially given that Ms. [Redacted] provided many of these records, along with a spreadsheet of all Presidio of Monterey Police Department’s arrest records since July 2004 (TABS 23-25), this omission is glaring.

Further, no effort was taken to corroborate or rebut evidence Ms. [Redacted] provided that Presidio of Monterey Police Officers have testified under oath as investigating and arresting police officers before the Superior Court of California. Had these records not corroborated Ms. [Redacted] complaint, it would have greatly strengthened the U.S. Army’s position that there is no violation of law and policy. The failure to examine this critical evidence, which is dispositive in and of itself, certainly does not demonstrate a thorough, neutral investigation. (TABS 23-25, 30).
While the Department of Army provided at TAB 19 a memorandum dated December 13, 2020, that purports to state that civilians are not subject to arrest. However, this document created by the Staff Judge Advocate is dated after Ms. made her complaint to the OSC and fails to address the actual practices at POM PD, and public records dated after December 13, 2020, that lists POM PD officers as “arresting officers” and POM PD as the arresting agency.

The AR 15-6 report inaccurately concludes that POMPD officers “cannot” themselves effect an arrest. This is again artful wording, that is not reflective of the facts. POM PD budgets and pays for each police officer to attend a California State Penal Code 832 training, as a requirement of his/her position. The training teaches police officers how to perform arrests and control of civilian suspects, to effect an arrest by themselves under California law. POM PD officers, after attending California State Penal Code Sec. 832 training, return to POM PD and, as a factual matter, arrest civilians within the course and scope of their employment on a regular basis. These arrests are of civilians, and based on state law, where the prosecutions occur in state court.

Further, the Presidio of Monterey Police Department Standard Operating Procedures regarding “Use of Force,” dated June 2, 2021, contains a section entitled, “Use of Force to Effect an Arrest” and cites California law, Penal Code Sec. 835a. The policy states,

Any peace officer may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835a).

See Exhibit D, attached. This policy, implemented by POM PD in 2021, accurately recognizes that POM PD officers are arresting individuals and are faced with circumstances where the use of force, from verbal persuasion to deadly force, may be required as a part of their job duties.

In closing, the men and women employed at the Presidio of Monterey Police Department as Police Officers have been performing law enforcement duties outside the scope of Army and DOD policies for well over two decades — through no fault of their own. These officers have acted in good faith and done the best they can in order to perform their job duties, per the directives of the US Army and Agency Staff Judge Advocate (SJA) opinions. Ms. has the utmost respect for the position as a public Law Enforcement Officer and for the men and women doing this difficult work. She desires that the US Army recognize in this complaint the actual work performed by POM PD officers and afford them the proper dignity and respect they deserve by ensuring they can proceed to perform their important public safety work with proper legal authority. POM PD current practices are not in compliance with Department of Defense policy. It is up to those in higher ranking positions that affect policy to seek and obtain the proper delegation of authority from the Secretary of Defense.

Ms. asks that all necessary action be taken to ensure that POM PD officers are not placed in harm’s way and civilian civil rights are honored.
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We appreciate your consideration of these important issues.

Sincerely,

LAW OFFICES OF WENDY MUSELL

Wendy Musell
Exhibit A
During a vehicle check at Lower Presidio Historic Park, subjects identified as 22 y.o. [redacted] and 15 y.o. Jane Doe were found holding each other while asleep in the bed of a pickup. A marijuana pipe containing burnt residue and an alcohol container were observed in plain view in the immediate area of the subjects. [redacted] admitted to possessing a large quantity of marijuana, which was stored in a backpack within arm’s reach of both subjects. [redacted] consented to a search of his vehicle, revealing 8.5 ounces of marijuana in the truck bed and several bags and mason jars containing various small amounts of marijuana and an open alcohol container in the cab. Under Miranda, [redacted] admitted to purchasing alcohol for Doe and consuming alcohol and marijuana with Doe at Del Monte Beach the prior evening. [redacted] described his relationship to Doe as consensually sexual, in which they engaged in vaginal, anal or oral sex approximately 3-4 times per week for the last 3 months. [redacted] explained Doe would lie to her mother to visit him and [redacted] would drive Doe to secluded locations where he believed law enforcement would not locate him, while they engaged in sexual acts. [redacted] said he was aware of Doe’s age and had been physically attracted to her since she was 10 years old.
The People of the State of California vs. [Redacted]

CASE INFORMATION

Case Type: Felony
Case Number: 18CR007673
Filing Date: 8/14/2018
Case Status: Closed

Parties

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Attorneys

[Redacted]

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8/21/2018  Advised of Charges and Direct Consequences of Plea
8/21/2018  Right to Confront and Cross Examine Witnesses Waived
8/21/2018  Right to Trial by Jury Waived
8/21/2018  Privilege Against Self-Incrimination Waived
8/21/2018  Court Finds Plea Knowledgeable, Intelligent, Voluntary
8/21/2018  Conviction Certified by Clerk of The Court
8/21/2018  Defendant Referred to Probation for Pre-Sentence Report
9/11/2018  Report
9/18/2018  Minute Order
9/18/2018  Hearing: Sentencing Held
9/18/2018  Report: Probation Officer (Adult)
10/16/2018 Minute Order
10/30/2018 Minute Order
10/30/2018 In Custody - Jail
11/1/2018 Minute Order
11/1/2018 OR Release
11/15/2018 Minute Order
12/13/2018 Referred to Monterey County Revenue Division
1/10/2019 Minute Order
4/16/2019 Minute Order
6/13/2019 Minute Order
7/16/2019 Minute Order
9/17/2019 Minute Order
12/17/2019 Minute Order
1/16/2020 Minute Order
1/17/2020 Petition: Violation of Probation
1/17/2020 Not in Custody
2/13/2020 Memorandum
2/13/2020 Warrant: Ordered
2/13/2020 Minute Order
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<td>2/20/2020</td>
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<td>5/11/2020</td>
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### HEARINGS

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<td>8:30AM</td>
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### ARREST INFORMATION

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### CHARGES, DISPOSITIONS & PLEAS

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WARRANTS

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RELATED CASES

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<th>Case Number</th>
<th>Description</th>
<th>Comments</th>
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</table>
No data available in table
To: [Redacted]

Thu, Jan 21, 1:00 PM

After speaking with Mr. [Redacted], I came to the realization that he is not the OSC as you pointed out. He is part of Garrison. He may have been tasked by higher to do this investigation but he is still not an OSC investigator which matters. In my time at POM, I have seen this too many times where Garrison is involved and the outcomes are relatively the same—nothing significant comes of it because of the establishment/so called leaders do not want to disrupt the norm or simply don't want to deal with it. You and I know that they do not want to entertain change. It's easier...
entertain change. It's easier to maintain status quo. I am referencing those in positions higher than the chief. It seems the chief has little support still. I have concluded, based upon the specific questioning of whether POM PD had authority to make arrests, that POM was not specifically authorized by statute to do so. We all knew that. Hence, the reason for suggesting deputization and debating the issue many times with JAG as you have too. To me it is very questionable whether DA has PCA authority over DACPs.

I SENSE THIS ISSUE COULD POTENTIALLY HARM THE CHIEF AND I DON'T WANT
To: [Redacted]

CHIEF AND I DON'T WANT TO DO THAT AND WON'T. His predecessors refused to address the same issue but there was no real consequence for not doing that. That includes the DES' and DGCs. Moreover, I am no longer employed there and I rightfully think I really don't have any influence in this matter anymore after carefully reconsidering the scope of this inquiry. Having said all of the above, I honestly do not trust the process or the people involved (not you [Redacted] I trust you but not them) with this inquiry. After speaking with Mr. [Redacted] and going through some of the Q&A, I have decided to withdraw from...
to: [redacted]

and DGCs. Moreover, I am no longer employed there and I rightfully think I really don't have any influence in this matter anymore after carefully reconsidering the scope of this inquiry. Having said all of the above, I honestly do not trust the process or the people involved (not you, [redacted] I trust you but not them) with this inquiry. After speaking with Mr. [redacted] and going through some of the Q&A, I have decided to withdraw from participating further in this investigative process as a witness. I have a strong conviction about this and sincerely do not feel led to continue.
Exhibit C
Probable Cause Details

General Information
Arrestee Name
Arrest Date & Time 10/04/2021 13:30
County Booking Number

Arrestee Date of Birth
Expiration Date & Time 10/06/2021 13:30
Agency Case Number 0522-2021

Transaction Log

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<td></td>
<td>PCO CREATED BY SUBMITTED OFFICER</td>
</tr>
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<td>PCO SUBMITTED FOR JUDICIAL REVIEW</td>
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Booking Charges

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<td>PC273.5(a) - Inflict Corporal Injury On Spouse/Cohabitant</td>
<td>Felony</td>
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Probable Cause Narrative

Facts establishing elements of offense(s) and identification of arrestee as perpetrator.

[Redacted]... into a physical domestic with her husband. [Redacted]... scratched the victim and struck him on the head with a china incense burner. Victim received scratches to his face and bump on his head. Victim lodged in M.C. Jail.

Officer Signature

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief and that this declaration was executed in Monterey County, California, on 10/4/2021 4:39:52 PM.

Booking Officer

Name: [Redacted] Position: Police Officer
Phone Number: [Redacted] Email: [Redacted]clv@mail.mil

Agency Liaison

Name: [Redacted] Phone Number: [Redacted] Email: [Redacted]clv@mail.mil
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<th>Section</th>
<th>Counts</th>
<th>Description</th>
<th>Code</th>
<th>Section</th>
<th>Counts</th>
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<td>1</td>
<td>DOMESTIC VIOLENCE</td>
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<td>PC</td>
<td>470b</td>
<td>1</td>
<td>POSSESSION OF FAKE ID</td>
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Firearm Used? Yes: _No:_
********** VICTIM NOTIFICATION **********
(To be completed by Arresting Agency/Victim)

TO THE VICTIM:

UPON RELEASE OF THE ARRESTEE, A GOOD FAITH EFFORT SHALL BE MADE TO NOTIFY YOU.

[ ] NOTIFICATION OF CONDITIONAL RELEASE RESTRAINING ORDER
The person arrested was charged with Penal Code 243(e)(1) or Penal Code 273.5. As a condition of release from jail, the arrestee cannot contact, molest, attack, strike, threaten, sexually assault, batter, telephone, or otherwise harass or disturb your peace. The arrestee must also stay 100 yards away from you, your home, and your work place. This Conditional Release Restraining Order will end on the date of the arrestee's arraignment. You may wish to consult an attorney about obtaining a permanent court restraining order.

[ ] NOTIFICATION OF EMERGENCY PROTECTIVE ORDER
The court has issued an Emergency protective Order. This Emergency Protective Order will end on the date stated in the order. You may wish to consult an attorney about obtaining a permanent court restraining order.

[ ] THERE IS NO CURRENT RESTRAINING ORDER IN EFFECT. You may wish to consult an attorney about obtaining one.

********** ATTEMPT TO CONTACT VICTIM UPON RELEASE OF ARRESTEE **********
(To be completed by Jail Staff of Agency Releasing the Arrestee)

TELEPHONE NOTIFICATION SHALL BE ATTEMPTED AS follows:

AT TIME OF RELEASE: Attempt to contact the victim at all listed telephone numbers. Log all attempts. If no contact is made, wait 15 minutes and try again.

AFTER 15 MINUTES: Repeat attempt to contact the victim at all listed telephone numbers. Log all attempts. If no contact is made, immediately contact arresting agency. Log contact with arresting agency.

At release:

<table>
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<tr>
<th>Telephone # Dialed</th>
<th>Date/Time</th>
<th>Name of Person Contacted</th>
<th>Signature</th>
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After 15 min.:

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<th>Telephone # Dialed</th>
<th>Date/Time</th>
<th>Name of Person Contacted</th>
<th>Signature</th>
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Arrest Agency:

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<th>Telephone # Dialed</th>
<th>Date/Time</th>
<th>Name of Person Contacted</th>
<th>Signature</th>
</tr>
</thead>
</table>

(3rd call if arrest agency is releasing)

Pink = Jail (County/Releasing Agency)
Yellow = Arresting Officer

Victim Notification - 04/08/97
Exhibit D
1. REFERENCES

   a. AR 190-14, Carrying of Firearms and Use of Force for Law Enforcement and Security Duties, 12 March 1993
   
   b. United States Code (USC) 2003
   
   c. FM 3-39, Military Police Operations, 9 April 2019
   
   d. ATP 3-39.10, Police Operations, 26 January 2015
   

2. PURPOSE. This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

3. DEFINITIONS

   a. Deadly force - Force reasonably anticipated and intended to create a substantial likelihood of causing death or very serious injury.

   b. Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed or restrained.

   c. Restraint - A reportable use of force is force resulting in more than momentary discomfort, such as from a control hold, or the application of handcuffs.
4. POLICY

a. The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

b. Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

c. The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

5. DUTY TO INTERCEDE. Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

6. USE OF FORCE

a. Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

b. The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.

c. Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

d. It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.
e. While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

7. DEGREE OF FORCE. The degree of force authorized in each instance must be weighed against the gravity of the offense and the circumstances involved. The following list of measures for use of force is to be used as the situation dictates, and are presented in the order of force escalation (IAW AR 190-14). It is NOT required that each step be used, depending on articulable facts:

a. Verbal persuasion

b. Presence of additional police/security personnel

c. Unarmed defensive tactics/control holds

d. TASER X26 Electronic Control Weapon

e. OC pepper spray

f. Expandable Baton or Straight Baton

g. Presentation of deadly force capability. Presenting a firearm may halt actions of adversaries without the necessity to escalate to deadly force.

h. Deadly force

8. USE OF FORCE TO EFFECT AN ARREST. Any peace officer may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835a).

9. FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE. When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

a. Immediacy and severity of the threat to officers or others.

b. The conduct of the individual being confronted, as reasonably perceived by the officer at the time.

c. Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, and the number of officers available vs. subjects).
d. The effects of drugs or alcohol.

e. Subject's mental state or capacity.

f. Proximity of weapons or dangerous improvised devices.

g. The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.

h. The availability of other options and their possible effectiveness.

i. Seriousness of the suspected offense or reason for contact with the individual.

j. Training and experience of the officer.

k. Potential for injury to officers, suspects and others.

l. Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.

m. The risk and reasonably foreseeable consequences of escape.

n. The apparent need for immediate control of the subject or a prompt resolution of the situation.

o. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.

p. Prior contacts with the subject or awareness of any propensity for violence.

q. Any other exigent circumstances.

10. PAIN COMPLIANCE TECHNIQUES

a. Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

   (1) The degree to which the application of the technique may be controlled given the level of resistance.

   (2) Whether the person can comply with the direction or orders of the officer.

   (3) Whether the person has been given sufficient opportunity to comply.

b. The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.
11. USE OF FORCE TO SEIZE EVIDENCE. In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, officers are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, officers should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted.

12. DEADLY FORCE APPLICATIONS

   a. Use of deadly force is justified in the following circumstances:

      (1) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.

      (2) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

   b. Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

      (1) The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.

      (2) The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

   c. To protect property critical of national security when necessary to prevent:

      (1) Actual theft, damage or espionage aimed at property or information specifically designated as vital to national security or compromise would seriously jeopardize the fulfillment of a national defense mission.

      (2) To prevent the escape of a dangerous prisoner, when probable cause dictates deadly force reasonably appears to be necessary to prevent serious bodily harm to others IAW AR-190-14.

      (3) To prevent theft of property (such as operable weapons or ammunition) that, in the hands of an authorized person, presents a threat of death or serious bodily harm to others.
13. REPORTING THE USE OF FORCE. Any reportable use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

14. NOTIFICATION TO SUPERVISORS. Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

   a. The application caused a visible injury.
   
   b. The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
   
   c. The individual subjected to the force complained of injury or continuing pain.
   
   d. The individual indicates intent to pursue litigation.
   
   e. Any application of a TASER device or control device.
   
   f. Any application of a restraint device other than handcuffs, shackles or belly chains.
   
   g. The individual subjected to the force was rendered unconscious.
   
   h. An individual was struck or kicked.
   
   i. An individual alleges any of the above has occurred.

15. MEDICAL CONSIDERATION

   a. Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

   b. Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.
c. The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

d. Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

16. SUPERVISOR RESPONSIBILITY

a. When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

   (1) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

   (2) Ensure that any injured parties are examined and treated.

b. When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:

   (1) The content of the interview should not be summarized or included in any related criminal charges.

   (2) The fact that a recorded interview was conducted should be documented in a property or other report.

   (3) The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

   (4) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.

   (5) Identify any witnesses not already included in related reports.

   (6) Review and approve all related reports.
(7) Determine if there is any indication that the subject may pursue civil litigation. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

(8) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

c. In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

17. WATCH COMMANDER RESPONSIBILITY. The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

18. TRAINING. Officers will receive periodic training on this policy and demonstrate their knowledge and understanding.

19. CITIZEN COMPLAINTS. In the event a citizen files a complaint of excessive force being committed by an Police Officer, the Chief will direct an Internal Review Board, consisting of 2 or more Senior Officers (Lieutenants or above), to investigate if a violation has occurred. The Chief will decide if the investigation will be forwarded to Investigations, who will determine if there is validity to the complaint. If there is evidence of a violation, it will be forwarded to SJA for further review and action.