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September 5, 2024

VIA ELECTRONIC MAIL

Chief Mike Henderson
Captain Nick Nicholas
Captain Mike Ezroj
Seal Beach Police Department
911 Seal Beach Boulevard
Seal Beach, CA 90740

Re: **Ninth Circuit Decision *Chinaryan v. City of Los Angeles* Regarding Use of High-Risk Felony Traffic Stop of Suspected Stolen Vehicle**

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Dear Chief Henderson, Captain Nicholas, and Captain Ezroj,

I am writing to notify you about the Ninth Circuit's decision in *Chinaryan v. City of Los Angeles*, which eliminates qualified immunity for an officer who uses high-risk tactics during a vehicle stop solely because of a suspicion that the vehicle is stolen. The Court defined a "high-risk vehicle stop" as an investigatory stop that also includes officers drawing and holding their weapons at the low ready position and placing suspects in a prone position.

Put simply, officers need something more than just a suspicion that the vehicle is stolen or cold-plated in order to justify the use of high-risk tactics. Additional factors that can justify high-risk tactics include: uncooperative subjects or actions by subjects that raise a reasonable possibility of danger or flight; officers have information that subjects are armed; the stop closely follows a violent crime; or officers have information that a crime that may involve violence is about to occur. This is not an exhaustive list. If officers do not have justification to conduct a high-risk stop, they can still conduct an investigative stop and direct occupants out of the vehicle, but without using high-risk tactics.

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Factual Background:

Hasmik Chinaryan was driving home in her husband's black Chevrolet Suburban limousine with her teenage daughter and a friend when an LAPD sergeant saw her and mistakenly suspected that she was driving a stolen vehicle. A couple of days before, a black Chevrolet Suburban limousine was stolen while parked on the street overnight. Chinaryan was driving in an area less than a half of a mile from where the stolen vehicle's LoJack signal was detected. The sergeant radioed Chinaryan's license plate number to the communications unit, which informed him that the license plate belonged to a Dodge Ram, which had not been reported stolen. The sergeant suspected that the Suburban driven by Chinaryan had been stolen because it was "cold-plated" (i.e. had a license plate other than the one registered by the DMV). The sergeant followed Chinaryan for more than ten minutes during which Chinaryan drove normally and in compliance with all traffic laws.

Although it was daytime, the sergeant could not see inside Chinaryan's vehicle because it had heavily tinted windows. Other LAPD officers drove past her vehicle from the opposite direction and saw Chinaryan and her friend through the front windshield. Although the officers did not register a signal from a LoJack device, they could not be sure they had the wrong vehicle because car thieves can disable LoJack devices.

Officers decided to conduct a high-risk felony stop involving about a dozen officers and a helicopter unit. The officers ordered Chinaryan out of the vehicle at gunpoint, pointing their weapons at her or in her direction, and commanded her to lie prone on the street with her arms outstretched. The officers also ordered the passengers out of the vehicle at gunpoint. All three were handcuffed and seated on the street while officers conducted an investigation. Officers checked the VIN numbers from the vehicle, which came back to a 2018 Suburban registered to Chinaryan's husband and with a license plate number that differed by one digit from the plates on the vehicle. From the time the officers stopped Chinaryan's vehicle until the time she and her passengers were released was about 24 minutes.

Legal Analysis:

As a reminder, qualified immunity shields government officials under Section 1983 unless 1) they violated a federal statutory or constitutional right, and 2) the unlawfulness of their conduct was "clearly established at the time." *Hernandez v. Town of Gilbert*, 989 F.3d 739, 743 (9th Cir. 2021). Here, the Court held the officers had no articulable basis to suspect that the plaintiffs in the vehicle posed a threat to anyone "beyond the generic threat that a suspected vehicle thief poses." Plaintiffs were not uncooperative or taking action at the scene that raised

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a reasonable possibility of danger or flight, the officers had no information that plaintiffs were currently armed or that a crime that may involve violence was about to occur, and this was not a situation where the stop closely followed a violent crime. The Court found that the degree of intrusion was severe: the officers physically restricted plaintiffs' liberty and handcuffed them, and that by drawing their guns and aiming them at or near plaintiffs, the officers greatly increased the seriousness of the stop. The Court found that the officers' reasonable suspicion that plaintiffs had stolen the Suburban, standing alone, was not enough to justify these intrusive tactics and, therefore, plaintiffs' Fourth Amendment rights were violated.

The Court then turned to whether it was clearly established at the time that the officers' tactics violated plaintiffs' Fourth Amendment rights. The Court found that previous cases (*Green v. City & County of San Francisco* and *Washington v. Lambert*) also both involving high-risk vehicle stops based only on reasonable suspicion that the vehicle was stolen, clearly established that reasonable suspicion of vehicle theft alone is not enough to justify intrusive tactics absent some case-specific need.

Of particular note, the Court stated tinted windows might justify precautions beyond the standard traffic stop in some circumstances, but police must consider less intrusive alternatives before using extreme force. The Court said a tactical investigatory stop¹ rather than a high-risk stop would have addressed officers' inability to see into the vehicles' rear seats, and from a position of cover, officers could have ordered plaintiffs to step outside, lift up their clothing, and turn around to reveal if they had weapons in their waistbands.

The bottom line is that police officers must have something more than reasonable suspicion that the vehicle was stolen or cold-plated in order to conduct a high-risk, felony traffic stop. If you have any questions or would like further information, please do not hesitate to reach out to me.

¹ The Ninth Circuit described a "tactical investigatory stop" as involving officers taking a position of cover and ordering occupants to step outside, lift up their clothing and turn around to reveal if they have weapons in their waistbands. During this type of stop, officers keep their guns holstered and do not normally order a suspect to lie down in the street.

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Sincerely,



Jennifer Petrusis

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