



**PALO ALTO POLICE DEPARTMENT
MEMORANDUM**

DATE: JUNE 24, 2021
TO: AGENT THOMAS DESTEFANO, JR.
FROM: ASSISTANT CHIEF ANDREW BINDER
SUBJECT: **Notice of Intended Disciplinary Action – Termination**

This is to advise you that I am proposing that you be terminated from your employment as a Palo Alto Police Agent, effective at the completion of the pre-disciplinary process, based upon the reasons stated herein.

The charges in this notice are based on your conduct on February 17, 2018, regarding the arrest of Gustavo Alvarez for operating a vehicle with a suspended driver's license. Officer Conde attempted to stop and detain Mr. Alvarez, but Mr. Alvarez retreated into his residence. After Officer Conde called for assistance, you and other officers arrived on scene, and a decision was made to breach Mr. Alvarez's front door and arrest him.

After Mr. Alvarez was taken out of his residence and while he was being handcuffed, a Sergeant on the scene struck Mr. Alvarez on the head. After Mr. Alvarez was handcuffed and was not resisting arrest and could not be reasonably believed to pose a threat to anyone, the Sergeant abruptly slammed Mr. Alvarez face down onto his vehicle's hood and windshield, telling him, "You think you're a tough guy, huh?" The use of force was not documented in any police reports—including reports that you reviewed and approved even though you knew they were inaccurate—regarding the incident and was not reported up the chain of command.

The Notice is being issued more than a year after the February 2018 incident for several reasons. First, because the use of force was not documented, the City was not on notice of any allegations of misconduct until Mr. Alvarez filed claims against the City and provided the City with a video recording of the event captured on his own video camera in his garage. That video captured more of the incident than had been captured on the MAV recordings. The Palo Alto Police Department opened an Internal Affairs investigation of the incident that had multiple subject officers in addition to yourself. The

Palo Alto Police Department also opened a criminal investigation into your and other officers' conduct. Mr. Alvarez sued you, the City, and several other officers. And, the City has been informed that the United States government is also investigating the incident.

RULES, GROUNDS FOR DISCIPLINE, AND ANALYSIS

Any future hearing officer or appellate body is advised that any one of the following charges, standing alone, would support my recommendation to terminate your employment.

Your actions during an incident occurring on February 17, 2018 violated the following Palo Alto Police Department Policy Manual sections:

1. PAPD USE OF FORCE POLICY – 300.2.1 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.

2. PAPD USE OF FORCE POLICY – 300.5 Reporting the Use of Force:

Any 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 report shall minimally include the type of force used, the reason for the force, the description of any injuries and a description of any medical treatment rendered. Additionally, a thorough explanation of the factors considered by the officer shall be included in the officer's police report. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.

3. PAPD REPORT PREPARATION POLICY – 344.4 Report Corrections:

Supervisors shall review all reports for content and accuracy and approve them if acceptable...

4. PAPD REPORT PREPARATION POLICY – 344.2.2 Non-Criminal Activity:

The following incidents shall be documented using the appropriate approved report:

- (a) Anytime an officer points a firearm at any person

5. PAPD STANDARDS OF CONDUCT – 340.5.5 Conduct Unbecoming:

(m) Any other on- or off-duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

The instances constituting the above policy violations occurred as follows, with the specific policy violations cited in bold:

On February 17, 2018 Officer Conde attempted to stop and detain Gustavo Alvarez for operating a vehicle with a suspended driver's license. Mr. Alvarez refused to submit to Officer Conde's authority and retreated into his residence. Officer Conde called for assistance and you and other officers responded to help. After you arrived on scene, a decision was made to breach Mr. Alvarez's front door and arrest him. You and three other officers approached Mr. Alvarez's front door and Sergeant Benitez announced he would kick it.

Once this plan was in motion, you took on the role of "breacher cover," which in this context meant providing cover for the person kicking the door. In this cover role, you drew your firearm and held it at the low ready. After Sergeant Benitez kicked at the front door a second time, it opened and Mr. Alvarez was standing in the doorway. With your firearm drawn, you pointed it at Mr. Alvarez and ordered him to exit the residence. You did not author any report regarding this incident **and never documented that you had pointed your firearm at Mr. Alvarez; this was a violation of PAPD Policy 344.4.49(a).**

Once Sergeant Benitez began to physically direct Mr. Alvarez toward his vehicle, you holstered your weapon and used physical force to assist Sergeant Benitez in pushing Mr. Alvarez chest down onto the hood of his car. During your administrative interview, you described Mr. Alvarez as, "actively resisting" and recalled Mr. Alvarez was trying to "pull away" and throw "his weight around." By your own admissions, and confirmed by the surveillance video, your physical actions in assisting with overcoming Mr. Alvarez's resistance to being handcuffed equated to using force, as defined in the Policy Manual. You did not author any report documenting the force you used to overcome Mr. Alvarez's resistance. Since you also read and approved all the reports associated with this incident, you were aware these facts were not documented elsewhere. **Your failure to document your own use of force was a violation of PAPD Policy 300.5.**

After Mr. Alvarez was handcuffed, Sergeant Benitez maintained control of him while you and Officer Conde disengaged from any further physical contact. You remained in the immediate vicinity of Sergeant Benitez and Mr. Alvarez and began talking on your police radio at the front of Mr. Alvarez's vehicle. Initially, your attention was averted away from Sergeant Benitez and Mr. Alvarez as you utilized your police radio. But once Mr. Alvarez was lifted off the hood of the vehicle by Sergeant Benitez and standing upright,

the surveillance video depicts your head turn towards Sergeant Benitez and Mr. Alvarez.

As Sergeant Benitez began to slam Mr. Alvarez towards the windshield/hood area of the vehicle, your head remained positioned with a direct line of sight while your body turned so that you were facing and in alignment with what was occurring between Sergeant Benitez and Mr. Alvarez. Your head and body remained aligned and positioned towards Sergeant Benitez and Mr. Alvarez as Mr. Alvarez was slammed into the windshield/hood area by Sergeant Benitez, which was an unjustified use of force. **PAPD Policy 300.2.1. required you to promptly report your observations to a supervisor, and you failed to do so.**

Officer Conde wrote the primary police report and Officer Johnson and Sergeant Benitez wrote supplemental reports for this incident. Later, acting in a supervisory capacity, you reviewed and approved all the officers' reports by signing each page of their respective portion of the crime report. As part of the report review process, supervisors are required to review reports for content and accuracy and only approve the report if it is acceptable. **You violated PAPD Policy 344.4 by approving Sergeant Benitez's report which you knew was inaccurate.**

Lastly, throughout this incident, you engaged in conduct that was unbecoming a member of this department and reflected unfavorably upon the Palo Alto Police Department and its members. In addition to the above-described conduct, you laughed at the scene while telling another supervisor about what happened to Mr. Alvarez, commenting that Mr. Alvarez had "pissed off the wrong Sergeant." You also sent an MDT message informing another officer that they had "missed out" because "the fuse was lit tonight" ["the fuse" being a nickname for Sergeant Benitez]. You also jokingly reenacted Sergeant Benitez's excessive force, after the fact, by slamming your hand on the hood of the car.

LEVEL OF PENALTY

Based on the above basis for action, I recommend termination from employment with the City of Palo Alto. In reaching this decision, I reviewed your personnel file and considered the severity of the sustained findings and their impact on the public service. In October 2017, you were suspended for 88 hours related to an incident where you drove while intoxicated and were the at-fault driver in a "hit and run" DUI collision.

Regarding the 2018 incident with Mr. Alvarez, you failed to document your own use of force, failed to notify a supervisor of excessive force that you witnessed, and then approved reports you knew to be false. Your conduct was despicable and has had an extremely negative impact on the public's trust in this Department. You covered up an unjustified use of force that eventually came to light only because of Mr. Alvarez's home

surveillance system and his pursuit of legal claims against the City. For these reasons, termination is the appropriate penalty.

RIGHT TO RESPOND

You have a right to respond to this notice in writing and/or through an informal pre-disciplinary conference with Chief Jonsen to present any new or mitigating information and/or show cause why disciplinary action should not be imposed as recommended. Your timely response will be considered before final action is taken. You have the right to have an attorney or representative present with you during this conference.

Pursuant to PAPD Policy 1020.6.2(b), you have five days from the date you receive this Notice to present your response, regardless of whether it is a written response or a conference meeting. However, due to the nature of the voluminous materials attached to the Notice, and without setting a precedent, the Department agrees to a reasonable extension of the five-day period and will work out a mutually agreeable date for your response.

WARNING AGAINST RETALIATION

This provision is to notify you that it is inappropriate to retaliate against any person who has participated in complaining or providing information regarding the allegations in this proposed action. Do not take any retaliatory action.

Thomas DeStefano, Jr Date

DocuSigned by:
Andrew Binder 6/24/2021

55BC987103E44D7...
Assistant Chief Andrew Binder Date

ATTACHMENTS:

- Administrative Investigation #2019-02 with all attachments

cc: Personnel File
Human Resources