



## **PUBLIC RELEASE MEMORANDUM**

**DATE:** August 17, 2020

**SUBJECT:** Officer Involved Shooting (Non-Fatal)

**Officers:** Officer Erik Valtierra  
Rialto Police Department

Officer Matthew Lopez  
Rialto Police Department

**Involved Subjects:** David Gonzales  
Date of Birth 06/28/1965  
Rialto, CA

**Date of Incident:** December 3, 2018

**Incident location:** 1700 block of N. Sycamore Avenue  
Rialto, CA

**DA STAR #:** 2019-40434

**Investigating Agency:** San Bernardino County Sheriff's Department

**DR #:** 601800162

**H #:** 2018-111

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## I.

### SUMMARY OF INCIDENT

On December 3, 2018 at 0137 hours officers were dispatched to a residence in Rialto regarding a David Gonzales who was in a truck repeatedly doing “burn-outs,” honking his horn, and revving his engine in the yard of the house. Rialto Police Officer Erik Valtierra was first on the scene. He pulled in behind an older blue pick-up truck which was parked at the gate in the driveway of the residence. The truck spontaneously revved its engine and began to quickly back up towards Valtierra’s patrol unit. Valtierra promptly backed up to avoid impact, but the truck still hit the front of the patrol unit. The truck then proceeded forward into the interior portion of the yard. Valtierra activated his lights and gave chase. Gonzales immediately drove to the right, exited the yard, circled around and came into the yard a second time, now behind Valtierra. Gonzales’ truck then impacted the back of Valtierra’s patrol unit and then pushed the patrol unit, causing Valtierra’s patrol unit to crash into an air conditioning unit at the back of the house. A gas line broke during this collision.

Valtierra exited his patrol unit and faced-off with Gonzales who was still in the truck facing him while revving the engine. The truck had slowly backed up and hit a parked motorhome which was in the yard. Valtierra was positioned on the driver’s side of his vehicle, in between the patrol unit and the house. The patrol unit was positioned at a sharp angle against the house and any impact from the truck could have pushed the patrol unit into the house which would have crushed Valtierra. In fear for his life, Valtierra discharged his handgun several times into the windshield of the truck.

Officer Lopez had arrived and witnessed the vehicular assault against Valtierra. Lopez exited his unit and positioned himself toward the passenger-side front of the truck. As the truck revved its engine and appeared poised to again ram Valtierra’s patrol unit, Lopez fired numerous rounds into the passenger side of the truck and the windshield in an attempt to eliminate the threat against his and Valtierra’s lives.

David Gonzales rolled out of the passenger’s side window of the truck and ran toward the back of the truck and hid. Valtierra released his K-9 which was able to locate Gonzales and control him with a bite to the right forearm. Gonzales did not comply with numerous commands while on the ground. Once other officers arrived, the K-9 was pulled off of Gonzales. Gonzales was escorted to the street for treatment from medics. Several of the nearby homes were evacuated due to the potential risk from the gas leak.

Gonzales suffered a through-and-through gunshot wound to his upper arm, a bullet graze wound to his face, and numerous deep dog-bite lacerations to his arm, and other

lacerations to his back. None of the wounds were life threatening. Neither officer was injured. The gas leak was repaired without explosion or harm to anyone.

Portions of the incident were captured on the bodycams of Valtierra and Lopez. A neighboring house also had a video system that captured portions of the incident.

### **Principle Involved Parties**

**David Gonzales**, DOB: 06/28/1965.

**Officer Erik Valtierra** of the Rialto Police Department. Date of Hire: May 2012. Employee #0773.

**Officer Matthew Lopez** of the Rialto Police Department. Date of Hire: March 2016. Employee #9091.

### **Scene**

This incident occurred on December 3, 2018 at 0146 hours. Location of occurrence was in the back yard of a single-family dwelling in the 1700 block of N. Sycamore Avenue, Rialto, California. This is a residential neighborhood. It was night at the time of this incident and there was nominal ambient lighting.

### **Gonzales' Criminal History**

**David Gonzales** has had prior contacts with law enforcement, but his rap sheet does not indicate any convictions. On March 4, 2019 Gonzales entered guilty pleas to two felony counts of *Penal Code* section 245(c) Assault With a Deadly Weapon Against a Police Officer for his conduct in this incident. He was sentenced to three years of probation with 365 days in jail and six years and four months state prison suspended. A pending misdemeanor vandalism case was dismissed pursuant to this agreement.

## **II.**

### **DETAILED ACCOUNT OF INVESTIGATION**

#### **Interviews with Officers, the Suspect, and Witnesses**

### **Officer Erik Valtierra Interview:**

The interview took place on December 3, 2018 at Rialto Police Department. It began at 0735 hours. Valtierra had not changed clothing and presented in his Class "C" uniform. He was interviewed by Detective M. Cleary and Josh Guerry of the San Bernardino Sheriff's Department. His Glock Model 22 .40 caliber handgun was collected and examined. It had five remaining cartridges in the clip and one in the chamber. Valtierra had a small cut on his left elbow and complained of lower back pain from being rear-ended by suspect Gonzales.

In preliminary discussions, Valtierra was advised of the voluntary nature of the interview and he agreed to talk. He indicated he had six years of service as a police officer. He indicated he was 5'8" tall and weighed 190. He said his rank was "Police Officer." He had been a Police Explorer and Parking Officer for Rialto before becoming an officer. His shifts ran from 6:00am to 6:30 pm, and on Saturdays from 2:00pm to 2:30am. He described his uniform (standard police uniform with badge, identification, and full array of standard equipment such as gun, taser, handcuffs, etc.) He was equipped with an Axon body camera. Valtierra said he had reviewed the camera's video prior to the interview. He said he had loaded his Glock with 14 rounds in the clip and one in the chamber for a total of 15. He estimated that he had fired four to five rounds.

Valtierra had never had contact with David Gonzales before, and Gonzales was identified only after the incident.

(Note: In the portions below and throughout this memorandum which are in "direct quotes," filler words or phrases are deleted for purposes of clarity and brevity. These deletions do not change the essence of what was said.)

The SBSO investigators invited Valtierra to give a detailed overview of the shooting. Valtierra described how he had been parked across town at Merrill and Larch. Dispatch called him and sent him to a 415 (disturbing the peace) subject. While en route, Dispatch advised that the reporting party (RP) said the subject had been revving his engine for the past hour inside the back yard of the residence. The RP did not know whether the subject was under the influence of drugs or alcohol. Valtierra hit the "on scene" button when he was about 100 yards away from the residence to let Dispatch know he had arrived at the location.

Valtierra noticed a blue truck inside the driveway of the residence. He pulled in behind it to get a look at the truck. He then saw the reverse (back up) lights activate on the truck. Valtierra thought "Oh shoot!" and he began to reverse as the truck reversed back at him. The truck rammed through the gate and backed up to within a foot of the patrol unit's front bumper and then it proceeded forward. Valtierra activated his overhead lights to conduct a stop and he entered the driveway. Valtierra saw that the truck went

around the yard, “does like a circle,” and is now coming at his passenger side. “Then, boom, I got hit. I felt my back end get hit.” He then felt the truck behind him pushing him. He was pushed into an air conditioning unit and chimney located at the back of the house.

*“I get pushed into that and I crash into that and I could feel the guy on the back. I can feel the vehicle on the back hitting me, bumping into me. So, at that point I’m like.... I’m gonna get pushed into this house and, shoot, this guy is gonna try to kill me...I was trained that you don’t stay in your vehicle, it’s a coffin. So, as soon as I exit the vehicle, I saw him reverse and I heard a rev and I’m like okay he’s gonna come directly at me again and he’s gonna hit me and he’s gonna try to hurt me. So, before he could do that, I pull out my gun and started shooting directly into his windshield.”*

Valtierra was concerned the subject was going to ram him again and “pin me into the house or into my car.” He was apprehensive about jumping on the hood of the patrol unit because he could be knocked off if the truck rammed him again.

*“I’m gonna be on top of my hood and I’m gonna go flying forward again. So, then my partner (Officer Lopez) comes and I hear my partner start shooting at the guy and at this point I don’t know where my partner is, I can just hear the gunfire. I yell at him ‘cease your fire’ because I didn’t know if he was shooting at my direction and if I’m gonna get hit.*

*“So, I finally saw the guy come out of the passenger side of the truck.”* Valtierra heard Lopez giving commands to Gonzales. Valtierra told Lopez to wait because he was going to go get his dog from inside the patrol unit. Valtierra then heard as Lopez tried to administer the taser. Lopez screamed to Valtierra that the guy has gone behind the truck. Valtierra asked Lopez to give him gun coverage as he “pies” around the car.

*“I see him on the floor (sic) and I’m giving him commands...let me see your hands. At first I do see his hands, both his hands so I don’t deploy my dog yet and then at one point his left hands goes towards his waist area and at that point that’s when I deployed my dog to apprehend him. While my dog was biting him, he was not complying with orders...at certain points he started to hit my dog a couple of times and I told him to stop hitting my dog’s snout, trying to pull it off...he was trying to use his fingers in his nostril areas. I’m telling him ‘stop fighting my dog, ‘as soon as you put your hands behind your back the dog will come off.’ It goes on for a few seconds I believe, or maybe for a couple of seconds, and we finally get another officer there, and once we get the officer there we walk up and I take my dog off and they place him in handcuffs.”*

Investigators then went through the account and clarified various aspects of it. Valtierra explained that when he was first hit, he was facing east, and the truck had gone around and was approaching from his passenger’s side. He attempted to reverse to get out of the way, but he was impacted. He accelerated to get out of the way, but the truck was also pushing him and so he hit the back of the house. Valtierra immediately exited the patrol unit out of the driver’s door and drew his weapon.

*“When I drew my weapon, I saw the car and I saw him revving it so I’m like this guy’s gonna come at me and he’s going to freaking kill me, he’s gonna pin me against this house or my car. So, I pull out my weapon to prevent that from happening.”*

Valtierra did not know whether any of his fired rounds hit Gonzalez.

Valtierra believed his “partner” (Officer Lopez, who had arrived in a different patrol unit) had begun firing before Valtierra had exited his vehicle. He felt the only direction he could go was toward the rear of his vehicle, because if the truck rammed him again, he could get injured if he was on the front hood. *“So, there was only one point of exit and that was going to the truck.”*

Valtierra said that at no time did Gonzales put his hands up in a sign of surrender. He first saw Gonzales as he jumped out of the truck’s passenger side window. Gonzales immediately ran toward the rear bed of the truck. He lost sight of Gonzales. Valtierra had no idea as to whether he was armed. He told Officer Lopez, *“Watch him, I’m going to go get my dog.”* Valtierra knew his partner had lethal force, and so he wanted to employ a non-lethal force option to gain compliance from Gonzales if possible. He considered Gonzales to still be a threat.

Valtierra retrieved his K-9 and returned with him to the location of the truck. Valtierra saw Gonzales on the ground, and initially he saw both hands, but his left hand then went down toward his waist and he lost sight of it.

*“I figured, okay, this guy’s gonna pull a gun out now and he’s gonna start shooting at us. So, my dog is a tool, I’d rather him get hurt than me or my partner not going home to our families. So, when my dog was sent I figured, okay, if this guy did have a gun, he’s gonna feel a lot of pain and pressure from my dog and might release his gun if he had it in his waistband and would try to focus on my dog instead of the weapon...”*

Valtierra said he made repeated commands to see Gonzales’ hands and for Gonzales to stop fighting his dog. Valtierra said Gonzales was not complying with those commands. He only remembered Gonzales asking for water. He did not remember how long it took for other officers to arrive. Valtierra considered deploying his taser at one point while Gonzales was on the ground, but then he considered that the K-9 was not getting Gonzales to comply, and so the taser was not likely to do anything more.

Valtierra said when he was shooting, he was pointing at the driver’s side of the windshield. The distance was 10 to 15 feet. The cadence of the shots was evenly distributed. He chose to use his handgun rather than his AR-15 because it was the most immediately accessible weapon. He stopped shooting because the truck had backed into a motorhome behind it and because Gonzales was likely distracted by the shots being fired by Officer Lopez. Valtierra said that while shooting he was *“Trying to stay alive...I felt that if I stood in this area, I was either gonna be severely hurt...or he was*

*gonna kill me.”* He said that he felt that if he hadn’t fired his weapon Gonzales “*probably would have killed me.*”

Valtierra’s intention in firing was to “*stop the threat.*”

### **Officer Matthew Lopez Interview:**

Officer Lopez’s interview was conducted at Rialto Police Department on December 3, 2018 beginning at 0611 hours. The investigators for the interview were SBSO Detectives M. Cleary and Josh Guerry. Officer Lopez presented in a Class “C” uniform, the same clothing he had been wearing during the incident. His Glock Model 22 Gen4, .40 caliber handgun was taken for examination and it had one cartridge in the magazine and one in the chamber. His ammunition was “WIN 40 S&W”—the same ammunition as used by Officer Valtierra. Lopez reported that he was not injured and none of his equipment was damaged during the incident.

Lopez was advised of the voluntary nature of the interview, and he agreed to talk. He indicated his employee number was 9091. He weighed 225 pounds and was 5’10”. His date of hire at Rialto P.D. was March of 2016. He started patrol in October of 2016. His rank was Police Officer. He indicated he worked the “cover team” with a Friday shift from 6:00am to 6:30pm, and on Saturdays he worked either day shift or graveyard. He typically does not have a rider or partner in his patrol unit. He was wearing a body worn camera and it was activated during the incident. He keeps 14 rounds in his clip, and one in the chamber for a total of 15. He estimated that he fired between six and twelve rounds during the incident.

Officer Lopez’s overview narrative of the incident was as follows: He was dispatched to a 415 (disturbing the peace) subject at an address in the 1700 block of N. Sycamore. A male by the name Gonzales was at the location in a truck in the yard. The reporting party said Gonzalez was his uncle. Valtierra got there shortly before him, and Lopez could see his taillights up ahead as he pulled right into the driveway. As he was pulling-up he saw Valtierra backing up and then he saw that the truck was reversing as well, and that the truck hit Valtierra’s unit. Lopez activated his lights and camera and got on the radio and transmitted “give us the 33” for emergency traffic. The truck then entered the yard (eastbound) and Valtierra followed. Lopez thought the truck was going to go around to the south where there was another gate, but he saw that the truck had somehow now gotten behind Valtierra and was again ramming him. Lopez thought “*holy shit, what the fuck is going on here?*” and jumped out of his patrol unit. He could hear the truck engine revving and the sound of a collision.

Lopez ran into the back yard and saw that Valtierra’s patrol unit had been pushed into the back of the house. The truck started to back up. Lopez thought, “*holy shit he’s gonna run me over.*” Lopez looked for cover and found a tree to his left. Lopez thought

*"I'm gonna have to shoot this guy cause he's gonna run me over. And that's when I saw Erik jump out of his car, and you can hear the engine revving, and then I started shooting thinking he was gonna run Erik over or pin the unit against Erik. I just started shooting rapid..."* Lopez indicated that as he was shooting at the driver inside the truck, he (the driver) was leaning over (ducking) toward the passenger side. Lopez had a clear visual of the man, but as he was backing up Lopez was "leading" with his shots because he was not sure how far back he was going to go. Most of his shots were aimed through the windshield and as he had a clear visual of Gonzales. He estimated the distance to be about ten yards. The cadence of the shots was "rapid fire."

The driver then came out of the truck through the passenger's window. *"He came out head over heels and I couldn't see his hands."* Lopez believed he shot twice as Gonzales was coming out of the truck. He and Valtierra both shouted for him to get on the ground, but he ran to the back of the truck that was next to a trailer. Lopez then deployed his taser *"because I can see he didn't have a weapon, but he was still trying to get away."* Gonzales got on to the bed of the truck for a moment but then rolled off the bed onto the driver's side of the truck. Erik had retrieved his dog and was telling Lopez *"get over here, I need lethal coverage."* Lopez then holstered his taser and pulled out his gun. He walked around the truck and could hear Valtierra giving Gonzales orders to show his hands. The dog went and held him there until Corporal Poaching arrived and took him into custody.

The detectives then went through the incident and asked follow-up questions. Lopez stated he had not had contact with Gonzales before and had not been to that residence before. Lopez said he was yelling "Stop!" during the time when Gonzales was backing up and right before he shot. He said it was dark in the backyard except for the headlights and Valtierra's overhead lights. Lopez was using a tac light on his handgun. He used his handgun rather than his AR-15 because it was the most immediately accessible weapon.

Lopez said that he believed if he had not fired, either Erik would have been killed, or Gonzales would have run him (Lopez) over. *"I don't want Erik to die. That was that, and I was scared shitless."* There were no crossfire issues with Valtierra. His intention in firing was only to stop the threat. Lopez did not know whether any of his shots hit Gonzales.

Lopez said that based on the nature of the dispatch he thought Gonzales was going to be drunk. He thought the resolution was going to be simply to make contact and tell Gonzales to quit bugging people and go home. When he initially saw Gonzalez backing up, he thought Gonzales was only trying to flee, *"and then once I saw him ramming Erik's car and pinning him up against the house, I was like 'holy shit, this dude is trying to kill him.'"*

Lopez clarified that after he tased Gonzales he did not see a weapon in his hands but knew he could have had one in his waistband. He was not sure if the taser had connected, but it was after the tase that Gonzales rolled off the back of the bed of the



truck. Gonzales did not comply with commands which were given during the time the dog was on him. *"His left arm was kind of tucked underneath his chest, that's when Erik sent in his dog and the dog grabbed ahold of his right arm."*

Lopez requested a "RFD (medical) stage." *"We were still waiting for the third unit to arrive because the dog was still on the bite and so, I don't know, I wanna...it felt like forever, but it was probably only like 30 seconds."*

### **Witness #1 (Reporting Party) Interview:**

Witness #1 was interviewed twice on December 3, 2018. The first interview was at 0544 hours. Witness #1 indicated he lived at the residence located in the 1700 block of N. Sycamore in Rialto. David Gonzales was his uncle and he also lived at the residence. Witness #1 described Gonzales as "confrontational and stand-offish." Witness #1 believed Gonzales used methamphetamine and would purchase it whenever he had money. Witness #1 also thought Gonzales suffered from bi-polar disorder and depression.

At approximated 0030 hours, witness #1 was in his room playing video games. Witness #1 could hear Gonzales driving his truck erratically in the back yard and honking his horn. He could hear Gonzales driving in circles. Witness #1 was afraid that Gonzales was going to crash into the house. At approximately 0135 hours witness #1 called law enforcement. When they arrived, Witness #1 looked outside. Witness #1 heard Gonzales revving the truck's engine. Witness #1 awakened his girlfriend (Witness #2) and told her they needed to exit the house because he was afraid that Gonzales was going to come crashing in. While he was in the hallway he heard five to six gunshots. Witness #1 got on the floor and covered his neck.

Witness #1 could hear the officers giving commands to Gonzales. He heard them say "Get out of the truck," and "Put your hands behind your back," and "Stop hitting the dog." He heard Gonzales screaming back at the officers "You don't belong here," and "Get out." It sounded like Gonzales was not complying with the officers' commands.

A follow-up interview was conducted with Witness #1 at 1230 hours on December 3<sup>rd</sup>. He indicated his grandmother, mother, and other uncle had also been in the house. He said his uncle David Gonzales had been driving in circles for about 45 minutes when he heard a crash. He thought Gonzales had hit the gate with the truck because he heard chains rattling. That was when he called 9-1-1.

About five minutes later he saw Gonzales again in the back yard in his truck. He saw a police car with its lights on. The patrol car was coming off of Sycamore Avenue and into the yard. He saw Gonzales reverse his truck into the police car. He heard another crash. He then saw Gonzales drive the truck towards the house. Witness #1 thought

Gonzales was going to crash into the house. That's when he woke up his girlfriend. He then heard the gunshots and the officers and Gonzales yelling.

**Witness #2 Interview:**

Witness #2 said she was asleep during the incident. Witness #1 woke her up and told her to go to the hallway. She heard about ten gunshots. She then heard yelling and screaming. She heard someone say, "Stop hitting my dog."

**Other Family Members Inside the Residence and Neighbors:**

The other family members who had been in the home during the incident were contacted. They all said they had been asleep and did not see or hear anything.

Nearby neighbors were also contacted. They claimed they did not hear or see anything other than some gunshots and some yelling.

**Witness #3, RFD Paramedic:**

Paramedic (Witness #3) was interviewed by telephone. He described how he arrived on scene with his EMT partner to render medical aid to Gonzales. Gonzales was laying in the driveway with a gunshot wound to his left arm and dog bite to the right arm. Gonzales refused to answer questions relating to his injuries. Gonzales was uncooperative and flailed around as they attempted to treat him. They had to handcuff Gonzales' left arm to the gurney for their own safety during the transport. A Rialto police officer rode with them to the hospital. Witness #3 said he would not have felt safe had Gonzales not been restrained. They transported Gonzales to ARMC and turned him over to medical personnel there. Witness #3 felt, based on his training and experience, that Gonzales may have been under the influence of drugs.

**Witness #4 (Doctor):**

Witness #4 was contacted in the trauma bay at Arrowhead Regional Hospital. Witness #4 informed detectives that when Gonzales arrived at ARMC he was extremely combative. He had to be sedated in order for the team to treat his injuries.

The admissions records prepared by Witness #4 and her staff indicate *"Patient not cooperating on initial contact and is still combative. Patient is moving all extremities on scene. Patient moving his head around on scene. Patient will not tolerate c collar. Patient carried to a gurney and placed in right lateral but patient continues to turn prone....Patient still aggressive towards ED staff and still moving all extremities..."*

### **Suspect David Gonzales Interview:**

Gonzales was contacted by SBSO Detectives Stoll and Cleary at Arrowhead Regional Medical Center (ARMC) on December 4<sup>th</sup>, 2018 at approximately 1451 hours. Gonzales had been treated for his injuries, but he expressed that he was still in pain. Gonzales initially asked whether he could have an attorney, and the investigators told him that was a decision he would have to make for himself. He agreed to talk. (Gonzales referenced getting an attorney several times in the interview, but only the last reference was unequivocal. The interview promptly ended at that time. For purposes of this evaluation, Gonzales's statements are not being used to incriminate him in a criminal proceeding, they are only being used to evaluate the lawfulness of the force that was used against him.)

Gonzales said he had lived at the address in the 1700 block of N. Sycamore residence for about a year. He had slept in a trailer in the backyard and his family slept in the house. Gonzales said he suffered from depression and had been prescribed Zoloft. He initially said he did not recall events from the previous day. The investigators encouraged him to tell the truth.

Gonzales said "they" entered his property in a vehicle. He said he had been driving his truck in circles and collided with one of their vehicles. He said he did not know they were police officers and he never saw the blue and red lights on the light bar of the patrol vehicle. Gonzales said he had just been "kicking back" and when the people entered his property, they "asked for it." Gonzales then said that he had been shot during the incident, and that "this bro (referring to himself) asked for it, and he got it." He said his vehicular assault on the people was "premeditated." He said that "He had a right to shoot me," in response to the assault. Detective Cleary asked for more details about the collision and Gonzales responded: *"This part I would need a lawyer, we just can't divulge everything. I haven't thought about it. That's when everything got crazy, and that's when they shot me. That's when they had a right to shoot me. I didn't call foul; they did what they did...Like I said, I started the game of Rock 'Em Sock 'Em Robots, and they finished the game with their guns."*

Gonzales thought being bit by the dog was sufficient punishment for his actions. He denied having been under the influence of drugs at the time of the incident but admitted having used methamphetamine in the past. He said he did not realize the people were police officers until he was shot. Gonzales said that he believed the officers would have conducted a DUI investigation if the incident took place on a public street. Detective Stoll asked him if he had been intoxicated at the time of the incident, Gonzales then unequivocally stated he wanted a lawyer.

The interview ended at that time.

### III.

## SCENE AND PHYSICAL EVIDENCE

### 9-1-1 Calls

Two recorded emergency 9-1-1 calls were received by Rialto P.D. dispatch.

The first was from Witness #1. Witness #1 reported that his uncle, David Gonzales, was driving erratically at his grandmother's house located in the 1700 block of N. Sycamore Avenue. Porter said his uncle had collided into the gate on the property. Witness #1 was concerned because Gonzales had been driving around the yard in circles for about an hour and crashed into unknown objects multiple times. Witness #1 thought his uncle might be under the influence of drugs or alcohol because "this does not seem like normal behavior." Witness #1 verified his uncle was still at the location. The dispatcher assured him she would have an officer respond.

Another call was received by a neighbor, Witness #5. He reported that his neighbor, who lived directly west of him, was driving a truck and honking his horn, revving his engine, and peeling out. The dispatcher advised Witness #5 that they had received an earlier call and officer would be responding.

### Video Surveillance

The next-door neighbor, on the east side to the subject location had a video camera system in operation. The camera was mounted on the northwest corner of the homeowner's residence and it pointed in a northerly direction. As such, the camera only picked up a small segment of the backyard of the incident. The video footage still gives some insight into the incident. The system did not provide a time stamp, and so the times indicated below are progressive from a start time of 00:00.

00:57: Gonzales' truck travels eastbound past a parked white sedan through the backyard at a fast pace.

01:08: Valtierra's patrol unit with activated emergency lights is seen following the route Gonzales' truck.

01:09: Gonzales truck is now behind Valtierra's patrol unit, traveling closely behind. The initial impression is that there were a total of three vehicles driving in a circular route, but upon closer viewing we realize that the last vehicle is again Gonzales' truck,

and he has somehow very quickly maneuvered behind Valtierra. Both vehicles then proceed southbound out of sight.

01:20: Gonzales' truck backs into a parked motorhome at slow speed on the east side of the property.

02:00, et seq.: Gonzales is seen falling off the back of the truck into some bushes. Officers can be seen walking near the area, apparently looking for Gonzales.

02:13: The K-9 rushes at Gonzales who is on the ground. The hind portion of the dog can be seen moving back and forth.

04:13-22: Other officers appear on scene.

04:57: Officer Valtierra removes his canine from the bite on Gonzales' arm.

06:12, et seq.: Officers handcuff Gonzales behind his back.

07:34: Gonzales is lifted to his feet by officers and escorted out of view to the west.

### **Physical Evidence**

A crime scene perimeter was immediately established, and all physical evidence was located and documented as to position.

Gonzales' truck is found backed-up at an angle next to the front of a small motorhome in the backyard. The motorhome is in a vertical north/south parking configuration, and the truck is lodged against it at an angle. The truck is aimed at Valtierra's patrol unit. To the west is a parked Nissan Maxima. A small tree is next to the Maxima.

Officer Valtierra's patrol unit is lodged against the back of the residence. The front end of the vehicle is abutted against the house and an air conditioning unit. The back end of the unit is only a few feet away from the house, indicating that Valtierra's person was trapped within a narrow angle of space that could have been easily closed had Gonzales' truck rammed into it (as it appears it was poised to do, based on the positioning of the vehicles).

>**Bullet Shell Casings:** Twenty fired cartridge casings (FCCs) are found on both sides of Valtierra's patrol unit. Since both officers were firing ammunition designated as WIN40 S&W, it is not readily apparent which casings came from which gun. (We know from a review of the videos and a count of the officers' ammo clips that the majority of shots were fired by Officer Lopez.) Six of the casings were essentially against the backside of the house, and the majority were in the zone directly south of the tree and the parked car. This is the zone where Lopez had been standing. Lopez had been

standing immediately north of Valtierra's patrol unit, with the truck facing toward him and the back of Valtierra's unit.

>**Taser Cartridge**: A deployed taser cartridge was found in the space between Gonzales' truck and the front of the motorhome.

>**Bloodstains**: While blood droplets are found at various locations, the major accumulation of blood is located where Gonzales' body was laying for several minutes during the dog bite and while Valtierra and Lopez were waiting for back-up.

>**Gonzales' Clothing**: Medical personnel removed Gonzales' clothing at their point of contact with him, which was just north of the entrance of the driveway. Suspected narcotics were found in a plastic bindle in one of the pants pockets, and that substance was later tested and confirmed as methamphetamine.

>**Chain Link Gate**: The gate was located laying in the street directly in front of the residence driveway.

>**Vehicle (Chevrolet 1500 truck, License # 3R28210) Processing**:

The older blue truck driven by Gonzales was currently registered to him. A search warrant was obtained by Detective Stoll, and together with Crime Scene Specialist, Witness #6, the truck was processed at the Sheriff's Scientific Investigations Division. Trajectories were determined by the use of trajectory rods which were inserted through the holes to determine their pathways.

>**Body damage** was located on the front bumper, passenger's side front fender, consistent with ramming Officer Valtierra's patrol unit.

>Numerous **bullet fragments** were located inside the passenger compartment in diverse areas, including the driver's side floorboard, the weather stripping of driver's door, the cushion of the rear bench seat, and the driver's side door panel.

>The **truck body** was riddled with bullet entry holes: 1) passenger side front fender (3); passenger door (2); passenger side wheel well mud flap (1); The trajectory of the shots were all basically right to left and slightly downward—which is consistent with Officer Lopez's position in front of the truck on the passenger side (although it is not possible to be conclusively certain which bullet holes came from which officer). It should be noted that several of these shots passed through the interior truck and exited through a plastic bag taped up in lieu of a rear driver's-side window on the other side.

>The **truck windshield** was shattered from numerous (9) bullet entry holes. Some of the rounds continued on and hit various fixtures inside of the truck such as the seats. The trajectory these shots were all front to back. Most were right to left and slightly

downward, which would again be consistent the positioning of Officer Lopez. Three shots (denominated by placards J-1, K-1, and M-1) had trajectories which were left to right, but it would be speculative to conclude which officer fired these shots. Shot P-1 was a driver's side external mirror through and through shot. This round was likely fired by Valtierra who was positioned more directly in front of the truck, as Lopez likely would not have had a clear shot to this mirror while standing on the other side of the truck.

>Three entry shots were located on or near the "C pillar" on the driver's side. This is the support pillar between the driver's side windows. It appears that these entry shots occurred after they passed through the windshield or the passenger side of the truck. Most have the trajectory of right to left.

### **AXON Body Camera Summaries**

The "AXON FLEX" body cam footage is less revealing than what one might expect. On both officers' cameras the audio inexplicably does not activate for the first thirty seconds. The lighting is dark throughout the episode, and the images are sporadic or fragmented. Still, the footage is of some benefit and it generally corroborates the officers' account of the events. The real-time indications on the videos were not accurate, and so the Detective Stoll timed the sequence of events from 00:00.

#### **Officer Erik Valtierra**

00:00: Valtierra is seated in the driver's seat of his patrol unit with emergency lights activated. He is driving slowly through the north driveway into the backyard of the incident location.

00:04: Valtierra's body-worn camera shifts from side to side as if violently jostled. Valtierra accelerates into the property. An off-white parked motorhome can be observed parked on the property.

00:08: Valtierra attempts a right turn between the motorhome and a parked white sedan.

00:12: Valtierra's patrol unit collides into an air conditioner unit protruding from the back of the house. Valtierra's body cam bounces up and down during the impact.

00:15: Valtierra exits the driver's side of his vehicle. He produces a handgun in his right hand.

00:18: Valtierra closes his driver's door.

00:22: Valtierra transitions his firearm from his left hand to his right hand.

00:25: Valtierra raises his firearm and points eastward. He moves forward.

00:28: Officer Lopez can be seen north of Valtierra's vehicle. Lopez is in a two-hand standing shooting stance. Valtierra maintains a one-hand stance. Both handguns are pointed at Gonzales' truck.

00:29: Both Lopez and Valtierra walk east with their firearms in raised position. The slide on Valtierra's gun can be seen to cycle multiple times.

00:30: The audio finally activates on the camera. Valtierra is hysterically shouting "Hold fire!" several times as he approaches Gonzales who is out of the truck and now on the ground on the passenger side of the truck. (It is apparent Gonzales is injured but it is unclear how serious the injuries are.)

00:34: Valtierra shouts "Get on the fucking ground!"

00:38: Valtierra tells Lopez he is going to get his dog. Valtierra runs to his patrol unit.

00:39: Valtierra broadcasts "K9-4, shots fired."

00:42: Lopez shouts at Gonzales "Don't move!" Gonzales responds, "Get out of here."

00:50: Valtierra has the dog out of the patrol unit and he directs the dog to Gonzales' location.

00:59: Valtierra tells Lopez to hold Gonzales at gun point as he approaches Gonzales.

01:09: Valtierra approaches Gonzales with his handgun raised. Gonzales is still on the ground. Valtierra commands "Let me see your hands; don't move!"

01:12: Gonzales rocks his body from side to side. He does not reveal his left hand.

01:13: Valtierra unleashed the K-9 on Gonzales. The K-9 bites Gonzales right forearm and begins to repeatedly yank on it.

01:33: Valtierra broadcasts: "My dog is on a bite. I need a couple of more units before I pull him off."

01:45, et seq.: Valtierra repeatedly commands his K-9 to "hold that bad guy."

01:58: Valtierra tells Gonzales if he places his hand behind his back the dog would come off the bite. (During this time frame Gonzales' empty left hand is now visible and it is apparent he can't comply with the request to put his hand behind his back because his shirt is up over his head and blocking this type of change of position.)



02:13, et seq.: Gonzales is attempting to get the dog to release his bite by pushing the dog's snout away. Valtierra shouts at Gonzales: "My dog will come off if you stop hitting him!" Valtierra repeatedly commands Gonzales to stop hitting the dog. The dog continues to yank on Gonzales' arm, causing Gonzales entire torso to shake back and forth. Valtierra's screamed commands to Gonzales continue for the next one and a half minutes.

03:42: Valtierra finally removes the dog from its bite on Gonzales' arm. The dog had been on the bite approximately 2.5 minutes. Other officers are now on scene.

03:54, et seq.: Officers repeatedly command Gonzales to put his hands behind his back. Gonzales tells them he can't move.

04:40: Valtierra advises other officers now on scene that his vehicle had struck a gas line.

05:01: Valtierra turns off his body-worn camera.

### **Officer Matthew Lopez**

00:00: Officer Lopez is in the driver's seat of his patrol unit and driving slowly.

00:05: Valtierra's unit can be seen in the driveway. The back-up lights illuminate.

00:09: A blue truck (driven by Gonzales) reverses into Valtierra's patrol unit. The collision forces Valtierra across the northbound lane of Sycamore Avenue.

00:12-16: Valtierra activates his emergency lights and proceeds forward after Gonzales.

00:24: Gonzales rams the truck into the passenger side of Valtierra's patrol unit which causes the unit to slide to the north in the backyard of the residence.

00:28: Lopez parks his unit in the driveway and exits the driver's side door.

00:29: The audio finally activates on the camera. The sound of a revving vehicle engine can be heard in the background.

00:34: Lopez runs east through the backyard with his firearm drawn and pointed in an eastern direction. Lopez shouts "Stop!"

00:35: The revving sound become louder and more distinct.

00:36:14-38:28: In this approximate two-second time-frame Lopez fires nine (9) shots at Gonzales' truck.

00::39:25: Gonzales' truck backs away slowly from Valtierra's patrol unit.

00:40:00: Lopez radios "Shots fired, shots fired!"

00:40:06-19: Valtierra fires two shots at the truck.

00:42:11: Lopez fires an additional shot at the truck (This is the tenth shot fired by Lopez and the twelfth shot collectively.)

00:43:11-17: Lopez shouts "I got you." And Valtierra responds "Hold fire!"

00:45-46: Lopez fires two more shots at Gonzales' truck. (This makes twelve shots for Lopez and fourteen collectively.)

00:45:13: Gonzales climbs out of the passenger window of the truck and falls on the ground.

00:46:12: Lopez fires another shot toward Gonzales.

00:48: Lopez shouts at Gonzales "Stay on the ground!"

00:51:04: Valtierra shouts "Hold fire! Hold fire!"

00:52:19: Both Valtierra and Lopez shout "Get on the ground!"

0056:00-1:06: Gonzales climbs on to the bed cover of his truck. Valtierra runs back to his patrol unit to retrieve his K-9. Gonzales is shouting "Leave me alone, ese! Get out of here!"

001:10-12: Gonzales calls Lopez "the devil" and says, "Fuck you, asshole!" Lopez deploys his taser.

01:21-30: Valtierra returns to the location where Gonzales is at, which is on the ground on the other side of the truck. Valtierra asks Lopez to hold Gonzales at gun point as he approaches with his K-9. Gonzales is lying on his stomach, bleeding from his face. His hands are at times underneath his body. Gonzales' shirt is pulled up over his head, but his arms are still protruding through the arm holes. Valtierra commands Gonzales not to move. Gonzales continues to move.

01:31: Valtierra unleashes the K-9. The dog charges and gets a bite on Gonzales' right forearm. The dog begins yanking.

01:40-04:00: For approximately two and a half minutes the officers give Gonzales commands to stop moving and to put his hands behind his back. The K-9 continues to hold its bite on the arm and to yank. Gonzales is groaning and screaming in anguish.

Gonzales attempts to get the dog off his arm by pushing the dog's snout away using his visible left hand. Valtierra repeatedly commands Gonzales to stop hitting the dog.

04:01: Valtierra tries to get the dog to release its bite.

04:15: The dog finally releases its bite on Gonzales' arm. Other officers are now on scene.

04:52, et seq.: Gonzales is finally handcuffed by unknown officer. The officers move Gonzales out to the street as they await medical aid as there is concern relating to the gas leak.

12:56: Officer Lopez turns of his body-worn camera.

### **Suspect Injuries**

**Gunshot wound Number One:** Upper left arm, through and through of bicep, with entry and exit wounds.

**Gunshot wound Number Two:** Laceration to right temporal cheekbone. A projectile was surgically removed from subcutaneous tissue soon after the incident.

### **Dog Bites:**

>Four full thickness lacerations, each three centimeters long, to the right lower forearm.

>Full thickness laceration to the right wrist approximately five centimeters long.

>Multiple full thickness lacerations to the right-hand index finger.

>Laceration to the back left scapular area approximately ten centimeters long.

### **Toxicology/ Substance Testing**

Mr. Gonzales' blood draw underwent a 6-panel immunoassay drug screen. **Amphetamines, opiates, and benzodiazepines were detected.**

Additional testing was done to determine the quantities of these illicit substances. The results were:

**Methamphetamine: 710ng/mL.**  
**Amphetamine: 39ng/mL.**  
**Opiates/Morphine: 63ng/mL.**

Two bundles of apparent narcotics were found in Mr. Gonzales' pants pocket. These items were tested.

Item 18-15967.I.1 White crystal powder, weighing .74 grams, contained **methamphetamine.**

Item 18-15967.I.2 White crystal powder, weighing .53 grams contained **methamphetamine.** Cocaine was also detected.

**Conclusions Regarding Physical and Recorded Evidence, Suspect Injuries,  
Toxicology and Lab Testing:**

In short, the scene physical evidence, body-worn camera recordings, suspect injuries, and lab testing correspond to, and corroborate, the accounts of the incident given by Valtierra and Lopez. There are no confounding or inexplicable aspects from the crime scene when compared to the narratives provided by the officers.

**IV.**

**APPLICABLE LEGAL STANDARDS**

**Laws of Arrest**

**California Penal Code section 834a**

If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such a person to refrain from using force or any weapon to resist such arrest.

### **California Penal Code section 835**

An arrest is made by an actual restraint of the person, or by submission to the custody of an officer. The person arrested may be subject to such restraint as is reasonable for his arrest and detention.

### **California Penal Code section 835a**

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the 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 efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

### **Laws of Self-Defense**

The legal doctrine of self-defense is codified in Penal Code Sections 197 through 199. Those sections state in pertinent part: "Homicide is justifiable when committed by any person in any of the following cases: (1) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person...(4) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed,...or in lawfully keeping and preserving the peace." Lawful resistance to the commission of a public offense may be made by the party about to be injured. (Pen. Code §692.) The resistance may be sufficient to prevent injury to the party about to be injured, or the prevent injury to someone else. (Pen. Code §693.)

Where from the nature of an attack a person, as a reasonable person, is justified in believing that his assailant intends to commit a felony upon him, he has a right in defense of his person to use all force necessary to repel the assault; he is not bound to retreat but may stand his ground; and he has a right in defense of his person to repel the assault upon him even to taking the life of his adversary. (*People v. Collins* (1961) 189 Cal.App. 2d 575, 588.)

Justification does not depend on the existence of actual danger but rather depends upon appearances; it is sufficient that the circumstances be such that a reasonable person would be placed in fear for his safety and the person act out of that fear. (*People v. Clark* (1982) 130 Cal.App.3d 371, 377.) "He may act upon such appearances with safety; and if without fault or carelessness he is misled concerning them, and defends himself correctly according to what he supposes the facts to be, his act is justifiable, though the facts were in truth otherwise, and though he was mistaken in his judgment as

to such actual necessity at such time and really had no occasion for the use of extreme measures.” (*People v. Collins, supra*, 189 Cal.App.2d at p. 588.)  
**CAL CRIM 3470 (REVISED 2012)**

### **Right to Self-Defense of Defense of Another**

Self-defense is a defense to the unlawful killing of a human being. A person is not guilty of that/those crimes if he/she used force against the other person in lawful self-defense or defense of another. A person acts in lawful self-defense or defense of another if:

1. The person reasonably believed that he/she or someone else was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully;
2. The person reasonably believed that the immediate use of force was necessary to defend against that danger; AND
3. The person used no more force than was reasonably necessary to defend against that danger.

When deciding whether a person’s beliefs were reasonable, consider all the circumstances as they were known to and appeared to the person and consider what a reasonable person in a similar situation with similar knowledge would have believed. If the person’s beliefs were reasonable, the danger does not need to have actually existed.

The person’s belief that he/she or someone else was threatened may be reasonable even if he/she relied on information that was not true. However, the person must actually and reasonably have believed that the information was true.

A person is not required to retreat. He or she is entitled to stand his or her ground and defend himself or herself and, if reasonably necessary, to pursue an assailant until the danger of death/bodily injury has passed. This is so even if safety could have been achieved by retreating.

### **Use of Deadly Force by a Police Officer**

Authorization of the use of deadly force is analyzed under the Fourth Amendment’s “*objective reasonableness*” standard. (*Brosseau v. Haugen* (2004) 543 U.S.194, 197.) This question is governed by the principles enunciated in *Tennessee v. Garner* (1985) 471 U.S. 1 and *Graham v. Connor* (1989) 490 U.S. 386.

In these decisions, the US Supreme Court explained “it is unreasonable for an officer to ‘seize an unarmed, non-dangerous suspect by shooting him dead..... However, where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or others, it is not constitutionally unreasonable to prevent escape by using deadly force.” (*Tennessee v. Garner, supra*, 471 U.S. at p. 11.)

Reasonableness is an objective analysis and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner, supra*, 490 U.S. at p. 396.) It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary. (*Id.* at p. 396-397.) The question is whether the officer’s actions are “objectively reasonable” considering the facts and circumstances confronting them, without regard to their underlying intent or motivation. (*Id.* at p. 397.)

The US Supreme Court in *Graham* set forth factors that should be considered in determining reasonableness: (1) the severity of the crime at issue, (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. (*Graham v. Connor, supra*, 490 U.S. at p. 396.) The question is whether the totality of the circumstances justifies a particular sort of ... seizure. (*Tennessee v. Garner* (1985) 471 U.S. at p. 8-9. The most important of these factors is the threat posed by the suspect. (*Smith v. City of Hemet* (2005) 394 F.3d 689,702.)

Thus, under *Graham*, the high court advised we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. “We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (*Smith v. Freland* (1992) 954 F.2d 343, 347.)

### **Reasonableness: The Two Prongs**

Penal Code section 197, subdivision (3) requires that one who employs lethal force have a “reasonable ground to apprehend” a design to commit a felony or to do some great bodily injury. Further, Penal Code section 198 requires that such fear be “sufficient to excite the fears of a reasonable person.” This is clearly an objective standard. In shorthand, perfect self-defense requires both subjective honesty and objective reasonableness. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1093.)

When specific conduct is examined under the analytical standard of reasonableness the concepts of apparent necessity and mistake are invariably, and necessarily, discussed,

for they are part of the same equation. “Reasonableness,” after all, implies potential human fallibility. The law recognizes, as to self-defense, that what is being put to the test is human reaction to emotionally charged, highly stressful events, not mathematical axioms, scientifically provable and capable of exact duplication.

While the test, as mandated by section 198, is objective, reasonableness is determined from the point of view of a reasonable person in the position of one acting in self-defense. (*People v. Minifie* (1996) 13 Cal.4th 1055, 1065.) We must take into consideration all the facts and circumstances that might be expected to operate in the persons mind. (*Ibid.*) Reasonableness is judged by how the situation appeared to the *person claiming self-defense*, not the person who was injured or killed as a result.

### **Imminence of Perceived Danger**

“Imminence is a critical component of both prongs of self-defense.” (*People v. Humphrey, supra*, 13 Cal.4th at p. 1094.) Response with deadly force must be predicated on a danger that portends imminent death or great bodily injury. Reasonableness and immediacy of threat are intertwined. Self-defense is based on the reasonable appearance of imminent peril of death, or serious bodily injury to the party assailed.

In *People v. Aris* the trial court clarified that imminent peril means that the peril must have existed, or appeared to the person to have existed, at the very time the shot was fired. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1188 disapproved on another ground in *People v. Humphrey* (1996) 13 Cal.4th 1073.) This was later cited with approval by the California Supreme Court: “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal. 4th 768,783 quoting *People v. Aris, supra*, 215 Cal.App.3d at p. 1187.)

The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate.

### **Retreat and Avoidance**

Under California law one who is faced with an assault that conveys death or great bodily injury may stand his ground and employ lethal force in self-defense. There is no duty to retreat even if safety could have been achieved by retreating. (CALCRIM No. 3470.) Indeed, in California the retreat rule has been expanded to encompass a reasonably perceived necessity to pursue an assailant to secure oneself from danger. (See *People v. Holt* (1944) 25 Cal.2d 59, 63; *People v. Collins* (1961) 189 Cal. App.2d 575, 588.)



## **Nature and Level of Force**

The right of self-defense is limited to the use of such force as is reasonable under the circumstances. (See *People v. Gleghorn* (1987) 193 Cal.App.3d 196, 200; *People v. Minifie*, *supra*, 13 Cal.4th at p. 1065; *People v. Moody* (1943) 62 Cal.App.2d 18,22.)

Case law does not impose a duty to use less lethal options. “Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh into nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” (*People v. Collins*, *supra*, 189 Cal.App.2d at p. 578.)

The rationale for vesting the police officer with such discretion was explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the *least* intrusive alternative (an inherently subjective determination) and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment.

*Scott v. Henrich* (1994) 39 F.3d 912, 915.

In summary, an honest and objectively reasonable belief that lethal force is necessary to avoid what appears to be an imminent threat of death or great bodily injury will justify the use of deadly force. This is true even if the person acting in self-defense could have safely withdrawn or had available to him a less lethal means of defense.

## V.

### ANALYSIS

#### **Discharge of Firearm by Officer Erik Valtierra:**

Officer Valtierra had been dispatched to what sounded like a low-level nighttime call involving someone who was essentially disturbing the peace by doing “burn-outs” in his truck. Valtierra arrived at the location and positioned himself to evaluate the scene. He had only been at the location for moments before a possible suspect vehicle backed into him in a gratuitous and provocative assault. Officer Lopez and reporting party Witness #1 described Gonzales backing into Valtierra. Valtierra’s perception was that Gonzales blasted backward through the gate and stopped within a foot of his patrol unit because Valtierra had sufficiently backed away from the oncoming truck. In either event, the conduct was feloniously assaultive. A car, used to assault someone, is a deadly weapon, and in this case the assault was on a police officer in a marked patrol unit.

What is unique about this set of facts is the unprovoked nature of the assault. Valtierra had not even had time to make contact with a suspect, or issue any commands, or threaten any arrest, to precipitate any hostility. All Officer Valtierra had done was pull into the driveway, and Gonzales backed his truck into him. Why Gonzales chose to start an unnecessary fight with someone who had done him no wrong remains an unanswered question in this episode. In some instance, the charge is levied that the police antagonized a suspect and created the response that resulted in the use of deadly force. That is clearly not the case here.

Not only was Valtierra reasonably put in fear for his safety after the vehicular assault, he now had an affirmative obligation to apprehend the person who perpetrated this assault. He activated his overhead emergency lights and entered the property in pursuit. The following sequence of events took only seconds to unfold. Gonzales did not suffice himself by merely fleeing the location, he instead circled around and almost instantly got behind Valtierra. He then rammed Valtierra a second time, and then he pushed Valtierra’s patrol unit into the residence where Gonzales’ own family lived. Again, his motives cannot be fathomed, but the positive drug results explain the lack of rationality in his thinking and highlight the volatility of the situation.

Officer Valtierra then found himself essentially trapped between his patrol unit and the home. The front of the patrol unit was wedged against a large air conditioning unit, and so driving forward was not a viable option. Valtierra exited his vehicle and found himself in a narrow triangle of space. The truck had backed up and was facing directly toward his patrol unit. Given what had happened just seconds before, the fear of another ramming attack was not only reasonable, it was inevitable. Furthermore, once the truck began revving its engine while pointed directly at him, the attack appeared to be imminent. If the truck hit the side of the patrol unit, the empty V-shaped space between

the patrol unit and the house would have been closed. Valtierra would have been crushed. The truck pointed at Valtierra is analogous to a pointed gun; the revving of the engine is analogous to pulling back the hammer of the gun.

Officer Valtierra's right to self-defense was objectively reasonable because the truck had already rammed him twice and it was now imminently poised to do so a third time. Valtierra's life and well-being were in jeopardy. Valtierra was extremely vulnerable. Valtierra's firing his service weapon at the driver of the truck was necessary to repel the potential assault. Neutralizing the driver was the only option Valtierra had to stop the truck from ramming him again. Firing his gun at the driver was the only viable mechanism available to Valtierra to neutralize the driver and the threat.

### **Discharge of Firearm by Officer Matthew Lopez:**

Officer Lopez had also just arrived on scene. Virtually the first thing he saw was the suspect truck backing up at high speed in the driveway and ramming his partner, Officer Valtierra. He saw Valtierra activate his overhead light and go in pursuit. Lopez momentarily thought the suspect was likely to go out of the other driveway and flee the location, but to his astonishment he saw that the truck circled around and positioned behind Valtierra. This placed Valtierra in a far more vulnerable situation, given the suspect's apparent willingness to ram police vehicles. In fact, the truck did ram Valtierra again and pushed him into the back of the residence.

Officer Lopez was obliged to go assist his partner, and that is what he did. He exited his vehicle, ran across the yard, and positioned himself next to Valtierra's vehicle in order to thwart another attack. Lopez had now placed himself in harm's way. The truck would have merely had to turn a little bit to the right (northward) and it could have mowed Officer Lopez down. Lopez had no immediate cover or protection. The body-worn cameras capture on audio something more terrifying than anything we see on the video. We hear the ominous sound of a large engine revving. Lopez begins firing.

Officer Lopez's use of deadly force was well within his right of self-defense and the defense of others. Neutralizing the driver was the only means of neutralizing the threat that was imminently presented to both himself and his partner. Shooting multiple rounds through the windshield, and the side panels, of the truck was the only means available to stop the truck.

Officer Lopez fired at least two shots at Gonzales as Gonzales bailed out of the truck and hit the ground. Once Gonzales was out of the truck, he no longer had the truck to use as a deadly weapon. But Lopez reasonably could still perceive Gonzales as a real and imminent threat. Until he was reasonably certain that Gonzales was not armed, Lopez had to presume that Gonzales still presented a threat. Furthermore, the shots that were fired by Lopez as Gonzales came out and hit the ground occurred while, and

just seconds after, Gonzales abandoned the truck. The time frames in this entire incident are extremely short. In fact, Officer Lopez, once he deduced that Gonzales was not displaying a new and portable weapon, and was instead trying to flee the location, immediately transitioned to a less-than-lethal option.

### **Deployment of Taser by Officer Lopez:**

As Gonzales came out of the truck and attempted to flee, Officer Lopez attempted to deploy a taser to subdue Gonzales. Even if he no longer felt personally threatened, Officer Lopez's duty was to apprehend the suspect who had just violently assaulted his partner. It is unclear whether the taser inflicted any shock on Gonzales. The use of the taser as a less-than-lethal means of apprehending a suspect in these circumstances was reasonable. Even if Gonzales was not threatening Officer Lopez at this particular moment, Officer Lopez had to apprehend Gonzales to protect the community from a dangerous individual. Use of the taser was a reasonable means to do so.

### **Deployment of Police Canine by Officer Valtierra:**

After the officers stopped shooting, and after the ineffectual deployment of the taser by Officer Lopez, Gonzales' exact whereabouts in the dark were momentarily unknown. The officers then located him on the ground near some bushes to the east of the truck. The officers' concern that Gonzales could have been armed with a gun was still real and reasonable.

Valtierra felt that his K-9 could assist in controlling Gonzales, and so he returned to his patrol unit to get the dog. When he came back, he cautiously approached Gonzales. Valtierra issued some commands. He wanted to see Gonzales' hands, to confirm that he was not handling a weapon. Gonzales responded with belligerence. He did not comply with the officers' repeated requests. It appears from the bodycam footage that Gonzales' arms were tangled up in his shirt which was pulled up and over his shoulders. The shirt could have impeded Gonzales in any attempt to comply. It is also apparent that Gonzales is injured, likely from a gunshot, because he is heavily bleeding. But in the video, we do not see Gonzales even attempt to comply with the officers' commands. Instead, he flails about and responds only with hostile language. Valtierra releases the dog, and the dog bites down on Gonzales' right forearm.

For the next two and a half minutes the dog is observed to be violently yanking on Gonzales' forearm. Gonzales is groaning and screaming in apparent excruciating pain. Gonzales attempts to get the dog to release its bite by pushing his snout away. Valtierra commands him to stop hitting the dog. Valtierra wants Gonzales to put his hands behind his back, but Gonzales either cannot or will not comply. We see that the dog is holding the right forearm, and Gonzales' shirt is possibly impeding movement of his left arm. We see both hands intermittently, and there is no visible weapon. Gonzales makes no effort to go for his waistband.

Only after back-up officers arrive on scene does Valtierra get his dog to release the bite. (The dog is reluctant to do so.) Both Valtierra and Lopez, in their interviews, perceived the passage of time until back-up arrived as short. But in watching the video we see that there is an extended duration where the dog is “on the bite,” yanking Gonzales’ arm, and inflicting excruciating pain.

Had Valtierra released the dog before back-up officers arrived, and had Gonzales resisted handcuffing, the officers would have been presented with a situation where one officer would have had to fight with Gonzales while the other officer covered with a firearm. This would have been a precarious situation, and one that was hard to control. Furthermore, if Gonzales had serious internal injuries, he could have exacerbated those injuries by fighting with the officers or attempting to flee.

As such, Officer Valtierra’s decision to hold Gonzales in a relatively static hold for a limited period of time was well within his discretion. Gonzales may have been in pain, and his bite wounds may have been exacerbated, but there was no escalation of the conflict and Gonzales’ gunshot wounds (which could have been very serious) were not exacerbated.

Furthermore, Valtierra’s instincts and discretion was seemingly ratified by Gonzales’ subsequent conduct that evening: Gonzales was threatening and did not cooperate with the transporting medical personnel, and he was combative with the personnel at the hospital. Had Valtierra released the dog sooner, the consequences might have been very unfortunate.

## VI.

### CONCLUSIONS

Based on the facts presented in the reports, and the applicable law, Officer Valtierra’s use of deadly force was a proper exercise of his right of self-defense. Therefore, his actions were legally justified.

Based on the facts presented in the reports, and the applicable law, Officer Lopez’s use of deadly force was a proper exercise of his right of self-defense and defense of others. Therefore, his actions were legally justified.

Based on the facts presented in the reports, and the applicable law, Officer Lopez’s and Officer Valtierra’s use of less-than-lethal means of force was legally justified.

**Submitted By:**  
**San Bernardino County District Attorney's Office**  
**303 West Third Street**  
**San Bernardino, CA 92415**  
**Dated: August 17, 2020**

