



PUBLIC RELEASE MEMORANDUM

February 3, 2021

Subject: Fatal Officer-Involved Shooting

Involved Officers: Sergeant William Knight
Pomona Police Department

Officer Sean Gonzalez
Pomona Police Department

Officer Cynthia Burciaga
Pomona Police Department

Officer Vaneric Mendoza
Pomona Police Department

Involved Subject/DOB: Nick Costales, 09/24/1985
Subject's Residence: Fresno, California

Incident Date: June 29, 2020
Incident Time: 3:52 p.m.

Case Agent/Agency: Detective Joshua Garabedian
Montclair Police Department

Agency Report #: CR-2002420

DA STAR #: 2020-00-34549

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PREAMBLE

This was a fatal officer-involved shooting by officers from the Pomona Police Department. The shooting occurred in the city of Montclair, in the county of San Bernardino and was investigated by the Montclair Police Department. This factual summary is based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings from Pomona Police officers' body-worn cameras and patrol unit video cameras, CHP vehicle cameras, and video from the Pasadena Police Department's airship. The foregoing items were submitted by the Montclair Police Department, CR# 20-2420.

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FACTUAL SUMMARY

On June 29, 2020, at approximately 12:40 in the afternoon, Nick Costales confessed over the telephone to the murder of his mother, Thelma Vasquez. Costales made this confession to his brother who was assisting Fresno Police Department detectives who were investigating the murder. The murder occurred in the city of Fresno. As a result of this, detectives with the Fresno Police Department obtained a Ramey warrant for the arrest of Nick Costales. The Ramey warrant was signed by the Honorable John Conklin, Fresno County Superior Court Judge. The arrest warrant was issued and a Department of Justice Stop¹ for the charge of murder, Penal Code section 187, was created. The warrant and the suspect information was provided to the Department of Justice (DOJ) Task Force, as follows: The suspect was Nick Costales and he was believed to be in possession of the victim's gold Kia Optima, California License plate number 6WMH157 as well as the victim's .380 Beretta semi-automatic handgun. Additionally, a cell phone "ping"² search warrant was authorized by the Honorable Galen Hill, Fresno County Superior Court Judge.

Later in the day, at approximately 3:30 in the afternoon, Los Angeles Area Impact Task Force police officers who were assigned to the Pasadena Police Department Airship PD1, received a phone call from a DOJ Task Force officer asking for assistance in locating Costales. The DOJ task force officer advised the airship officers that the cell phone ping search revealed Costales was at the I-710 and I-10 freeway in Alhambra. Pasadena Police Department officers immediately took off from their airfield located in Alta Dena. Once in the air, officers were continually updated as to the ping search results for Costales' location. Officers from the California Highway Patrol (CHP) and the Pomona Police Department were also dispatched to the area to assist in the search for Costales.

At approximately 3:47 p.m., officers from Pasadena Airship PD1 located Costales driving the victim's gold Kia Optima eastbound on the I-10 freeway in the number three lane near the Towne Avenue exit in the city of Pomona. Officers from CHP and the Pomona Police Department were then guided to Costales' location by the officers in the airship. The CHP and Pomona Police Department officers were provided with information regarding Costales, including the fact that he was wanted for murder, as well as the possibility of Costales being armed with a handgun. Pomona Police Department Officers Cynthia Burciaga and Sean Gonzalez, in one patrol vehicle, drove behind Costales and activated their unit's emergency lights and siren in an attempt to stop him. Following behind Officers Burciaga and S. Gonzalez were Pomona Police Department Sergeant William Knight in one police unit and Officers Vaneric Mendoza and Wallace Gonzalez in another

¹ A Department of Justice Stop is a stop placed on a record/vehicle by the Department of Justice.

² Cell phones perform their wide and growing variety of functions by continuously connecting to a set of radio antennas called "cell sites." Each time a phone connects to a cell site, it generates a time-stamped record known as cell-site location information (CSLI).

[Carpenter v. United States, 138 S. Ct. 2206, 2208, 201 L. Ed. 2d 507, 512, 2018 U.S. LEXIS 3844, *1, 86 U.S.L.W. 4491, 27 Fla. L. Weekly Fed. S 415, 2018 Comm. Reg. \(P & F\) 64, 2018 WL 3073916](#)

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patrol unit. CHP Officers Thomas Alaimo and Cesar Banuelos, each in their own patrol vehicle, followed behind the Pomona Police officers.

Costales exited the I-10 freeway at the Monte Vista Avenue offramp, in the city of Montclair. Costales turned southbound on Monte Vista Avenue and pulled over to the west curb at approximately 3:52 p.m. Officer Burciaga stopped her patrol unit approximately one car-length behind Costales. Sergeant Knight stopped his patrol unit next to Officer Burciaga's vehicle. Officer W. Gonzalez stopped his patrol unit behind Officer Burciaga's and Sergeant Knight's patrol vehicles.

As soon as Costales' vehicle came to a stop, Costales immediately opened his driver's door, very quickly got out and turned toward the police officers, who were stopping their vehicles behind him. Costales immediately raised a handgun and began rapidly firing at the officers. Costales' first round struck the patrol unit occupied by Officers Burciaga and S. Gonzalez. With both hands on his gun, Costales continued firing at the officers while sweeping his arms from right to left and back again. Officers Burciaga, S. Gonzalez, Mendoza, and Sergeant Knight all alighted from their patrol units, took cover, and began firing back at Costales.

Just as the shooting was occurring, CHP Officer Thomas Alaimo stopped his patrol unit behind and slightly east of Sergeant Knight's patrol vehicle. A private citizen had stopped his vehicle at the scene, directly behind Officer W. Gonzalez's patrol unit. CHP Officer Caesar Banuelos was the last officer on scene; as he was exiting the freeway off-ramp approaching Monte Vista Avenue, he heard gunfire and saw the private citizen ducking behind his car. Officer Banuelos stopped his patrol unit behind his partner, Officer Alaimo's patrol car. Officer Banuelos saw his partner and the Pomona Police officers hunkered down behind their patrol vehicles taking cover.

Costales continued firing at the officers and was eventually struck by the officers' return gunfire. Costales fell but began getting back up with his gun to continue shooting at the officers. The officers fired additional rounds at Costales, and he fell to the ground once more. After Costales was down and no longer firing at the police officers, he was taken into custody. Costales was transported to Pomona Valley Medical Center where he underwent emergency surgery. However, Costales succumbed to his injuries and at approximately 8:20 in the evening, Costales was pronounced deceased.

STATEMENTS BY POLICE OFFICERS³

On July 1, 2020, **Officer Ryan Castillo** was interviewed by Detective Amanda Reidell of the Montclair Police Department.

³ Herein is a summary only. All reports submitted were reviewed, but not all are referenced here.

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On June 29, 2020, Officer Castillo was on duty as a police officer with the Pasadena Police Department. Officer Castillo was assigned to the LA Impact Team as an officer observer to the Pasadena Police air unit, PD1.

Officer Castillo was at the heliport in the city of Alta Dena when he received a phone call on his LA Impact cell phone from an officer⁴ assigned to one of the Impact groups regarding a suspect wanted in connection with a homicide out of Fresno. Officer Castillo was advised the suspect vehicle was in their area at the I-710 and I-10 freeway in the city of Alhambra via a cell phone ping pursuant to a search warrant and was asked to assist in locating the vehicle in the air unit. Officer Castillo was given the suspect vehicle's license plate number and description and was informed there was a Department of Justice Stop on the vehicle. Officer Castillo and his partner, Pilot Steve Thruston, took off from the airfield in the PD1 airship and began looking for the suspect vehicle on the I-10 freeway.

While they were in the air searching for the suspect vehicle, Officer Castillo continued to receive updates as to the suspect vehicle's location. A cell phone ping indicated the suspect vehicle was at the I-60 south and the I-10 freeway. The next ping was in the city of Pomona on the I-10 freeway. As they approached Pomona over the eastbound I-10 freeway at Towne Avenue, Officer Castillo saw the suspect vehicle travelling in the number three lane. Because the suspect vehicle was on the interstate, Officer Castillo notified the CHP along with the Pomona Police Department. The CHP was the first to arrive, followed by the Pomona Police Department. Officer Castillo coordinated with the police officers on the ground and helped them locate the suspect vehicle.

Officers from both the CHP and the Pomona Police Department located the suspect vehicle and got behind it. The officers attempted to stop the vehicle. The suspect vehicle exited the freeway at the Monte Vista Avenue off-ramp. Two Pomona Police Department units were behind the suspect vehicle. A CHP unit was behind the two Pomona Police Department units. The suspect vehicle then made a right turn heading south on Monte Vista Avenue and immediately pulled over to the west curb line facing south. The police units set up behind the suspect vehicle for a high-risk traffic stop. Immediately after pulling over, the suspect opened his door, produced a black semi-automatic handgun and immediately started shooting at the officers behind him. (The suspect⁵ was later identified as Nick Costales.) The police officers on the ground then engaged Costales by returning gunfire. As the air unit circled above, a tree line obstructed Officer Castillo's view momentarily. Once Costales was back in view, Officer Castillo saw Costales was still shooting while retreating back and taking cover behind his vehicle. Costales moved to the sidewalk while still shooting and was struck by officers' gunfire. Costales fell to the ground

⁴ Officer Castillo was not asked for the identity of or the agency for which this officer was employed.

⁵ The term "suspect" was used by the officers during their interviews. None of the officers used the suspect's name during their interviews, indeed some may not have known his name. However, for ease of reference and clarity, the term "suspect" will be replaced with the last name, Costales, where practical throughout the remainder of the memorandum.

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and dropped the firearm near the grass area next to the sidewalk. Costales then got back up with the handgun and exchanged more gunfire with the officers a second time. Officer Castillo's view was again obstructed by the tree line. By the time Costales came back into view, Officer Castillo saw Costales and the gun were both on the ground. Officer Castillo and his partner then left the area.

On July 1, 2020, **Officer Steve Thruston** was interviewed by Detective Amanda Reidell of the Montclair Police Department.

On June 29, 2020, Officer Thruston was on duty as a police officer with the Pasadena Police Department. Officer Thruston was assigned as the pilot to the Pasadena Police air unit, PD1. Officer Thruston's primary duty is to fly the airship. Officer Thruston was assigned to the LA Impact Task Force, a multi-agency narcotics task force.

Officer Thruston's partner, Officer Castillo, received a phone call on his task force cell phone from another agency asking them to assist them by using their air support helicopter to locate a vehicle wanted in connection with a murder.

Officer Thruston and his partner, Officer Castillo, departed from the heliport in the city of Alta Dena and began looking for the suspect vehicle on the I-10 freeway. Officer Castillo used binoculars while looking for the suspect vehicle. Officer Thruston and Officer Castillo were given updates as to the suspect vehicle's location. As Officer Thruston reached Kellogg Hill in Pomona, the traffic on the I-10 freeway began to slow down. As they approached Garey Avenue, Officer Castillo located the suspect vehicle after confirming the vehicle's description and license plate number.

Officer Thruston began to follow the vehicle and local police agencies were contacted. The CHP and Pomona Police Department responded and located the suspect vehicle. The suspect vehicle exited the freeway at Monte Vista Avenue and waited for the red light before turning right and going south on Monte Vista Avenue where the officers conducted a high-risk traffic stop. The suspect vehicle and the officers' vehicles were facing southbound. The suspect vehicle stopped, the driver's door immediately opened, and an arm extended from the vehicle with a gun in hand.

Officer Thruston continued orbiting above and lost sight briefly when his view was blocked by trees. However, while orbiting, Officer Thruston saw gunfire exchanged Costales and the officers. Officer Thruston saw Costales on the sidewalk with a gun in his hand, facing the police officers on the street, swinging his arm back and forth like he was trying to get a good shot. Costales then moved onto the street and then back onto the sidewalk where he fell. Costales then tried to get back up. Officer Thruston saw an officer with a rifle in the middle of the street. A short time later, the officers approached Costales. Officer Thruston believed the situation was under control, so he left the area.

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On July 1, 2020, at approximately 8:16 a.m. **Officer Thomas Alaimo** was interviewed by Detective Joshua Garabedian and Sergeant Michael Zerr of the Montclair Police Department.

On June 29, 2020, Officer Alaimo was on duty as a police officer with the CHP. Officer Alaimo was assigned to the Baldwin Park Area Office and was working on patrol. Officer Alaimo was driving a marked CHP vehicle and was wearing his CHP blue utility uniform. Officer Alaimo's vehicle had a dash-camera and it was activated during the incident.

Officer Alaimo was working in the area of the I-10 freeway and Indian Hill when he received a call regarding a vehicle that was wanted in connection with a murder. The vehicle was a silver⁶ Kia Optima. Officer Alaimo was given the license plate number. Because the vehicle was wanted in connection with a murder, Officer Alaimo requested additional units to respond to the area to assist him.

There was an airship flying above the area, but Officer Alaimo did not have direct communication with the airship. Officer Alaimo first spotted the suspect vehicle heading eastbound in the number two lane on the I-10 freeway, east of Towne Avenue. Officer Alaimo positioned his vehicle approximately three vehicles behind the suspect vehicle. Officer Alaimo did not want the suspect to know he was being followed by law enforcement until more units were on scene. Officer Alaimo saw one Pomona Police Department vehicle arrive. A few seconds later, Officer Alaimo saw another Pomona Police Department vehicle arrive. As they were exiting Monte Vista Avenue behind the suspect vehicle, Officer Alaimo saw a third Pomona Police Department unit arrive.

After exiting Monte Vista Avenue, the suspect vehicle and the officers turned right onto southbound Monte Vista Avenue. The suspect vehicle appeared to be yielding and came to a stop next to the curb line. Two of the Pomona Police Department vehicles stopped approximately 10 to 15 feet behind the suspect vehicle in the number one and number two lanes of Monte Vista. Officer Alaimo stopped his vehicle behind the Pomona Police Department vehicle in the number one lane and the third Pomona Police Department vehicle pulled up to his right and stopped next to Officer Alaimo's unit in the number two lane.

Almost immediately upon coming to a stop, Officer Alaimo opened his door and had one foot out the door when he saw gunfire hitting the Pomona Police Department vehicle directly in front of him. Most of the officers were not yet out of their vehicles when they started taking gunfire from the suspect. Officer Alaimo saw the Pomona Police sergeant from the unit directly in front of him duck down behind his vehicle door and partially inside his vehicle and return fire with his handgun. The sergeant's vehicle was struck with gunfire and Officer Alaimo saw the spotlight on the vehicle pop when it was hit with gunfire. Officer Alaimo was in fear and grabbed his rifle and went to the back of his patrol vehicle. Officer

⁶ Photographs show the vehicle was a gold/tan color.

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Alaimo chambered one round in the rifle but never discharged it. The Pomona Police Department sergeant in front of him also grabbed his rifle.

While at the back of his patrol vehicle, Officer Alaimo heard more gunfire. He could not tell if it was police fire or gunfire from the suspect. Officer Alaimo saw additional officers off to his right and saw that one of the Pomona Police Department officers was down on the ground. Officer Alaimo moved up to left front door of the Pomona Police Department vehicle directly in front of him to check on the sergeant and to make sure he was alright. Officer Alaimo could not see the suspect, Costales, from this location but could see several other police officers over on the sidewalk to the right. Officer Alaimo moved over to the patrol vehicle to the right and took cover behind that vehicle. From that point, Officer Alaimo could see Costales was down on the sidewalk and not moving. Officer Alaimo never saw Costales until he was already down on the sidewalk.

An officer with the Pomona Police Department had a ballistic shield and Officer Alaimo joined him and other Pomona Police Department officers as they approached the suspect vehicle. They made sure there were no other occupants in the suspect vehicle and then approached Costales. As they approached Costales, the officers gave him several commands to stay still, to not move, and to not reach for the firearm. Officer Alaimo saw Costales' gun, which appeared to be a black compact Beretta, nearby.⁷ An officer from the Pomona Police Department picked up the firearm, cleared it, and moved it further away from Costales. Costales was placed into handcuffs and the fire department arrived on scene approximately 30 seconds to a minute later. Costales did not make any statements. Officer Alaimo only heard Costales breathing.

During the shooting, there were several civilian vehicles in traffic heading northbound on Monte Vista Avenue. With the assistance of Montclair Police Department, the vehicles were cleared out quickly. There was an independent news media person in a black Dodge Charger parked behind the officers' vehicles. Officer Alaimo had seen this vehicle pulling up behind the officers as they were exiting the freeway and he thought the vehicle was an undercover Pomona Police Department vehicle.

On July 1, 2020, at approximately 8:56 a.m. **Officer Caesar Banuelos** was interviewed by Detective Joshua Garabedian and Sergeant Michael Zerr of the Montclair Police Department.

On June 29, 2020, Officer Banuelos was on duty as a police officer with the CHP. Officer Banuelos was assigned to the Baldwin Park Area Office and was working on patrol. Officer Banuelos was driving a marked CHP vehicle and was wearing his CHP blue utility uniform. Officer Banuelos' vehicle had a dash-camera and it was activated during the incident.

⁷ Officer Alaimo was not asked to estimate the distance of the gun from the suspect.

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Officer Banuelos was driving his patrol car eastbound on the I-10 freeway in the Azusa/Citrus area when CHP dispatch broadcast a call of an allied agency airship following a potential murder suspect who was wanted for a homicide that occurred in Fresno. CHP dispatch described the suspect vehicle as a gold Kia Optima and provided the license plate number. Officer Banuelos responded to the location of the suspect vehicle as given in the broadcast. Because the suspect vehicle was wanted in connection with a murder, Officer Banuelos considered every possible outcome, from best case scenario to worst case scenario, that could come of his contact with the suspect in order to mentally prepare himself for what might happen. CHP dispatch relayed information from the airship to the CHP officers regarding the current location of the suspect vehicle.⁸ A few minutes later, Officer Banuelos heard his partner, Officer Alaimo, advise CHP dispatch that he was in the vicinity of the suspect. A few minutes after that, Officer Banuelos heard Officer Alaimo advise CHP dispatch that he had visual on the suspect vehicle. Officer Alaimo advised CHP dispatch of his location and said he was approximately three cars behind the suspect vehicle. Officer Banuelos heard Officer Alaimo advise that a Pomona Police Department unit had passed him and had gotten directly behind the suspect. Officer Alaimo then advised that two additional Pomona Police Department vehicles had arrived on scene and that the first Pomona Police Department unit was initiating a traffic stop. Officer Banuelos could not see this as he was not yet on scene. Officer Banuelos heard Officer Alaimo advise that the suspect vehicle was exiting Monte Vista Avenue.

At this point, Officer Banuelos was heading eastbound on the I-10 freeway just west of Indian Hill. Officer Banuelos was familiar with the area and knew he was not far from Monte Vista Avenue.⁹ Officer Banuelos heard Officer Alaimo advise over the radio that he was exiting at Monte Vista Avenue. As Officer Banuelos exited on Monte Vista Avenue and was approximately 100 yards from the limit line, he heard gunfire. Officer Banuelos saw a freelance photographer ducking behind a vehicle which was stopped in the number two lane just past the turn onto Monte Vista Avenue. Officer Banuelos knew he had to get to the scene and drove between two civilian vehicles that were stopped on the off-ramp. As he did so, Officer Banuelos advised over the radio that shots had been fired.

Officer Banuelos turned right onto Monte Vista and positioned his car in the number one lane directly behind a CHP patrol unit. Immediately upon arriving on scene, Officer Banuelos saw his partner, Officer Alaimo and the Pomona Police Department officers hunkered down, taking cover behind their vehicles. Officer Alaimo's vehicle was in the number one lane, stopped directly behind a Pomona Police Department unit. There were two other Pomona Police units stopped, one in the number two lane and one in the middle between the number one and number two lanes, behind the first two Pomona Police units. Officer Banuelos saw a Pomona Police sergeant near the left front of the Pomona Police unit which was stopped in the number one lane. Officer Banuelos retrieved the rifle from

⁸ The CHP officers did not have direct communication with the airship or the Pomona Police Department officers.

⁹ According to aaroads.com, the distance from the Indian Hill Boulevard exit to the Monte Vista Avenue exit on the eastbound I-10 freeway is 1.75 miles.

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his patrol vehicle and ran towards the left side of his Pomona Police Department vehicle. As soon as Officer Banuelos got out of his patrol car, the gunfire stopped.

As he positioned himself next to the Pomona Police vehicle in the number one lane, Officer Banuelos saw the gold colored vehicle from the broadcast about 20 yards ahead of the Pomona Police vehicles. The Pomona Police vehicles had sustained several gunshots. The Pomona Police unit in the number one lane had sustained a gunshot to its driver's side spotlight. Officer Banuelos also saw fired cartridge casings on the ground. From what he saw, Officer Banuelos knew there had been an exchange of gunfire going both directions between the suspect and the officers.

Officer Banuelos saw the suspect driver, Costales, from the gold Kia lying on the sidewalk approximately 15 to 20 yards from the passenger side front of the Kia. Officer Banuelos noticed a black handgun approximately three feet north of Costales' location on the sidewalk.

Officers with the Pomona Police Department retrieved a ballistic shield and formed a three-man stack on the passenger side of the Pomona Police vehicle in the number two lane. The Pomona officers then began approaching Costales along the passenger side. Officer Banuelos and the Pomona Police sergeant triangulated and made a left-side approach as the three Pomona police officers cleared the suspect vehicle. Once the vehicle was cleared, the officers all began walking towards Costales. One of the Pomona officers handcuffed Costales, another one retrieved Costales' firearm. Once the situation was cleared, Officer Banuelos returned to his patrol car to secure his rifle. About one minute later, Officer Banuelos saw the emergency services start to render aid to the suspect.

On July 1, 2020, at approximately 5:18 p.m. **Officer Wallace Gonzalez, III** was interviewed by Detective Joshua Garabedian and Sergeant Michael Zerr of the Montclair Police Department.

On June 29, 2020, Officer W. Gonzalez was on duty as a police officer with the Pomona Police Department.¹⁰ Officer W. Gonzalez was working as a patrol officer and his field training officer, Officer Vaneric Mendoza, was riding with him. Officer W. Gonzalez was dispatched to assist another police agency helicopter that was in the air tracking a vehicle

¹⁰ All Pomona Police Department Officers who responded to the scene on June 29, 2020, unless otherwise indicated, wore readily identifiable police uniforms consisting of Navy blue pants and shirts with their names and Pomona Police Department badges on the chest and Pomona Police Department patches on each shoulder. All officers also carried the following tactical gear: Body-worn camera, a police radio, .45 caliber handgun, magazines holding ammunition, a baton, and handcuffs. All officers drove marked Pomona Police Department Ford Sport Utility Vehicles. The police department vehicles had forward-facing cameras which were activated when the officers activated their patrol vehicle's emergency lights. The body-worn cameras were synchronized with the patrol vehicles' cameras so that each camera began recording simultaneously. In addition, the body-worn cameras were also able to be activated by the officer.

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with a Department of Justice (DOJ) hit. Officer W. Gonzalez was patched through to the helicopter and was able to hear what the officers in the helicopter were saying.

Officer W. Gonzalez was advised that the vehicle with the DOJ hit was for a suspect wanted for murder out of Fresno. Officers were advised the suspect was possibly armed with a handgun and was driving a gold Kia with no window tint, in stock condition. The officers in the helicopter updated the officers regarding the suspect vehicle's location. Officer W. Gonzalez asked the officers in the helicopter how many people were in the suspect vehicle and was told only one occupant could be seen in the gold Kia. Officer W. Gonzalez was advised that a CHP vehicle was following behind the suspect vehicle eastbound on the I-10 freeway approximately a quarter mile east of the Towne Avenue exit.

Officer W. Gonzalez got onto the I-10 freeway via Towne Avenue. Officer W. Gonzalez heard Pomona Police Sergeant Knight say over the radio that he was at the Indian Hill off-ramp, waiting for the suspect vehicle to drive by. Officer W. Gonzalez drove on the safety shoulder in order to reach the suspect because the traffic was heavy. As soon as Officer W. Gonzalez got to Indian Hill, the officers in the helicopter advised the suspect was in between a semi-truck and another gold vehicle. Officer W. Gonzalez then saw lights and sirens up ahead when he was about a quarter mile from the Monte Vista Avenue exit. As Officer W. Gonzalez got closer to Monte Vista Avenue, he drove to the right of a CHP unit and pulled behind Sergeant Knight's vehicle, stopping behind and to the right of Sergeant Knight's vehicle. Sergeant Knight was driving directly next to Officer Burciaga and Officer S. Gonzalez, who were in one vehicle. Officer Burciaga's unit was behind the suspect vehicle. The suspect vehicle exited the freeway at the Monte Vista exit. As the suspect was heading down the off-ramp, Officer W. Gonzalez saw the suspect looking at the officers in his rearview mirror. Officer W. Gonzalez also saw the suspect reaching for something. The suspect vehicle stopped at the bottom of the off-ramp before turning right onto Monte Vista Avenue.

The suspect vehicle then veered off to the west curb line and the driver's door opened before the car was even stopped. As soon as the suspect vehicle stopped, the suspect, Costales, got out and began shooting. Officer Burciaga's unit stopped about one car-length behind Costales' vehicle; Sergeant Knight stopped his unit next to and to the left of Officer Burciaga. Officer W. Gonzalez stopped his patrol unit behind and centered between Officer Burciaga's vehicle and Sergeant Knight's. Officer W. Gonzalez saw two rounds strike Officer Burciaga's front driver's side window. Officer Burciaga then opened her driver's side door and got out of her vehicle. Northbound traffic on Monte Vista Avenue was heavy and people were actively driving by when Costales began shooting at the officers.

Costales continued shooting and began walking toward the officers. As he walked toward the officers while firing, Costales "did not try to cover himself up at all." Officer W. Gonzalez was afraid for his life and for the lives of his partners. Multiple officers were

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yelling at Costales to drop the weapon and to stop shooting, but he did not obey their commands. Officer W. Gonzalez was behind Officer Burciaga and was pointing his gun toward Costales but could not shoot because Officer Burciaga was in front of him. Officer Burciaga was actively engaging Costales while moving for cover when Officer W. Gonzalez saw her shoulder "pop into" his gun's sights. Officer W. Gonzalez then went to the back of Sergeant Knight's vehicle but was still unable to shoot because his fellow officers were too close down-range. Costales continued shooting and Officer W. Gonzalez could hear bullets whistling past him and windows shattering as the patrol units were hit. Officer Burciaga was returning fire and then went to the back of her patrol unit. Officer S. Gonzalez was out of the patrol unit on the passenger side. Officer W. Gonzalez saw the passenger side window of Officer Burciaga's patrol unit shatter. Officer S. Gonzalez was standing there and when the window shattered, Officer S. Gonzalez fell down. Officer W. Gonzalez thought Officer S. Gonzalez had been hit. Officer Burciaga and Officer W. Gonzalez helped get Officer S. Gonzalez to the back of Officer Burciaga's patrol unit and made sure he was alright. Costales moved to the west sidewalk and continued firing, primarily in the direction of the passenger side of Officer Burciaga's patrol vehicle. Officer W. Gonzalez believed Costales was firing that direction because most of the police officers were located near that side.

Officer W. Gonzalez's field training officer, Officer Mendoza, flanked the trees west of the curb line and fired at Costales. Sergeant Knight was at the front driver's side of his patrol unit with his rifle, firing at Costales. Officer W. Gonzalez saw Costales get hit with a round from the rifle. Officer W. Gonzalez looked through Officer Burciaga's patrol unit's windows and saw Costales was down on the west sidewalk. Costales then got back up, grabbed his gun, and began shooting at the officers again. Officer W. Gonzalez then heard the officers say the suspect was down.

Officer W. Gonzalez got the ballistic shield from Officer Burciaga's patrol unit and checked to make sure Sergeant Knight was alright. Officer W. Gonzalez saw that Sergeant Knight's patrol unit had been hit, but that Sergeant Knight was unharmed. Officer W. Gonzalez told Sergeant Knight he had the shield so they could go clear Costales' car and gun. The officers stacked up on the tree line west of the curb and approached Costales' car. As his partners cleared the car, Officer W. Gonzalez stayed focused on Costales. Costales was still moving around and Officer Gonzalez yelled at him to stop moving. As soon as they got to Costales, Officer W. Gonzalez kicked Costales' gun back further away from Costales. Officer W. Gonzalez helped Officer Burciaga handcuff Costales. Officer W. Gonzalez then grabbed the trauma kit from his patrol car. The fire department arrived within seconds and began treating Costales.

On July 1, 2020, at approximately 2:00 p.m. **Sergeant William Knight** was interviewed by Detective Joshua Garabedian and Sergeant Michael Zerr of the Montclair Police Department.

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On June 29, 2020, Sergeant Knight was on duty as a police officer with the Pomona Police Department. Sergeant Knight's duty weapon was a Springfield 1911 .45 caliber handgun loaded with nine .45 caliber bullets. Sergeant Knight was working as a patrol supervisor when he heard a call go out over the police radio from a PD1 sign, which Sergeant Knight knew to be a Pasadena Police Department helicopter, asking if the Pomona Police Department had any units available to assist with a Department of Justice traffic stop on a murder suspect.

Sergeant Knight responded to the call for assistance. Knowing they were attempting to stop a murder suspect, "someone who had taken a life," Sergeant Knight thought the suspect would probably not want to stop for the police and that the suspect could potentially want to hurt the police in order to get away. As Sergeant Knight began responding to the call, he heard airship PD1 give updates on the suspect vehicle's location as it travelled on the I-10 freeway. Sergeant Knight also listened over the police radio to other police units who gave their location as they responded to the call. Over the radio, Sergeant Knight asked for the suspect vehicle description and which agency wanted the vehicle stopped. As Sergeant Knight made his way to Indian Hill Boulevard and the I-10 freeway, he coordinated with the CHP as the suspect vehicle was driving on the interstate. Sergeant Knight also heard other responding officers ask questions over the radio about the suspect and the suspect vehicle. Sergeant Knight listened as the PD1 airship advised over the radio that the suspect vehicle had what appeared to be a single occupant wearing a green shirt. The PD1 airship directed the police officers to the suspect's location on the freeway.

When Sergeant Knight was eastbound on the I-10 freeway at the Indian Hill Boulevard on-ramp, he waited for the suspect vehicle and the police officers to reach his location. Once they did, Sergeant Knight positioned his patrol unit behind the Pomona Police Department unit operated by Officer Cynthia Burciaga. Officer S. Gonzalez was riding as a passenger with Officer Burciaga. Officers Burciaga and Gonzalez were driving behind the suspect vehicle. The suspect vehicle was in the number four lane, heading eastbound on the I-10 freeway. Officers Burciaga and S. Gonzalez were directly behind the suspect vehicle, in fairly heavy traffic. Once the traffic opened up, the suspect vehicle began to accelerate and the distance between the suspect vehicle and the police officers grew. Sergeant Knight directed Officer Burciaga to initiate a traffic stop. Officer Burciaga activated her emergency equipment on the police car and the suspect vehicle changed lanes, getting into the exit lane at Monte Vista Avenue.

The suspect vehicle exited the freeway at Monte Vista Avenue and Officer Burciaga followed behind it. Sergeant Knight and a CHP officer followed behind Officer Burciaga. As they exited the freeway, Sergeant Knight unlocked the AR15 rifle in his unit and placed it on his passenger seat so that if they got into a situation where they needed more substantial firepower, the rifle would be easily accessible. As they all came to the bottom of the off-ramp, Sergeant Knight saw the traffic light was red and that there were several cars in front of the suspect vehicle. Sergeant Knight pulled his vehicle to the side slightly

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so he could keep observation of the suspect vehicle while they were stopped. Sergeant Knight asked the PD1 airship to take over radio traffic and to call out the pursuit. The PD1 airship acknowledged this request and immediately began to call out all radio traffic.

When the traffic light turned green, the suspect vehicle turned right (south) on Monte Vista Avenue and pulled over to the right-hand curb line (west), facing south. There was a small car directly in front of the suspect's vehicle that pulled over as well, but then fairly quickly drove away. Residential homes were located to west, just on the other side of a block wall located west of the curb and sidewalk.

Sergeant Knight set up for a felony vehicle stop, pulling to the left of Officer Burciaga's unit and placing his vehicle at an angle so he would have a better point of view. Sergeant Knight began to open his driver's door and began to step out while putting his vehicle into park when he saw the driver's side door of the suspect vehicle open. The suspect vehicle was approximately 20 feet in front of the officers' patrol units. Sergeant Knight got out of his car with his gun drawn, stood in the doorway of the driver's side door, pointed his gun at the suspect's vehicle, and yelled out a command to the suspect to get back in the car. The suspect, Costales, quickly exited his vehicle, presented a handgun in his right hand, and pointed it north at the unit directly behind him, Officer Burciaga's unit. Costales immediately started shooting at Officers Burciaga and S. Gonzalez who were in the patrol unit right next to Sergeant Knight's. Sergeant Knight was in fear for his life. Sergeant Knight instantly recognized the deadly threat and discharged his gun at Costales. Costales stood in the open doorway of his car while he was shooting at the officers. Costales moved around the outside of his car's open door and headed south toward the front of his vehicle. Costales continued shooting at Officers Burciaga and S. Gonzalez; Costales also shot at Sergeant Knight.¹¹

Sergeant Knight's gun went into slide lock when he ran out of bullets and he took cover behind the "A" pillar¹² of his police car and reloaded. As he did so, he looked through the passenger side window of his police unit at Officer Burciaga's police vehicle. Sergeant Knight did not see the police unit's driver's side door open, nor did he see Officer Burciaga or Officer S. Gonzalez who were previously in that unit. Because he could not see Officer Burciaga or Officer S. Gonzalez, Sergeant Knight feared they had been shot. Sergeant Knight glanced back up and saw Costales was still standing, moving evasively and erratically, left to right in what appeared to be an attempt to gain a better shooting position while continuing to shoot at all the police officers.

Sergeant Knight quickly grabbed the AR15 rifle, chambered a round, stood behind his police car's doorway, and fired the rifle twice¹³ at Costales. Costales fell to the ground and Sergeant Knight could not see him. Sergeant Knight stepped out from the safety of

¹¹ Photographs show Sergeant Knight's patrol unit was struck by gunfire, including at least one shot to the driver's side spotlight, which was positioned on the "A" pillar of the unit, near where Sergeant Knight stood.

¹² The "A" pillar is the vertical support on a vehicle, located around the windshield.

¹³ Sergeant Knight's body-cam video footage shows Sergeant Knight only fired the rifle one time from this position.

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his vehicle to get a better view and saw Costales was "still attempting to manipulate the gun, trying to get up, and he was looking directly north from where he had originally fired, and then slowly he was rolling and then he started to get back up. When he got back up, I, I thought, you know, wow, this, this guy. I have to stop this threat immediately." There were approximately three dozen citizens in cars stopped in traffic for the northbound light. Sergeant Knight again fired the AR15 at Costales. Sergeant Knight did not know how many rounds he fired, but believed he shot three or four rounds.¹⁴ Costales went down approximately 10 feet southwest of his car, onto the sidewalk, and stopped moving. Sergeant Knight pulled back a bit, keeping his eye on Costales, and began yelling at Officers Burciaga and S. Gonzalez, trying to communicate with them. Sergeant Knight yelled at Officer S. Gonzalez asking him if they were alright. Sergeant Knight heard Officer S. Gonzalez reply that they were alright.

There were CHP officers behind Sergeant Knight. Sergeant Knight wanted to get the suspect vehicle cleared, so he put together a team of officers to do so. Sergeant Knight wanted to get Costales secured into handcuffs and then render any medical aid that was needed. One of the officers yelled to Sergeant Knight that he had a shield and quickly lifted the shield. Sergeant Knight and two CHP officers provided cover with rifles while the clearing team of officers moved forward to clear the suspect vehicle. When the clear signal was given, they walked southbound to where Costales had gone down. Per Sergeant Knight Costales was then handcuffed and rolled over to his side. Sergeant Knight asked an officer to get the medical bag so they could render aid. The fire department arrived very quickly after that.

Sergeant Knight believed he never had the chance to attempt to deescalate¹⁵ the situation because Costales got out of his vehicle immediately and began firing his gun at the officers instantaneously. Sergeant Knight believed had no other choice but to use lethal force to stop the threat.

On July 1, 2020, at approximately 2:58 p.m. **Officer Sean Gonzalez** was interviewed by Detective Joshua Garabedian and Sergeant Michael Zerr of the Montclair Police Department.

On June 29, 2020, Officer S. Gonzalez was on duty as a police officer with the Pomona Police Department. Officer S. Gonzalez was assigned to patrol as a field training officer. Officer S. Gonzalez's uniform consisted of black utility pants and a black polo shirt, with the word "Police" etched on the back in gray letters, a gray Pomona Police Department patch on his left breast, his name on his right breast, and two Pomona Police Department patches on each shoulder. Officer S. Gonzalez also wore a utility belt which contained his Glock .45 caliber handgun and other tactical gear.

¹⁴ Sergeant Knight's body-cam video shows Sergeant Knight fired the rifle 6 more times.

¹⁵ Although Sergeant Knight believed he did not have the chance to attempt to deescalate the situation, he did attempt to do so when he gave a command to Costales to "Get back in the car."

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Officer S. Gonzalez was riding as passenger and was training Officer Burciaga who was driving the patrol vehicle when they were dispatched to the eastbound I-10 freeway, east of Towne Avenue to stop a vehicle related to a homicide. A police department airship had located the vehicle and was tracking it. This airship provided them with the vehicle description and a vague location for it. The suspect vehicle was a Kia Optima and the license plate number was given to the officers.

Eastbound traffic on the I-10 freeway was heavy, so the suspect vehicle had not travelled very far from the time they were dispatched to the time they reached the freeway. Once they were on the freeway, the airship directed them to the suspect vehicle. Somewhere between the Indian Hill Boulevard and Towne Avenue exits, Officer S. Gonzalez and Officer Burciaga got behind the suspect vehicle and continued following it while heading eastbound on the I-10 freeway. Officer S. Gonzalez could see there was only one occupant in the suspect vehicle. When they were near the Indian Hill Boulevard exit, Sergeant Knight fell in behind them in his patrol car. Sergeant Knight advised them there were CHP units in the area, but Officer S. Gonzalez did not see them. Initially, Sergeant Knight told Officers Burciaga and Sean Mendoza to have the CHP units take over, but then he directed them to initiate a felony traffic stop on the suspect vehicle. As such, Officers S. Gonzalez and Burciaga caught back up to the suspect vehicle and activated their lights and sirens. The suspect vehicle exited at Monte Vista and then made a right turn onto Monte Vista Avenue, which was southbound.

After exiting the freeway, the suspect pulled along the west curb. Officers Burciaga and S. Gonzalez pulled up right behind the suspect vehicle, approximately one and a half car lengths behind it. Because the suspect, Costales, and the suspect vehicle were involved in a murder, Officer S. Gonzalez came out of the patrol unit as quickly as he could with his firearm drawn. While standing behind the open passenger door in the crease between the passenger's seat and the door, Officer S. Gonzalez told Costales to show him his hands.

Costales got out of the driver's side of his vehicle with a blue steel semiautomatic handgun in his hand, pointed it at the officers and fired rounds at them. Officer S. Gonzalez was afraid he or his partners were going to get shot by Costales. Officer S. Gonzalez returned fire, hoping to keep Costales from killing them. There was an exchange of gunfire between Costales and Officer S. Gonzalez. Officer S. Gonzalez kneeled behind his passenger door so that he would be covered by the door which has ballistic paneling. Officer S. Gonzalez's passenger side window was shot, and Officer S. Gonzalez fell to the ground. He did not feel any pain, but Officer S. Gonzalez thought he had been shot. Officer S. Gonzalez moved to the back of the patrol unit and Officer Burciaga helped him get back to his feet. Officer S. Gonzalez quickly checked his own body to ascertain whether he had been shot and found he had not. Officer S. Gonzalez saw Costales was moving from the driver's side of the suspect vehicle to the passenger side of the vehicle and onto the sidewalk while still shooting at the officers. Officer S. Gonzalez fired two more rounds at Costales who continued firing rounds at them. Officer S. Gonzalez began reloading his

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firearm when he heard that Costales was down. Officer S. Gonzalez estimated he fired sixteen rounds at Costales.

Officer S. Gonzalez saw Costales was lying on the sidewalk motionless, but he could not see Costales' hands. Officer W. Gonzalez got the ballistic shield from the rear hatch of Officer S. Gonzalez's unit and an arrest team was assembled. The arrest team approached Costales. Officer S. Gonzalez did not approach Costales with the arrest team. Officer Vaneric Mendoza pointed out Costales' gun¹⁶ to Officer S. Gonzalez and said it was two feet away from Costales. Officer S. Gonzalez picked up Costales' gun and rendered it safe by removing the magazine, clearing the chamber for any bullets and locking the slide back. There was a round in the chamber. Officer S. Gonzalez put Costales' gun on the top of the suspect vehicle. Costales was placed into handcuffs and the fire department personnel began administering aid to him.

On July 1, 2020, at approximately 3:55 p.m. **Officer Cynthia Burciaga** was interviewed by Detective Joshua Garabedian and Sergeant Michael Zerr of the Montclair Police Department.

On June 29, 2020, Officer Burciaga was on duty as a police officer with the Pomona Police Department. Officer Burciaga was working as a patrol officer and her field training officer, Officer S. Gonzalez, was riding as her passenger. On this date, an air support unit from another police agency was asking for assistance in locating a suspect vehicle related to a murder. It was Officer Burciaga's understanding that a DOJ task force had a hit on the vehicle and the murder suspect, and that the task force needed help in stopping the vehicle. The vehicle was described as a Kia Optima, the license plate number of the Kia Optima was given, and the officers were told the suspect possibly had a firearm in the vehicle. Officer Burciaga's awareness and concerns for safety were elevated because of the potential danger involved in stopping a potentially armed murder suspect.

Officer Burciaga got onto the eastbound I-10 freeway via the Towne Avenue on-ramp and within about a quarter mile, she saw the suspect vehicle travelling in the number two lane. Officer Burciaga moved closer to the suspect vehicle, getting to approximately two vehicles behind it, and followed behind. Sergeant Knight told Officer Burciaga to get behind the suspect vehicle. She did so and continued following the vehicle for approximately one mile. When Officer Burciaga was about a quarter mile from the Monte Vista Avenue exit, she activated her patrol unit's lights to pull over the suspect vehicle. While behind the suspect vehicle, Officer Burciaga saw that the suspect, Costales, appeared to be the only occupant of the vehicle and that Costales was looking down at his lap and over to his left mirror, back at her. Costales appeared to be "messing around with something down below."

¹⁶ The gun used by Costales was a Beretta semi-automatic .380 auto caliber pistol, model number 84F. The gun was registered to Costales' mother, the murder victim in Fresno. The gun was found to have three rounds in the magazine and one round in the chamber. At the scene, San Bernardino County Sheriff's Department crime scene investigators recovered nine .380 fired cartridge casings.

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Costales exited the freeway at Monte Vista Avenue and started to go south on Monte Vista. Costales pulled off to the side of the street. As soon as Officer Burciaga put her patrol car into park, approximately six to seven feet behind the suspect vehicle, Costales immediately got out his car, turned around, and started firing at Officer Burciaga with a black pistol. Glass from her front windshield shattered immediately and hit Officer Burciaga on the hand.¹⁷ In fear for her life, Officer Burciaga quickly got out of her vehicle and took cover behind the ballistic panel in her driver's door. Costales, fired a few shots at her and then went to the front right side of his vehicle and started shooting at her partner, Officer S. Gonzalez. Officer Burciaga saw her partner fall to the ground and immediately thought he had gotten hit. Officer Burciaga ran to the back of her patrol unit to go to her partner. Officer Burciaga pulled him behind the unit for cover, told him to stay back, and returned fire from the back of her patrol unit because Costales was still actively shooting.

While shooting at the officers, Costales was "shooting down the line, like if you could imagine like beer cans like that were lying on the table. He just shot immediately down the line. He took one shot at me and then he flung this way and then flung back. It was rapid fire that he was shooting." After Officer Burciaga pulled her partner, Officer S. Gonzalez to safety, she saw Costales was shooting from the shrub area that was off to the right side of his vehicle, approximately eight to nine feet away from his car. Costales was shooting in the direction of Sergeant Knight. Officer Burciaga shot two rounds at Costales to stop the threat and saw Costales go down. Costales was lying face down. Officer Burciaga knew that if she hadn't shot at the suspect, she would have been killed. Officer Burciaga estimated she fired a total of six rounds at Costales.

Sergeant Knight gave orders to Costales to remove his hands from underneath him but Costales did not comply. Officer Burciaga saw Costales' firearm was about two to three feet away from him.

Sergeant Knight asked for the ballistic shield that was in Officer Burciaga's unit. Officer W. Gonzalez got the shield and the officers stacked up on the west side of Officer Burciaga's unit and then began approaching Costales. Before reaching Costales, the officers cleared Costales' vehicle to make sure there were not any occupants inside. After clearing the vehicle, the officers approached Costales. As they approached, Officer Burciaga told Costales not to move. While Sergeant Knight and Officers Mendoza and W. Gonzalez held lethal over on Costales, Officer Burciaga handcuffed Costales. Officer Burciaga turned Costales onto his side to help clear his airway because he seemed to be having trouble breathing. Within about a minute, the fire department paramedics began administering treatment to Costales and Officer Burciaga was taken from the scene.

¹⁷ Photographs of Officer Burciaga's patrol unit show the unit was struck several times by gunfire; one bullet struck the driver's side windshield, directly in front of where Officer Burciaga was sitting when Costales began shooting. It should be noted, Officer Burciaga is only 4'11" tall.

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On July 1, 2020, at approximately 4:36 p.m. **Officer Vaneric Mendoza** was interviewed by Detective Joshua Garabedian and Sergeant Michael Zerr of the Montclair Police Department.

On June 29, 2020, Officer Mendoza was on duty as a police officer with the Pomona Police Department. Officer Mendoza was assigned to patrol as a field training officer. Officer Mendoza was riding as passenger and was training Officer W. Gonzalez who was driving the patrol vehicle. On this day, Officer Mendoza and Officer W. Gonzalez were informed by Pomona Police Dispatch and a Pasadena Police Department airship, PD1, that the PD1 airship had just located a suspect who was wanted for a homicide. The Department of Justice task force was looking for the suspect and the PD1 airship had located him on the I-10 freeway at Towne Avenue in Pomona.

Officer Mendoza and Officer W. Gonzalez were dispatched to the call along with other Pomona Police Department officers. While en route to the call, officers were advised the suspect was armed and dangerous and was wanted for a homicide out of Fresno. Upon hearing this, Officer Mendoza began preparing for the worst. Officer Mendoza considered one of two scenarios could happen: either the suspect would take off and there would be a pursuit, or the suspect would fight and potentially use lethal force against the officers and the public.

Officers Mendoza and Gonzalez caught up with the suspect on the I-10 freeway at the Monte Vista Avenue exit; they were the third police vehicle behind the suspect vehicle. Sergeant Knight was in front of them and Officers Burciaga and S. Gonzalez were in front of Sergeant Knight. Officer Mendoza saw a CHP vehicle was beside their unit.

The suspect vehicle exited at Monte Vista Avenue and the officers followed behind it. The light was red, so the suspect was stopped at Monte Vista Avenue. When the light turned green, the suspect vehicle, a brown Kia Optima, turned right, southbound, onto Monte Vista Avenue, where the traffic stop was conducted. Officer Burciaga along with her training officer, S. Gonzalez, parked behind the suspect vehicle. Sergeant Knight parked his police unit beside Officer Burciaga's in an off-set position. Officers Mendoza and W. Gonzalez parked their vehicle in an off-set position, behind Officer Burciaga's unit.

Officer Mendoza saw the suspect, Costales, immediately get out of his vehicle, turn around, and begin shooting at Officers Burciaga and S. Gonzalez. In fear, Officer Mendoza quickly got out of his vehicle and moved to his right to take cover behind Officer Burciaga's vehicle. As he moved to take cover, rounds were still being fired at the police and the police unit. Officer Mendoza looked and saw Officer S. Gonzalez was behind his open vehicle door, the window shattered as several rounds were being fired at the officers, and Officer S. Gonzalez fell to the ground. Officer Mendoza had to duck his head back down behind Officer Burciaga's police unit to take cover. Officer Mendoza then peeked out from behind the right rear corner of Officer Burciaga's vehicle and saw Costales had turned and was firing rounds at Sergeant Knight, who was to the left of

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Officer Mendoza. Costales was next to the right front fender of his Kia Optima while firing. Costales would "kind of hunker down and pop up, hunker down and pop up," and was "taking a, like a cover position" while shooting at the officers. Officer Mendoza pointed his firearm at Costales and fired several rounds to try to stop the threat but Costales continued shooting. Officer Mendoza believed Costales' actions showed he was out to kill the officers or anyone else at the scene. Costales didn't run and just stayed there while shooting. Officer Mendoza knew if he didn't shoot Costales, either he or his fellow officers would have been hurt or killed. Officer Mendoza went back into his police unit in an attempt to get the AR15 rifle but was unable to get it out.

Officer Mendoza went back to the rear of Officer Burciaga's police unit where he looked to see if Officer S. Gonzalez was okay, because he thought he had been shot by Costales. Officer Mendoza saw that Officer Burciaga was pushing Officer S. Gonzalez back behind their patrol unit. Officer Mendoza put a fresh magazine into his handgun as a tactical reload (his handgun was not yet out of bullets). Officer Mendoza could not see Costales, so he moved to another position behind a nearby tree for cover. At that point, Sergeant Knight began yelling, "Suspect's down, suspect's down, I can't see his hands, I can't see his hands!" Officer Mendoza initially couldn't see Costales because the tree was obstructing his view, but when he did see Costales, he saw him lying on the sidewalk. Officer Mendoza could not see Costales' hands.

Sergeant Knight told the officers they needed to clear Costales' car. Officer W. Gonzalez got the ballistic shield from Officer Burciaga's unit. Together, Officers W. Gonzalez, Mendoza, and Burciaga all made a tactical approach to Costales' car and made sure no one was inside it. The three officers then proceeded to where the suspect was lying on the ground. Costales' gun was on the ground nearby, so Officer Mendoza kicked it back toward Officer S. Gonzalez. Officer Mendoza asked Officer S. Gonzalez to recover and clear the weapon. Officer S. Gonzalez retrieved the gun, cleared it, and secured it.

As they approached Costales, Costales was breathing. Officer Burciaga put on gloves and handcuffed Costales, with the assistance of Officer W. Gonzalez. Once Costales was in handcuffs, Officer Mendoza had Officer W. Gonzalez get the medical bag and attempt to render medical aid to Costales. Officer W. Gonzalez ran to the patrol unit, grabbed the medical bag, and then within seconds the fire department was on scene and they began rendering aid to Costales.

STATEMENTS BY CIVILIAN WITNESSES¹⁸

On June 29, 2020, at approximately 7:00 p.m. **Witness #1** was interviewed by Detective Joshua Garabedian of the Montclair Police Department.

¹⁸ All reports of civilian statements made were reviewed, though not all are summarized here.

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Witness #1 was a videographer for On Scene TV. At approximately 3:30 p.m., Witness #1 was driving eastbound on the I-10 freeway near Indian Hill Boulevard when he observed a police helicopter flying in the area. Shortly after, Witness #1 saw two marked Pomona Police Department patrol units and a marked CHP patrol unit drive eastbound past him with their overhead lights activated. Witness #1 followed the patrol units as they merged onto the Monte Vista Avenue off-ramp. The patrol units turned southbound onto Monte Vista Avenue and came to a stop. Witness #1 initially thought two patrol units stopped in the roadway with one additional patrol unit behind them, but later learned there were two units double stacked behind each other.

Witness #1 came to a stop along the west curb line of Monte Vista Avenue behind a Pomona Police Department patrol unit and began to record with his cell phone. Before Witness #1 had a chance to get out of his car, Witness #1 heard multiple gunshots. Witness #1 did not know exactly what was taking place, so he got out of his car and ran along the driver's side of his car and took a position of cover behind his vehicle. From this position, Witness #1 could not see the subject but he could see the police officers firing their guns toward the subject. Witness #1 heard a bullet whizzing by him. Witness #1 made his way over to the passenger side of his vehicle where he saw the subject lying face down on the sidewalk, next to the vehicle which had been pulled over. Witness #1 saw one officer behind a tree, a CHP officer with a rifle, two Pomona officers behind a car door, another Pomona officer behind a car trunk with a shield, and a CHP officer next to the officer with the shield. Multiple uniformed police officers approached the subject and placed handcuffs on him. The fire department arrived on scene and provided aid to the subject within no more than a minute. During the incident, Witness #1 heard the officers yelling but could not tell what they were saying because there was noise from the gunshots being fired, the police sirens sounding, and horns honking from cars in the northbound traffic on Monte Vista Avenue.

On July 1, 2020, **Witness #2** was interviewed by Detective Amanda Riedell of the Montclair Police Department

On June 29, 2020, at approximately 3:30 p.m., Witness #2 was in his tow truck and was stopped in northbound traffic on Monte Vista Avenue during the officer involved shooting. Witness #2 called Montclair Police Dispatch after the incident to advise the police department that he was a witness.

While Witness #2 was stopped, facing north, at the red light at Palo Verde and Monte Vista Avenue, Witness #2 saw a gold sedan exit the eastbound off-ramp from the I-10 freeway and turn southbound onto Monte Vista Avenue. The vehicle caught his attention because several police units were behind it with their emergency lights activated. The gold sedan then proceeded to stop, and the driver immediately got out of the vehicle and went towards the front of his car. The driver began firing a gun at the officers who were stopped behind him. The driver was a white or Hispanic male, wearing a tan shirt. He fired several rounds, three to five shots, at the officers before they fired back. The officers

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had no choice but to shoot him because he fired at them first and there were several vehicles around. After a short exchange of gun fire between the driver and the officers, the driver went down on the sidewalk. Witness #2 left the area at this point. Neither he nor his vehicle sustained any injuries or damage.

INCIDENT AUDIO AND VIDEO

POMONA POLICE DEPARTMENT DISPATCH RECORDING

Officers from Pasadena Airship, PD1, advised Pomona Police Department Dispatch that they were working a DOJ Stop on a murder suspect out of Fresno. PD1 advised the suspect headed eastbound on the I-10 freeway, east of Towne and asked if they had any available units to assist.

Dispatch verified the suspect's position and then called out to officers, Adam 33 (Officers Mendoza and W. Gonzalez) and Edward 34 (Officers Burciaga and S. Gonzalez). Adam 33 and Edward 34 responded. Dispatch then asked PD1 for a vehicle description. PD1 advised the vehicle was a gold Kia Optima, newer model, license plate 6WMH157 and said there is a DOJ Stop on the plate. Dispatch then advised the officers of the vehicle description and advised the suspect was wanted for murder. An unidentified male asked dispatch which agency was looking for the suspect. Dispatch asked PD1 for this information and was told it was a task force who had reached PD1. Dispatch advised officers the suspect was listed as being armed with a handgun and the suspect's name was Nick Costales. Sam 3 (Sergeant Knight) advised dispatch he would be en route to the call as well.

PD1 advised that the suspect vehicle was in stock condition with no tinted windows. Dispatch asked PD1 if CHP had been notified. Sam 3 then spoke directly to officers in PD1 and asked if they had eyes on the vehicle at that moment. PD1 advised they did have visual on the suspect and that they were also working with CHP. PD1 advised traffic had come to a complete stop at Towne. Dispatch then confirmed with PD1 that the suspect vehicle was on the freeway. PD1 advised the vehicle was in the number two lane. Sam 3 asked PD1 to update him as to the responding officers' location and PD1 advised they were about a quarter mile east of the Towne Avenue offramp.

Adam 33 asked PD1 how many people were in the suspect vehicle. PD1 advised possibly two, but then updated this and advised that it appeared to be a solo occupant, a male wearing a green shirt. PD1 then communicated directly with Edward 34 and Adam 33 and directed them to the suspect vehicle's location. PD1 advised the officers that a CHP officer was located to their left.

Sam 3 told his fellow Pomona Police officers to try to bring the suspect to Indian Hill, where Sam 3 was waiting. Sam 3 asked PD1 if CHP was working on a traffic break. PD1 advised they were currently working on it. Edward 34 advised they were behind the

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suspect vehicle, a tan colored Kia Optima, license plate number 6WMH157. Dispatch replied, "10-4, that is the correct vehicle." Edward 34 continued to call out his location and advised the suspect vehicle appeared to hold a solo occupant. PD1 updated Pomona Police Department officers of the CHP unit's location. Edward 34 advised they just passed Indian Hill and were coming up on Monte Vista. Sam 3 asked Edward 34 if he was in a marked unit and said he did not see him. PD1 advised Edward 34 had not yet passed Indian Hill.

Sam 3 then advised Edward 34 that he was with them and told him to back off and let CHP handle the suspect vehicle. Sam 3 asked PD1 if they could communicate with the CHP. Sam 3 then advised Edward 34 to go ahead and "light up" the suspect vehicle because the suspect vehicle was "taking off." Edward 34 replied, "Copy." Edward 34 then advised they were exiting at Monte Vista. Sam 3 advised dispatch he was with Edward 34 and Adam 33. PD1 advised of the suspect vehicle location. Sam 3 then asked PD1, "Call this for us please." PD1 replied, "Copy" and began calling out the stop.

PD1 advised the suspect was in eastbound traffic and had just gotten the green light. Suspect was eastbound up to Monte Vista, making a southbound turn onto Monte Vista, "pulling curb, driver's door open, shots fired, shots fired." Dispatch replied, "Shots fired." PD1 advised, "Suspect is shooting at officers who are facing southbound. He is north and armed with a firearm." The next transmission from PD1 is, "Suspect is down."

BODY-WORN CAMERA AND DASH-CAMERA VIDEO SUMMARIES¹⁹

Officer Burciaga's Body-Worn Camera Video

Officer Burciaga's body-worn camera video was activated while she was driving with her field training officer, Officer S. Gonzalez who was riding as her passenger. Upon pulling Costales' vehicle over, Officer Burciaga stopped her car and put it into park. Officer Burciaga quickly reached for the door handle on her driver's door. As she did so, Officer S. Gonzalez shouted, "Let me see your hands!" This was quickly followed by the sound of several gunshots. Officer Burciaga quickly got out of her car and crouched down behind her open driver's door. Costales could not be seen due to Officer Burciaga's position of

¹⁹ The officers herein were equipped with "Watch Guard Digital In Car Video" systems. The camera system includes a camera which is attached to each patrol unit's dash as well as a camera worn by each officer. The system is activated automatically whenever the patrol unit's lights are activated on full rotation but can also be activated manually by the officer. The dash-camera video and body-worn video recordings all began while the officers were inside their patrol units, several minutes before locating Costales on the I-10 freeway. Due to the position of the body-worn cameras on the officers' torsos, while the officers were still inside their vehicles, all that could be seen was the interior of the patrol unit and the sky outside beyond the windshields. The Pomona Police Department officers could be heard communicating directly with Pasadena Police Officer Ryan Castillo in the PD1 airship. All video recordings were reviewed in their entirety. The summaries of the videos will only cover the events from the beginning through the point immediately after the incident under review. All videos were reviewed though not all are summarized here as they show the same conduct albeit from different perspectives.

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cover behind her patrol unit's door. Officer Burciaga held her gun with both hands, aimed north to the front of her patrol unit, but did not appear to fire any rounds. Multiple gunshots could still be heard as Officer Burciaga retreated northbound to the rear of her patrol unit. Additional marked patrol units could be seen parked behind Officer Burciaga's unit. One of those units was Officer Mendoza's; Officer Mendoza could be seen standing next to the passenger side of his unit, pointing his gun north. Multiple gunshots could still be heard.

As soon as Officer Burciaga reached the back of her patrol unit, her partner, Officer S. Gonzalez was seen falling backwards, onto the ground near the rear passenger side of Officer Burciaga's vehicle as gunshots continued to ring out. Officer Burciaga yelled, "Down," as she pulled Officer S. Gonzalez to safety behind her vehicle where she helped him get to his feet. Multiple gunshots continued and Officer Burciaga quickly moved to the driver's side rear of her vehicle, raised her gun, and fired southbound. Because several other gunshots were still ringing out, it is not entirely clear how many times Officer Burciaga fired her gun. However, it appears Officer Burciaga fired at least two rounds. Costales still could not be seen due to Officer Burciaga's position of cover behind her patrol unit.

There was an eight second pause in gunfire and the sound of several car horns honking was heard. During this pause, a male voice could be heard yelling, "Stay on the ground! Get on the ground!" in the distance. Officer Burciaga moved behind her patrol unit back to the passenger side rear where Officer S. Gonzalez stood. Officer S. Gonzalez was leaning his upper body out past the passenger side, pointing his gun south. Officer Burciaga tapped Officer S. Gonzalez on his side and said, "I got you. I got you right here," as she moved behind him. When the sound of gunshots began again, Officer Burciaga stood next to the west side curb, pointed her gun south with both hands, fired one round, paused, fired another round, and paused again before firing a third and final round. While Officer Burciaga was firing these three rounds, Officer S. Gonzalez could be seen in front of and to the left of Officer Burciaga. Officer S. Gonzalez also had his gun pointed south and he also fired his handgun. While Officer Burciaga was firing the three rounds, her body moved slightly west, closer to the sidewalk. With this movement, Costales could then be seen in the distance down on the sidewalk, but still moving. Due to the distance, it is not entirely clear what Costales was doing; however, it appears he was trying to get up from the ground. Officer S. Gonzalez stepped back behind the patrol unit and reloaded his handgun.

After Officer Burciaga finished firing her three gunshots, all other gunshots ended as well. Officer Burciaga asked Officer S. Gonzalez if he had been hit. He said he had not. The remainder of the video shows the officers as they formed a team and together approached Costales behind Officer W. Gonzalez, who held a ballistic shield.

Officer Burciaga's body-worn camera video reveals that the gun battle between Costales and the officers lasted for one minute and 34 seconds.

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Officer Burciaga's Patrol Vehicle Dash-Camera Video²⁰

This video shows that as soon as his car was stopped, Costales immediately opened his driver's door and quickly stepped out with his left bare foot, turned toward Officer Burciaga's unit and pointed a handgun directly at Officer Burciaga's patrol vehicle as she came to a stop behind Costales' car. Costales immediately began firing the gun at Officer Burciaga's unit.

Officer S. Gonzalez was heard yelling, "Let me see your hands," but this was instantly followed by the sound of Costales' gunshots as he began firing at the officers. Costales held the gun in both hands as he fired. Costales fired his gun at the officers before the sound of return gunfire was heard.

While standing next to his vehicle, with the left side of his body tucked just inside his car, Costales held both arms out in front of him and shot directly at Officer Burciaga's patrol unit. Costales then very quickly swept his arms to his right and fired additional rounds in that direction.²¹ Costales pointed his gun back to his left and fired additional rounds toward the front passenger side of Officer Burciaga's vehicle.²²

While firing at the officers, Costales moved away from his car and quickly retreated backwards around his open driver's door and then moved to the front of his car. As Costales reached the front of his car, the driver's side door of his car closed. Costales crouched down in front of his car and the top of Costales' head could be seen as he moved toward the curb while he faced north toward the officers. Costales then stepped up onto the sidewalk near the front of his vehicle while still facing northbound toward the officers and pointed his gun at the officers again. Holding his gun in both hands, Costales fired additional rounds at the officers. Costales retreated backwards on the sidewalk while continuing to point his gun at the officers. Multiple gunshots were heard. Officer Castillo in the PD1 airship could be heard saying, "Shots fired, shots fired."

Costales then turned to his right and stumbled. Costales did not fall but instead turned back to his left, toward the officers and again pointed his gun at them. Multiple gunshots could still be heard, and it is not clear if the gunshots were from Costales' gun or the officers' guns because no police officers could be seen in the video at to this point. Costales then retreated backwards slightly while still pointing his gun at the officers.

²⁰ There were three cameras that captured video from different positions on the dash of Officer Burciaga's vehicle, one camera was mounted on the passenger side and one was mounted in the middle of the dash, both facing the front. An additional camera faced the rear passenger compartment of the patrol unit. All three videos were reviewed. Because this video was recorded from the dashboard of Officer Burciaga's patrol unit, no police officers were seen in this video until they approached Costales after he was down on the sidewalk.

²¹ Additional body-cam and dash-cam video reveal that Costales was firing at Sergeant Knight at this point.

²² Additional body-cam and dash-cam videos reveal Officer S. Gonzalez was in this location at this time.

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Costales stepped back onto the street while pointing his gun at officers, crouched down and fired at least one round at the officers. Costales quickly stepped back onto the sidewalk. Costales then fell to the ground and rolled onto the grass on the west side to the sidewalk. Costales began getting back up and reached his right arm out to his front before being shot. Costales then rolled onto the sidewalk where he remained down on his left side. No additional gunshots could be heard from this point.

Officers could be heard yelling, but it is not clear what they were yelling. Costales remained on his left side but could be seen moving very slightly. Officers could be heard yelling, "Do not move," and "Stop moving!" Radio traffic could be heard with officers requesting medical aid and requesting northbound traffic on Monte Vista be stopped. Officers used a ballistic shield and approached Costales' car, looked in the windows, and then approached Costales and placed him into handcuffs.

Officer S. Gonzalez's Body-Worn Camera Video

Officer S. Gonzalez's video shows he was riding in the passenger seat of Officer Burciaga's patrol unit. As they initiated the traffic stop of Costales and exited the freeway at Monte Vista Avenue, Officer S. Gonzalez told Officer Burciaga, "Remember, he has a gun."

Over the police radio, Officer Castillo from the PD1 helicopter was heard calling out the incident. Officer Castillo said the suspect was turning "southbound onto Monte Vista from the 10 and he's pulling curb." While Officer Castillo was saying Costales was "pulling curb," Officer S. Gonzalez was opening his door, although the patrol car was still moving. As soon as the patrol vehicle stopped, Officer S. Gonzalez very quickly got out and placed his handgun in the crease between the open car door and the passenger compartment and pointed his gun southbound. As he did so, Officer S. Gonzalez yelled, "Let me see your hands!" Simultaneous to this, Costales got out of his car, turned toward the officers, and began shooting at them.

Costales' first two gunshots were heard while Officer S. Gonzalez was still yelling, "Let me see your hands!" Costales fired at least five rounds in rapid succession²³ while Officer S. Gonzalez ducked below his open door.²⁴ Officer S. Gonzalez then quickly moved toward the outside edge of his open car door, pointed his gun southbound toward Costales and fired several times. Additional gunshots were also heard, but at this point in the video, no other officers or Costales could be seen, so it is not clear from where the shots came. As other gunshots continued to ring out, Officer S. Gonzalez continued to

²³ The exact number of rounds fired by Costales is difficult to determine because after Officer Sean Mendoza ducked behind his car door, Costales could not be seen. It should also be noted that Sergeant Knight fired at Costales shortly after Costales began firing. See Sergeant Knight's statement and body-worn camera video summary for details.

²⁴ Costales could not be seen in the video because Officer S. Gonzalez's body-worn camera was behind the open passenger door where Officer S. Gonzalez took cover.

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fire his gun while he moved back behind his open car door. The window to the car door then shattered and Officer S. Gonzalez fell backwards.

Immediately after Officer S. Gonzalez fell, Officer Burciaga came to his aid and pulled him backwards around to the rear of their patrol unit while gunshots continued to ring out. Officer S. Gonzalez stood up behind the patrol unit and Officer Burciaga was seen moving toward the driver's side at the rear of their patrol unit while pointing her handgun southbound, in the direction of Costales. There was a brief pause in gunshots and several car horns were honking. Officer S. Gonzalez moved behind the patrol unit to the passenger side where he pointed his gun southbound. Costales could still not be seen at this point. Several officers could be heard yelling, "Get on the ground!" After the short pause in gunfire, additional gunshots began ringing out again, but from Officer S. Gonzalez's position, the camera did not capture images of Costales or any other officers, so it is not clear from where the gunshots came.

Officer S. Gonzalez fired his gun southbound however, the open passenger car door blocked the camera view of his target. Officer S. Gonzalez fired several more rounds until the slide on his gun locked back.²⁵ Officer S. Gonzalez quickly moved back behind the patrol unit and reloaded his handgun before pointing it again southward. No more gunshots could be heard from this point onward.

The remainder of the video shows the officers as they approached Costales. When Officer S. Gonzalez approached, the handgun used by Costales was seen lying on the sidewalk just north of Costales. Officer S. Gonzalez was directed to pick it up by an unidentified officer. While other officers handcuffed Costales, Officer S. Gonzalez carefully picked up the handgun, removed the magazine, and cleared a round from the chamber.

Sergeant Knight's Body-Worn Camera Video

Sergeant Knight's body-worn camera video shows Sergeant Knight coming to a stop as the officer in PD1 airship was heard saying Costales is "pulling curb." While his patrol unit was still moving, Sergeant Knight quickly opened his driver's side door. Once his vehicle was stopped, Sergeant Knight quickly got out of his patrol unit and stood in the crease between his unit and the open driver's side door, while yelling, "Get back in the car!" Sergeant Knight immediately placed his handgun in between the driver's side door and the front windshield frame, pointing it south.

Just as Sergeant Knight finished yelling, "Get back in the car," gunshots began ringing out. While standing in the crease between his unit and the open driver's door, Sergeant Knight quickly fired his handgun several times. Simultaneous to this, several other

²⁵ The video clearly shows the slide of Officer Gonzalez's gun locked back, indicating the gun was out of ammunition.

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gunshots were heard, making it difficult to determine how many times Sergeant Knight fired.

Sergeant Knight reloaded his handgun and then turned and reached into his patrol unit. Gunshots were still being fired as Sergeant Knight hurriedly reached for his rifle. Several gunshots continued as Sergeant Knight struggled to free the rifle when the strap on the rifle got caught on something in the patrol unit. As Sergeant Knight was grabbing the rifle from inside his patrol unit, over the police radio, Officer Castillo in the PD1 aircraft was heard saying, "Shots fired, shots fired. Suspect is shooting at officers." With the rifle in his hands, Sergeant Knight moved back to the crease between his vehicle and the open driver's door, chambered a round in the rifle and then pointed it between the driver's door and the windshield frame.²⁶ As gunshots continued to ring out, Sergeant Knight fired one round from his rifle. Sergeant Knight then stepped away from his vehicle and headed out into the street. Other gunshots continued to be heard.

As Sergeant Knight quickly headed into the street, Costales' vehicle was briefly seen. Sergeant Knight moved further south, closer to Costales' vehicle. As Sergeant Knight moved south, Officer Burciaga's and Sergeant Knight's patrol units came into camera view. Officer Burciaga's unit was stopped next to the curb, behind Costales' car; Sergeant Knight's unit was stopped in the street, next to the driver's side of Officer Burciaga's vehicle. Neither Costales nor any police officers could be seen. Sergeant Knight twice yelled, "Get on the ground!" While he was shouting, several car horns were heard. After yelling, "Get on the ground" the second time, Sergeant Knight fired his rifle twice; other gunshots were heard ringing out, but from this video, it is impossible to know from where the shots came because neither Costales nor any other officers were in view of the camera. Sergeant Knight then fired his rifle four more times.²⁷

Sergeant Knight's Patrol Vehicle Dash-Camera Video²⁸

Sergeant Knight's dash-camera video shows Costales and Officer Burciaga as they headed south on Monte Vista Avenue. Costales quickly pulled his Kia Optima over to the

²⁶ At this point, Sergeant Knight's body-worn camera appears to have shifted and is no longer facing to Sergeant Knight's front. Instead, it is facing outward and slightly to the right of Sergeant Knight. From reviewing the video, it appears Sergeant Knight may have knocked his body-worn camera loose during his struggle in freeing the rifle.

²⁷ The video ends at this point, however, Sergeant Knight's second body-cam video shows the continuation of the incident. When the second body-cam video begins, Sergeant Knight was standing at the open driver's side door of his patrol unit and it is clear the incident is over. There is an obvious gap in time between the two videos. It should be noted, during his interview, Sergeant Knight explained that after the shooting had subsided, he looked down and saw that his body-worn camera had dislodged from his chest. Sergeant Knight then saw that the status light on the camera was green, which indicated it was not recording. Sergeant Knight immediately reached down and pressed the record button to start recording again. The second recording only captured events that occurred after the incident under review.

²⁸ There are two separate videos, one from a camera positioned at the middle of the dash and one positioned at the passenger side of the dash. Both videos show the same events, albeit from slightly different perspectives. These videos contain no audio.

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west curb and stopped. Officer Burciaga's unit stopped behind Costales' car. Sergeant Knight stopped his vehicle next to the driver's side of Officer Burciaga's patrol unit.

As Sergeant Knight's vehicle was coming to a full stop, Costales was opening his driver's door. Costales very quickly got out of his vehicle,²⁹ turned to face north toward the officers, pointed a handgun directly at Officer Burciaga's unit and began firing. Costales held the gun with both hands with his arms outstretched in front of him. As Costales fired his gun, he kept the left side of his body tucked in very close to his car.

Costales continued firing his handgun at the officers as he swept his arms from right to left and back again. Costales first fired two rounds in the direction of Officer Burciaga's patrol unit, then two rounds in the direction of Sergeant Knight, and then additional rounds back toward Officer Burciaga's unit. When Costales fired at Sergeant Knight's patrol unit, small bits of black debris³⁰ were seen flying in the air from Sergeant Knight's vehicle. Costales then quickly stepped away from his car, and while continuing to fire his gun at officers, Costales moved backwards around his open driver's door and headed to the front of his car. While facing the officers, Costales quickly ducked and stepped to his left and onto the west sidewalk. While on the sidewalk, Costales pointed his gun north, toward the officers, before he turned his body slightly to the right and began retreating south while side-stepping. While retreating, Costales lowered his gun and then quickly raised it up again, pointing it at the officers twice. Costales bent his upper body forward quickly, then stopped his retreat, advanced toward the officers and fired two more rounds. Costales continued advancing toward the officers and then fell onto the sidewalk, just south and west of his parked car. After Costales fell, he was no longer visible because his car blocked the camera view. Several seconds later, Sergeant Knight came into camera view as he moved to the front of his patrol unit while pointing a rifle toward Costales. The remainder of the video shows the officers as they approached Costales to take him into custody.

Officer Vaneric Mendoza's Body-Worn Camera Video

Officer Mendoza's body-worn camera video begins while he and Officer W. Gonzalez were in the patrol unit assisting other officers in locating Costales. Over the patrol unit's radio, Sergeant Knight was heard telling Officers S. Gonzalez and Burciaga to stop Costales. Officer Mendoza was in the passenger seat and Officer W. Gonzalez was driving the patrol unit. Officer Mendoza directed Officer W. Gonzalez to get up closer but cautioned him to be careful of Costales.

After exiting the freeway at Monte Vista Avenue, the patrol unit came to a brief stop before turning right on Monte Vista. While Officer W. Gonzalez made the right turn on Monte Vista, Officer Castillo from the PD1 airship could be heard over the radio saying Costales

²⁹ Costales was barefoot.

³⁰ Photographs of Sergeant Knight's patrol unit show the unit's driver's side spotlight was struck by gunfire and the spotlight's black plastic frame was shattered.

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was, "pulling curb." While Officer Mendoza was telling Officer W. Gonzalez to stop the unit, gunshots started ringing out. Officer Mendoza quickly got out of the patrol unit and as he did so, witness Witness #1's vehicle could be seen stopping several feet behind them next to the curb on Monte Vista Avenue.

Officer Mendoza quickly turned and faced south. As he did so, Officers Burciaga and S. Gonzalez could be seen on either side of their patrol unit. Officer Burciaga ran from the driver's side of her vehicle to the rear where she took cover behind the unit. Officer S. Gonzalez crouched down behind the patrol unit's open front passenger door. Several gunshots rang out in rapid succession. Officer Mendoza raised and then quickly lowered his handgun before retreating backwards toward the rear of his patrol unit.

Officer Mendoza's camera captured the moment when Officer S. Gonzalez fell backwards next to the passenger side of Officer Burciaga's patrol unit. Officer Burciaga quickly pulled Officer S. Gonzalez behind the unit while shots continued to ring out in quick succession. Officer Mendoza then quickly advanced south toward Officers Burciaga and S. Gonzalez and yelled, "Heads up," while he raised his gun, and then fired it southbound. Costales could not be seen at this point in the video.³¹ Officer Mendoza fired seven rounds, paused and then fired two more rounds.

Officer Mendoza then quickly moved to the passenger side of his patrol unit, leaned inside and reached for the rifle, which was mounted between the two front seats. While Officer Mendoza was leaning into the patrol unit, Officer Castillo could be heard over the radio saying the suspect was down and requesting medical aid. The sound of gunfire had ceased. Multiple car horns were heard sounding nearby. Multiple gunshots again started to ring out again and Officer Mendoza tried to remove the rifle from its mounted position. Unsuccessful in his attempt to remove the rifle, Officer Mendoza turned away and moved back to the side of his patrol unit and faced south. Officer Burciaga could be seen standing in a shooting stance, leaning her upper body to the right, with her arms outstretched in front of her as she stood next to the curb several feet behind the passenger side of her patrol unit. Officer S. Gonzalez was seen standing directly behind their patrol unit.

While gunfire continued to ring out, Officer Mendoza moved closer to Officers Burciaga and S. Gonzalez and yelled, "Heads up, right" twice and then, "Heads up," as he moved onto the sidewalk and raised his handgun and pointed it south. Officers Burciaga and S. Gonzalez were south and slightly east of Officer Mendoza as he stood on the sidewalk. Officer Mendoza quickly reloaded his firearm while continuing to yell, "Heads up, right!" The sound of gunshots again ceased. Costales could briefly be seen lying on the sidewalk several feet south of his car. Officer Mendoza quickly headed west onto the grass just west of the sidewalk and took cover behind a tree; from this position, Costales could not

³¹ It should be noted, Officer Mendoza's body-worn camera appeared to be located near the lower portion of his torso. As such, the camera did not capture the same view that Officer Mendoza would have had.

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be seen. Officer Mendoza pointed his gun south from behind the tree. The remainder of the video shows the officers as they approached and handcuffed Costales.

Officer W. Gonzalez's Patrol Vehicle Dash-Camera Video

After turning right onto Monte Vista Avenue, Officer W. Gonzalez drove his vehicle behind Officer Burciaga's patrol unit. Sergeant Knight's patrol unit was driving to the left of Officer Burciaga's unit. As Officer Burciaga and Sergeant Knight's patrol vehicles began slowing, the right front passenger door to Officer Burciaga's patrol car began to open as Officer Burciaga pulled next to the west curb. Officer W. Gonzalez slowed his vehicle behind Officer Burciaga's. As all the patrol vehicles were coming to a stop, Costales' driver's door began opening. Costales quickly got out of his vehicle, turned and began rapidly firing at Officer Burciaga's police unit. Officer Burciaga quickly opened her door and got out, ducking behind her open driver's door as Costales continued to fire his gun in her direction. A portion of Officer S. Gonzalez's body was seen as he ducked down behind his open passenger door. The sounds of multiple guns being fired began to ring out as officers returned gunfire at Costales. Costales continued to fire his gun, holding it in both hands. Costales swept his arms from right to the left and back again, shooting rounds at Officer Burciaga and then at Sergeant Knight, and then back at Officer Burciaga. As Costales fired at Sergeant Knight, small black pieces of something that was hit on Sergeant Knight's vehicle flew in the air.

After Officer Burciaga got out of her vehicle, she faced south and continued ducking behind her open driver's door. As she did so, Officer S. Gonzalez continued to duck down behind his open passenger door while returning gunfire at Costales. Multiple gunshots could be heard ringing out. Costales then quickly moved away from his car, toward the middle of the street, while still firing at the officers. Costales then backed up quickly and moved to his left, taking cover in front of his car. While Costales was backing up and taking cover, Officer Burciaga, while crouching down, turned and ran to the back of her patrol unit. Officer S. Gonzalez remained on the passenger side of the patrol unit, ducking down for cover behind his door.

As Officer Burciaga reached the back of her patrol unit, Officer S. Gonzalez fell backwards onto the ground. Officer Ryan Castillo from the PD1 aircraft could be heard over the police radio saying, "Shots fired, shots fired." Officer Burciaga ran to Officer S. Gonzalez and pulled him back behind her patrol unit as gunshots continued to ring out. At this point in the video, Costales could no longer be seen because he was blocked from the camera view by his car and Officer Burciaga's police vehicle. Gunshots continued to ring out. After pulling Officer S. Gonzalez behind her patrol unit, Officer Burciaga ran to the driver's side rear of her unit and Costales was momentarily captured on video when he popped up in the camera's field of view, faced the officers, and then quickly ducked back down. As gunshots continued to ring out, Officer Burciaga returned fire at Costales, shooting her gun twice. Officer Ryan Castillo from PD1 could be heard over the police radio saying, "He's shooting at officers."

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The video then showed Sergeant Knight stepping away from the driver's side of his patrol unit, pointing a rifle in a southwest direction. Sergeant Knight then moved to the front of his patrol unit, which then blocked the camera view of him. There was a brief pause in gunfire. Officer Castillo could be heard over the radio saying the suspect was down and requesting medical aid. Officer Burciaga headed back to the passenger side rear of her patrol unit, next to Officer S. Gonzalez. Gunshots rang out again. Officer S. Gonzalez fired south from behind the patrol unit in the direction of Costales. Officer Burciaga moved to her right and out of camera view as gunshots continued. CHP Officer Alaimo, armed with a rifle, and CHP Officer Banuelos, armed with a handgun came into camera view as they quickly approached from the north, taking cover behind the rear of Sergeant Knight's patrol unit as gunfire continued. Shortly after the CHP officers took cover behind Sergeant Knight's vehicle, all gunfire ceased. The remainder of the video shows the officers retrieving the ballistic shield and carefully heading southbound to take Costales into custody.

PASADENA POLICE AIRSHIP VIDEO

The airship video³² shows Costales' vehicle as it pulled over to the west curb on Monte Vista Avenue. As Costales stopped his vehicle, the officers stopped their patrol cars behind Costales. Costales very quickly got out of his car immediately upon stopping. Costales turned and faced the officers while he extended both of his arms out in front of him. Costales held a gun with both hands and pointed it at the officers. As Costales pointed the gun at the officers, both Sergeant Knight and Officer Burciaga's patrol vehicle doors began to open but the officers were not yet out of their vehicles. Because the airship was circling above, Costales and the officers were momentarily blocked from view by nearby trees.

When Costales was back in view, the video captured him stepping backwards on the street away from the officers while he pointed a gun at them. Costales then headed to the front of his car where he was again blocked from view by the trees. Several civilian cars were stopped in northbound lanes on Monte Vista Avenue, not far from Costales and the officers. When Costales came back into view, he was stepping backwards on the west sidewalk, away from the officers. As he did so, Costales faced the officers and pointed his gun at them. Because the camera was zoomed in on Costales, none of the officers could be seen in the video at this point. Costales appeared to be struck by gunfire as he stumbled and almost fell. Costales then advanced toward the officers, pointing his gun at them. Costales' body jerked slightly and Costales fell to the ground, dropping his handgun. Costales fell onto his left side, head facing north, toward the officers. The handgun he previously held was on the sidewalk approximately arms' length away from Costales. Costales rolled his body west onto the grass next to the sidewalk. After a very brief pause, Costales then started to get back while moving toward his gun on the sidewalk. The airship camera zoomed in and out, making it difficult to see Costales. Once

³² There is no audio.

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the camera was zoomed back out, the trees again blocked Costales from camera view as the airship continued to circle above.³³

As the airship continued to circle, Sergeant Knight could be seen standing in the street with a rifle while facing the west curb. Costales was then seen lying on the sidewalk, on his left side, with his head facing north. The handgun Costales previously held was seen lying on the sidewalk nearby. No additional movement was seen by Costales. The video ended shortly thereafter.

DE-ESCALATION

Officer S. Gonzalez and Sergeant Knight attempted to de-escalate the situation at the outset by ordering Costales to show his hands and to get back into his vehicle. Costales did not comply with either of these orders.

Decedent

Costales was pronounced deceased by Dr. Dabbs at 8:20 p.m. on June 29, 2020, at Pomona Valley Hospital Medical Center.

Autopsy

Witness #3, Deputy Medical Examiner for the Los Angeles County Department of Medical Examiner-Coroner, conducted the autopsy of Nick Costales on July 11, 2020. Witness #3 noted 11 gunshot wounds and one gunshot cluster consisting of two gunshot wounds to Costales' body. Witness #3 determined the cause of death was multiple gunshot wounds.

Toxicology

Heart blood, femoral blood and vitreous humor, were collected from Costales during the autopsy.

Toxicology results for the **Heart Blood** sample were listed as follows:

- 11-nor-Delta-9-Carboxy-THC, Free present
- Ephedrine .21 ug/mL

Toxicology results for the **Femoral Blood** sample were listed as follows:

- Ephedrine .22 ug/mL
- Methylenedioxyamphetamine (MDA), Quantity Not Sufficient

³³ It appears that the airship's video camera was manually zoomed in and out by the operator in an attempt to keep Costales in view despite the blockage of the trees.

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CRIMINAL HISTORY

Nick Costales has a criminal history that includes the following convictions:

2005, 594 (a) of the Penal Code, Vandalism, Fresno County case number F04800442-6, a felony.

2010, 23152 (b) of the Vehicle Code, Driving Under the Influence of Alcohol, Fresno County case number M11500006, a misdemeanor.

2012, 23152 (b) of the Vehicle Code, Driving Under the Influence of Alcohol, Fresno County case number M13912658, a misdemeanor.

2014, 23152 (b) of the Vehicle Code, Driving Under the Influence of Alcohol, and 14601.2(a) of the Vehicle Code, Driving on a Suspended License, Fresno County case number M14927853, misdemeanors.

2016, 243 (d) of the Penal Code, Battery Causing Serious Bodily Injury, Fresno County case number F16905534, a felony.

Crimes Upon Peace Officers

Attempted Murder of a Peace Officer

California Penal Code section 664/187 (Summarized in pertinent part.)

Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows:

(e) [...] if attempted murder is committed upon a peace officer or firefighter, [...], and the person who commits the offense knows or reasonably should know that the victim is a peace officer [...] engaged in the performance of his or her duties, the person guilty of the attempt shall be punished by imprisonment in the state prison for life with the possibility of parole.

This subdivision shall apply if it is proven that a direct but ineffectual act was committed by one person toward killing another human being and the person committing the act harbored express malice aforethought, namely, a specific intent to unlawfully kill another human being. The Legislature finds and declares that this paragraph is declaratory of existing law.

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(f) Notwithstanding subdivision (a), if the elements of subdivision (e) are proven in an attempted murder and it is also charged and admitted or found to be true by the trier of fact that the attempted murder was willful, deliberate, and premeditated, the person guilty of the attempt shall be punished by imprisonment in the state prison for 15 years to life. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce this minimum term of 15 years in state prison, and the person shall not be released prior to serving 15 years' confinement.

Assault With a Deadly Weapon

California Penal Code section 245 (d) (Summarized in pertinent part.)

(1) Any person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Any person who commits an assault upon the person of a peace officer or firefighter with a **semiautomatic firearm** and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years. (Emphasis added.)

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a(b).)³⁴ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal C. §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332-333.) An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778,

³⁴ All references to code sections herein pertain to the California Penal Code.

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citing, In re Tony C. (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

An officer-involved shooting may be justified as a matter of self-defense, which is codified in Penal Code at §§196 and 197. Both of these code sections are pertinent to the analysis of the conduct involved in this review and are discussed below.

PENAL CODE SECTION 196. Police officers may use deadly force in the course of their duties, under circumstances not available to members of the general public. Penal Code §196 states that homicide by a public officer is justifiable when it results from a use of force that “is in compliance with Section 835a.” Section 835a specifies a ***police officer is justified in using deadly force*** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

- (1) to defend against an imminent threat of death or serious bodily injury to the officer or another, or
- (2) to apprehend a fleeing felon who threatened or caused death or serious bodily injury, if the officer also reasonably believes that the fleeing felon would cause further death or serious bodily injury unless immediately apprehended,

(Penal C. §835a(c)(1).) Discharge of a firearm is “deadly force.” (Penal C. §835a(e)(1).) The “[t]otality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal C. §835a(e)(3).)

While the appearance of these principals is new to section 835a in 2020,³⁵ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our

³⁵ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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pre-2020 state caselaw, developed upon the former iteration of section 196, is still relevant.

There are two new factors in section 835a that did not appear in the section previously, nor did they develop in caselaw pertaining to use of deadly force. First, a peace officer must make reasonable efforts to identify themselves as a peace officer and warn that deadly force may be used, prior to using deadly force to affect arrest. (Penal C. §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (Penal C. §835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

While the codified standards for use of deadly force in the course of arrest are set forth at subsections (b) through (d) of Section 835a, the legislature also included findings and declarations at subsection (a). These findings and declarations lend guidance to our analysis but are distinct from the binding standards that succeed them within the section. In sum, the findings are as follows:

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly;³⁶
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands and suffer a greater instance of fatal encounters with law enforcement, therefore.

³⁶ Penal C. §835a (a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a (a)(3).

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(Penal C. §835a(a).)

PENAL CODE SECTION 197. California law permits *all persons* to use deadly force to protect themselves from the imminent threat of death or great bodily injury. Penal Code §197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

The pertinent criminal jury instruction to this section is CALCRIM 505 (“Justifiable Homicide: Self-Defense or Defense of Another”). The instruction, rooted in caselaw, states that a person acts in lawful self-defense or defense of another if:

- (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury, and;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger.

(CALCRIM 505.)

“Imminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) A person may resort to the use of deadly force in self-defense, or in defense of another, where there is a reasonable need to protect oneself or someone else from an apparent, imminent threat of death or great bodily injury. “An imminent peril is one that, from appearances, must be instantly dealt with.” (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) The primary inquiry is whether action was instantly required to avoid death or great bodily injury. (*Humphrey, supra*, 13 Cal.4th at 1088.) What a person knows, and his actual awareness of the risks posed against him are relevant to determine if a reasonable person would believe in the need to defend. (*Id.* at 1083.) In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. (*Scott v. Henrich, supra*, 39 F. 3d at 915.)

Imminence, newly defined in the context of an arrest, is similar:

A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

(Penal C. §835a(e)(2).)

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**CAL CRIM 3470 (REVISED 2012)
RIGHT TO SELF-DEFENSE OR 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.

REASONABLENESS. Self-defense requires both subjective honesty and objective reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) The United States Supreme Court has held that an officer's right to use force in the course of an arrest, stop or seizure, deadly or otherwise, must be analyzed under the Fourth Amendment's "reasonableness" standard. (*Graham v. Connor, supra*, 490 U.S. at 395.)

The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight...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 in a particular situation.

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(*Id.* at 396-397, citations omitted.)

The “reasonableness” test requires an analysis of “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (*Id.* at 397, citations omitted.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. A person’s right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639.) If the person’s beliefs were reasonable, the danger does not need to have actually existed. (CALCRIM 505.) Yet, a person may use no more force than is reasonably necessary to defend against the danger they face. (CALCRIM 505.)

When deciding whether a person’s beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a “reasonable police officer” standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)³⁷ To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*)

The *Graham* court plainly stated that digestion of the “totality of the circumstances” is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra*, 490 U.S. at 396.) As such, “reasonableness” cannot be precisely defined nor can the test be mechanically applied. (*Id.*) Still, *Graham* does grant the following factors to be considered in the “reasonableness” calculus: the severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

Whether the suspect posed an immediate threat to the safety of the officer or others has been touted as the “most important” *Graham* factor. (*Mattos v. Agarano* (9th Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun or knife, for example, is the sort of immediate threat contemplated by the United States Supreme Court, that justifies an officer’s use of deadly force. (*Reynolds v. County of San Diego* (9th Cir. 1994) 858 F.Supp. 1064, 1071-72 “an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”) Again, the specified factors of *Graham* were not meant to be exclusive; other factors are taken into consideration when “necessary to account for the totality of the circumstances in a given case.” (*Mattos v. Agarano, supra*, 661 F.3d at 441-442.)

³⁷ The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation”. As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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The use of force policies and training of an involved officer's agency *may* also be considered as a factor to determine whether the officer acted reasonably. (Sen. Bill No. 230 (2019-2020 Reg. Sess) §1. See fn. 3, *infra*.)

When undertaking this analysis, courts do not engage in *Monday Morning Quarterbacking*, and nor shall we. Our state appellate court explains,

under *Graham* 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.

(*Martinez v. County of Los Angeles*, *supra*, 47 Cal.App.4th at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) Specifically, when a police officer reasonably believes a suspect may be armed or arming himself, it does not change the analysis even if subsequent investigation reveals the suspect was unarmed. (*Baldrige v. City of Santa Rosa* (9th Cir. 1999) 1999 U.S. Dist. LEXIS 1414 *1, 27-28.)

The Supreme Court's definition of reasonableness is, therefore, "comparatively generous to the police in cases where potential danger, emergency conditions or other exigent circumstances are present." (*Martinez v. County of Los Angeles*, *supra*, 47 Cal.App.4th at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.) In close-cases therefore, the Supreme Court will surround the police with a fairly wide "zone of protection" when the aggrieved conduct pertains to on-the-spot choices made in dangerous situations. (*Id.* at 343-344.) One court explained that the deference given to police officers (versus a private citizen) as follows:

unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because 'the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.'

(*Munoz v. City of Union City* (2004) 120 Cal.App.4th 1077, 1109, citing *Graham v. Connor*, [*supra*] 490 U.S. 386, 396.)

ANALYSIS

On June 29, 2020, at approximately 3:50 p.m., in the daylight hours, officers from the Pomona Police Department, assisted by two CHP Officers, initiated a traffic stop on

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Costales pursuant to a lawfully issued arrest warrant for the crime of murder. All the police officers were in distinctively marked police units and were each wearing distinctively marked police uniforms. Each of the officers knew the traffic stop was high-risk due to the nature of the offense for which the warrant had been issued. In addition, the officers were advised Costales was believed to be in possession of a handgun.

Once the traffic stop was initiated on the I-10 freeway, Costales exited the freeway, turned south onto Monte Vista Avenue, and then quickly veered off to the west side curb, abruptly stopping his car. Immediately upon coming to a stop, Costales got out of his vehicle and began shooting at the officers who were still inside their patrol units trying to quickly stop their patrol units behind Costales' vehicle. As their patrol units were being riddled with Costales' gunfire, Sergeant Knight, Officer S. Gonzalez, Officer Burciaga, and Officer Mendoza quickly got out of their units, took cover, and returned gunfire. Costales continued firing at the officers for more than a minute and a half, until he was ultimately struck by the officers' gunfire.

In order to determine if the officers' use of deadly force was justified under Penal Code section 835a, we need to determine whether it was objectively reasonable for each officer to believe Costales presented a deadly threat or threat of great bodily injury to the officers or others.

Prior to the traffic stop, the officers knew Costales was wanted for murder and that Costales was possibly armed with a handgun. This knowledge heightened each officers' concern for not only their own safety, but also for the safety of the public. We know from the witnesses' statements and from the video recordings that the freeway was congested with heavy traffic. As such, the safety of the public would naturally be of concern to each of the officers. The officers' concern for their safety and that of the public was reasonable. Officers Burciaga and S. Gonzalez initiated the traffic stop while driving behind Costales' vehicle on the I-10 freeway. Due to the high-risk nature of the traffic stop, Sergeant Knight, Officer W. Gonzalez, and Officer Mendoza assisted Officers Burciaga and S. Gonzalez.

Once the traffic stop was initiated, the officers followed behind Costales as he exited the freeway and then turned onto Monte Vista Avenue. We know from witness statements and from videos recorded at the scene, Monte Vista was also heavily congested with traffic. Immediately after turning onto Monte Vista Avenue, Costales abruptly veered toward the curb and came to a quick stop. Because Costales pulled over to the curb so abruptly, Officer Burciaga and Sergeant Knight were forced to stop quickly. As a result, the officers' vehicles were only 20 feet behind Costales' car. As soon as Costales' vehicle stopped, Costales immediately got out of his car with a gun in his hand, turned toward the officers, and began shooting at them. Many of the officers had not even had the chance to get out of their vehicles when Costales began shooting. When Costales began shooting at the officers, this clearly presented both a deadly threat and a threat of great bodily injury to each of the officers and to the nearby civilians. Witness statements and video

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from the scene reveal there were many civilians present when Costales began shooting his gun.

Because the officers knew they were conducting a high-risk traffic stop, they were better prepared to meet the deadly threat posed by Costales. Officer S. Gonzalez had anticipated the danger posed by Costales and he began opening his passenger door before Officer Burciaga had stopped their patrol vehicle. Because of this, Officer S. Gonzalez was able to get out of the patrol unit quickly, just a split second after Costales had gotten out of his car. As soon as Officer S. Gonzalez got out of the unit, he yelled at Costales, commanding him to show his hands. This proved to be the only chance Officer S. Gonzalez had to attempt to deescalate the situation. Costales ignored Officer S. Gonzalez and began shooting at the officers before Officer S. Gonzalez was even able to finish his order to Costales to show his hands.

Sergeant Knight also was opening his car door before he had stopped his own patrol unit. Sergeant Knight very quickly got out and yelled at Costales to get back in his car. This proved to be Sergeant Knight's only chance to deescalate the situation. Costales also ignored Sergeant Knight's command and immediately began rapidly firing at the officers.

Officer Burciaga was in her patrol unit when Costales began shooting. The first of Costales' rounds struck the driver's side of her windshield, shattering glass on her arms. But for Officer Burciaga's short stature of 4'11", she very likely would have been struck in the head with Costales' initial shots. As Costales shot at the officers, he quickly swept his arms from the left to the right and back again, shooting at Officer Burciaga, Officer S. Gonzalez, and Sergeant Knight. Costales fired multiple rounds at the officers before any of them had a chance to return fire.

Officer S. Gonzalez and Sergeant Knight were the first officers to return gunfire from behind their open vehicle doors at Costales. Officer Burciaga quickly got out of her patrol unit and ducked behind her open driver's door as Officer S. Gonzalez and Sergeant Knight shot at Costales. Costales continued firing at the officers and as Officer S. Gonzalez fired from behind his open vehicle door, the window in the door shattered. Officer S. Gonzalez fell backwards onto the ground and he believed he had been shot by Costales. Costales continued firing at the officers as he stepped away from his car and moved behind the front end of his car for cover. Costales ducked down behind his car, but quickly popped back up to continue shooting at the officers. Officer Burciaga hurried toward Officer S. Gonzalez and pulled him to safety behind their patrol unit while Costales continued shooting. Costales continued shooting at the officers, so Officer Burciaga moved to the driver's side rear of her patrol unit and shot at Costales.

During the gun battle, Sergeant Knight ran out of ammunition. Sergeant Knight reached inside his patrol unit to grab the rifle he had only moments earlier unlocked. When the strap on the rifle caught on something inside the patrol unit, Sergeant Knight frantically

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tried to free it as Costales continued shooting at the officers. Once Sergeant Knight was able to free the rifle, he returned Costales' gunfire.

Officers W. Gonzalez and Mendoza had stopped their patrol unit behind and centered between Sergeant Knight's and Officer Burciaga's vehicles. As Costales shot at the officers, both Officers W. Gonzalez and Mendoza got out the patrol unit, ducking for cover. Officer W. Gonzalez raised his gun but was unable to shoot safely because Officer Burciaga was downrange. Officer Mendoza also raised his was gun, but then quickly lowered it. Officer Mendoza ran to the rear of Officer Burciaga's patrol unit for cover as Costales continued shooting. Officer Mendoza saw Officer S. Gonzalez ducking behind the open passenger door to his unit and then saw the window to that door shatter as Officer S. Gonzalez fell backwards. Officer Mendoza had to duck behind Officer Burciaga's unit for cover as Costales continued shooting. Officer Mendoza thought Officer S. Gonzalez had been shot. Officer Mendoza peeked out from behind the right rear corner of Officer Burciaga's unit and saw Costales had turned and was firing rounds at Sergeant Knight. Officer Mendoza shot his gun at Costales, but Costales continued shooting at the officers.

As the gun battle between Costales and the officers continued, Costales moved to the west sidewalk and began to retreat backwards away from the officers, while still facing them and shooting. Costales was struck by gunfire and then began advancing toward the officers while pointing his gun at them and shooting. Costales was struck again and fell to the ground. The officers stopped firing at Costales and yelled at him to stay down on the ground, but Costales began getting back up, and grabbing his gun. As officers yelled at him to get down on the ground, Costales ignored their commands, intent on continuing the gun battle and the officers were forced to fire at Costales again. Finally, this stopped Costales. The gun battle initiated by Costales lasted for one minute and 34 seconds, until finally Costales was down and unable to shoot at the officers any longer.

Costales' intent was clear from the moment he stepped out of his car and began shooting at the officers. Costales intended to kill as many of them as he could. Costales systematically fired his gun at Officer Burciaga, then at Officer S. Gonzalez, and then at Sergeant Knight. Costales then continued firing at each of the officers again. Costales' rounds struck both Officer Burciaga's and Sergeant Knight's patrol units. One of Costales' rounds hit the driver's side spotlight behind which Sergeant Knight stood.

Video footage of the shooting from multiple angles shows all the officers were in obvious fear for their lives as they ducked behind their vehicles for cover and tried to defend themselves and their partners against the onslaught of bullets fired by Costales. Officer Burciaga, Officer S. Gonzalez, and Sergeant Knight were all in imminent danger as Costales shot at them. Officers Mendoza and W. Gonzalez were also in imminent danger in their positions downrange. In addition, CHP Officers Alaimo and Banuelos were also downrange behind the Pomona Police officers and their lives too were in imminent danger.

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Not only were all the police officers' lives in imminent danger as Costales fired his gun, but many nearby private citizens' lives were in imminent danger as well. When Costales began shooting at the officers, there was a private citizen who had stopped his car directly behind the Pomona Police Department officers' patrol units. And, across the street, many dozens of private citizens were stuck in their vehicles as they sat stopped in the opposite lanes of traffic on Monte Vista Avenue. During the eight second pause in gunfire, these citizens could be heard frantically honking their horns, obviously keenly aware of the deadly position they were in as they sat in their cars, unable to escape. In addition to these private citizens, private homes were located just west of Costales on the opposite side of a wall west of the sidewalk.

Costales undoubtedly posed an immediate threat to the safety of the officers and the nearby private citizens. Officer S. Gonzalez, Officer Burciaga, Sergeant Knight, and Officer Mendoza had no choice but to defend themselves, their fellow officers, and the nearby private citizens, against Costales as he shot at the police officers. Each of the officers honestly and reasonably believed they had to shoot Costales in order to defend human life. The officers and the nearby private citizens were all in imminent danger of being killed or suffering great bodily injury as Costales fired his weapon.

The officers used no more force than was reasonably necessary to defend against the danger they faced. Costales fired multiple gunshots at the officers at close range. Costales' rounds struck the patrol units while many of the officers were still inside them. Costales continued firing at the officers while the officers hunkered down behind their vehicles. The officers' only reasonable choice was to fire back at Costales. At no point did Costales back down either. Even after he was hit by the officers' gunfire, Costales advanced toward the officers and continued firing at them. When Costales was struck again and fell down to the ground, he got back up and continued shooting, even after the officers had stopped firing at him and yelled at him to stay down on the ground. From the beginning until the very end, Costales' intent was clear. He was intent on killing the officers and he was not going to back down or surrender. The only way to stop Costales was with deadly force.

Costales ignored every single command given by the officers. From the very beginning, Costales ignored Sergeant Knight's command to get back into his vehicle. Costales ignored Officer S. Gonzalez's command to show his hands. It is apparent that Costales had already made up his mind to shoot the officers before either of these two commands were given. The speed with which Costales got out of his car, turned, and began shooting at the officers proves this. Costales ignored both officers' commands: he did not show them his hands, nor did he get back into his vehicle. Instead, he immediately began shooting at the officers.

After Costales was shot and was down on the ground, the officers stopped shooting at him and began yelling commands to him to stay down. Several officers yelled at Costales

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and told him to stay on the ground. Costales also ignored these commands. When Costales attempted to get up from the ground, the officers continued yelling at him to stay down on ground. Costales ignored these commands and got up to continue shooting at the officers.

The officers' beliefs were objectively reasonable; any officer at a scene with these facts and circumstances confronting them, would believe Costales posed an imminent threat to his or her life and to the life of anyone else nearby.

CONCLUSION

Based on the facts presented in the reports and the applicable law, Sergeant Knight's use of deadly force was a proper exercise of Sergeant Knight's right of self-defense and therefore his actions were legally justified.

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

Based on the facts presented in the reports and the applicable law, Officer Burciaga's use of deadly force was a proper exercise of Officer Burciaga's right of self-defense and therefore her actions were legally justified

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

Submitted By:
San Bernardino County District Attorney's Office
303 West Third Street
San Bernardino, CA 92415

Date: February 2, 2021

