



## PUBLIC RELEASE MEMORANDUM

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**Date:** January 21, 2022

**Subject:** Non-Fatal Officer-Involved Incident

**Involved Officer:** Officer Michael Yeun  
San Bernardino Police Department

**Involved Subject:** "FD" [JUVENILE]  
**Subject's Residence:** San Bernardino, CA

**Incident Date:** August 18, 2020

**Case Agent:** Detective Chris Crosswhite  
San Bernardino County Sheriff's Department

**Agency Report #:** 602000143/H#2020-084

**DA STAR #:** 2021-39941

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**PREAMBLE**

The summary of this non-fatal incident is drawn from a submission of materials prepared by the San Bernardino County Sheriff's Department (SBCSD). The case agent for this submission was SBCSD Detective Chris Crosswhite.

The submission reviewed included the following: reports of law enforcement witnesses, police dispatch audio recordings, body-worn camera (BWC) video recordings, audio recordings of law enforcement and civilian witness interviews, law enforcement photographs, and law enforcement scientific investigation reports.

**FACTUAL SUMMARY<sup>1</sup>**

On August 18, 2020, at approximately 3:33 p.m., San Bernardino Police Department (SBPD) Officer Michael Yeun fired his duty weapon at [REDACTED] ("FD") in the city of Highland. FD, a juvenile, was armed with a loaded semi-automatic pistol at the time of the officer-involved shooting. No law enforcement officer sustained physical injury during the encounter. FD sustained gunshot wounds, received medical aid at the scene and was transported to Loma Linda University Medical Center (LLUMC) for further care. FD survived his injuries.

Prior to the shooting, Officer Yeun and his partner—Officer Robert Hines, were on duty and assigned to patrol areas of San Bernardino. The officers wore department-issued uniforms with SBPD badges and police insignia. Officer Hines drove a marked black and white SBPD patrol unit; Officer Yeun rode in the front passenger seat. Officers Hines and Yeun were asked by narcotics Officers Alex Cerritos and Edgar Chavez to locate a vehicle whose occupants the narcotics team were actively investigating. Officers Hines and Yeun were told that one of the suspect vehicle occupants had a "no bail" warrant and had recently made social media postings along with another vehicle occupant of themselves posing with firearms. A short time after receiving this information from Officers Cerritos and Chavez, Officers Hines and Yeun located the suspect vehicle moving southbound on Sterling Avenue and turning onto East Baseline Street. Officer Hines positioned his unit behind the suspect vehicle and shortly thereafter, the suspect vehicle accelerated away at speeds in excess of the speed limit. The occupants of the suspect vehicle looked back at the patrol unit while the suspect vehicle weaved through traffic without making turn-signals and cut-off and tailgated other vehicles. Officer Yeun announced via dispatch that they would be conducting a traffic stop of the suspect vehicle at East Baseline Street and McKinley Avenue. Officer Hines activated his overhead emergency lights to effectuate the stop. The suspect vehicle immediately yielded at the driveway of the Mountain Breeze Villas, west of the intersection.

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<sup>1</sup> Herein is a summary only. All incident-involved officers were employed by the San Bernardino Police Department. All investigating officers were employed by the San Bernardino County Sheriff's Department.

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Just as the suspect vehicle stopped, its front passenger door flew open and the front passenger (FD) stepped out. FD wore white tank-top and burgundy sweatpants. FD looked back at Officers Hines and Yeun's patrol unit and took off running. Officer Yeun got out of the patrol unit and gave chase. FD was running so fast that he came out of his shoes but continued to sprint away in his socks into the Casa Del Sol apartment complex east of the Mountain Breeze Villas. Officer Yeun saw that FD had his left hand on his left side as if he was trying to keep something heavy in his pocket from swaying around too much. FD continued to hold onto the left side of his pants during the entire foot chase. Officer Yeun believed that FD was securing a pistol in his pocket as the chase continued between buildings and past civilians and cars in the area. During the foot pursuit, it occurred to Officer Yeun that FD may be drawing him into this apartment complex to set up an ambush of the officer. Officer Yeun admitted that he was not familiar with the apartment complex as it is one usually patrolled by the sheriff's department. However, Officer Yeun did believe that the area was the territory of a criminal street gang that he had recently become familiar with.

After approximately 26 seconds of running, Officer Yeun drew his duty weapon and ordered FD to get on the ground or be shot. FD ignored the command and continued running 20-40 yards ahead of the officer. About 10 seconds after that, Officer Yeun noticed that FD stumbled or fell to the ground but was getting back up and appeared to be taking cover behind a bush and trying to fix upon the officer's location. Officer Yeun finally closed his distance on FD and ordered FD to get on the ground. Officer Yeun momentarily lost sight of FD's hands. When Officer Yeun saw FD's right hand again, the officer saw FD was holding a handgun. FD was kneeling next to a bush and looked up at Officer Yeun. Believing that FD was going to shoot at him, Officer Yeun fired three times at FD from a distance of approximately 10-15 yards. Officer Yeun saw FD's hand separate from his weapon as FD fell onto his back. Within seconds of firing his duty-weapon, Officer Yeun alerted dispatch, "Shots fired. Shots fired. One down."

Officer Yeun saw that FD's gun was within six inches of FD's feet as FD lay on the ground. Officer Yeun kept FD at gunpoint for a brief time (about 30 seconds) until Officer Chavez arrived. After Officer Chavez arrived, Officer Yeun holstered his weapon, handcuffed FD, checked FD for any additional weapons and requested medical aid. Officer Yeun also advised dispatch, "[FD] has a gun here. He pointed it at me." While waiting for medical aid to arrive, FD asked Officer Yeun, "Why you shoot me for bro?" Officer Yeun responded, "Because you had a gun." While waiting for medical aid to arrive, FD became agitated. Officer Yeun patted at FD's back and told him to calm his breathing and to relax. Officer Yeun repeatedly told FD, "You can't point a gun at officers." FD denied pointing a gun at Officer Yeun and later threatened to kill Officer Yeun. While still within earshot of FD, Officer Yeun gave a statement to a superior officer, during which FD repeatedly screamed, "I didn't point the gun at him, he's lying." Thereafter, FD received first aid at the scene and was transported by ambulance to LLUMC. FD was treated for a bullet laceration to the upper right arm, a gunshot wound to the right lower back and a through-and-through gunshot wound to the upper right thigh.

After an examination of the scene and the collection of evidence, a total of three fired cartridge casings (FCC's) were recovered that were attributable to the semi-automatic pistol fired by

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Officer Yeun. The weapon used by Officer Yeun was collected and examined by a SBCSD Scientific Investigations Division (SID) Criminalist. The Criminalist found that Officer Yeun's weapon fired without malfunction and had no apparent damage. FD's weapon was also collected from the scene. FD's handgun was a black and red 9mm Luger caliber semi-automatic polymer pistol. FD's handgun contained 5 live rounds in the magazine. FD's gun was examined by a SBCSD Crime Scene Specialist and was test-fired without noted malfunction.

**STATEMENTS BY LAW ENFORCEMENT OFFICERS<sup>2</sup>**

**Officer Robert Hines** gave a voluntary interview to SBCSD Detectives Hernandez and Stone at 10:22 p.m. on August 18, 2020, approximately seven hours after the shooting incident. Officer Hines's attorney was present for the interview. At the time of the incident, Officer Hines had been a SBPD police officer for four and a half years. Officer Hines participated in the precipitating traffic stop but did not witness the officer-involved shooting. During his involvement prior to the shooting incident, Officer Hines wore a black department-issued uniform, including a short-sleeved polo shirt with SBPD insignia patches affixed upon both outer shoulders and black pants. Officer Hines also wore a black baseball cap with "San Bernardino Police" displayed in white block letters across the forehead.

The following is a summary of additional relevant portions of the interview:

Officer Hines was Officer Yeun's partner on the day of the incident and was driving the marked black and white patrol car that the officers used to pull over the subject vehicle. Officer Hines recalled that he and Officer Yeun received a phone call from Officer Chavez that Officers Hines and Yeun listened to simultaneously via speakerphone. Officer Chavez told Officers Hines and Yeun that one of the occupants in the subject car had a no-bail warrant and had been seen on social media posing with guns. Officer Hines and Yeun then contacted Officer Cerritos, who reiterated the information provided by Officer Chavez and gave Officer Hines and Yeun a description, license plate number and location of the subject vehicle.

Officer Hines stated that he intercepted the subject vehicle near the intersection of Sterling Avenue and Baseline Street. Officer Hines recalled that Officer Yeun did mention that this area of San Bernardino involved an up and coming clique of the East Side Verdugo criminal street gang. Officer Hines stated that the driver looked at the direction of Officer Hines' unit and as the vehicle continued in front of the officer's unit, the rear passenger turned completely around and looked at the officers through the back windshield. At that moment, the subject vehicle sped away. Officer Hines observed the subject vehicle travel at approximately 65 miles per hour (in excess of the speed limit),

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<sup>2</sup>All law enforcement officers investigating the officer-involved shooting were employed by the San Bernardino County Sheriff's Department. All investigative reports submitted were reviewed, but not all are referenced here. No law enforcement personnel became aware of or used any civilian person's name until investigations revealed it, or as otherwise specified. All references to any witness or FD by name are made here for ease of reference.

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make lane changes without signaling, cut-off and tailgate other cars. One of those cars had to swerve to avoid being hit by the subject vehicle. Officer Hines saw the occupants of the subject vehicle look back at the officers; Officer Hines believed that they were shocked or scared, and certainly knew that officers were behind them.

As they approached McKinley Avenue on East Baseline Street, Officer Yeun announced the traffic stop over the radio and Officer Hines activated his emergency lights to effectuate the traffic stop. Officer Hines saw the subject car quickly yield into an apartment complex driveway. Officer Hines then saw the front passenger of the subject car look back at the patrol unit before fleeing on foot. Officer Yeun ran after the front passenger while Officer Hines stayed with the patrol unit and the subject car. Then, Officer Hines heard Officer Yeun try to broadcast that he was in a foot pursuit. Officer Hines assisted by providing a supplemental physical description of FD over the radio.

**Officer Edgar Chavez** gave a voluntary interview to SBCSD Detectives Hernandez and Stone at 11:49 p.m., on August 18, 2020, approximately eight hours after the shooting incident. Officer Chavez's attorney was present for the interview. At the time of the incident, Officer Chavez had been a law enforcement officer for approximately six years. Officer Chavez witnessed the precipitating traffic stop and the officer-involved shooting.

The following is a summary of additional relevant portions of the interview:

On the day of the shooting incident, Officer Chavez and his partner, Officer Cerritos, were working in conjunction with the probation department to investigate identified juveniles who had been seen showing off firearms on social media. Officer Chavez asked Officers Hines and Yeun to conduct a traffic stop of a vehicle that was believed to contain those juveniles, as well as another person for whom a no-bail warrant had issued. Officer Chavez advised Officers Hines and Yeun that the juveniles were armed with pistols.

Officer Chavez explained that he was working in an undercover capacity and that he was nearby in an unmarked police unit when Officer Yeun announced the traffic stop. Officer Chavez saw the emergency lights on Officer Yeun's patrol unit activate. Next Officer Chavez saw FD running and holding his waistband. Officer Chavez believed that FD had a firearm based on the information he previously had and because of the manner in which FD fled. Officer Chavez described FD as a Hispanic male of medium complexion, wearing a white tank top and sweatpants. Officer Chavez saw FD run out of his shoes as he moved eastbound down Baseline Street. Officer Chavez then watched FD run north into an apartment building complex. Officer Chavez followed the foot-pursuit in his unmarked car, in case Officer Yeun was being lured into an ambush.

Officer Chavez watched FD and Officer Yeun run between apartment buildings. At some point, Officer Chavez lost sight of FD and Officer Yeun. The next time Officer Chavez saw FD and Officer Yeun, Officer Chavez was approximately 60 yards away and saw FD

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fall. FD immediately tried to get up, then Officer Chavez heard three gunshots. Through the entire foot-chase and when gunshots rang out, Officer Chavez was not in a position to see if FD had a firearm in his hand. However, Officer Chavez did see Officer Yeun shoot at least twice. At the time, it appeared to Officer Chavez that FD was standing up approximately 10 feet away from Officer Yeun.

After hearing the gunshots, Officer Chavez put on his badge and gun and went to assist Officer Yeun. Officer Chavez heard Officer Yeun announce on the radio that shots had been fired. Officer Chavez saw that there were a lot of people in the area and wanted to provide Officer Yeun cover while Officer Yeun handcuffed FD. Right after Officer Yeun handcuffed FD, Officer Yeun told Officer Chavez to watch out for FD's gun—it was a red and black pistol that looked like a Glock; the gun was under a bush. That was the first time that Officer Chavez saw FD's gun. As Officer Chavez stood by with FD and Officer Yeun, Officer Chavez heard Officer Yeun tell FD several times that he shouldn't point a gun at cops.

**Officer Michael Yeun** gave a voluntary interview to SBCSD Detectives Stone and Carpenter at 12:17 a.m. on August 19, 2020, approximately eight hours and 45 minutes after the shooting. Officer Yeun's attorney was present for the interview. At the time of the incident, Officer Yeun had been a law enforcement officer for three and a half years. He was not physically injured.

During the incident, Officer Yeun wore a black department-issued SBPD uniform, including a short-sleeved polo shirt with SBPD insignia patches affixed upon both outer shoulders and black pants. Over the black polo shirt, Officer Yeun wore a department-issued black tactical vest with a SBPD cloth badge displayed on the left chest, and "M.Yeun" and "POLICE" displayed on the right chest. The back of the vest included the word "POLICE" in large white block letters. Officer Yeun also wore a black baseball cap with "San Bernardino Police" displayed in white block letters across the forehead.

Officer Yeun explained during his interview that prior to the incident, his duty-weapon had been loaded with 18 rounds, total. The following is a summary of additional relevant portions of the interview:

Officer Yeun recalled that he was close to the end of his normal workday when he and his partner—Officer Hines, were contacted by narcotics officers about conducting a traffic stop. Officer Yeun was told that an occupant of the subject vehicle had a no-bail warrant, and one or two others were recently seen on social media possessing firearms. Thereafter, Officer Yeun stated that they located the subject vehicle. After the subject vehicle was observed committing vehicle code violations, Officers Yeun and Hines initiated a traffic stop. After the subject vehicle yielded, but before Officer Yeun's patrol unit came to a complete stop, Officer Yeun saw FD jump out of the front passenger door and run.

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Officer Yeun immediately ran after FD and noticed that FD put his left hand on his left pocket. Officer Yeun saw that FD's pocket swung like there was something heavy in it and FD was trying to keep it steady. Officer Yeun also saw that FD was running towards an apartment complex that he was not familiar with; it was one patrolled by SBCSD. Additionally, Officer Yeun believed the apartment complex was in the territory of a criminal street gang clique that he had recently become familiar with. Officer Yeun believed that FD had "friendlies" at the apartment complex and was possibly setting up the officer to be ambushed.

Officer Yeun then began giving FD commands to get on the ground. While giving commands, Officer Yeun also told FD, "I'm gonna fucking shoot you." Officer Yeun admitted that this was unprofessional language, but explained he used it to try to scare FD into giving up. However, FD just kept running. It was unusual, based on Officer Yeun's past foot-chase experience that FD did not give up. Soon thereafter, FD fell or stumbled to the ground and Officer Yeun gave FD another command. Officer Yeun lost sight of FD's hands momentarily. Still, Officer Yeun continued in a full sprint toward FD. When Officer Yeun saw FD again, FD was kneeling next to a bush with a gun in his right hand. It appeared to Officer Yeun that FD was trying to take cover or use the bush as concealment while trying to see where Officer Yeun was. Instead of getting to the ground as Officer Yeun ordered, FD looked up at Officer Yeun. At that moment, Officer Yeun believed that FD was going to shoot at him.

Officer Yeun stated that he kept moving to make it harder for FD to shoot at him. Officer Yeun believed that "if [FD] had the opportunity to locate [the officer] before [the officer] had an opportunity to contact [FD] that [FD] would take a shot" at the officer. Officer Yeun explained that by the time he saw FD's handgun in FD's hand, that he was no longer in a position to take cover behind vehicles in the area. If the officer had retreated backwards, Officer Yeun recognized that he would risk falling. Officer Yeun stated that had he stopped mid-sprint and attempted to move backwards, that the officer would be even more vulnerable to getting shot by FD. Officer Yeun also felt that FD would have shot at him if the officer took the extra second or two to give FD additional warnings, nor would warnings have made any difference in FD's conduct. Moreover, Officer Yeun explained that since FD had a firearm, it would have been inappropriate for him to transition to less-lethal munitions. Additionally, Officer Yeun knew that there were bystanders in the area behind him and to the officer's left. Officer Yeun believed that if FD shot at him, that those bystanders were at risk of being struck by a stray bullet. Officer Yeun stated simply that he feared for his life. Officer Yeun did not give FD an opportunity to turn his weapon towards the officer; from 10-15 yards, Officer Yeun fired three times at FD.

Officer Yeun stated that he stopped firing when he saw FD's hand separate from FD's firearm. After FD was shot, Officer Yeun stated that FD became compliant with the officer's verbal commands. After other officers appeared, Officer Yeun was able to get FD handcuffed and call for medical aid.



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**Additional Law Enforcement Personnel** were interviewed regarding their involvement in this incident and related investigations. SBPD Narcotics Officer Alex Cerritos told investigators that he personally observed FD and another of the subject car's occupants on a live Facebook broadcast, each holding real guns. One of the guns was a black Glock-style semi-automatic pistol with a red upper slide. On the day of the shooting incident, Officer Cerritos confirmed via police radio with Officers Hines and Yeun that the subject car contained four people, one of whom was wanted on a no-bail warrant and believed to be armed. Officer Cerritos directed Officers Hines and Yeun in locating the subject car prior to the traffic stop.

Sergeant Ryan Wicks, who supervised the narcotics team, was aware of the social media investigation being conducted by Officers Chavez and Cerritos prior to the shooting incident. On the day of the shooting incident, Sergeant Wicks heard the radio traffic about Officer Yeun's traffic stop. Sergeant Wicks went to the area of the traffic stop. By the time Sergeant Wicks arrived, FD had fled. Sergeant Wicks continued to the apartment complex to try to locate the foot-chase when he heard over the radio that shots had been fired. Shortly thereafter, Sergeant Wicks located Officer Yeun; Officer Chavez was already there and FD was handcuffed. Sergeant Wicks confirmed that FD's weapon retrieved from the scene looked like the same gun seen in the narcotics officers' social media investigation.

A SBCSD Scientific Investigations Division Criminalist examined Officer Yeun's duty weapon. The Criminalist identified Officer Yeun's weapon as a Glock model 17Gen4, 9mm Luger caliber semi-automatic pistol. The Criminalist found Officer Yeun's weapon had no apparent modification or defect and fired without malfunction.

**STATEMENTS BY CIVILIAN WITNESSES<sup>3</sup>**

Multiple civilian witnesses were contacted after the shooting incident who heard the gunshots and/or saw police activity. Of those civilians, only one watched portions of the foot-chase and the culminating officer-involved shooting. The witness civilian stated that he was at his car and closing his trunk when he saw FD run by. The witness civilian saw FD holding his pants. The witness civilian described Officer Yeun as an Asian police officer in full uniform, including a cap and vest. The witness civilian heard Officer Yeun say, "Stop or I'm going to shoot you." Thereafter, the witness civilian saw FD trip, fall to the ground and roll a couple of times. The witness civilian saw FD start to get up. The witness civilian stated that he could not tell if FD was pulling anything out as FD was getting up because the witness civilian's view of FD was partially obstructed by cars in the parking lot. Next, the witness civilian heard three shots. The witness civilian estimated that the officer stood no more than ten feet away from FD when the officer fired. A minute later, the witness civilian stated that an undercover officer with a badge

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<sup>3</sup> Multiple civilian witnesses were interviewed pursuant to the submitted investigation. Every civilian statement and recorded statement submitted was reviewed in totality. However, only selected parts of those statements are included here. No civilian witness used the name of any person involved in the lethal force encounter, unless otherwise indicated. Names are included in this summary for ease of reference only.

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hanging over regular clothes arrived.

The three other occupants (two juveniles and an adult) in the subject car were also interviewed after the incident. Juvenile #1 was the driver. Juvenile #1 admitted he was unlicensed and driving his mother's car. Prior to the traffic stop, Juvenile #1 said he saw the black and white police SUV get behind them. Juvenile #1 said that the people in the car told each other to keep their hands up. Juvenile #2 sat behind Juvenile #1 in the subject car. Juvenile #2 said he saw the blue lights and knew they were getting pulled over. Adult #1 was in the backseat with Juvenile #2. Adult #1 stated that there was tension in the car after the police got behind them. Adult #1 told Juvenile #1 to slow down or "chill out" because Juvenile #1 was driving "panicky." Adult #1 heard Juvenile #1 say "We're getting pulled over." All the interviewed car occupants did not hear FD say anything before he ran out of the car. All the interviewed car occupants denied knowing FD had a gun in the car.

**SUBMITTED MEDIA<sup>4</sup>**

**Dispatch Recordings.** The case agent's submission included audio files containing dispatch radio broadcasts. The dispatch recordings appear to have been submitted in real time. The actual timing of the recordings, however, was not apparent from the recordings themselves, except to make approximations based upon the digital title and audio content of the calls. There was some indication of timing when the audio recordings were considered alongside the dispatch logs prepared by SBPD, which noted approximate timestamps for radio communications delayed only by the time to receive and record the information. With those limitations in mind, the following is a summary of the relevant submitted dispatch recordings:

At approximately 3:32 p.m, Officer Yeun announced that his unit would be conducting a traffic stop at Baseline and McKinley. As the dispatcher attempted to get the plate for the vehicle being stopped, Officer Yeun instead announced, "Foot pursuit." Officer Yeun continued to make radio announcements as he ran, saying "red pants, running back to Mountain Breeze Apartments." Officer Hines then got on the radio and described FD as a Hispanic Male with red pants and a white shirt.

Officer Yeun made two additional radio broadcasts in the next 20 seconds wherein he described FD as running while holding his waistband. At approximately 3:33 p.m., Officer Yeun broadcasted, "Shots fired. Shots fired." Dispatched repeated, "Shots fired. One down." Other radio traffic commenced, then at 3:34 p.m., Officer Yeun radioed, "Yeah, go and roll med aid. He has a gun and he pointed it at me."

**Body Worn Camera Video Recording.** The BWC recordings made by Officer Yeun's device was submitted by the case agent. Officer Yeun's BWC footage showed an opening a timestamp

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<sup>4</sup> All submitted photographs and audio and video recordings were reviewed and considered in the context of the entire submission. Only selected portions of selected items are mentioned here. The submitted video footage was reviewed at slowed speeds.

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of August 18, 2020, at 3:32:42 p.m. Officer Yeun's BWC device did capture the officer-involved shooting. However, the BWC footage cannot recreate what the wearing officer perceived by his combined senses. Officer Yeun wore his BWC mechanism at mid-sternum. The resulting footage was therefore subject to the limitations of the camera mechanism and the view resulting from being worn on the officer's chest. Additionally, the submitted video footage included audio only *after* the 30 second mark. With the aforementioned parameters in mind and in the context of all other material submitted, the following is a summary of Officer Yeun's BWC video footage:

At the outset, Officer Yeun appeared to be in the front passenger seat of a patrol unit. Officer Yeun opened his unit door at 3:32:54 p.m., and within three seconds was out and running after FD. FD's left hand appeared to be holding onto the left side of his pant waistband ahead of Officer Yeun, and shortly after the foot-chase began, FD's white sneakers flew off his feet. After the audio delay, the first thing that Officer Yeun can be heard saying is, "northbound, running north east, still grabbing his waistband." FD can still be seen ahead of Officer Yeun, running by buildings, cars, and other people in the apartment complex at 26030 Baseline Street in San Bernardino.

At 3:33:23 p.m., Officer Yeun can be heard to draw his firearm and shout, "Get on the ground or I'll fucking shoot you dude." FD, who was still running ahead of Officer Yeun did not alter his pace or otherwise respond to Officer Yeun. Six seconds later, Officer Yeun radioed again, "Northeast, still grabbing the waistband." At 3:33:30 p.m., the BWC footage showed FD and Officer Yeun run by a man at the open trunk of a car under a carport. (See *Statements by Civilian Witnesses, supra.*)

At 3:33:33 p.m., the BWC view of FD became obscured by cars parked in the immediate area. The case agent recognized this footage as indicating FD fell to the ground. The submission in total suggests that FD indeed stumbled and rolled onto the ground in a grassy area west of Building T, and immediately east of the cars parked in the adjacent carport. (See *Incident Scene Investigation, infra.*) Two seconds later, and as FD attempted to get up, Officer Yeun ordered, "Get on the ground! Get on the Ground!"

At 3:33:37 p.m., FD appeared to pick up the gun from the ground and clutch it with his right hand. FD moved his right hand under an adjacent bush while he squatted next to the bush. FD's right arm appeared to be flexed at almost a 90-degree angle. FD looked up at Officer Yeun and then looked towards his hands. Within a second, Officer Yeun fired three times at FD. FD fell backward onto his back and screamed, "Ah, damn!" Officer Yeun said, "Let me see your hands." FD immediately brought both of his hands to his face and opened his empty palms facing outwards.

At 3:33:43 p.m., Officer Yeun announced, "Charlie-50. Shots fired. Shots fired. One Down." Officer Yeun continued to give FD commands to put his hands out and to lay on his stomach, which FD complied with.

At 3:34:12 p.m., Officer Chavez could be heard saying, "Cuff him." Officer Yeun

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holstered his firearm and proceeded to handcuff FD. Officer Yeun then appeared to search FD's waistband and pockets.

At 3:34:35 p.m., Officer Yeun radioed, "Yeah. Go ahead and roll med aid. He has a gun here. He pointed it at me."

At 3:35:08 p.m., FD can be heard saying, "Why you shoot me for bro?" Officer Yeun responded, "Because you had a gun...." FD retorted, "Bro, I wasn't gonna shoot you, man."

The BWC footage continued to show FD become agitated about getting medical aid and someone calling his mom. Officer Yeun seems to keep a hand on FD's back, pats FD's back and told FD to calm himself to keep the blood from coming out quicker.

At 3:36:28 p.m., Officer Yeun says to FD, "You can't point a gun at officers." At 3:36:51, Officer Yeun repeated, "You just can't point a gun at officers, dude." FD responded to Officer Yeun, "I didn't point the gun at you...Don't try to play me."

The BWC continued to show FD become further agitated about the ambulance and dying. At 3:38:31 p.m., FD told Officer Yeun, "Ooh bro. I'm gonna kill you bitch...." At approximately 3:40:01 p.m., Officer Yeun was relieved of his position at FD's side and spoke to Sergeant Wicks. FD can still be seen and heard in the background during this conversation. At 3:40:31 p.m., FD can be heard saying, "I didn't point the gun at him, he's lying."

**Photographs.** Approximately 300 photographs were submitted by the case agent, including photographs of FD, Officer Yeun and his duty weapon, other officers, the scene of the shooting incident and of collected evidence. In addition, one photograph submitted appears to be a screen-capture of Instagram activity showing FD pointing a black Glock with a red slide. The weapon in the screen-capture looks like FD's weapon collected from the scene as described below.

**INCIDENT SCENE INVESTIGATION**

The incident scene investigation was managed by Detective Guerry, with the assistance of SBCSD crime scene specialists. The shooting occurred in a grassy common area between buildings T and U at the Casa Del Sol apartment complex at 26030 Baseline Street in San Bernardino. The apartment complex consisted of multiple two-story multiple-family dwellings accessible by private asphalt streets and concrete walkways. Open carport areas were noted throughout the complex, including the area immediately west of where the shooting occurred.

Detective Guerry described FD's weapon<sup>5</sup> as a semi-automatic handgun with a black frame and

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<sup>5</sup> Fingerprints were obtained from FD's gun. However, an analysis of the collected fingerprints could not be completed due to the poor quality of the fingerprints obtained. Regardless, Officer Yeun's BWC video footage did show FD in possession and control of the black and red firearm discovered at the scene.

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red slide. FD's gun was discovered protruding under an estimated 3-foot-tall box hedge abutting the west side of Building T. Detective Guerry determined that FD's gun contained five bullets in the magazine; the chamber was empty. Detective Guerry observed that FD's full metal jacket bullets were stamped "WIN 9MM LUGER." Blood was noted approximately three feet west of FD's gun. Three bullet strikes were noted at the northwest corner of Building T. Three FCC's attributable to Officer Yeun's duty weapon were located approximately 11 and a half feet west of FD's gun. Officer Yeun's FCC's were also stamped "WIN 9MM LUGER."

A bullet trajectory analysis completed by a SBCSD crime scene specialist concluded that three gunshots were fired at the incident scene. One bullet trajectory was consistent with a shooter firing from a position north of the north wall of Building T and in a southerly direction (a north-south trajectory). Two bullet trajectories were consistent with the shooter being west of Building T and firing east toward Building T (west-to-east trajectories).

After FD's weapon was collected from the scene, it was successfully test-fired.

**INJURED PARTY**

FD was 15 years old at the time of the shooting incident. After the shooting incident, FD received medical first aid at the scene and was transported by ambulance to LLUMC. FD received medical care at LLUMC for gunshot wounds including a laceration to the right upper arm, an entry wound to the right lower back (just above the belt line), and a through and through bullet strike on the upper right thigh.

**APPLICABLE LEGAL PRINCIPLES**

If a police officer witnesses a moving vehicle commit traffic violations, it is both reasonable and lawful for the officer to initiate a traffic stop of that vehicle. (*People v. Lomax* (2010) 49 Cal.4<sup>th</sup> 530, 564.) A peace officer may use objectively reasonable force to effect an arrest, to prevent escape or to overcome resistance. (Calif. Penal Code §835a(b)).<sup>6</sup> 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, citing, *In re Tony C.* (1978) 21 Cal.3d 888, 895.) 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) A subject who draws or exhibits a firearm with the intent to resist or prevent arrest or detention of himself by a peace officer commits a serious felony. (Penal C. §417.8, 1192.7(c)) 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.)

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<sup>6</sup> All references to code sections here pertain to the California Penal Code.

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**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(c)(1) 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 “defend against an imminent threat of death or serious bodily injury to the officer or another.” 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).)

A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense using objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

**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;
- (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- (3) he used no more force than was reasonably necessary to defend against that danger.

(CALCRIM 505.) The showing required under section 197 is principally equivalent to the showing required for a police officer to use lethal force under section 835a(c)(1), as stated above.

While the appearance of these principals was new to section 835a in 2020,<sup>7</sup> 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 “threatened infliction of serious physical harm” to the officer, 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

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<sup>7</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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actions are reasonable under the Fourth Amendment of our national Constitution, that state statutory requirements may also be 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 pre-2020 state caselaw is still relevant.

There is one additional pertinent and new factor in section 835a that did not appear in the section previously, nor was it developed in prior caselaw: deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

In addition, the legislature included generalized findings and declarations at subsection (a) of Section 835a that are instructive. 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 with consideration of gravity and consequence, lawfulness and consistency with agency policies;<sup>8</sup>
- (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.

(Penal C. §835a(a).)

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<sup>8</sup> 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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**IMMINENCE.** “Imminence is a critical component” 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 more recently defined in the context of police use of lethal force 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).)

In addition, police officers are not constitutionally required to use all feasible alternatives to avoid a situation where the use of deadly force is reasonable and justified. (*Martinez v. County of Los Angeles, supra*, 47 Cal.App.4th at 348.) The court in *Scott* explained:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment...Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves.

(*Scott, supra*, 39 F.3d at 915.)

**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



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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.

(*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.)

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* (9<sup>th</sup> Cir. 2011) 661 F.3d 433, 441-442.) The threatened use of a gun 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* (9<sup>th</sup> Cir. 1994) 858 F.Supp. 1064, 1071-72.) If an officer is acting in the course of an arrest or detention, it is not required that the subject point the firearm at the officer, or even draw the weapon in a rude, angry or threatening manner to qualify as a serious felony being committed against that officer. (Penal C. §§245(d), 417.8; *People v. Raviart* (2001) 93 Cal.App.4<sup>th</sup> 258, 266, *People v. Pruett* (1997) 57 Cal.App.4<sup>th</sup> 77, 88.) An officer may reasonably use deadly force when he confronts an armed suspect in close proximity whose actions indicate an *intent* to attack. (*Id.*) 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.)

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. 8, *supra*.)

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

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

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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.4<sup>th</sup> at 343, citing *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.) 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.4<sup>th</sup> at 343-344, citing *Roy v. Inhabitants of City of Lewiston* (1st Cir. 1994) 42 F.3d 691, 695.)

**ANALYSIS**

This report evaluates the use of deadly force by Officer Michael Yeun. As indicated above, there are legal bases that must be met before a use of force is justified and the right to self-defense ripens. We draw our conclusion here based upon those principles and the required careful examination of the totality of the circumstances evidenced by the case agent's submission.

A use of force must be "reasonable" in order to be deemed lawful. When considered in the context of self-defense, whether Officer Yeun was justified in employing lethal force involves a two-part analysis: (1) did the officer subjectively and honestly believe he needed to protect himself or others from an apparent, imminent threat of death or great bodily injury; and (2) was the officer's belief in the need to protect himself from an apparent, imminent threat of death or great bodily injury objectively reasonable.

**Subjective Belief of Imminent Need to Protect.** The subjective belief of Officer Yeun is stated here based upon the officer's statement.

Officer Yeun recalled that on the day of the incident, it had been hot—100 degrees. He was physically tired with about an hour or less left in his normal workday when he was contacted by Officers Chavez and Cerritos about a potential traffic stop. Officer Yeun was told that one of the occupants of the subject vehicle had a no-bail warrant. Officer Yeun explained that someone with a no-bail warrant would especially seek evade police to avoid jailing. In addition, Officer Yeun understood that two occupants of the subject vehicle had recently made social media postings of themselves being armed with a firearm. Officer Yeun stated that that attempting to contact an armed and wanted subject heightened his stress level immediately prior to the incident.

During the eventual foot chase, Officer Yeun noticed that FD's pant pocket swung like there was something heavy in it and that FD kept his left hand on it to keep it steady. With the information already imparted to him, Officer Yeun believed that FD was indeed armed and could shoot at the officer at any time. What's more, Officer Yeun believed the apartment complex was in the

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territory of a new clique of a known criminal street gang. Officer Yeun believed that FD may be drawing the officer into the apartment complex to be ambushed. Officer Yeun's unfamiliarity with the layout of the complex was also distressing.

Officer Yeun drew his duty weapon as FD led Officer Yeun between buildings of the apartment complex. Officer Yeun tried to scare FD into giving up by yelling, "Get on the ground or I'll fucking shoot you dude." It was unusual in Officer Yeun's experience that this did *not* cause FD to give up and this heightened his concern that FD was luring the officer into an ambush. Soon thereafter, Officer Yeun saw FD fall or stumble to the ground. Officer Yeun ordered FD to get to the ground as he believed it would have been easy for FD to just stay on the ground. However, FD appeared to the officer to be trying to take cover or hide himself behind a bush, all while trying to fixate upon Officer Yeun's position. Officer Yeun continued running toward FD at a full-sprint when suddenly he saw FD with a gun in his hand. Officer Yeun stated that when he saw FD's gun that he was no longer able to take cover or retreat without placing himself at further danger of being shot. Officer Yeun also believed that because there were bystanders in the immediate area, that if he gave FD an opportunity to shoot and FD missed, that those bystanders would be in danger of being struck. Officer Yeun stated, "I was in fear for my life. I thought, when I saw the handgun that [FD] was going to, if [FD] had the opportunity to locate me before I had an opportunity to contact [FD], that [FD] would take a shot at me." Officer Yeun fired three times at FD. Officer Yeun stated that he stopped firing because he saw FD's gun come away from FD's hand.

The stated account of Officer Yeun of the circumstances at play *prior* to and culminating with the officer-involved shooting is consistent with the submission, as a whole.<sup>9</sup> Furthermore, the submission supports Officer Yeun's conclusion that FD was armed and intended to fire his weapon at the officer. Based upon the foregoing, it is reasonable to conclude that Officer Yeun bore an honest and subjective belief that he was under threat of imminent deadly harm or bodily injury at the time he used lethal force.

**Reasonable Belief of Imminent Need to Protect.** Although Penal Code section 835a(c)(1) is the authority for an officer's use of lethal force, the analytical framework for determining what is "reasonable" is included in *Graham* and its progeny. This analysis also overlaps with the second component to a self-defense claim: a finding that each officer had an objectively reasonable belief of the need to use deadly force to protect himself from imminent threat of death or serious injury.

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<sup>9</sup> The submission shows that after the shooting occurred in this case, Officer Yeun repeated several times that FD pointed a gun at him. It is not beyond the realm of possibility that Officer Yeun believed that statement to be true at the time. Officer Yeun was involved in a dynamic incident and had just endured the stress of an apparent life-or-death encounter. After being removed from the scene and being given mere hours to recalibrate his senses, Officer Yeun told investigating detectives that FD "didn't have an opportunity to turn towards [Officer Yeun]," implying that FD did not in fact point his gun at the officer. The issue that these *post*-shooting circumstances presents does not detract from the relevant facts reasonably gleaned from the submission or the totality-of-the-circumstances analysis of Officer Yeun's use of lethal force, *infra*.

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As in *Graham*, we first consider the severity of the crime at issue. Immediately prior to initiating their traffic stop, Officers Hines and Yeun were informed that someone in the suspect vehicle had a “no bail” warrant and was therefore arrestable. Officers Hines and Yeun indicated no other information about the underlying crime that was the basis for the warrant. The possession of a concealable firearm by two juveniles in the vehicle could be the basis of a felony charge against them.<sup>10</sup> However, the firearm possession was the subject of an ongoing investigation. After witnessing the subject vehicle commit vehicle code violations, it was the officer’s duty to initiate a traffic stop. The moving violations, however, would still be low-level offenses.

Once the target vehicle yielded and FD got out and ran with his firearm in hand, the character of the involved crimes shifted dramatically. For example, drawing or exhibiting a firearm with the intent to prevent detention by a peace officer is a violation of Penal Code section 417.8 that could qualify as “serious” felony pursuant to Penal Code section 1192.7(c). Another “serious” felony is assault of an officer engaged in in the performance of his duties with a loaded semi-automatic firearm—a violation of Penal Code section 245(d)(2). Assault of a peace officer with a semi-automatic firearm could also be deemed a “violent” felony pursuant to Penal Code section 667.5(c)(8). Neither sections 417.8, nor 245(d)(2) required that FD fire his weapon at Officer Yeun, or even point the weapon directly at the officer. It was sufficient that FD armed himself with an operable and loaded semi-automatic firearm and wielded it such that FD *could have* used it against Officer Yeun. As such, it was reasonable for Officer Yeun to believe immediately prior to using lethal force that FD was actively engaged in committing especially serious and/or violent felonies against Officer Yeun.

Resistance is another essential consideration in a *Graham* analysis. In order to effectuate FD’s arrest or detention, officers were authorized to use reasonable force. For FD’s part, FD had a duty to refrain from using any force or weapon to resist arrest. It does appear that FD was aware or should have been aware that he was being pursued by law enforcement. The evidence submitted shows that Officers Hines and Yeun were wearing police uniforms replete with badges and insignia and traveled in a marked black and white police car. Before the officers turned on their emergency lights, the car occupants did look back towards the police cruiser. When the car occupants were later interviewed, they admitted spotting the officers prior to the time they were pulled over. Two of the car’s occupants admitted hearing the driver say, “we’re getting pulled over.” Both civilian and law enforcement witnesses stated that the patrol unit’s flashing emergency lights were visible. Indeed, the driver immediately yielded. FD’s choice to run away from the suspect vehicle also tends to indicate that FD did not want to be contacted by the police. Further, while FD ran from Officer Yeun, the officer did yell commands at FD that would only reasonably come from a police officer. In sum, the submission supports a conclusion that FD knew or should have known that officers intended to detain him. FD’s flight alone, however, was not the pinnacle of his resistance; it was that FD maintained possession of the loaded weapon and wielded it in the presence of an armed and pursuing police officer.

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<sup>10</sup> Penal Code section 29610 prohibits a minor from possessing a concealable firearm; the crime is punishable as a misdemeanor or felony. (*In re M.G.* (2014) 228 Cal.App.4<sup>th</sup> 1268, 1278.)

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FD made the distinct choice to maintain possession of his firearm before stepping out of the suspect vehicle. The occupants of the vehicle became aware of the officers' presence behind them well-before the attempted traffic stop. During that time, FD had the opportunity to disarm himself or otherwise disassociate himself from the weapon. For example, FD could have left the gun in the car or dropped it to the ground. During the roughly 40-second foot-pursuit, Officer Yeun ordered FD to get to the ground. Instead of complying, FD specifically chose to *maintain hold* of his firearm. Then, when an unexpected stumble interrupted his flight, FD fell to the ground. FD chose *not* to remain on the ground. Rather, FD appeared to be getting back up when Officer Yeun closed the gap between them. Officer Yeun again ordered FD to the ground. Then, it appeared to Officer Yeun that FD looked at Officer Yeun, while holding the gun in his right hand. FD maintained hold of his weapon instead of dropping it. At this point, it was well within reason for Officer Yeun to believe that FD first intended to escape detention by running and secondly, FD intended to arm himself. It was also reasonable for Officer Yeun to deduce, therefore, that when FD was caught, that FD would be desperate enough to use his firearm to continue to evade detention by Officer Yeun. Self-armament with a semi-automatic firearm in the face of detainment by uniformed and armed law enforcement contact is an extreme level of resistance. Officer Yeun was not obligated to retreat, nor did he forfeit the right to defend himself or others from the lethal threat posed by FD. Had FD fired his weapon at Officer Yeun, the backdrop would have included civilians in the parking complex, including the witnessing civilian at his car trunk (see *Civilian Witnesses, supra*) and occupied dwellings immediately west of the officer. The submission supports a finding that FD was actively resisting an officer at the time Officer Yeun used lethal force.

Immediacy is the "most important" *Graham* factor. A qualifying imminent threat is one that would cause a reasonable person to believe that action was instantly required to avoid death or great bodily injury. Here, it does not appear that FD made a blatant and obvious attempt to *shoot at* Officer Yeun. Rather, the assault upon Officer Yeun was comprised of mounting subtle actions FD took that together reasonably indicated an apparent intent to shoot the officer. First, prior to running, FD was aware that contact with police was imminent. In order to prepare for that contact, FD armed himself with a loaded gun. By running from the officer, FD indicated he did not want or intend to be detained. Secondly, FD also ran into an apartment complex Officer Yeun believed to be the territory of a criminal street gang. Officer Yeun was especially vulnerable to ambush on-foot, as he was out in the open and unfamiliar with the location he was being drawn into. The isolation of Officer Yeun in an unfamiliar location precluded the officer from being able to quickly call for help at his precise location. This was made evident by the fact that even Officer Chavez, who was intently trying to follow the foot chase, was unable to maintain a visual of FD and Officer Yeun.

Well into the foot-chase, Officer Yeun ordered FD to get on the ground or be shot. Doing so allowed the officer to check to what extent FD would go to evade Officer Yeun. It was either to simply evade the officer or evade assuming the risk that lethal force might be used against him. By ignoring Officer Yeun's order to get to the ground, FD had to be perceived as someone so desperate to evade that he would risk being shot. Officer Yeun was ultimately correct in his deduction that FD was armed with a firearm. Thus, FD's desperate evasion reasonably signaled

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that FD was prepared to *use* lethal force to get away. As stated above, Officer Yeun perceived FD to be looking at the officer and look at his own weapon immediately prior to the time the officer fired his duty weapon. Despite substantial opportunities during his flight to discard or disassociate himself from his firearm, FD instead chose to continue to possess the firearm and wield it to assault Officer Yeun when the officer had finally caught up to FD. Had FD decided to shoot at Officer Yeun, it cannot be said that the residents at the apartment complex were beyond danger of being shot by FD. Officer Yeun had to make a split-second choice at that moment to defend against the perceived imminent danger to himself and others in the immediate vicinity.

Although no bullet was recovered from the chamber of FD's weapon, the presence of live rounds in the weapon's magazine show that FD was ready and able to shoot and kill anyone in the presence of his gun as he wielded it. The weapon that was collected at the scene did appear to be the same red and black gun being held by FD in posted social media. According to their own statements, none of the other occupants of the subject vehicle were aware that FD had a gun. FD concealed the gun in his pants as he ran from Officer Yeun. FD's prior possession of the weapon tended to show that the weapon belonged to FD. It would also be reasonable to conclude, therefore, that FD was aware of his firearm's capability and contents. Furthermore, even after being taken into custody, FD did explicitly threaten to kill Officer Yeun in broad daylight and in the presence of other law enforcement officers and civilians.<sup>11</sup> The location of gunshot wounds to FD's right side (right arm, right lower back and right thigh) was consistent with the BWC footage that showed FD exposed his right profile to Officer Yeun at the time shots were fired. However, when Officer Yeun fired, FD also had a gun in his right hand that *could have* been turned on the officer in an instant. As such, FD's conduct, in total, demonstrated that FD had the present ability, opportunity and *apparent* intent to immediately cause death or serious bodily injury to Officer Yeun and others. As such, the necessity of the use of deadly force by Officer Yeun cannot be second-guessed. Officer Yeun reasonably believed that his action was instantly required to avoid immediate death or great bodily injury.

Based on the foregoing, each of the primary *Graham* factors as applied, support a finding that the use of lethal force by Officer Yeun was reasonable. The officer had a split-second to confront the lethal danger posed by FD, which by all indication to Officer Yeun was an immediate threat to kill. As such, the use of lethal force by Officer Yeun is also justifiable under Penal Code §197.

**Pre-Shooting De-escalation.** Section 835a(a) does advise that lethal force be used only "when necessary to defend human life" and that safe and feasible de-escalation should be employed. Here, Officer Yeun attempted to give FD verbal commands during the foot pursuit. Normally, the mere presence of armed and uniformed law enforcement and the issuance of verbal commands can serve as a de-escalation technique. Officer Yeun did warn FD that he could be shot if he failed to get to the ground. Officer Yeun explained that he used profanity in issuing that warning "to try to scare subject into giving up." One faced with such a response might reasonably find there is no likely escape and choose to surrender. FD, however, was not

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<sup>11</sup> FD also indicated to Officer Yeun that he was *not* going to shoot at the officer. The spectrum of what FD was going to do based upon his own statements swung widely between nothing at all to killing Officer Yeun. The ranting of this injured teenager in custody is indicative of how unpredictable FD's behavior was, under the circumstances.

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intimidated and did not surrender. In that moment, FD may have been emboldened by the knowledge that he had a loaded pistol and that only one officer was actively pursuing him. FD's behavior subsequent to getting out of the target vehicle negated a reasonable conclusion that FD intended either to comply or surrender. FD gave Officer Yeun no explicit or implicit indication that FD sought to peaceably comply or surrender. Rather, FD chose to maintain his firearm and draw Officer Yeun out. The subjective and objective factors discussed above point to the same conclusion that the shooting officer in this case perceived an imminent lethal threat to himself and others at the time he fired his weapon.

Although there was no investigation submitted regarding the availability or contemplated use of less-lethal munitions, Officer Yeun was immediately aware that FD could be armed with a firearm when the foot-chase began. There was no subsequent pause from the beginning of the chase to the time that Officer Yeun became certain that FD had a pistol in his hand. As such, it would not have been reasonable for Officer Yeun to consider using less-lethal munitions because there was no time for him to transition to less-lethal munition use. Officer Yeun was instantly confronted by a subject capable of using lethal force against him. Had the officer taken the time to transition to less-lethal munitions, he would have done so at his own peril as it would have left him ill-equipped to defend against the immediate lethal threat FD imposed. Simply put, FD's actions dictated a circumstance where there was no further feasible, safe or reasonable opportunity for Officer Yeun to de-escalate.

**Other Statutory Considerations.** The additional considerations mentioned in §835a(a) further support a conclusion that the use of deadly force by Officer Yeun was lawful.<sup>12</sup>

First, the submission in total does not support a conclusion that Officer Yeun acted excessively. Officer Yeun's conduct discussed herein appears to have been judiciously exercised. Deadly force was not employed as a knee-jerk reaction to FD's flight, even though it appeared to the officer that FD possessed a gun as soon as FD got out of the target vehicle. Instead, Officer Yeun issued verbal commands first. As set forth in detail above, the officer's use of deadly force came after the officer was presented with compounding conduct amounting to an immediate lethal threat. An inventory of Officer Yeun's weapon indicated that the officer could have fired many more rounds at FD, but did not. The submitted evidence supports a conclusion that gunfire did not continue after FD dropped his weapon or after FD fell to the ground. This is consistent with the officer's explanation that he only fired his weapon to end the threat posed to him and prevent FD from shooting him. As such, Officer Yeun can be found to have well-appreciated the gravity and consequence of his use of lethal force evidenced by the judicious way he employed lethal force.

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<sup>12</sup> This review is based on a totality of the circumstances from the perspective of a reasonable officer in the same situation. (Penal C. §§835a(a)(3)-(4).) However, this review does not undertake additional examination of whether agency use of force policies were violated because (1) no law requires it, and (2) the submitted materials do not indicate or otherwise suggest that any use of force policy was violated.

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**CONCLUSION**

Under the facts, circumstances and applicable law in this matter, the use of deadly force by Officer Michael Yeun was exercised in self-defense and in a reasonable manner. Accordingly, no criminal liability based on the officer's conduct attaches in this incident.

**Submitted By:**

**San Bernardino County District Attorney's Office**

**303 West Third Street**

**San Bernardino, CA 92415**

**Dated: January 21, 2022**

