



## PUBLIC RELEASE MEMORANDUM

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**Date:** March 8, 2021

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

**Involved Officers:** Officer Thomas Cho,  
Ontario Police Department  
  
Officer Eder Vergara,  
Ontario Police Department

**Involved Subject:** Christina Robles (DOB 11/12/1974)

**Subject's Residence:** Ontario, CA

**Incident Date:** December 14, 2019

**Case Agent:** Detective Shahrouz Sadeghian  
Ontario Police Department

**Agency Report #:** 191200726

**DA STAR #:** 2020-33836

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**PREAMBLE**

The summary of this fatal incident is drawn from a submission of materials prepared by the Ontario Police Department. The case agent for this submission was Detective Shahrouz Sadeghian.

The submission reviewed includes the following: reports of law enforcement witnesses, reports summarizing interviews of involved law enforcement and civilian witnesses, police and fire dispatch audio recordings, officer belt recorder audio recordings, audio recordings of law enforcement and civilian interviews, law enforcement photographs, medical records, scientific investigation reports and law enforcement drone video.

**FACTUAL SUMMARY**

On December 14, 2019, at approximately 2:47 a.m., Ontario Police Department (OPD) Officers Thomas Cho and Eder Vergara fired their duty pistols at 45-year-old Christina Martinez Robles in the City of Ontario. Ms. Robles suffered gunshot wounds as a result. Ms. Robles also sustained other gunshot wounds not attributable to the officers. Ms. Robles died at the scene. No first responders sustained physical injury.

The series of events that culminated in the lethal force encounter began with a 9-1-1 call made approximately 10 minutes prior. [REDACTED] ("Victim") called 9-1-1 at around 2:37 a.m. on December 14, 2019, and hung up. When the 9-1-1 line operator called Victim back a minute later, Victim answered and specifically asked for paramedic versus police help. Victim was breathing heavily and appeared to have trouble communicating coherently. Victim was able to explain that he was bleeding from his nose and mouth and that his wife (Ms. Robles) was bleeding at the mouth. When asked numerous times about what had happened to cause their bleeding, Victim repeatedly responded that he did not know. Victim then stopped talking and the call ended.

At 2:40 a.m., before Victim's call ended, the Ontario Fire Department (OFD) dispatched its Medical Engine 135 to Victim's location on the 1300 block of East F Street in Ontario (the "Subject Residence"). OPD Officers Vergara and Cho were also dispatched to accompany OFD personnel. Medical Engine 135 arrived at the Subject Residence at approximately 2:46 a.m., with four firefighters aboard. Officers Cho and Vergara arrived less than a minute thereafter.

As the firefighters disembarked from Medical Engine 135 and began to gather their equipment, Officers Cho and Vergara met in the street and made their way towards the front door of the Subject Residence. The front entrance at the Subject Residence consisted of an interior wooden door that opened towards the inside and an exterior black security screen door that opened towards the outside. Officer Vergara took the lead position towards the front entrance. Officer Vergara paused momentarily on the front walkway to listen for noise coming from inside the house. After hearing nothing, Officer Vergara rang the doorbell, knocked on the security screen

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door and announced, "Ontario Police." Officer Cho stood-by, standing off-set and behind Officer Vergara's left side. By this time, the firefighters were also walking towards the front entrance.

Within seconds of Officer Vergara's knocking, the interior door cracked open and the black screen door swung towards the officers. A porch light was on immediately above the doorway. There was some light coming from further inside the Subject Residence. Victim recognized it was the police at the door and partially emerged from the doorway. Officers Cho and Vergara immediately noticed that Victim was injured in the face and head. Officer Vergara described Victim as "profusely bleeding" there. Officer Cho said that Victim was suffering from "obvious medical conditions" with deformities to his face and jaw. OFD personnel also saw Victim emerge from about 20-30 feet away on the front lawn, northwest of the front entrance.

Victim told the officers, "my wife, she's crazy." Then, Victim turned his head to look over his right shoulder and into the house. Suddenly, Victim exclaimed, "she has a gun," moved abruptly out of the doorway and passed the officers. Simultaneously, both Officers Vergara and Cho saw someone inside walking briskly toward the front entrance—Ms. Robles. Ms. Robles had a black semi-automatic handgun in a two-handed grip, pointed at Officer Vergara's face. As Ms. Robles advanced, Officer Vergara retreated backward and drew his duty weapon. Officer Vergara fired his weapon four times at Ms. Robles. Officer Cho, believing that Ms. Robles had fired towards the officers, also retreated and drew his duty weapon. Officer Cho fired one time at Ms. Robles.

After firing their weapons, both officers immediately tried to find cover in the front yard. The firefighters of Medical Engine 135 also immediately retreated backwards and took cover after shots were fired. This encounter happened less than two minutes after OFD arrived on scene and was brief—only ten seconds passed between the time Victim opened the interior door and the time the officers shot at Ms. Robles.

Immediately after taking cover, Officers Cho and Vergara alerted their dispatch that shots had been fired. Officer Vergara also advised dispatch that officers had been shot at. Ms. Robles could be heard moaning and yelling for help from inside the Subject Residence in the minutes after the officer-involved shooting. Numerous OPD units responded to the scene and announcements were made over loudspeaker demanding that Ms. Robles surrender beginning at approximately 3:04 a.m. Ms. Robles made no subsequent attempt to communicate, nor did she show herself.

At 7:26 a.m., after placement of an armored shield near the front entrance, use of a scouting team, robots and a drone, OPD determined it was safe to enter the Subject Residence. OPD's entry team quickly discovered Ms. Robles and her two children were deceased in the southwest bedroom of the home, each with apparent gunshot wounds.

Victim was interviewed several times after the incident. Victim explained that before he called 9-1-1 that fateful morning, that he awoke to the sound of gunshots and discovered that he and both of his children were bleeding from their heads. Victim believed that Ms. Robles had shot him in the jaw and had shot the children. Victim also reported that he had wrestled a knife from Ms.

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Robles, after which he called 9-1-1. Additionally, just before police arrived, Ms. Robles shot at Victim twice more. Victim suffered gunshot wounds to the face, neck, left wrist and back.

Crime Scene Investigators discovered Ms. Robles's weapon—a black 9mm semi-automatic Glock pistol, on the floor inside the front doorway; it contained no bullets. There were nine fired cartridge-casings (FCC's) found within the Subject Residence; five were located in the southwest bedroom, two were located in or near a hallway bathroom and two were located in the living room. The FCC's located inside the Subject Residence were determined to come from Ms. Robles's weapon. However, OPD's crime scene investigation revealed no additional evidence that Ms. Robles fired her weapon towards the front door and at Officers Cho and Vergara. A bloodied black kitchen knife was discovered in the living room of the Subject Residence.

Two fired bullet fragments were discovered by a forensic pathologist during the autopsy examination of Ms. Robles's body. When considered in light of all other evidence collected in this case, these bullet fragments revealed that Ms. Robles was shot by her own weapon in addition to being shot by OPD officers.

**STATEMENTS BY LAW ENFORCEMENT OFFICERS<sup>1</sup>**

**Officer Eder Vergara** gave a voluntary statement to Detectives Shahrouz Sadeghian and Gary Naranjo, in the presence of Officer Vergara's attorneys, on December 18, 2019, approximately four days after the shooting incident. Officer Vergara was permitted to review his body-worn camera (BWC) video footage of the incident immediately prior to his interview.

At the time of the shooting incident, Officer Vergara had been a California peace officer for a total of eight years and served the last 15 months at OPD. Officer Vergara was driving a marked OPD patrol unit and wore a department-issued long-sleeved patrol uniform that bore OPD patches on both shoulders, an OPD badge on the left chest, his name plate and the American flag. At the time of the shooting, Officer Vergara carried his department-issued Glock 17, 9mm pistol, that he previously loaded with 18 rounds.

Additional relevant portions of Officer Vergara's statement can be summarized as follows:

Officer Vergara was working the graveyard shift and was set to end his 12.5-hour day at 5:30 a.m., on the morning of the incident. He received the late shift dispatch to assist OFD with a reporting party who called for medical assistance. Dispatch relayed to the responding officers that the reporting party said he was bleeding but didn't know why. Officer Vergara believed that the reporting party may have been under the influence of alcohol or a controlled substance.

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<sup>1</sup> Herein is a summary only. All peace officers involved in this matter and/or its investigation, were employees of the Ontario Police Department. All 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. All references to any witness or Christina Robles by name are made here for ease of reference.

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Officer Vergara arrived at the scene and pulled behind the fire engine that was already there. As soon as Officer Vergara got out of his patrol unit, he noticed his partner—Officer Cho arrive in a second patrol unit.

Both officers approached the front door and paused to see if they could hear anything. Not hearing anything, Officer Vergara knocked on the exterior door and announced “Ontario Police.” Within seconds, the inner wood door opened. Then, the black screen door opened and a Hispanic male adult in his mid-30’s (Victim) appeared. Victim looked like he was in shock. Victim was bleeding profusely. Victim was missing a chunk of meat and skull to the back of his head and had a very large ball or contusion on his right cheek. Victim was trying to communicate with the officers, but Officer Vergara had a hard time understanding Victim.

Officer Vergara heard Victim say, “my wife’s crazy” and saw Victim look back (into the house) over Victim’s right shoulder. Next, Officer Vergara explained that he saw an adult female (Ms. Robles) “walking briskly toward the front door.” Ms. Robles had “both of her arms fully extended” while holding a black semi-automatic handgun and was pointing it directly at Officer Vergara’s face. Officer Vergara believed that the firm grip in which Ms. Robles held her weapon indicated Ms. Robles “knew what she was doing” with her gun and that she was acquiring the officer in her sights. Officer Vergara described his thoughts as being the following:

At this moment, ...it appeared everything just goes into slow motion. I clearly saw the handgun. She is quickly walking towards me where I’m at in the front door and I have nowhere to go. I’m in what you call a “fatal funnel.” I thought she was going to shoot me and kill me.

...

[A]s I was processing all this to me it was clear that she had just shot the male half who had called us. If she was going to uh shoot and kill me, she was going to end up shooting and killing him as well too. And even my partner...Officer Thomas Cho who was walking up uh behind me, who was also uh in that walkway.

Meanwhile, Victim ran past Officer Vergara, bumping the officer in the left shoulder and taking the officer off balance as Victim went by. Officer Vergara was still able to draw his firearm from his holster as Ms. Robles advanced and fired his firearm at Ms. Robles. Officer Vergara recalled that as he continued to fire, that he “could feel and hear gunshots coming from inside the house out toward him,” and that he “actually felt one bullet graze the top of his head” from front to back.

Officer Vergara estimated that he shot at Ms. Robles five times, at a distance of approximately seven feet. Officer Vergara believed that Ms. Robles fired two to three

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times at him.

The officers retreated and took cover behind the fire engine. While there, Officer Vergara recalled hearing Ms. Robles screaming. Officer Vergara also heard Officer Cho order Ms. Robles to drop her gun and come outside. Officer Vergara asked Officer Cho to watch the house in the event Ms. Robles came out shooting at them again. While Officer Cho did that, Officer Vergara completed a tactical reload of his weapon.

**Officer Thomas Cho** gave a voluntary statement to Detective Jeffrey Wright, in the presence of his attorneys, on December 18, 2019, approximately four days after the shooting incident. Officer Cho was permitted to review his BWC video footage of the incident immediately prior to his interview.

At the time of the shooting incident, Officer Cho had been a California peace officer for a total of five years, having served the prior two years at OPD. Officer Cho wore an OPD-issued long-sleeved patrol uniform, displaying his badge on his left chest area and OPD patches on each shoulder. Officer Cho drove a marked black and white OPD patrol unit. At the time of the shooting, Officer Cho carried his department-issued Glock 17, 9mm pistol, that he previously loaded with 18 rounds.

Additional relevant portions of Officer Cho's statement can be summarized as follows:

Officer Cho's workday began at 6 p.m. and was set to end at 6:30 a.m. on the morning of the incident. At about 2:41 a.m., he recalled being dispatched to a 9-1-1 call for medical service, where the reporting party said he woke up to find blood on him and his wife, with no explanatory information. Officer Cho felt that the lack of additional detail was on the "stranger side," but that it was otherwise a normal and routine call for service.

When Officer Cho arrived at the scene, he saw his partner—Officer Vergara, and an OFD engine were already there. Officer Cho followed Officer Vergara to the front door from a position approximately 12 to 18 inches back and left of Officer Vergara.

From a distance of about two to three feet, Officer Cho saw Victim open the front door. Officer Vergara also saw someone else inside the house walking with deliberate and "quick rabbit steps" towards the door with hands extended, much like one would if they were holding a gun. Except, Officer Cho did not see a gun. Victim then ran by and Officer Cho heard the pop sounds of a gunshot and saw muzzle flash coming from inside the house. At this point, Officer Cho unholstered his duty weapon. Believing that either he or his partner had been shot at once by Ms. Robles, Officer Cho drew his weapon and fired one round towards the doorway at a distance of about six feet. Officer Cho stated that he was afraid of getting stuck in the walkway and felt that he was going to get shot or seriously hurt. Officer Cho explained that the officers had no cover and were in the line of fire in the walkway. Officer Cho explained that he was worried for his life, for Officer

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Vergara's life, the lives of the firefighters and Victim's life.

While retreating away from the doorway, Officer Cho recalled that he stopped firing because Officer Vergara had backed into him. However, he heard Officer Vergara continue to fire. Officer Cho also tripped, had put his gun hand down and took a knee to keep from falling down as both officers were retreating to the front yard. Then both officers retreated further away from the front door of the Suspect Residence and took cover behind the fire truck parked in the street.

After taking cover, Officer Cho armed himself with his rifle, so as to be prepared for additional threat of gunfire by Ms. Robles, with "something more powerful" than a handgun.

**Additional OPD Personnel** who responded to the scene were asked to detail their participation in the investigation and police response. There were no OPD witnesses of the officer-involved shooting other than the shooting officers themselves. Sergeants Kenneth Graham-Brayton Lundy and Brian Darwin made separate inquiries of Officers Cho and Vergara, briefly, while at the scene. Those statements were primarily consistent with the interviews that Officers Cho and Vergara gave days after the shooting incident.

Two certified Glock Armorers were interviewed regarding their examinations of Officers Cho and Vergara's duty weapons. Officer Chris Ables inspected Officer Cho's duty weapon and found it contained 16, 9 mm rounds, with one additional round in the chamber, for a total of 17 rounds. Officer Ables performed a test fire of Officer Cho's handgun and found it to be properly functioning.

Officer Samuel Avalos examined Officer Vergara's duty weapon and found that it contained one round in the chamber and 17 rounds in the magazine, for a total of 18 rounds. One of Officer Vergara's magazines contained 13 rounds. Officer Vergara had two other magazines that were found to contain 17 rounds each. Officer Avalos performed a test fire of Officer Vergara's handgun and found it to be properly functioning.

Officer Ables also examined Ms. Robles's firearm, which was found in the interior entryway at the Subject Residence. Officer Ables described Ms. Robles's firearm as a "Glock 17 chambered in 9mm." Ms. Robles's gun had the slide locked back and an empty magazine in it. Officer Ables found no bullets inside of Ms. Robles's firearm.

The case agent also submitted information that Ms. Robles was employed as a probation officer in the County of San Bernardino and had so served for more than 20 years. Ms. Robles had been issued a firearm for her work and was required to demonstrate her firearm competence quarterly.

**OFD personnel** responded to the scene in two companies—Medical Engine 131 and Medical Engine 135. Medical Engine 135 treated Victim at the scene before Victim was transported to the hospital. Victim told OFD personnel at the scene that his wife shot him. The same personnel



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observed that Victim had been shot at three distinct places—the back of the left ear, the left upper back and the left forearm. It appeared that the gunshot wound to the left forearm also caused a compound fracture there. OFD personnel observed gunshot residue to the back of Victim's head and on the upper left side of Victim's back.

OPD Detectives interviewed each of the four firemen who arrived at the scene aboard OFD Medical Engine 135; these four firemen are the only other first-responders to witness the officer-involved shooting other than the shooting officers. The two firemen who were on the driver's side of the firetruck and closest in distance to the Subject Residence upon arrival recalled hearing what they believed could be two gunshots coming from inside the residence, *before* Officers Cho and Vergara went to the front entrance. When OPD officers proceeded to the front door, three firemen waited approximately 20 to 30 feet back and on the front lawn. One of the firemen was at the fire truck. Each of the three firemen who were on the front lawn saw the officers at the door and saw Victim come out of the front door. Then in a matter seconds, all four firemen heard up to six gunshots. One of these firemen believed the shots came from inside of the house. None of the firemen saw OPD officers fire their weapons. As soon as shots rang out, the firemen on the lawn dropped their equipment and ran for cover. In the immediate five to ten minutes after shots were fired, three of the firemen were behind the firetruck and heard a female inside the house say, "Help me, I'm dying." One of the firemen was certain that the voice was that of an "older woman" and despite the specific statement, did not believe that the call was for help. Rather, this fireman believed that the cries sounded like a "set up."

**STATEMENT BY CIVILIAN WITNESSES<sup>2</sup>**

**Victim.** At the time of the shooting, Victim was a 44-year-old resident of Ontario and Ms. Robles's husband of 19 years. Victim spoke to first responders at the scene while receiving initial first aid and was interviewed three additional times thereafter.

Victim told all first responders at the scene on December 13, 2019, that his wife shot him. The first officer to approach Victim appears to have been Officer Derrick Alatorre. At approximately 2:49 a.m., Victim told Officer Alatorre that he and his kids had been shot. Victim told Officer Edward Flores that his wife "Christina" had and fired a gun but that he didn't know how many shots she fired. Victim also told Officer Flores that his children were inside the house and sleeping before shots were fired and didn't know if the children were injured.

Two days after the shooting, Detectives Frederico Alvarez and Henry Melendez interviewed Victim in the Intensive Care Unit at Pomona Valley Medical Center (PVMC). Victim's treating nurse told the detectives that up until that time, Victim had not talked to anyone and no one had come to see him. Victim's ability to speak was impaired due to his injuries. Detectives Alvarez and Melendez were able to discern a series of events that occurred prior to the officer-involved

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<sup>2</sup> Multiple civilian witnesses were interviewed pursuant to the submitted investigation. Every civilian statement was reviewed in totality. However, only the relevant parts of those statements are included here.

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shooting via conversation (in Spanish), where Victim wrote on a notepad to communicate. Detective Melendez prepared a translated transcript of that conversation in English. The following is a summary:

Victim fell asleep on the floor of his bedroom at approximately 10:00 p.m., on December 13<sup>th</sup>. His wife and their two children slept on the bed next to him. In his sleep, Victim heard four gunshots. Victim awoke to find himself bleeding. Ms. Robles was on the ground next to the bed, crying. Their children laid in bed. Victim saw his daughter was bleeding in the face and his son was bleeding in the head. Victim asked Ms. Robles, "What happened?" Receiving no reply, Victim went to the bathroom, then to the kitchen sink to check on and tend to his injuries. Victim noticed he was bleeding at the mouth. Victim believed Ms. Robles had shot him. Victim went to sit on the living room couch when he saw Ms. Robles take out a knife from inside a kitchen drawer and come at Victim with it. Victim fought Ms. Robles for the knife. Victim was able to disarm Ms. Robles of the knife, after which Ms. Robles sat next to him on the sofa.

Victim called 9-1-1 with his cell phone and spoke to the operator via cell phone speaker. Victim recalled that he couldn't breathe. He was dizzy and afraid that he was going to die. Victim heard a squeal or sound in his ear. He saw that Ms. Robles was bleeding at the chest. While Victim was on the phone with 9-1-1, Victim recalled that Ms. Robles went to the bedroom and returned with her gun. Then, from a distance of about two feet, Ms. Robles shot at Victim twice, hitting him in the arm and hand. This caused Victim to drop the cell phone. Then, the police arrived. Victim told the officers at the door that Ms. Robles had a gun and that Ms. Robles was crazy. Ms. Robles was behind Victim with the gun in her hand when Victim opened the door. Victim recalled the police telling Ms. Robles to drop the gun, but Ms. Robles ran to the bedroom. Victim did not hear any shots fired after the police arrived.

Victim denied fighting with Ms. Robles on the night before the shooting. Even during the incident, Victim recalled Ms. Robles saying nothing to him. Victim denied that Ms. Robles had ever pointed the gun at him before this incident. Victim stated that he had a good relationship with his wife and kids.

At the end of this first extended interview, Detectives Alvarez and Melendez advised Victim of the death of his children and Ms. Robles. Victim asked how Ms. Robles died; he did not ask how his children died. When the detectives followed up with Victim approximately two months later, Victim suggested that when he saw the children bloodied in bed he knew they were dead. Although some details that the detectives re-hashed with Victim were stated differently than when they first spoke, Victim's description of what happened immediately before and after he opened the door for the police was generally consistent with his prior statements.

Victim's medical records submitted by the case agent revealed that Victim sustained three gunshot wounds as follows: (1) a gunshot wound to the left neck that exited the right cheek, causing multiple facial fractures, jaw fracture, tongue laceration and swollen tongue; (2) a

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gunshot wound to the left wrist causing a fracture; and (3) a gunshot graze wound to the middle upper back on the left side.

**Other civilians** living in the immediate vicinity of the Subject Residence were interviewed to determine if there were additional witnesses to this shooting incident. While some civilians did hear loud gunshot-like sounds, no additional persons provided specific information expanding on what Victim reported. An immediate neighbor to the west of the Subject Residence reported hearing "a couple of loud bangs" at approximately 1:45 a.m., and then about 35-40 minutes later heard yelling and gunfire (five shots).

Extended family members of Ms. Robles and Victim were also interviewed. No extended family members spoke to either Victim or Ms. Robles close in time to the shooting. No extended family members were present at the scene when the events leading up to the shooting occurred.

**INCIDENT AUDIO/VIDEO**

**Dispatch Audio Recordings.** The submission included separate audio recordings of the 9-1-1 call made by Victim and dispatch radio broadcasts by both OPD and OFD. These recordings are respectively 10 minutes and 10 seconds (10:10), 17 minutes and 37 seconds (17:37), and 38 minutes and 36 seconds (38:36) long. The actual timing of these recordings is not apparent from the recordings themselves. There is some indication of timing when the audio recordings are considered alongside dispatch logs prepared by OFD and OPD, which note approximate timestamps for radio communications delayed only by the time to receive and input the information.

The 9-1-1 call appears to have been first fielded by OPD, then transferred to OFD as Victim requested paramedics instead of police. Victim was asked multiple times by OFD dispatch, what happened to him, why he needed help and how he became hurt. Victim had difficulty communicating. Victim was able to say he and his wife were bleeding. Victim told the operator that his wife was bleeding from her chest. The dispatcher asked to speak to Victim's wife. Victim is heard saying, "talk, talk, talk," then a female voice is heard saying, "I can't talk." Victim told the dispatcher, "She don't wanna talk."

The dispatcher then began to speak to Victim in Spanish. Victim told the dispatcher in Spanish, that he and his wife were both bleeding at the mouth, but denied that they were fighting. The dispatcher again asked to speak to Victim's wife, to which Victim said, "She left." Then in English, Victim said his wife went to "the room" and he was on the couch. Victim denied that anyone in the house was drinking, doing drugs, or had any weapons. The call ended abruptly after Victim told the dispatcher his name.

The OFD dispatch recording submitted may have captured radio traffic in real time, as there are significant pauses in between audio broadcasts. The OFD dispatch recording submitted does not include any audio footage of the shooting incident, only statements made by OFD personnel

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before and after the shooting incident. The OFD dispatch recording does include audio footage of the initial dispatch, wherein Medic Engine 135 is notified that OPD was joining OFD's response and that the reporting party and his wife were both bleeding. Within approximately five minutes of the audio dispatch, the OFD dispatcher alerts personnel that shots have been fired; there is no audio of OFD personnel at the scene confirming that shots had been fired. Less than four minutes after the announcement of shots being fired, OFD personnel (Medic Engine 135) at the scene indicated to OFD dispatch that they were unable to access the reporting party and requested that another unit respond. The secondary unit (Medic Engine 131) announced its arrival at the scene about eight minutes after that. The subsequent OFD dispatch recording indicates that personnel from Medic Engine 135 were aware that the reporting party (Victim) had suffered a gunshot wound to the head. In response, Medic Engine 131 personnel confirmed their contact with the reporting party and also observed the reporting party's gunshot wound.

**Body Worn Camera Video Recordings.** The case agent's submission included video recordings from cameras worn by OPD officers at mid-sternum.<sup>3</sup> In addition to the identifying digital properties given to these video files as submitted, the identity of the officer who recorded the footage can be inferred from the video content. The BWC recordings do indicate the time being recorded, but do not appear to be a coordinated time between all submitted BWC recordings. Ninety-nine separate BWC recordings were submitted, though some officers submitted multiple distinct recordings. The shooting incident was captured by the BWC device of Officer Vergara, only. While Officer Cho did activate his BWC device, he did not do so until *after* all shots had been fired. Each recording was reviewed in light of the interview or report given by the person to whom the recording is attributed. The submitted BWC recordings were generally consistent with the wearing-officer's interview or report. The timing of events noted in the dispatch recordings and companion logs immediately before and after the shooting incident appear to be consistent with the timestamps indicated by the submitted BWC recordings.

The following is a summary of select notable events captured by BWC and is considered in context of all other submitted audio and video recordings:

Officer Vergara arrived at the doorway of the Subject Residence, first. The exterior security screen door cracked open. Victim emerged breathing heavily or gasping as if in pain. Officer Vergara said, "How you doing?" A light above the doorway and to the east illuminated the front stoop, but the interior was dark. Victim stepped forward and said, "My Wife. She's crazy." Officer Vergara's right hand moved the security screen door open and with his left hand open and in front of him said, "[W]ait, what's going on?" Victim looked back over his right shoulder towards the inside of the house, and said, "She has a gun!" Victim turned back towards Officer Vergara and abruptly came out of the doorway. Officer Vergara held the security screen door with his left hand, said, "Hold on, hold on, hold on," but Victim moved past Officer Vergara. Officer Vergara then pushed the security screen door forward (closed) with his left hand and stepped

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<sup>3</sup> One exception was the BWC that appeared to have been mounted on the electronic robot used to enter the Subject Residence.

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backwards. Five consecutive shots into the front door were immediately fired at approximately 2:47 a.m.

Approximately nine seconds passed from the time Officer Vergara first asked Victim how he was doing, to the time the first shot was fired. All shots were fired in a span of about a second.

After shots were fired, Officer Vergara backed away and to the west, behind hedges to the front of the Subject Residence. Officer Vergara shouted, "Shots fired, shots fired. Put it out. Put it out." Officer Cho was immediately heard saying, "Shots fired. Shots fired."

A few seconds later, Officer Vergara noticed Victim standing to the front of the Subject Residence garage and shouted to him to move and get out of the way. Despite Officer Vergara's yelling, Victim did not turn to look at the officer or otherwise acknowledge the officer's commands. About 15 seconds after Officer Cho's broadcast, Officer Vergara radioed the following:

3-22 Shots fired. I don't know if I hit the suspect. She came at us with a handgun. I got the victim. Looks like he's been shot as well. Start us units Code-3. I can't see past the screen. Looks like she may be on the other side of the screen. She also took a shot at me.

While Officer Vergara was broadcasting, Ms. Robles can be heard moaning and yelling, and can be heard to say, "Help me!" Officers Cho and Vergara remained on the front lawn. Officer Vergara re-doubled his effort to get Victim to move away from the Subject Residence. Officer Cho said, "She's coming." Ms. Robles's moaning continued. Officer Vergara radioed that he didn't know if anyone else was inside of the house, but that they could hear Ms. Robles screaming from inside of the front door.

Officer Cho appeared to be looking through the front window of the residence when Officer Vergara told him to get away from the window. Officers Cho and Vergara then began stepping backwards. Officer Vergara radioed, "We're going to retreat away from the house. Not certain if she's down or not and there's some windows where she can see us." Officer Vergara then yelled at Victim, who was now standing in the driveway, to go to the corner. Meanwhile, the officers moved around the north side of the fire truck, across the front, and back down the south side towards the rear passenger fender. Officer Vergara then radioed, "I still do not have a visual of the female inside the living room. When we exchanged gunfire, she was right on the other side of the black screen door."

Officer Cho then holstered his firearm, armed himself with a rifle and took watch of the Subject Residence front walkway from his post at the rear of the firetruck. Officer Vergara twice told Officer Cho that he felt a bullet fly past the top of his head. The officers discussed having "hit" Ms. Robles and seeing Ms. Robles with a gun. Almost ten minutes after shots were fired, Officer Cho said he could still hear Ms. Robles at the

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door. Ms. Robles was heard to say, "I'm dying." Officer Cho responded, "Drop the gun, come outside."

The balance of BWC footage taken by non-shooter OPD personnel included OPD's post-shooting efforts. In sum, those show that Victim was met and given first aid away from the Subject Residence. Victim told officers at the scene that he and his kids were shot, that his wife has a gun and that the two children were still inside the house. Meanwhile, two armored vehicles were brought to the crime scene, one of which was parked immediately in front of the Subject Residence. At approximately 3:04 a.m., multiple announcements in English and Spanish were broadcast over a loudspeaker asking that Ms. Robles come out of the Subject Residence. The announcements continued for hours. Civilians in houses in the immediate vicinity of the Subject Residence were evacuated from their homes and interviewed. Officers Cho and Vergara assisted with the evacuation of one neighbor and remained outside the Subject Residence until approximately 4:03 a.m. A scout team was sent to the area immediately around the Subject Residence. Two other scout teams watched the Subject Residence from the back yard of neighboring residences to the east and west.

One submitted BWC recording appeared to have been taken by a device mounted upon a robot that entered the Subject Residence at approximately 7:14 a.m. The robot-mounted BWC video showed that Ms. Robles's gun was on the ground inside the front doorway with the barrel pointed toward the outside and the grip toward the interior. The robot picked up the gun and brought it outside to officers at approximately 7:19 a.m. When OPD personnel entered the Subject Residence at approximately 7:26 a.m., Ms. Robles and her two children were discovered in the southwest bedroom exhibiting rigor mortis. OFD personnel later pronounced them deceased.

**Officer Belt Audio Recordings.** The case agent's submission included belt recorder audio recordings. In addition to the identifying digital properties given to these audio files as submitted, the identities of the officer who recorded the footage and of other persons whose voices are heard can be gleaned from the audio content. Forty-six audio recordings were submitted in total and contain footage of witness interviews or attempts to contact witnesses by phone. There are no belt audio recordings of the shooting incident. Belt audio recordings that were the subject of written reports were reported in a manner consistent with their audio content.

**Drone Video Recordings.** The case agent's submission included five video recordings attributed to a small flying drone. The footage does not include any date and time information, but based upon officer reports, the drone was utilized on the day of the shooting, at approximately 7:23 a.m. Drone footage showed the interior of the Subject Residence, including the living room, front hall, and southwest bedroom. The areas depicted appeared cluttered and disheveled. The color video of the southwest bedroom was too dark to show what was in the bedroom, except to show a dog sitting on the bed. Thermal drone video footage from the southwest bedroom revealed three bodies—one on the floor and two on the bed.

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**INCIDENT SCENE INVESTIGATION**

The Subject Residence can be described as a single-story single family residence, with a south-facing front door and attached two-car garage. It sits on a residential street west of the intersection of North Imperial Avenue and South F Street in the City of Ontario. The Subject Residence has three bedrooms and two bathrooms.

The front entry of the Subject Residence abuts a narrow front hallway that opens into the central living room. Two bedrooms are side by side across the front of the house and to the west of the front entrance. A bedroom is in the northwest corner; a guest bathroom is south of that bedroom. The master bedroom is located in the southwest corner of the Subject Residence. A common hallway fronts the northwest bedroom, guest bathroom and master bedroom.

Multiple OPD Forensic Technicians marked and collected evidence at the scene, prepared a diagram of the Subject Residence noting the location of all marked and collected evidence, a diagram of strike marks within the Subject Residence and of suspected bullet trajectories. Forensic Technicians also photographed the shooting officers, their weaponry, all vehicles immediately in front of the Subject Residence, and the deceased. Aerial photographs of the Subject Residence and the area in the immediate vicinity were also submitted. Over 5,500 photographs were submitted in total.

Nine FCC's in total were discovered inside the Subject Residence, all of which appeared to come from Ms. Robles's weapon. Five FCC's were located inside the southwest bedroom, two were located in the area of the common hallway, and two were located in the living room. Based on his assessment of the evidence and his investigation, the case agent deduced that both children lay in bed when they were shot. The case agent also determined that Victim was laying on the floor when he was shot in the head and was also shot at twice as he sat on the living room couch.

Five distinct gunshot wounds were noted and two fired bullet projectiles were recovered from Ms. Robles during the autopsy examination (see Autopsy, *infra*). The case agent determined based upon his visual comparison of the fired bullet projectiles from Ms. Robles to the ammunition used by Ms. Robles and the shooting officers, that one of the recovered projectiles was fired by the shooting officers. The case agent determined that the other projectile recovered from Ms. Robles was visually similar to Ms. Robles's ammunition and appeared to be associated with one of the hallway FCC's. At the conclusion of his investigation, the case agent was unable to locate a bullet strike or projectile associated with the other hallway FCC.

Buccal swabs from Ms. Robles, Victim and their deceased children were collected and submitted for analysis against blood evidence taken from Ms. Robles's gun, blood evidence from the northwest wall of the living room at the Subject Residence, and evidence from a live Winchester Luger 9mm round recovered from the area of the guest bathroom and common hallway. The Scientific Investigations Division of the San Bernardino County Sheriff's Department (SID-SBCSD) determined that only Ms. Robles and Victim contributed to DNA located on Ms. Robles's gun. SID-SBCSD also determined that there was very strong support to conclude Ms.

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Robles's DNA was located upon the live round from the area of the guest bathroom and common hallway, and in the blood evidence from the living room wall. The children were excluded as DNA contributors as to all items.

Based upon the evidence collected and trajectory analysis conducted, the case agent opined that there was no direct evidence showing any rounds were fired out of the residence and towards officers during this officer-involved shooting incident.

**DECEASED**

**AUTOPSY.**<sup>4</sup> A San Bernardino County Sheriff's Department, Coroner Division Forensic Pathologist performed the autopsy of Ms. Robles on December 31, 2019. The forensic pathologist identified the following:

- (1) A tangential gunshot wound to the top of Ms. Robles's head that went front to back without penetrating the skull;
- (2) A gunshot wound indicated by entry on the left neck and exit on the right neck, with an indicated trajectory of front to back, slightly right to left and slightly upward;
- (3) A gunshot wound below the right collar bone, where the bullet lodged in the right shoulder blade, with an indicated trajectory of front to back;
- (4) A gunshot wound to the upper right breast, where the bullet lodged in the right lower torso; and
- (5) A gunshot grazing wound above left shoulder blade, with an indicated trajectory of top to bottom.

The forensic pathologist described Ms. Robles's death as a homicide due to multiple gunshot wounds. No information submitted noted the forensic pathologist's opinion regarding the lethality of any particular gunshot wound. Photographs of the two bullets lodged in Ms. Robles's body were examined by the case agent. The case agent determined that the bullet lodged in the right shoulder blade was visually similar to Ms. Robles's ammunition. The case agent also determined that the bullet lodged in the right lower torso was visually similar to the ammunition of Officers Cho and Vergara.

Separate autopsies were conducted of the involved children. The Forensic Pathologist identified one gunshot wound to the right eye in the female child, with a front to back, slightly right and upward trajectory. The Forensic Pathologist identified four gunshot wounds to the male child, to

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<sup>4</sup> This information was reported by the detective present at the autopsy. A Forensic Pathologist's report was not included in the case agent's submission.



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the neck and both arms.

**CRIMINAL HISTORY.** Ms. Robles had no known criminal history.

**APPLICABLE LEGAL PRINCIPLES**

To preface, the public “expects” a responding officer to investigate a 9-1-1 call, as part of the officer’s proper exercise of his duties. (*People v. Brown* (2015) 61 Cal.4<sup>th</sup> 968, 981-982.) Distinct from their duties to investigate crime, police officers are also expected to serve a “community caretaking” function by providing emergency services or helping those in danger of harm. (*People v. Ray* (1999) 21 Cal.4<sup>th</sup> 464, 471-472.)

Independent of the above-stated public expectation, an officer who responds to an emergency call and is faced with threat of harm while fulfilling his duties, need not retreat and maintains his right to self-defense. (Calif. Penal C. §§197, 835a)<sup>5</sup> These authorities are pertinent to the analysis of the conduct involved in this review and are discussed in greater detail below.

**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.)

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<sup>5</sup> All references to code sections here pertain to the California Penal Code, as they existed at the time of the incident. Significant modifications were made to sections 196 and 835a pursuant to Assembly Bill 392. (Assem. Bill No. 392 (2018-2019 Reg. Sess.) as Chaptered August 19, 2019.) However, those modifications became effective on January 1, 2020 and do not apply retroactively. Even if they did, the conclusion of the analysis would be the same.

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**IMMINENENCE.** “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.4<sup>th</sup> 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.)

There is no requirement that a person (including a police officer) retreat even if safety could have been achieved by retreating. (*Id.*, see also CALCRIM 505.) 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* (1996) 47 Cal.App.4th 334, 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 v. Henrich, 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*, (1989) 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.

(*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-

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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.) When considered 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.4<sup>th</sup> 1125, 1147.) 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.*)

The "most important" *Graham* factor in the analysis is whether the suspect posed an immediate threat to the safety of the officer or others. (*Mattos v. Agarano* (9<sup>th</sup> Cir. 2011) 661 F.3d 433, 441-442.) Yet, other factors are taken into consideration when "necessary to account for the totality of the circumstances in a given case." (*Id.*)

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.4<sup>th</sup> at 343, citing *Smith v. Freland* (6<sup>th</sup> 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* (1<sup>st</sup> Cir. 1994) 42 F.3d 691, 695.) In close-cases, the Supreme Court will surround the police with a fairly wide "zone of protection" when the aggrieved

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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.4<sup>th</sup> 1077, 1109, citing *Graham v. Connor*, [*supra*] 490 U.S. 386, 396.)

**ANALYSIS**

This report evaluates the use of deadly force by OPD Officers Thomas Cho and Eder Vergara on December 14, 2019 in Ontario. As indicated above, there are legal bases to justify an officer-involved shooting. We draw our conclusion here based upon those principles and a careful examination of the circumstances made apparent by the material referenced above.

Whether Officers Cho and Vergara were justified in their use of a firearm under the principles of self-defense and defense of others per Penal Code §197 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 or others from an apparent, imminent threat of death or great bodily injury objectively reasonable.

**Subjective Belief of Imminent Need to Protect.** The subjective belief of each of the involved officers is stated here based upon the officer’s statement and the video footage of his conduct. Officers Cho and Vergara were dispatched to the Subject Residence to accompany OFD; they both understood OFD was summoned to provide medical assistance. Officers Cho and Vergara both understood that the party requesting medical assistance was inexplicably bleeding. Officer Cho described the call as “routine” for a Friday night, at best, or “a little out of the ordinary” at worst. Officer Vergara recalled standing outside the front entrance before ringing the doorbell, to see if he could hear any noise coming from inside and he did not hear anything unusual. Officer Vergara stated he didn’t think “there was much threat to the call to begin with.” It is reasonable to believe that the rapid pace of events that unfolded once the door opened caught Officers Cho and Vergara by surprise. Both officers had their weapons holstered when they approached the front door.

When Victim emerged in the doorway, obviously injured and bleeding, Officer Vergara heard Victim say, “My wife’s crazy.” Officer Cho could not understand what Victim was trying to say but did see Victim was bloodied and obviously seriously injured. Officer Cho stood behind Officer Vergara as Victim came out of the doorway. Then, both Officers Cho and Vergara saw

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Ms. Robles approach the door with her hands extended out in front of her. Officer Vergara recalled seeing a black semi-automatic handgun in Ms. Robles's hands, being pointed directly at Officer Vergara's face. Officer Cho did not see Ms. Robles's gun, but recognized that the way she held her hands out was exactly how he looked like when he held out a gun. Although neither officer specifically stated hearing it, Victim can be heard to say, "She has a gun!" as he moved out of the doorway. Officer Cho admitted his attention was diverted by Victim running past him, but that in the split second it took for him to look back towards the door, he perceived muzzle flash coming from inside the house and believed either he or his partner had been shot at. Officer Cho shot one time, and believed that Officer Vergara fired after he did. Officer Cho stated he was scared for his life and believed he was going to get shot. Officer Cho stated he also feared for the lives of Officer Vergara, Victim and OFD personnel. Officer Vergara believed that Ms. Robles was about to shoot and kill him, so he drew his firearm as Ms. Robles advanced, and fired his weapon at her.

Only ten seconds passed between the time Victim opened the door to the officers and the time Officer Vergara first fired his weapon. Officer Vergara felt a gunshot graze the top of his hairline from front to back and believed Ms. Robles fired two or three rounds at him.<sup>6</sup> Both officers retreated backwards away from the front door, as they found themselves in a "fatal funnel" without any cover. Officer Vergara fired as he backed away from the front door. Officer Vergara backed into Officer Cho, causing Officer Cho to take a knee and put his hand down to avoid falling down. These facts tend to show that Officers Cho and Vergara perceived an advancing threat upon their lives, in addition to a seriously injured and fleeing victim, from a confined and vulnerable position.

Based upon the foregoing, it is apparent that Officers Cho and Vergara each bore an honest and subjective belief that Victim, the officers themselves or OFD personnel behind them were under threat of imminent deadly harm or bodily injury at the time they each used lethal force.

**Reasonable Belief of Imminent Need to Protect.** More than the stated belief of Officers Cho and Vergara, however, the materials detailed above and contemplated in total support a finding that each officer had an objectively reasonable belief of the need to use deadly force to protect himself or another.

As in *Graham*, we first consider the severity of the crime at issue. Officers Cho and Vergara did not initially believe that they were called to the Subject Residence to investigate a crime. However, the officers did put together quickly after Victim appeared in his urgent condition that Ms. Robles may have shot Victim and was imminently ready to fire upon the officers as well. The evidence suggests that Victim was shot as he sat on his living room couch just as OFD personnel arrived at the scene. The two OFD firemen who were closest to the front door of the Subject Residence upon arrival recalled hearing what they believed could have been two gunshots. This was around the time Victim provided the OFD dispatch operator with his name. Victim confirmed that he dropped the phone right after he was shot in the living room. The last

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<sup>6</sup> After investigation, no direct evidence that Ms. Robles shot at Officers Cho and Vergara was recovered.

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thing Victim was recorded to have said on his 9-1-1 call was his name; it was 2:46 a.m. The police were at the door shortly after Victim was shot in the living room, at 2:47 a.m. As such, Officers Cho and Vergara approached the door at the Subject Residence in an even more dangerous situation than they were originally led to believe with the initially dispatched information. At a minimum, once Victim presented himself and officers saw Ms. Robles approach with her firearm pointed at them, the officers could have reasonably understood that they faced a situation involving an assault or attempted murder of Victim as well as an assault on the officers with a firearm. The officers had no way to know of the murders that occurred at the Subject Residence prior to their arrival. Still, at the time that the officers used lethal force, it was reasonable for Officers Cho and Vergara to believe that Ms. Robles was engaged in additional serious and violent felonies.

Resistance is another essential consideration in a *Graham* analysis. Since Ms. Robles can be heard on the 9-1-1 call recording just a few minutes prior, it is reasonable to deduct that she would have been aware that emergency personnel had been summoned and would be at the Subject Residence shortly. Ms. Robles's extended background as a probation officer also tends to support an inference that she was familiar with the mechanics of a first response. It is further reasonable to conclude Ms. Robles knew that police and fire personnel had actually arrived on scene. The sound of the approaching fire truck in the dead of night considered with the timing of Victim getting shot reasonably suggests that Ms. Robles may have acted at that moment because she did not want Victim either to escape or report what had happened to first responders. Even in his injured state, Victim reported knowing that police were at the door. It cannot be reasonably disputed therefore, that Ms. Robles also knew the police were present when she approached the front door with quickness. The sound of Officer Vergara's doorbell ring and knock announcement of "Ontario Police" would have been as unmistakable as the uniforms that both shooting officers wore at the time. As such, the officers had reason to believe that the persons appearing at the door would recognize them as peace officers. By approaching the front door with a firearm pointed in the officers' direction, Ms. Robles blatantly conveyed to Officers Cho and Vergara that Ms. Robles was resisting in the most extreme form.

Inmediacy 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. As just discussed, the officers were confronted with an obviously injured and fleeing Victim while coming face-to-face with the Victim's aggressor, who had weapon being pointed in the officers' direction. The evidence collected did show that Ms. Robles's weapon was in the "slide-locked" position, meaning that it was spent of all bullets. But it cannot be said that Ms. Robles did not intend to continue firing at Victim and Officers Cho and Vergara. The manner in which she approached the officers at the door suggests she may have intended to fire her weapon at officers, but ran out of bullets. It is reasonable to believe that Ms. Robles's background as a law enforcement officer herself, would be acutely aware of the consequence of a police presence as well as the lethal danger of pointing a weapon at officers. By choosing to present herself in a shooter's stance, Ms. Robles projected herself to be a lethal threat to Officers Cho and Vergara, regardless of whether she actually possessed in her hands the firepower to see the threat through. The officers could not have reasonably known that Ms. Robles had no more

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bullets in her weapon. To the contrary and under these circumstances, the involved officers had reason to believe that Ms. Robles was armed, ready and immediately capable of firing upon them.

In the evaluation of the question of necessity at the time shots were fired, it must be noted that the courts have employed a standard that is highly deferential and viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The inquiry allows for the fact that split-second judgments are being made under tense, uncertain and rapidly-evolving circumstances. The fact that Ms. Robles's gun was *empty* is precisely a factor that is available only with the aforementioned 20/20 vision of hindsight and cannot be considered. Officers Cho and Vergara initially presented themselves to Victim at the front door of the Subject Residence believing there was little to no threat in doing so. Yet, within the span of about nine seconds, the officers instead were met with a gun being pointed at them. Officers Cho and Vergara had no reason to believe that the threat posed to them, Victim and the OFD firemen on scene was anything less than deadly. Officers Cho and Vergara stood open to Ms. Robles, without cover, at a distance less than 10 feet. If the gun was loaded, it would have taken a fraction of a second for Ms. Robles to fire a shot.

Both officers believed that Ms. Robles fired at them. One of the OFD firemen who stood on the front lawn also believed that shots came from the inside of the Subject Residence. One fired shot from Ms. Robles's weapon produced a FCC located in the common hallway, but the case agent was unable to opine due to the lack of bullet strike or recovered projectile, exactly what was hit or fired upon by Ms. Robles.<sup>7</sup> The disagreement of human perception and physical evidence might be explained by the dynamic circumstances under which the officers and OFD fireman perceived the situation, coupled with the small space in which it occurred. Even though there is no direct evidence that Ms. Robles actually fired at the officers, this fact does not change whether the officers' conduct was lawful. By pointing her gun towards the officers and advancing towards the officers with it, the officers were afforded no other reasonable choice but to act swiftly to defend against the perceived imminent danger to themselves and others in their immediate vicinity. As such, the necessity of the use of deadly force by Officers Cho and Vergara cannot be successfully second-guessed.

Officers Cho and Vergara had to act instantly to confront the danger posed by Ms. Robles, which was by all indication an immediate threat to kill the officers and/or Victim. Based on the foregoing, the use of lethal force by Officers Cho and Vergara is deemed to have been reasonably made and is also justifiable under Penal Code §197.

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<sup>7</sup> It is within the realm of possibility that Ms. Robles fired this shot prior to the time the front door closed and that the resulting FCC was shuffled from the area of the front door either by Ms. Robles, or any one of a number of OPD personnel who subsequently entered the Subject Residence.

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**CONCLUSION**

Under the facts, circumstances, and applicable law in this matter, the use of deadly force by Officers Thomas Cho and Eder Vergara was justifiable in self-defense and the defense of others. 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: March 8, 2021**

