



PUBLIC RELEASE MEMORANDUM

Date: October 25, 2021

Subject: Fatal Officer-Involved Shooting

Involved Officers: Officer Ryan Malman
San Bernardino Police Department

Officer Sean Galarza
San Bernardino Police Department

Involved Subject/DOB: Jesus Alvarez Pulido
05/17/1970

Subject's Residence: Transient, San Bernardino

Incident Date: August 28, 2020

Incident Time: 6:17 p.m.

Case Agent/Agency: Detective E. Campos
San Bernardino Police Department

Agency Report #: 2020-92135

DA STAR #: 2021-00-12495

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PREAMBLE

This was a fatal officer-involved shooting by officers from the San Bernardino Police Department. The shooting was investigated by the San Bernardino Police Department. This factual summary is based on a thorough review of all the investigative reports, photographs, body-camera video, and audio recordings submitted by the San Bernardino Police Department.

FACTUAL SUMMARY

On August 28, 2020, at approximately 6:04 p.m., Witness #1 called 911 after his brother-in-law, Jesus Pulido, attacked him inside his home at the 3400 block of North Mountain View Avenue in San Bernardino. Witness #1 was seriously injured after Pulido struck him in the face with a handgun. Witness #1 and his wife, Witness #2, were able to escape the residence, but were unable to get Witness #1's elderly and wheelchair-bound mother, Witness #3, out of the residence. They were also unable to retrieve their cell phones, car keys, or shoes. Once outside, Witness #1 and Witness #2 saw Pulido's car in their driveway with the engine running. Witness #1 and Witness #2 got into Pulido's car and fled. Concerned for Witness #1's mother's well-being, they stopped and asked a stranger if they could use his phone to call the police. Witness #1 called 911 and said, "We need help. I've got a guy with a gun in my house."

San Bernardino Police Officers Sean Galarza and Ryan Malman were dispatched to the residence. While the officers drove to the scene, the dispatcher relayed to the officers additional details given by Witness #1, which included a physical description of Pulido, the fact that Pulido was armed with a black 9 mm semi-automatic handgun, and Pulido was high on "speed." The officers were also advised that Witness #1 reported Pulido had "tried to shoot them" and that he and his wife were able to escape, but his elderly and disabled mother was still in the house with Pulido.

At approximately 6:09 p.m., Officer Galarza arrived at the residence, followed shortly thereafter by Officer Malman. At approximately 6:12 p.m., Officers Galarza and Malman began to approach the front door in an attempt to contact Pulido. Because Pulido was reportedly armed with a gun, the officers made their approach with caution. As they approached, the officers noticed a window just east of the front door was shattered. At the front door, a metal security screen prevented the officers from being able to see beyond the screen. Officer Galarza announced, "Jesus, come on out. Jesus, come on out. San Bernardino Police Department. Let us see your hands." Pulido responded by yelling, "Fuck you! Fuck you!" Officer Malman noticed the blinds at the broken window moving and heard Pulido yelling from that location but was unable to see inside.

As Pulido continued yelling at them, Officers Galarza and Malman retreated from the residence and took cover behind a car parked in the driveway. Over the radio, Officer Galarza requested additional units respond to the scene and requested units to set up a

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perimeter around the residence in order to contain Pulido. Officer Galarza also requested an officer armed with a less-lethal shotgun respond to the scene. Pulido continued yelling at the officers, but due to the distance and because he was yelling in Spanish, the officers were unsure what Pulido was saying. Officers Galarza and Malman retreated further away from the residence, taking cover behind Officer Malman's patrol unit, which was parked on the street near the home's driveway, while they waited for additional officers to arrive.

Shortly thereafter, San Bernardino Police Officer Lucero, Officer Ledezma, and Corporal Rutherford arrived on scene. Officer Lucero set up on the east side of the property where he could watch the back of the house. Officer Ledezma and Corporal Rutherford assisted Officers Galarza and Malman at the front of the house. At approximately 6:15 p.m., Officer Ledezma began giving commands in Spanish over the public address system telling Pulido they were the police department and ordering Pulido to come outside with his hands up. Pulido responded by yelling at the officers in Spanish, saying he was not going to come outside, and he was not going back to jail. At the same time, the officers saw that someone was inside the house banging on the front window with a black object. Officer Ledezma continued giving commands to Pulido, but Pulido still refused to come outside.

At approximately 6:17 p.m., Officer Lucero announced over the radio that he saw black smoke coming from the back of the residence and said it appeared Pulido had started a fire inside the home. Upon hearing Officer Lucero's report and seeing the smoke from their position in front of the house, the officers decided they needed to take immediate action to get inside the residence to ensure Witness #3's safety. Corporal Rutherford formed a team with Officers Galarza, Malman, and Ledezma to go inside to rescue Witness #3, who was unable to walk. Together, the officers approached the front door to the residence with their guns drawn. They continued giving commands to Pulido to come outside with his hands up, but Pulido refused. Corporal Rutherford moved to the east side of the door to keep lethal coverage on the broken glass window while Officer Galarza opened the front security screen. After opening the metal security screen, Officer Galarza found the front wooden door was locked. Attempting to force entry, Officer Galarza kicked the door. After the first kick, the door quickly swung open, hit an interior wall, and immediately began to close. In the brief moment the door was open, Officer Malman saw Pulido inside, walking toward the officers with a rifle in his right hand. Officer Galarza pushed the front door back open just as Officer Malman yelled, "He's got a gun!" As soon as the door was pushed back open, Officers Galarza and Malman saw Pulido standing inside the entryway approximately 10 feet away, facing the officers. Pulido had a rifle in his right hand and a handgun in his left hand. Both of Pulido's guns' barrels were pointed down toward the floor. From their positions further back, Officer Ledezma, and Corporal Rutherford saw Pulido standing inside, facing the officers, with a rifle in his right hand.

Pulido began raising both the rifle and the handgun, pointing them at the officers. As he did so, Officer Galarza and Officer Malman fired their handguns at Pulido. Pulido was struck and fell to the ground. The officers entered the residence to secure Pulido and saw Pulido's rifle and handgun had fallen on the ground nearby. The officers kicked the

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firearms out of Pulido's reach and placed him into handcuffs. Emergency medical aid was called for Pulido. The officers began searching for Witness #3 and for the source of the fire. Corporal Rutherford found and extinguished the fire in the kitchen. Officer Ledezma found Witness #3, at approximately 6:20 p.m., in a room west of the kitchen. Officer Ledezma helped her into her wheelchair and out of the residence. Emergency medics treated Pulido, but he succumbed to his injuries and was pronounced deceased at the scene at 6:29 p.m.

STATEMENTS BY POLICE OFFICERS¹

All San Bernardino Police Department officers who responded to the scene on August 28 2020, wore readily identifiable police uniforms consisting of black battle dress uniform cargo pants, black boots, black polo shirts with San Bernardino Police patches on both sleeves, San Bernardino Police Department badges embroidered on the shirt's left chest, and their names embroidered on the shirt's right chest. The officers' body-worn cameras were worn in the center of their chests.

On August 29, 2020, at approximately 1:36 a.m., **Officer Sean Galarza** was interviewed by Detective E. Campos of the San Bernardino Police Department.

Officer Galarza was employed as a police officer for the San Bernardino Police Department. On August 28, 2020, Officer Galarza was on duty and was assigned to patrol. Officer Galarza drove a distinctively marked San Bernardino Police Department patrol unit. Officer Galarza's duty belt was equipped with his handgun, a Taser, a baton, his radio, and handcuffs. Officer Galarza's handgun was a 9 mm Glock 17 and held 17 rounds in the magazine and one round in the chamber. Officer Galarza's body-worn camera was activated during the incident

At approximately, 6:05 p.m., Officer Galarza was on patrol in the area of Highland Avenue and Sierra Way when he was dispatched to an emergency call regarding a Hispanic male (Jesus Pulido) who had caused a disturbance in a house and had assaulted a family member. The house was located at the 3400 block of North Mountain View Avenue in San Bernardino. Pulido was reportedly armed with a gun and was wearing a black shirt and black pants. As Officer Galarza drove to the location given in the call, additional information was broadcasted that the reporting party (Witness #1) had been bitten by Pulido and that Witness #1 had taken Pulido's vehicle and had fled to a different location. An additional officer was dispatched to meet with Witness #1 at a different location. Witness #1 also reported that there was an elderly, disabled female (Witness #3) still inside the residence and that Pulido was inside and was possibly high on some substance or had been drinking. Dispatch also relayed that it was a possible "212.5," (home invasion robbery).

¹ Herein is a summary only. All reports submitted were reviewed, but not all are referenced here. During their interviews, none of the officers identified or referred to the reporting party or any of the witnesses by name. For clarity, all witnesses will be referred to by name throughout the remainder of this memorandum.

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Officer Galarza was the first officer to arrive on scene. Officer Galarza parked his patrol unit on Pershing Avenue just west of the residence. Officer Galarza activated his body-worn camera and approached the residence from the west side. Because Pulido was reportedly armed with a gun, Officer Galarza took his handgun out of its holster and made his approach. Officer Galarza saw a trailer on the west side of the property. In the call, it had been reported that they were not sure if Pulido had gone into the trailer. Officer Galarza looked to see if anyone was in the trailer but did not see anyone. As Officer Galarza approached the residence, he listened but did not hear any noise coming from inside the residence. Officer Galarza saw that the window directly to the east of the front door was broken and there was no longer any glass on it. Officer Galarza stood at the southwest edge of the property and listened but still did not hear anybody inside the house. There was a metal security screen on the front door and Officer Galarza could not see through it. When Officer Malman arrived, Officer Galarza asked him if he wanted to approach the house and attempt to make contact with Pulido or anyone else who might be inside the residence.

As Officer Galarza and Officer Malman approached the front door to the residence, they announced, "It's the police department, Jesus." They then announced, "Hey, Jesus, can you come to the door and come talk to us?" In response, Pulido began yelling, "Fuck you! Fuck you!" After not getting compliance from Pulido, Officer Malman told Officer Galarza that they should retreat and take cover behind the vehicles parked in the driveway until they gain compliance from Pulido. Officer Galarza notified dispatch that Pulido was not complying with their commands and requested additional units to respond to the location. Officer Galarza asked the responding units to set up a perimeter around the residence in order to keep Pulido from fleeing. Not knowing the condition of Hermina, the officers also requested medical aid respond and to stage nearby.

Officer Malman's patrol unit was parked on 34th Street in front of the driveway to the residence facing in a northeast direction towards the front of the residence. Officer Galarza and Officer Malman moved back to Officer Malman's unit where Officer Malman took cover behind the open driver's side door and Officer Galarza took cover behind the open passenger side door. From there, they could see the front door of the residence. Pulido continued yelling, but it was difficult to understand what he was saying. Corporal Rutherford then arrived on scene. Corporal Rutherford told the officers that if they heard gunshots being fired inside the residence or any other sort of exigency, they would form a reaction team to go inside.

Officer Ledezma arrived and parked his patrol vehicle just east of Officer Malman's, also facing toward the front of the residence. Officer Galarza asked Officer Ledezma to give verbal commands to Pulido in Spanish over his public address system. Because Pulido was yelling at the officers in Spanish, Officer Galarza thought it would de-escalate the situation if Officer Ledezma made the announcements in Spanish. The officers utilized the patrol vehicle lights and the air horn to identify themselves, in a further attempt to de-

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escalate the situation. Officer Ledezma gave commands in Spanish and then relayed over the police radio that Pulido was replying, "Fuck you. I am not coming out. I'm not going back to jail." Pulido continued yelling at the officers in Spanish and it sounded like he was inside the house near the front window where the glass was broken. Pulido was given ample time to surrender but he refused to do so. Because of this, Officer Galarza requested that an officer armed with a less-lethal shotgun respond to the scene so they would have a less-lethal option to utilize in their attempts to resolve the situation. Additional officers arrived and set up a perimeter around the house.

While waiting for the officer with the less-lethal shotgun to arrive, Officer Lucero radioed in that there was black smoke coming from inside the residence and that it looked like a fire had been started in the house. At that moment, the officers heard the fire alarm sounding inside the house. Officer Galarza then saw black smoke rising from the center of the house. Because of this, Officer Galarza, Officer Malman, and Corporal Rutherford formed a reaction team and approached the front door of the residence. As they approached, they continued giving announcements to Pulido, asking him in Spanish to come out with his hands up. They made these announcements in a continued attempt to de-escalate the situation and to get Pulido to come outside and surrender so they would not have to force entry into the house. Pulido continued to ignore the commands and continued yelling at the officers.

When they got to the front door, Officer Galarza opened the metal security screen door, which was unlocked. Officer Galarza then attempted to open the front door, but it was locked. Because the residence was on fire and Witness #3, who was disabled, was still inside, they knew they had to force entry so they could rescue her. Officer Galarza kicked the door with his left foot, forcing the door open. As the front door swung open, it hit the interior wall and immediately swung back and started closing again. Officer Galarza pushed the door back open with his left hand while holding his duty weapon in his right hand. As Officer Galarza pushed the door open, he heard Officer Malman behind him yell, "Gun!" Officer Galarza looked into the entry and saw Pulido standing inside approximately 10 feet away. Pulido was facing the officers holding what looked like a "deer hunting rifle" in his right hand and a smaller black handgun in his left hand. Both guns were pointed toward the ground. There was nothing in between Pulido and the officers. Pulido was staring right at the officers and as Officer Galarza looked directly at Pulido, Pulido began to raise his left hand with the handgun, pointing the gun at the officers. Officer Galarza fired his handgun once² at Pulido and took cover. Officer Galarza heard a second officer, who was behind him, also fire his duty weapon. Officer Galarza believed that second officer was Officer Malman. Officer Galarza saw Pulido had fallen to the ground near the living room area. Officer Galarza advanced into the residence and gave commands to Pulido to show him his hands. Pulido was not responding to the commands. Officer Galarza could see Pulido's left hand was touching the handgun, so he approached and kicked it away from his hand. Pulido's rifle had fallen on the ground, closer to the officers.

² After counting the bullets remaining in Officer Galarza's duty weapon, it appears he may have fired two rounds.

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After kicking the handgun away, Officer Galarza and Officer Malman rolled Pulido over onto his stomach to quickly search him for any additional weapons and to handcuff him. Medical aid was cleared to come into the scene to treat Pulido. After placing Pulido into handcuffs, Officer Galarza began to look for Witness #3 because there was still a fire in the house, and they needed to get her out. The house was filled with smoke, making it difficult to see. Officer Galarza looked in the east bedroom and didn't find her. Officer Galarza heard other officers shouting, "Where's the fire, where's the fire?" Officer Galarza looked around and saw Corporal Rutherford in the kitchen near the stove which was engulfed in flames. Corporal Rutherford grabbed a large pitcher and filled it with water to extinguish the fire. As Corporal Rutherford dealt with the fire, Officer Galarza continued to search for Witness #3. Officer Galarza believed Witness #3 was wheelchair-bound and smoke was filling the air so he was concerned she may have fallen and could be choking on the smoke. Officer Galarza and Officer Malman saw there was a sliding glass door at the back of the house that led outside. Officer Galarza and Officer Malman went outside and saw there was an open door at the rear of the residence. They heard people speaking in Spanish and saw that other officers outside near the back of the residence had located Witness #3. Officer Galarza and Officer Malman then secured the scene.

At the conclusion of the interview, Detective Campos counted the number of rounds remaining in Officer Galarza's duty weapon and found one round in the chamber and 15 rounds in the magazine.

On August 29, 2020, at approximately 2:30 a.m., **Officer Ryan Malman** was interviewed by Detective E. Campos of the San Bernardino Police Department.

Officer Malman was employed as a police officer for the San Bernardino Police Department. On August 28, 2020, Officer Malman was on duty and was assigned to patrol. Officer Malman drove a distinctively marked San Bernardino Police Department patrol unit. Officer Malman's duty belt was equipped with his handgun, a Taser, baton, radio, and handcuffs. Officer Malman's handgun was a 9 mm Glock 17 and held 17 rounds in the magazine and one round in the chamber. Officer Malman's body-worn camera was activated during the incident

While Officer Malman was on patrol, he and other officers were dispatched to a man with a gun call at the 3400 block of North Mountain View Avenue. While en route to the call, dispatch advised that it was a possible home invasion robbery and the suspect was the brother-in-law (Jesus Pulido) who was possibly under the influence of drugs. Pulido was described as wearing black pants and a black shirt and was armed with a handgun. An elderly female (Witness #3) was reportedly inside the residence, but the reporting party (Witness #1) had fled in Pulido's vehicle. As Officer Malman arrived at the reported address, he activated his patrol unit's emergency lights. Officer Malman saw Officer Galarza was already there in the front yard. Officer Malman positioned his patrol unit on the south side, in front of the residence. As Officer Malman made contact with Officer

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Galarza, he heard Pulido yelling inside the residence. Officer Galarza said they were going to attempt to contact Pulido. As they walked to the front of the residence, Officer Galarza was giving commands to Pulido. Officer Malman saw the east window of the residence was shattered and when he saw movement through the window, he thought that he and Officer Galarza were in a bad position. Officer Malman could hear Pulido near the broken window and could see the blinds moving, but he could not see into the residence. Pulido was yelling at the officers in Spanish. Officer Malman did not speak Spanish, so he did not know what Pulido was yelling. Officer Malman was afraid Pulido was going to start shooting at them and they had no cover. Because they were in a bad tactical position, they retreated and took cover behind a vehicle parked in the driveway. The officers requested back up officers arrive to assist.

Officer Malman and Officer Galarza took cover behind a vehicle parked in the driveway, but as they did so, Officer Galarza realized they were still in a bad tactical position because the trailer described in the call was now behind them. Officer Malman could hear dogs barking in the backyard and grew concerned that Pulido may have gone into the backyard. Officer Malman and Officer Galarza moved, taking cover behind Officer Malman's patrol unit which was parked facing the front of the residence. Officer Malman took cover behind the driver's door.

Corporal Rutherford and Officer Ledezma arrived on scene. Officer Ledezma made announcements to Pulido in Spanish over the public address system and Pulido continued yelling. One of the officers requested someone respond to the scene with a less-lethal shotgun. As Officer Ledezma continued making announcements, Corporal Rutherford told the officers that if they heard gunshots fired inside the residence or if any exigent circumstances arose, they were going to force entry into the residence. Corporal Rutherford asked Officer Galarza and Officer Malman if they had any entry tools and they told him they did not. As they discussed the potential entry plan, Officer Lucero announced over the radio that there was smoke coming from inside the residence. After hearing this, Corporal Rutherford advised they were going to have to force entry because there was an elderly female still inside the residence. They approached the residence with Corporal Rutherford in front, followed by Officer Galarza, Officer Malman, and Officer Ledezma. As they approached the front door, Officer Malman heard movement coming from inside the residence. Officer Galarza opened the unlocked metal screen door and as he did so, Officer Malman thought to himself, "We are in a bad position," because they could not see what was behind the door and they knew Pulido was armed. Officer Galarza told them the front door was locked, so they had to force entry.

Officer Galarza kicked the front wooden door open and as he did so, Officer Malman was able to see Pulido walking towards them while holding a black long rifle in his right hand. Officer Malman yelled, "He's got a gun!" As he yelled this, the front door began to close. Officer Galarza pushed the door back open and Officer Malman saw Pulido had a black handgun in his left hand. The officers yelled drop the gun. When Officer Malman saw the black handgun, Pulido was yelling at the officers. Pulido was approximately ten feet away

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from the officers. Pulido began to raise the handgun, pointing it directly toward the officers, and Officer Malman, fearing for his own safety, and the safety of his partners, fired his handgun at Pulido. Officer Malman believed he fired approximately five to six rounds. Officer Malman believed that if he had not shot Pulido, either he or another officer would have been shot and killed. Officer Malman saw Pulido fall to the floor as he was hit by gunfire. The officers went into the residence to secure Pulido, to look for Witness #3, and to figure out where the fire was. Officer Malman saw the rifle had fallen to the ground nearby but did not see the handgun. Medical aid had already been called and had staged nearby. After handcuffing Pulido, medical aid was cleared to come in to render aid to Pulido. Officer Malman assisted other officers in clearing the residence and looking for Witness #3. Another officer was able to extinguish the fire that was found to be in the kitchen. Officer Malman and Officer Galarza went outside to the backyard to see if Hermina had gone outside or into the trailer. Once outside, they learned Corporal Rutherford had already located Witness #3.

At the conclusion of the interview, Detective Campos counted the number of rounds remaining in Officer Malman's duty weapon and found one round in the chamber and 11 rounds in the magazine.

On August 28, 2020, at approximately 11:34 p.m., **Officer Raymond Ledezma** was interviewed by Detective A. Reyna of the San Bernardino Police Department.

Officer Ledezma was employed as a police officer for the San Bernardino Police Department. On August 28, 2020, Officer Ledezma was on duty and was assigned to patrol. Officer Ledezma drove a distinctively marked San Bernardino Police Department patrol unit. Officer Ledezma's body-worn camera was activated during the incident.

Officer Ledezma and other officers were dispatched to a man with a gun call at the 3400 block of North Mountain View Avenue. As Officer Ledezma drove to the reported address, police dispatch broadcasted that the reporting party (Witness #1) advised that a Hispanic male suspect (Jesus Pulido) had broken into the residence and that Pulido was armed with a firearm. Dispatch also relayed to the officers that Pulido was possibly under the influence of a controlled substance, Pulido had been in an altercation with Witness #1, Pulido had arrived to the residence in a black Dodge vehicle, and Pulido broke into the residence and began fighting with people over a gun. Dispatch also advised that Witness #1 had fled the residence in Pulido's vehicle, but that his mother (Witness #3), who was an elderly female, was still inside with Pulido. Officer Ledezma asked dispatch for a phone number for Witness #3 so he could call her and ask her to walk outside of the residence. Dispatch advised that Witness #3 used a wheelchair and she was unable to exit the residence. Over the radio, Officer Ledezma heard officers say they needed a Spanish speaker because Pulido was inside the residence yelling in Spanish. Officer Ledezma spoke Spanish.

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When Officer Ledezma arrived at the location, he activated his patrol unit's emergency lights and parked on the street on the south side of the residence. Officer Ledezma walked to a truck that was parked on the south side of the residence and heard someone yelling from inside the home. Officer Ledezma went to Officer Rutherford's vehicle and used the public address system to provide verbal commands to Pulido. When Officer Ledezma began to use the public address system, he accidentally struck the horn and briefly activated the siren. Over the public address system, Officer Ledezma announced, in Spanish, that they were the San Bernardino Police Department, they needed him to come out of the residence with his hands up, and that they didn't want to harm him. Officer Ledezma also identified the address of the residence over the public address system. Officer Ledezma asked fellow officers if they had Pulido's name and was told it was Jesus. Officer Ledezma began giving commands, using Pulido's first name, and told him to come out with his hands up. Officer Ledezma gave these commands three to four times. Officer Ledezma's goal was to de-escalate the situation, to get Pulido to come outside and comply with the officers so no force would have to be used, and to avoid a possible hostage situation.

Officer Ledezma heard a subject inside yelling that he was not going to come out and that he was not going back to jail. Officer Ledezma saw a black object hitting the home's front window from inside. The window was located on the south side of the residence just east of the front door. The object appeared to be a metal pole or stick. The glass on the left side of the window was broken, but the right side on which someone was banging, was not. Officer Ledezma noticed that Corporal Rutherford had set up a team on the east side of the residence. Additional officers had set up a perimeter around the property. Officers on the east side of the property reported they saw smoke coming from inside the residence. Officer Ledezma then saw smoke coming out of the residence. The fire inside the residence escalated things and created an exigency requiring the officers enter the residence because Witness #3's life was in danger.

Officer Ledezma approached Corporal Rutherford and the other officers. Together, they approached the front door to the residence and gave commands identifying themselves as police and ordering Pulido to open the front door. Officer Ledezma armed himself with the Taser so they had a less-lethal option. Officer Galarza opened the screen to the front door but was unable to open the front door as it was locked. Officer Ledezma could hear Pulido inside yelling but could not recall specifically what he was saying. Officer Galarza and Officer Malman were to the left of Officer Ledezma and Corporal Rutherford was to his right. Officer Galarza kicked open the front door and Officer Ledezma saw Pulido standing inside, straight ahead facing the officers. Officer Ledezma saw Pulido was standing flat footed, with his chest pointed toward the officers, while holding a hunting style rifle with the barrel pointing downwards toward the ground. Officer Ledezma estimated he was approximately 10 yards from Pulido when he saw him with the rifle. Pulido held the rifle with both hands. Officer Ledezma saw Pulido start to raise the barrel of the rifle, pointing it toward the officers and was afraid Pulido was going to shoot them. Officer Ledezma quickly moved out of the way of the gun, to his right, switching from the

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Taser to his handgun, and then heard gunshots. Initially, Officer Ledezma believed the gunshots were from Pulido shooting the rifle at the officers. Officer Ledezma did not fire his handgun as he did not have a clear shot of Pulido because Officer Galarza was positioned near the doorway. Officer Ledezma heard about four gunshots being fired from his left and he could smell smoke and gunpowder. Officer Ledezma did not see who fired. Officer Ledezma believed that if the officers had not fired their weapons, then they would have been shot by Pulido.

The officers entered the residence and Officer Ledezma noticed the rifle he had seen Pulido holding was on the floor two to three feet away from Pulido. Officer Ledezma kicked the rifle away from Pulido. Pulido was lying on the ground, face down with his hands underneath him. Officer Ledezma grabbed Pulido's left hand and placed it behind his back. Officer Ledezma did not recall who grabbed Pulido's right hand and handcuffed him. Officer Ledezma did not see Pulido armed with any other firearms, nor did he see any other firearms inside the residence.

Corporal Rutherford told the officers they needed to find the female inside the residence and to find where the smoke was coming from. Officer Ledezma did not remember who stood by with Pulido while he and Corporal Rutherford began searching the rooms for Witness #3 and for the location of the smoke. Officer Ledezma called out for Witness #3 in Spanish. Corporal Rutherford was able to locate and extinguish the fire in the kitchen oven.³ Officer Ledezma found Witness #3 in a room west of the kitchen. Witness #3 was very shook up and afraid. Officer Ledezma asked her if she was okay and she told Officer Ledezma someone had broken into her bedroom and threw her onto the floor. Officer Ledezma located Witness #3's wheelchair and used it to escort her out of the residence.

Outside, Officer Ledezma checked the trailer located on the west side of the residence and contacted Witness #4, who identified himself as Witness #3's son. Officer Ledezma had Witness #4 and Witness #3 wait at the front of the residence.

On August 29, 2020, at approximately 12:55 a.m., **Corporal Jay Rutherford** was interviewed by Detective A. Reyna of the San Bernardino Police Department.

Corporal Rutherford was employed as a police officer for the San Bernardino Police Department. On August 28, 2020, Corporal Rutherford was on duty and was assigned to patrol. Corporal Rutherford was also a member of the Department's SWAT team. Corporal Rutherford drove a distinctively marked San Bernardino Police Department patrol unit. Corporal Rutherford's body-worn camera was activated during the incident

At approximately 6:00 p.m., Corporal Rutherford was driving his patrol unit when he heard an emergency call broadcasted by dispatch. The call was regarding a man with a gun at the 3400 block of North Mountain View Avenue. Corporal Rutherford began driving to the location to assist other officers who were already en route to the scene. Corporal

³ Photos taken at the scene show the fire was on top of the stove.

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Rutherford used his map to determine a tactical approach to the residence. Corporal Rutherford also exchanged messages with police dispatch and obtained more information in relation to the call. Corporal Rutherford learned the suspect (Pulido) was armed with a gun and had assaulted his brother-in-law (Witness #1). In addition, Corporal Rutherford learned that Witness #1 had left the house in Pulido's car and borrowed a phone to call the police, but his 75-year old disabled mother or grandmother (Witness #3) was still inside the residence. Corporal Rutherford asked dispatch for a phone number to contact Witness #3.⁴

When Corporal Rutherford arrived at the location, three other officers were already there. The residence was located on the corner of an intersection near the 3400 block of North Mountain View Avenue, the front door was in the middle of the house and faced south. Corporal Rutherford parked his unit facing the front door of the residence and activated his patrol unit's emergency overhead lights. Corporal Rutherford retrieved his rifle from the unit's security rack and loaded it. Corporal Rutherford retrieved his rifle because it was loaded with 60 rounds, which was a higher capacity than his pistol. The other officers were not armed with rifles and Corporal Rutherford wanted to have a tactical advantage over Pulido if he chose to fire at the officers.

Corporal Rutherford went to assist Officer Galarza and Officer Malman who were standing behind a patrol unit located southwest of the residence and facing the front door. Corporal Rutherford believed Officer Galarza had made announcements for Pulido to come outside and that he had some dialog with Pulido because Officer Galarza told him Pulido was a Spanish speaker. Officer Ledezma, who speaks Spanish, was on scene, so Corporal Rutherford had Officer Ledezma make announcements in Spanish over Corporal Rutherford's patrol unit's public address system. The announcements were made in an attempt to get Pulido to come out of the house peacefully and to resolve the situation without using any force. Officer Ledezma sounded the patrol unit's siren before making any announcements. Officer Ledezma then made several announcements in Spanish telling Pulido they were the police and asking him to come outside with his hands up. In response, Pulido yelled at the officers and hit a window with an unknown object. Officer Ledezma told Corporal Rutherford that Pulido said something to the effect of he was not going to come outside. Officer Ledezma continued to make announcements, making approximately three to four separate announcements. Corporal Rutherford believed the situation might progress into a barricaded situation with a possible SWAT call out.

As the senior officer, Corporal Rutherford made sure officers set up a perimeter around the residence in order to contain Pulido because he was reportedly armed with a gun. Corporal Rutherford told Officer Galarza and Officer Malman that they would be the emergency reaction team if any gunshots were fired inside the residence or if any other kind of threat occurred that endangered Witness #3, who could potentially be a hostage. Officer Lucero was positioned on the east side of the residence and had visual of the back of the house. Officer Lucero reported that he saw black smoke coming from the back of

⁴ Corporal Rutherford did not say, nor was he asked whether he received Witness #3's phone number.

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the residence, indicating a fire had been started inside the residence. At that point, Corporal Rutherford's immediate concern was the safety of Witness #3, who was disabled and unable to get outside, as well as the safety of Pulido. Corporal Rutherford told the other officers they needed to enter the residence to save Witness #3.

Corporal Rutherford led the officers to the front door. Officer Galarza and Officer Malman were behind Corporal Rutherford so they could open the door. Corporal Rutherford believed the screen door was unlocked because no force was used to open it. After it was opened, Corporal Rutherford went around the screen door and kept lethal cover on the front window to the right of the front door where they had seen movement earlier. One of the officers told Corporal Rutherford that the front door was locked and asked if they could kick it open. One of the officers kicked the door open with one kick. Corporal Rutherford believed it was Officer Galarza who kicked the door open, but he didn't see because of his position on the other side of the screen door. When the door flew open, Corporal Rutherford began to transition back toward the front door with his rifle in order to enter the residence, when out of the corner of his eye, he saw what he believed was the barrel of a rifle or a shotgun⁵ inside the hallway of the residence about five to six feet away from the officers. Corporal Rutherford was only able to see about six inches of the barrel and believed someone was trying to take aim at the officers with the rifle. Corporal Rutherford tried to get to the doorway to see who was holding the rifle but couldn't see. Corporal Rutherford believed the person was taking cover behind the doorway frame and that was why he couldn't see him. When he saw the barrel, Corporal Rutherford was scared he and the other officers were going to get shot. Officer Galarza moved to the right and Corporal Rutherford heard one of the officers say something about a "gun" and "drop it." Corporal Rutherford then heard shots being fired from behind him. Corporal Rutherford did not see who fired because he was facing the window at the time with his back to the officers. Corporal Rutherford believed he heard about eight gunshots. When the gunshots were fired, Corporal Rutherford was back behind the screen door and was unable to see into the doorway of the residence.

Corporal Rutherford moved to the front and told the officers they needed to enter the residence and to keep their eyes on Pulido. When they began to enter the residence, Corporal Rutherford made announcements identifying himself as a police officer and asking if anyone else was inside. As they entered the residence, Corporal Rutherford saw Pulido down in the hallway directly in front of the front door, approximately 10 feet away. Corporal Rutherford saw a pistol magazine and the barrel to a rifle or possibly BB gun next to Pulido. Corporal Rutherford stepped over Pulido so the officers behind him could detain him. Corporal Rutherford heard officers requesting medical aid for Pulido. Corporal Rutherford's first priority was to put out the fire and find Witness #3 while other officers tended to Pulido.

The house was full of smoke and they continued to search the residence for Witness #3. Corporal Rutherford and Officer Ledezma began searching the east side of the residence

⁵ Corporal Rutherford believed it was a rifle but said it could have possibly been a shotgun.

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and cleared the living room along with three bedrooms and the bathroom but did not find Witness #3 at that time. Corporal Rutherford then walked past Pulido and into the kitchen where he saw a large 1' x 1' couch cushion on fire on top of the stove with two burners ignited. Corporal Rutherford knocked the couch cushion off the stove and poured water on it to extinguish the fire. Corporal Rutherford then walked through the laundry room and found a locked door that he believed led to the garage. Corporal Rutherford forced entry and found Witness #3 inside the room. The room was a garage that had been converted into a makeshift room. Because Witness #3 was a Spanish speaker, Officer Ledezma began speaking with her in Spanish. They used a wheelchair to escort Witness #3 out of the residence through the back door and then to the front of the residence. Corporal Rutherford then contacted another subject, Witness #4, in the back trailer. No other subjects were located inside the residence or in the trailer.

Corporal Rutherford believed that if Pulido had not been shot, then Pulido would have shot the officers in the doorway, then Pulido could have shot Corporal Rutherford, and that if they had all been shot, then Pulido could have easily killed Hermina.

STATEMENTS BY CIVILIAN WITNESSES⁶

On August 28, 2020, at approximately 11:04 p.m., **Witness #1** was interviewed by Detective E. Campos of the San Bernardino Police Department.

Witness #1 lived at the 3400 block of North Mountain View Avenue in San Bernardino with his wife, Witness #2, and sons. Witness #1's mother, Witness #3, lived in the home in the garage space they converted to a bedroom. Witness #1's brother lived in the trailer located on the property. Jesus Pulido is Witness #2's brother.

Witness #1 explained that Pulido had just gotten out of jail after having had problems with his wife. Pulido had also previously spent about a year in jail for "harassing" his daughter's husband. When Pulido got out of jail this year, he asked Witness #1 if he could stay with them because he didn't have a place to live. Witness #1 told Pulido it was fine if he "came by here," but told him he could only leave his things at the house. Witness #1 also told Pulido he could not live at the house, but he could come over to take showers when he needed to do so.

Pulido had been coming by to take showers but would not stay. Pulido had been polite. Whenever they crossed paths, Witness #1 would ask Pulido how he was doing, but that was as far as the conversation would go. Witness #1 said that Pulido's wife had a restraining order against Pulido because Pulido constantly harassed the family. Pulido had told Witness #1 there had been an incident where Pulido called his wife and threatened her over the phone. When Pulido did this, there was a police detective present and the wife handed the phone to the police detective. As soon as the detective got on the phone, Pulido began "going off" on the police detective.

⁶ All reports of civilian statements made were reviewed, though not all are summarized here.

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When Witness #1 got home on August 27, 2020, he saw his brother, Witness #4, was giving Pulido a ride somewhere. Pulido looked like he wasn't himself. After Pulido left with his brother, Sheriff's deputies came to the residence looking for Pulido. The deputies asked Witness #1 if Pulido was living there and Witness #1 told them Pulido would only visit once in a while. Witness #1 said the deputies asked him if Pulido behaved erratically or had made threats to them in any way and Witness #1 told them Pulido had never made any threats toward him or his family. Witness #1 explained that Pulido had never threatened him in the past and was always fine. The reason Witness #1 allowed Pulido to come over was because he didn't disrespect his home.

On August 27, 2020, Witness #1 had gone to bed and after falling asleep, he heard a commotion coming from outside his room. Witness #1 heard his wife and his son, Witness #5, screaming. Witness #1 went to find out what was going on and saw that Pulido was "high on speed" and was hallucinating. Pulido had a history of drugs but Witness #1 had never seen him "this fucked up." Witness #5 and his younger sons were playing, and Pulido kept saying, "the dolls" in Spanish. Pulido was talking about "witchcraft" and said he was going to kill "the dolls." Witness #1's older son, Witness #5, "lost it" and went after Pulido.

When Witness #5 went after Pulido, Witness #1's wife began banging on his bedroom door and told him Pulido was going crazy. Witness #1 got in between Witness #5 and Pulido and separated them. Witness #5 cooled down and went into his bedroom. Witness #1 escorted Pulido outside. Witness #1 was able to calm Pulido down, but saw that Pulido had a gun in his pocket. The gun was a black semi-automatic handgun. Witness #1 had seen Pulido with a gun before but wasn't sure if it was the same gun. Witness #1's sons left the residence and went to spend the night at their in-laws for their safety. Pulido kept saying, "I'm going to shoot him in the chest." Witness #1 said he kept telling Pulido, "No, it's cool. We are family." The police were never called Thursday night.

Witness #1 stayed awake with Pulido until about 6:30 a.m. on Friday, August 28, 2020. Pulido started coming down from his "high." Witness #1 told Pulido he had to leave for work and Pulido began crying and apologizing to him. Witness #1 hugged Pulido and told him it was okay and to go to sleep. Witness #1 told Pulido no one was home except for Witness #1's mother, so he didn't need to feel "threatened." Witness #1 left for work and later called his brother, who lived in the trailer on the property, and asked him to check on Pulido. Witness #1's brother said Pulido had left for Muscoy. Witness #1 told his brother that was probably bad news because he believed that was where Pulido was getting his drugs.

Witness #1 got home from work at about 3:30 p.m. Only Witness #1's wife was home. Witness #1 took a shower, went to his bedroom, locked his bedroom door, and went to bed. At approximately 4:00 p.m., Witness #1 took lorazepam because he was still "antsy"

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from the night before after the incident with Pulido. Witness #1's wife, Witness #2, was also in her bedroom.

Witness #1 was asleep when he heard banging on his bedroom door and Pulido yelling, "Brother-in-law, brother-in-law!" Witness #1 heard his wife screaming, "What's going on? What are you doing? Calm down!" Witness #1 had his handgun under his bed, so he grabbed it and went to the door. Witness #1 didn't remember if he opened the door or if Pulido kicked it open. Pulido came into his bedroom and wanted his gun. Pulido began yelling, "Give it to me!" Witness #1 told Pulido he wasn't giving him anything.⁷ Pulido then jumped on top of him and Witness #1 fell backwards onto his bed. Pulido hit him in the face with a gun but Witness #1 was able to kick Pulido off of him. Witness #1 was ready to shoot Pulido but then he saw his wife in the background and thought he might shoot her if he fired his gun.

Witness #1 was able to push Pulido away and Pulido told him, "You are against me." Pulido kept saying, "They are here for me. They are here for me. Give me a shotgun, they are here for me." Witness #1 said he played along and asked Pulido, "Where are they?" Witness #1 told Pulido he would protect him and walked to the front door. Witness #1 opened the front door, planning to escape. Pulido was in the middle of the living room with his gun and was threatening him and his wife. Witness #1 was afraid for their safety. Witness #1 and his wife tried to get Pulido to give them his gun, but Pulido refused and said, "No way." Pulido kept opening windows and saying, "They are there. Look." Witness #1 told Pulido no one was there and that he was "good." Witness #1 and his wife put distance between themselves and Pulido in case Witness #1 had to fire his weapon. Pulido was still waving the gun around "like crazy." Pulido had the gun in his right hand. Witness #1 continued to tell Pulido everything was okay. Pulido ran into a bedroom and Witness #1 told his wife, "Let's go right now." Witness #1 and his wife fled the residence through the front door. They had no keys or anything with them, but they saw Pulido's vehicle in the driveway with the engine running, so they got into Pulido's vehicle and left.

After leaving the area, Pulido was worried about his mother who was still inside the residence. Witness #1 told his wife they needed to get to a telephone so they could call the police. While driving, they saw an ice cream street vendor, so they stopped and were able to use the ice cream vendor's phone to call the police. Witness #1 told police dispatch what was happening and stayed on the phone until officers arrived at his location. Witness #1 told police dispatch they needed help because there was a man in their house with a gun and his mother was still inside. Witness #1 told police dispatch to "be careful" because Pulido had a gun. While Witness #1 was on the phone with police dispatch, his wife walked back home because she was worried about Pulido.

⁷ Pulido knew Witness #1 had several guns at the residence, but Pulido did not have access to the guns because they were locked in a safe.

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Witness #1 was taken to the hospital in an ambulance. At the hospital, Witness #1 was told he had fractures to his face and that he needed stitches.⁸

On August 28, 2020, at approximately 9:20 p.m., **Witness #2** was interviewed⁹ by Detective Alvarez of the San Bernardino Police Department.

Witness #2 lived at the 3400 block of North Mountain View Avenue with her husband, Witness #1. Jesus Pulido was Witness #2's brother. On August 28, 2020, she was in the northeast bedroom of her residence and Witness #1 was in the southeast bedroom asleep. All of the sudden she heard a loud noise followed by someone saying, "Open the door. Why did you close it? Why don't you open it?" Witness #2 recognized the voice as her brother's. Witness #2 opened her bedroom door, walked out, and saw Pulido inside the residence in the hallway holding and pointing a handgun gun at her. Witness #2 asked him why he had a gun and told him not to scare her. Pulido told her someone was chasing him and that the police were also after him. Witness #2 told Pulido no one was chasing him.

To Witness #2, Pulido looked bad and appeared to be on drugs. Witness #2 knew Pulido used drugs but did not know what kind. Witness #2 did not know how Pulido got inside the residence. Pulido told Witness #1 to open his bedroom door. Witness #2 yelled at Witness #1 not to open the door because Pulido had a gun. Pulido broke down Witness #1's bedroom door, went into the bedroom, and hit Witness #1 in the eye with the handgun. Witness #2 was afraid Pulido was going to kill Witness #1. Witness #2 told Pulido to stop because he was going to kill Witness #1. Witness #1 had a registered firearm and he grabbed it to defend her and himself from Pulido.

Pulido kept repeating that someone was chasing him, but he was only hallucinating because no one was outside. Pulido pointed the gun at both her and Witness #1 and told them they were not going to get him. Witness #2 asked Pulido to give her the gun, but he refused to give it to her because he said someone was chasing him. Pulido told her that if they get him or if the police come, then he was going to either kill himself or the police. Witness #2 did not see Pulido with any other weapons besides the gun and she did not see or hear Pulido discharge the weapon.

Pulido was acting crazy and appeared to be paranoid. Pulido started checking all the bedrooms and looking out of all the windows. When Pulido checked inside Witness #1's bedroom, Witness #2 and Witness #1 used the opportunity to run out of the house. Witness #2 was in shock and scared because she had never seen her brother act this way. Witness #2 said they were so scared when they ran out of the house that they did not have anything. Witness #1 ran out of the house in his boxers and she ran out in her bare feet to get away from Pulido. When they got outside, they saw Pulido's car was

⁸ According to medical records, Witness #1's injuries were as follows: Facial laceration; fracture of ethmoid sinus; fracture of maxillary sinus; fracture of sphenoid bone; orbital wall fracture.

⁹ The interview was conducted in Spanish.

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parked out front with the engine running. Witness #2 got in the driver's seat and Witness #1 got in the passenger seat. Witness #2 drove to the intersection of Parkdale Avenue and Sierra Way where they asked a stranger to let them use his phone so they could call the police. Witness #2 feared for the safety of her family and Witness #1's mother. Witness #2 ran back to the residence because she loved her brother.

On August 28, 2020, at approximately 10:04 p.m., **Witness #3** was interviewed¹⁰ by Detective E. Campos of the San Bernardino Police Department.

Witness #3 had been living at the residence located at the 3400 block of North Mountain View Avenue with her son, Witness #1, for the past six months. Witness #1 was taking care of her because she recently had a brain aneurysm.¹¹

Witness #1 lives at the residence with Witness #2 and her son, Witness #5. Witness #3 explained that Witness #2 was Jesus Pulido's sister. Witness #3's son, Witness #4, also lived in a trailer located there on the property. Witness #5 had left the residence with his girlfriend prior to the incident with Pulido. Witness #3 said that Pulido was always on drugs and only visited his sister when he was hiding after committing robberies.

Witness #3 identified Pulido in a photograph and said his full name was Pascual Pulido. Witness #3 said that Pulido commits robberies and then comes to the residence to hide out from law enforcement. Pulido lived at an apartment complex somewhere around 40th Street and Sierra Way.

On August 28, 2020, Witness #3 was asleep in her bedroom, which was located on the west side of the residence. Witness #3 heard or felt her bedroom door being kicked down. Witness #3 felt the door falling and as she looked over, she saw Pulido holding a large knife with a black handle. Pulido pulled Witness #3 off the bed and she fell onto the floor. Witness #3 saw the large knife in Pulido's right hand and a handgun in his left hand as he stood over her. As Pulido stood over her, he put the knife against her throat and asked her, "Where's Witness #1?" Witness #3 told Pulido she did not know where Witness #1 was. Pulido then asked her, "Where are the other fags?" Witness #3 told Pulido she wasn't sure. Witness #3 explained that Pulido was referring to Witness #5 and his girlfriend. Witness #3 said she was terrified because of the look Pulido had when he confronted her. Pulido took her cell phone. As Witness #3 laid on the floor, Pulido kept looking under beds and kept saying, "Don't call anyone." Pulido was "acting crazy and desperate," and was breathing hard. Witness #3 was terrified as she watched Pulido pulling items from under the beds. Witness #3 thought Pulido was going to kill her. Witness #3 was unable to stand up because she needs a wheelchair to get around.

¹⁰ The interview was conducted in Spanish.

¹¹ Detective Campos asked Witness #3 if she had any issues with remembering details or any other complications as a result. Witness #3 said she felt fine and the only complication she had was that she couldn't walk on her own.

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After checking under the beds, Pulido left her room and went into the kitchen area. Witness #3 was able to see Pulido from where she was and she saw him waving a gun in the air while saying, "I don't give a fuck," in Spanish. Witness #3 drug herself into the kitchen area where she saw Pulido outside through the north sliding glass door. Pulido was outside waving a gun. Witness #3 saw the neighbor to the north watching what was happening. Witness #3 heard her neighbor say something to Pulido and after the neighbor said something to him, Pulido fired the handgun into the air. Witness #3 saw and heard Pulido fire approximately four rounds into the air.

As Pulido fired his gun, he kept saying, "I don't give a fuck." After Pulido fired the gun, Witness #3 was not sure where Pulido went. Witness #3 was able to drag herself onto a chair that was in the kitchen. Witness #3 was afraid because she knew her son, Witness #1, was in the house asleep. Witness #3 did not hear when the police arrived, but they entered the residence and assisted her with the wheelchair. Witness #3 said she did not hear any additional gunshots after Pulido had fired his gun.

Earlier in the day, Witness #3 had talked to her son, Witness #1, and told him she was afraid of Pulido. Witness #3 explained that when Pulido shows up high on drugs, he goes into Witness #2's room to hide. Witness #3 had never seen Pulido act this way before, but her son, Witness #1, has seen Pulido acting in the same manner as he did tonight. Witness #3 believed Pulido had been incarcerated because he had attempted to kill his son-in-law.

On August 28, 2020, at approximately 10:05 p.m., **Witness #4** was interviewed¹² by Detective A. Reyna of the San Bernardino Police Department.

Witness #4 lives at the 3400 block of North Mountain View Avenue with his mother, Witness #3; his brother, Witness #1; his brother's wife, Witness #2; and Witness #1 and Witness #2's children, Witness # 5 and Witness #6, and Witness #5's girlfriend, Witness #7. Witness #4 explained that he lives inside the trailer located in the backyard of the residence, next to the driveway.

Witness #4 had known Jesus Pulido for approximately 20 years. According to Witness #4, Pulido was a drug user and was homeless. Witness #4 believed Pulido used marijuana and possibly methamphetamine. Pulido had been released from jail approximately two to three months earlier after serving approximately 13 months in custody for domestic violence. Witness #4 knew Pulido had an estranged wife and three children but did not know where the family lived as they moved away because they were afraid of Pulido. Pulido would frequently visit them at their residence and would take showers there. In the past two to three days, Pulido had been coming to the residence daily and would stay there approximately four hours. Witness #4 had seen Pulido with a gun in his waistband approximately three to four weeks earlier when he gave Pulido a ride to the store. Pulido told him he was always armed and that he had the gun for

¹² The interview was conducted in Spanish.

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protection. The gun was black metal with a matte finish. After taking Pulido to the store, Witness #4 dropped Pulido off at a house in Muscoy. Pulido told him the house belonged to a friend.

On August 28, 2020, between approximately 1:00 to 2:30 a.m., Witness #4 was inside the residence eating with his nephews, Witness #5 and Witness #6, and Witness #5's girlfriend when Pulido arrived. Witness #4 saw Pulido had the same gun in his waistband. Pulido took the gun out and placed it on the dining room table. Witness #4 heard Pulido say that he wanted to kill his wife. Witness #5 told Pulido not to be thinking that way. Pulido became angry with Witness #5 and an argument ensued. Pulido told Witness #5 not to yell at him and said he was just playing. Pulido picked up his gun and put it back in his waistband. Witness #4 then left the residence and went into his trailer where he fell asleep.

Witness #4 woke up around 6:00 a.m. and saw he had several missed calls and text messages from Witness #7 who stated that she, Witness #6, and Witness #5 had to leave the residence after Pulido had threatened them. Witness #7 told Witness #4 they were afraid of Pulido. Witness #1 called Witness #4 at about 6:30 a.m. and told him to be careful because Pulido was on drugs, was upset, and was armed with a pistol. Witness #1 told Witness #4 he had to leave for work and asked him to take care of their mother, Witness #3, who was inside the residence. Witness #4 went outside and saw Pulido was coming out of the house. Pulido told him he was going to Muscoy. Pulido then got into his car and drove away. At around 12:30 p.m., Witness #4 ran some errands but returned within about 15 minutes. Witness #4 then fell asleep inside his trailer.

Witness #4 was not sure of the exact time, but he believed it was about 6:00 p.m. when he awoke to the sound of police sirens. Witness #4 looked out of his bathroom window and saw uniformed police officers in front of the residence giving commands with their microphones to exit with "your hands up." Witness #4 believed the officers commands were given in Spanish. It was daylight and Witness #4 had a clear and unobstructed view from his bathroom window which he estimated was approximately 3 inches tall by 8 inches wide. Witness #4 saw police officers standing next to their patrol units with their guns drawn and pointed toward the residence. There were police cars parked in front of the residence off of 34th Street and additional police cars parked nearby in the surrounding area.

Witness #4 saw approximately five police officers approach the front door of the residence. The officers were in the middle of the sidewalk between the front door and the street when they fired numerous shots toward the residence. Witness #4 believed all five officers possibly fired their weapons, but he could not see who they were firing at. When they fired their weapons, the officers were approximately 20 to 25 feet away from the front door. The officers then entered the residence through the front door. Witness #4 remained inside his trailer and tried to call his mother, but she did not answer her phone. A short time later officers knocked on his trailer and ordered him to come outside. The officers

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then searched his trailer and had Witness #4 wait out in front of the residence with his mother.

INCIDENT AUDIO AND VIDEO

911 CALL

Witness #1 called 911 and said, "We need help. I've got a guy with a gun in my house."¹³ The 911 operator was able to gather the following details from Witness #1:

The male with the gun was his brother-in-law, Jesus Pulido. Pulido was armed with a black 9 mm semi-automatic handgun, he was "high," and he was inside Witness #1's house at the 3400 block of North Mountain View Avenue. Pulido was Hispanic and was wearing a black shirt and black jeans. Witness #1 told the 911 operator that Pulido tried to shoot them. Witness #1 said he and his wife were able to "run away," but they needed the police to get his mother who was still inside the residence in the "back room." Witness #1 told the operator, "You better hurry up. He's going crazy. We ran out. We're down the street in his car." Witness #1 explained that Pulido was "by himself in the residence," but his mother, who was 75 years old, was also in the residence in a back room. Witness #1 then repeated, "My mom is in the house, man, hurry up." Witness #1 said he believed his brother was outside in the trailer on the side of the house, but he wasn't sure. Witness #1 again pleaded with the 911 operator to hurry up. The 911 operator explained that the officers were on their way.

Witness #1 said he was bleeding all over and that he was in his underwear. Witness #1 told the operator he had brought his lawfully registered gun with him and he had it inside the car with him. Witness #1 gave a description of Pulido's car, which they had used to get away from Pulido, and said they were at the intersection of Sierra Way and Parkdale. Witness #1 reported that Pulido had bitten him. Witness #1 reiterated the fact that his mother was still inside and suggested that the officers go through the backyard to get her but advised there were dogs in the backyard.

The dispatch operator asked Witness #1 if he needed medical attention and an ambulance and Witness #1 replied in the affirmative. Witness #1 told the 911 operator that the officers needed to be careful with Pulido because he had a gun and "he is crazy." Witness #1 said he believed Pulido had used "speed." Witness #1 then told the operator that Pulido had broken in and started beating him, and that when Witness #1 had his gun out, Pulido tried to take his gun away from him. Pulido then threatened to kill him, and Witness #1 told Pulido he was there to help him.

The 911 operator asked Witness #1 if there was a phone number for the house or if his mother had a phone. Witness #1 replied that she did have a phone, but he didn't know her phone number because they didn't have anything with them since they left the house

¹³ Throughout the phone call, a female was heard in the background crying and at times screaming in Spanish.

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so quickly. Witness #1 said there was not a landline phone at the house. Witness #1 explained that his mother couldn't walk because she was disabled.

The 911 operator verified their location at Sierra Way and Parkdale. Witness #1 confirmed their location and said he was there "bleeding in his underwear," and his wife was there crying for her brother. Witness #1 then said, "Try not to kill the idiot." The operator replied that they don't try to kill anyone but unfortunately sometimes "circumstances happen." Witness #1 replied, "I understand." Witness #1 then advised that he saw a police officer heading to his location. The operator told Witness #1 to keep his hands on the dash because "they knew the gun was there." Witness #1 said he understood and that the gun was there next to him. Witness #1 again pleaded with the operator to get someone to get his mother. The operator told Witness #1 officers were at the residence and when Witness #1 asked if Pulido was still there at the house, the operator told him he was. The 911 operator told Witness #1 to roll down both windows in the car and to stick his hands outside the window for the officer. Witness #1 said he would. Witness #1 then advised that the officer was there, and the operator told him he was going to disconnect the call.

DISPATCH RECORDING¹⁴

The dispatch operator advised officers of the man with a gun call on the 3400 block of North Mountain View Avenue and said a subject was inside with a gun and was possibly 11550.¹⁵ The dispatcher said the reporting party advised the subject arrived in a black Dodge and said, "He did end up taking the RP's vehicle and fled. He is still armed." The dispatcher then said, "Correction. Apparently, the suspect is still 97.¹⁶ The RP¹⁷ left in the suspect's vehicle. The RP is armed." Dispatch also advised that the reporting party's mother was still inside the residence with the subject.

The dispatcher said the reporting party would be at the corner of Sierra Way and Parkdale. An unidentified officer responded that he copied. An unidentified officer asked the dispatcher if they had any prior call history at the residence. The dispatcher responded that she did not show any priors but that she would "check somewhere else." The dispatcher said the reporting party was advising that there was a trailer on the side of the residence and that his brother was possibly inside, but that he did not know for sure. The dispatcher then said, "For officer safety," the reporting party advised there were four dogs at the residence and that they were probably outside. The dispatcher then advised the officer who was responding to the reporting party's location that the reporting party was requesting medical aid. As officers arrived on scene, communications were as follows:

Officer Galarza: Trailer is on west side, detached, unable to tell if someone is inside.

¹⁴ The entire dispatch recording was reviewed. This summary will only include the recording from the beginning until the point immediately after the incident under review.

¹⁵ Health and Safety Code 11550 (a), Under the Influence of a Controlled Substance.

¹⁶ On scene.

¹⁷ Reporting party.

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Dispatch: 14 is almost 97

Officer Galarza: Looks like the front window is broken out.

Dispatch: I copy, he's supposed to be 11550 on meth. The mother is disabled, she's unable to walk. There is no phone for the residence.

Officer Galarza: Copy, I can hear yelling coming from the inside. The blinds are shut, there's a mesh door and I'm unable to see. Going to try to make contact once (unintelligible) in here.

Dispatch: I copy, he's advising that the subject is possibly in a room to the rear of the residence and he also tried fighting the RP for the RP's gun.

Officer Galarza: I copy. Just in case, maybe like our 3rd and 4th units, can we have them north of the residence just to make sure. It's fairly large, single story. I can hear yelling from the south side but I'm unable to tell what room they're in.

Dispatch: Adam 16, can you cover the north side? And again, the subject is a Hispanic male, black shirt, black jeans, and for officer safety, the subject should be armed with a black handgun.

Unidentified Officer: Subject is not listening to our commands so far, unable to see anything. Spanish, a Spanish speaker, we'll try to get one here. He's banging out the window right now.

Unidentified Officer- Can you show me en route?

Officer Galarza: Myself and Officer Malman are going to be on the west side, behind the cars in the driveway.

Dispatch: Can you confirm we have someone out with the RP?

Unidentified Officer: Anyone with less lethal (unintelligible) just in case.

Unidentified Officer: I have less lethal, show me en route there

Unidentified Officer: We're gonna try PA announcements out in Spanish, see if we can get some contact with him. (Short siren chirp in background.)

Unidentified Officer: Can you see the rear of the residence from where you're at?

Unidentified Officer: He can hear the announcements. He's yelling back in Spanish. He's saying in Spanish he's not going to come out and he's hitting the window with some object

Unidentified Officer: Baker 7, can we try to get the 20¹⁸ for the handicapped female inside so we know where she's at?

Unidentified Officer: Adam 16, we've got black smoke coming out of the north side of the residence (unintelligible) he started a fire.

Dispatch- Did you copy the possible 20 of mom?

Unidentified Officer: Negative.

Dispatcher: If you can try to get it, it sounds like he lit the house on fire.

Unidentified Officer: We're making entry, three officers, one with a rifle.

Dispatcher: I copy. Units, officers are making entry.

Unidentified Officer: Baker 7, they're saying the female's in the back of the house.

Unidentified Officer: Shots fired, get medics, get medics.

Dispatcher: I copy, shots fired, medics already been advised.

Unidentified Officer: Shots fired.

Dispatcher: Adam 17, an update on all officers.

¹⁸ Phone number.

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Unidentified Officer: Officers code 4.¹⁹

Dispatcher: I copy, all units are code 4.

Dispatcher: Adam 17, advise when fire's cleared in.

Unidentified Officer: We're putting out the fire in the kitchen right now.

BODY WORN CAMERA²⁰

Officer Sean Galarza

Officer Galarza's body-camera began recording began while he was driving his patrol unit. It was daylight and the visibility was clear. Officer Galarza parked his unit on a street west North Mountain View Avenue. Officer Galarza got out of his vehicle and walked toward North Mountain View Avenue, where he turned and walked east on North Mountain View Avenue with his gun drawn. Officer Galarza stopped near the fence surrounding the back of the Araya residence and paused momentarily. Officer Galarza raised his gun, pointed it near the top of the fence, and paused facing the fence. A travel trailer was parked on the other side of the fence. Officer Galarza reported the trailer's location was on the west side of the house and said he was unable to tell if anyone was inside it. Officer Galarza lowered his gun and continued walking beside the fence until he reached the end of the fence at the southwest edge of the driveway to the residence. Officer Galarza stopped at the edge of the driveway, still behind the fence, and asked, "What's my next closest unit?" Two civilian vehicles were parked in the driveway. Officer Galarza continued walking west, behind the vehicles in the driveway and toward the front of the house. As Officer Galarza approached the front of the residence, he spoke into his radio and reported that it looked like the front window was broken out. Officer Galarza walked away from the house and back to the driveway where he stood behind one of the parked cars. Officer Galarza reported that he could hear yelling coming from inside the house. Officer Galarza reported all the blinds were shut, there was a "mesh door," and he was unable to see inside. Unintelligible yelling was heard in the distance.

Officer Malman arrived and parked his patrol unit, with its emergency overhead lights activated, in the street facing the front of the house. Officer Galarza requested the third or fourth units respond to the north of the residence, reporting it was a fairly large single-story residence. Officer Galarza reported he could hear yelling coming from the south side of the residence. Officer Galarza asked Officer Malman if he wanted to go make contact with "Jesus."

Officer Galarza walked toward the front of the house, stopped before reaching the front porch, and said, "Jesus, come on out." After a brief pause, Officer Galarza said, "Jesus,

¹⁹ No further assistance needed.

²⁰ All body-worn camera recordings were reviewed in their entirety. The summaries of the body-worn camera recordings will only cover the events leading up to the officer-involved shooting through the point immediately after the incident under review. Multiple officers' body-worn cameras recorded the incident, albeit from different perspectives. To avoid redundancy, the summaries will include only the portions of video that shed additional light on the incident.

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It's San Bernardino Police Department. Come on out and let us see your hands." This was followed immediately by a male voice yelling, "Fuck you!" Officer Galarza spoke into his radio and reported Pulido was yelling expletives at them and was not listening to their commands. Officer Galarza reported they were not able to "see anything." The male voice continued yelling but the words were unintelligible. Officer Galarza backed away from the residence, asked for a "Spanish speaker," and reported "he's banging on the window right now." Officer Galarza took cover behind a vehicle parked in the driveway. Once behind the vehicle in the driveway, the windows reflected the images of Officer Galarza and Officer Malman, both with their guns drawn, as they peeked out from behind the vehicle at the residence. Officer Galarza reported his and Officer Malman's location was on the west side of the residence behind the cars parked in the driveway. Dogs were heard barking in close proximity to Officer Galarza, but no dogs were seen.

Officer Galarza and Officer Malman retreated further, taking cover behind Officer Malman's patrol unit. Corporal Rutherford was seen walking away from a patrol unit stopped on 34th Street, toward Officer Galarza. The unit's emergency overhead lights were activated. Corporal Rutherford held onto a rifle with both hands. Officer Galarza asked for "anyone with less-lethal." Officer Galarza told Corporal Rutherford about his interaction with Pulido, and the fact that Pulido responded by saying, "Fuck you! Fuck you!" Officer Galarza said it sounded like Pulido "was at the front of the house" and that it sounded like Pulido was a Spanish speaker. Officer Ledezma was seen on foot on 34th Street; Officer Galarza asked him if he was a Spanish speaker. Officer Galarza asked Officer Ledezma to use the "PA" to see if he could get Pulido to come outside.

A male voice asked who was on the east side and another male voice answered, "Joe." A loud siren chirp was heard. Officer Ledezma made announcements in Spanish over the public address system. As Officer Ledezma repeated the announcements in Spanish a second time, Corporal Rutherford told Officer Malman that if they heard "any kind of shots fired" or if they had to make a "hostage rescue," then, "Ryan, you, Sean, and me" will be going in the front door. A male voice answered, "Got it." Officer Ledezma asked Officer Galarza for Pulido's first name and Officer Galarza answered, "Jesus." Over the public address, Officer Ledezma addressed "Jesus" and repeated announcements in Spanish a third time.

Officer Galarza said, "Started a fire inside." Officer Galarza was facing east and the front of the residence could be seen to the left of Officer Galarza. The officers then discussed whether anyone had a shield. No one did. An officer said, "Alright, let's go." The officers began walking toward the house. Corporal Rutherford was in the front, followed by Officer Galarza. Officer Galarza said three officers were making entry and one of the officers had a rifle. As they got to the front door, Corporal Rutherford moved east, past the front door, pointing the rifle at the broken window located just east of the front door. As he did so, officers were heard loudly announcing, "Police." Officer Galarza opened the front security screen door and yelled, "Police!" Officer Galarza was unable to open the solid wood front entry door by hand. Officer Galarza stepped back and kicked the front door. The door

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opened immediately, hit an interior wall, and began to close. Officer Galarza quickly reached toward the door and pushed it back open as multiple officers continued to yell, "Police!" As soon as he pushed the front door back open, Officer Galarza stepped back and to his right, near the right side of the door frame. Corporal Rutherford began transitioning back toward the entry, grabbing the screen door with his left hand.

Just as Officer Galarza pushed the entry door back open, Pulido was seen inside the residence near the entry way with a rifle in his right hand. Officer Galarza moved closer to the right side of the door frame and Pulido could no longer be seen, but the barrel of Pulido's rifle was still visible as it quickly raised up and pointed at the officers just outside the front door. Officer Galarza quickly backed away from the door as he fired his handgun. Additional gunfire was heard. A total of seven gunshots were heard. One of the officers said, "Move forward." Officer Galarza moved forward and stepped past the threshold of the door. The rifle Pulido had held was seen lying in the middle of the entryway floor, the barrel was pointed south, toward the front door. Pulido was seen lying on his left side on the floor, with his back to the officers. Pulido's right arm was seen bent at the waist. Several officers yelled, "Let me see your hands!" Pulido moved slightly and then rolled onto his back. Officers were heard saying, "Cuff him, cuff him."

Inside the residence, the fire alarm was sounding loudly, and smoke was in the air. Officer Galarza and Officer Malman rolled Pulido onto his stomach, pulled his arms behind his back and placed him into handcuffs. Pulido's hands and arms had blood on them and as the officers handcuffed Pulido, blood was transferred onto their hands. A male voice said, "What's on fire? Need to find the fire." Officer Galarza stepped away from Pulido and headed to the east side of the residence, quickly looking into a bathroom and two bedrooms. Another officer was seen also quickly looking into the rooms as if searching for someone. Another male voice asked, "Where's the fire? Where's grandma? Where's the gun?" Officer Galarza answered, "I kicked it away. It's way off to the right." Additional officers were heard asking, "Where's the fire?" An officer said, "I don't see the fire. Secure him, secure the guns. It's in here!" An officer asked, "Can you get that gas off?"

Officer Galarza walked back into the living room and past Pulido who was down on the ground on his stomach. An unidentified officer knelt down beside Pulido. Officer Galarza walked into the kitchen and large flames were seen burning on the top of the stove. Smoke was in the air. Corporal Rutherford was seen as he turned away from the fire, filled something with water at the sink, then turned back toward the stove and began pouring water on the flames. Officer Galarza said, "They're putting out the fire now." An officer asked, "Fire clear?" Another officer answered, "Yeah, open the windows." An officer asked, "Are the pilots off?" An officer asked, "Do we have mom?"

Officer Galarza walked to a front bedroom, walked inside and past the bed, and said, "Nothing in here." An officer asked, "Where's mom?" An officer suggested she may be out back in the trailer. An officer yelled, "You in here?" Officer Galarza opened a sliding glass door that led to the back yard. Officer Galarza and Officer Malman walked out to

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the back yard as officers loudly asked, "Hello, you hear?" An officer was heard saying, "We located the mother." Officer Galarza went back into the house and could be heard breathing loudly as if out of breath. Once inside, a San Bernardino Police Department sergeant was seen standing inside the residence. The sergeant escorted Officer Galarza and Officer Malman out of the residence and into the front yard.

Officer Ryan Malman

Officer Malman's body-worn camera began recording while he was driving his patrol unit. Officer Malman parked his patrol unit on 34th Street, facing northeast toward the front of the Araya residence. Officer Malman got out of his vehicle and walked toward Officer Galarza who was standing at the driveway apron of the residence. Officer Galarza held his handgun in his right hand, at waist level, pointed toward the ground.

Officer Galarza and Officer Malman walked toward the front of the house. Officer Galarza moved closer to the front door, stopping near the southwest edge of the front porch. While Officer Galarza began telling Pulido to come outside, Officer Galarza stood near the northwest edge of the driveway. A male voice was heard yelling expletives in response to Officer Galarza. Officer Malman told Officer Galarza to get back, to back up, and to come back to the car. The male continued yelling unintelligibly. Officer Malman retreated south and took cover behind a vehicle (Jeep) parked in the driveway. Officer Malman said, "He's at the window, at the window." As Officer Malman stood behind the Jeep, Officer Malman stood on the driver's side. Additional patrol units arrived on 34th Street.

Officer Malman retreated south to his patrol unit, unlocked the driver's door, and opened it. Officer Malman stood behind the open driver's door and said, "Sean, come back." Officer Malman raised his handgun with his right hand and pointed it above his open vehicle door, toward the residence. The conversation between Officer Galarza and Corporal Rutherford was heard in the background. As Officer Ledezma made announcements over the public address system, Officer Malman said, "He's just yelling back." A male voice was heard over the radio saying, "He can hear the announcements. He's just yelling back." Officer Malman yelled, "Come outside!" Over the radio, a male voice said, "He's just saying in Spanish he's not going to come out." The male voice continued speaking, but due to the loud barking dogs, his words could not be ascertained. Announcements continued over the public address system. Officer Malman said, "What's up? Yeah, I'm good, I'm good, sir." Another male voice was heard speaking in the background, but his words were drowned out by the barking dogs. Announcements over the public address continued.

As Officer Malman continued standing behind his open driver's side door, over the radio, a male voice announced, "We've got black smoke coming out of the north side of the residence. He started a fire." A male voice asked, "You got a shield?" Officer Malman answered, "No." Officer Malman quickly walked behind his patrol unit and then headed north, following behind Officer Galarza who walked north behind Corporal Rutherford as

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the officers headed toward the front of the residence. All three officers walked toward the front door and Officer Ledezma was seen as he joined them near the front of the residence. Officer Galarza approached the front door and Corporal Rutherford moved to the right of the door, pointing a rifle toward the window just east of the front door.

Officer Galarza opened the front security screen door and announced, "Police." Officer Galarza was unable to open the front wooden entry door and Officer Malman told him to, "Boot it." Officer Ledezma moved closer to the front porch, with his handgun drawn. Officer Galarza kicked the front door open and Officer Malman said, "There's a gun! There's a gun!" A small palm tree partially blocked the camera view of the front door and entryway. Officer Ledezma was several feet away from, but directly in line with the front door as it was kicked open. The front door quickly slammed back shut. Officer Ledezma quickly put his handgun into his holster and began to pull his Taser as multiple officers yelled, "There's a gun!" "Police!" "Drop the gun!" Officer Galarza quickly stepped toward the front door and pushed it back open. Officer Ledezma ran east out of the line of the doorway as he pointed his Taser north toward the doorway. Officer Galarza pointed his gun north into the doorway. Corporal Rutherford was east of Officer Galarza, on the opposite side of the security screen door, pointing the barrel of his rifle into the doorway. Officer Malman was on the walkway southwest of the front porch and the entry door. Officer Malman and Officer Galarza fired their handguns into the doorway. Seven gunshots rang out in quick succession. From Officer Malman's position southwest of the entryway, the angle of his body-worn camera did not capture images of anything beyond the threshold of the door before or during the shooting.

The officers quickly moved into the residence and yelled, "Let me see your hands!" Pulido was seen lying on the ground on his left side, facing away from the officers. As the officers quickly approached Pulido and placed him into handcuffs, the fire alarm sounded loudly, and smoke filled the air.

Corporal Rutherford

Corporal Rutherford's body-worn camera began recording when he was standing on 34th Street in front of the Araya residence. Corporal Ledezma was giving commands in Spanish over the public address system. Officer Malman was standing on the passenger side, behind the open front passenger door of Officer Malman's patrol unit. Conversation was had regarding what the officers would do if there were any shots fired in the house or if they needed to rescue a hostage.

When smoke was reported to be coming from the back of the house, Corporal Rutherford led the officers to the front door, holding a rifle at chest level pointed toward the house. Faint smoke was seen near the roof on the north side of the residence. Upon reaching the front porch, Corporal Rutherford pointed the rifle at the broken front window located east of the front door and said, "Try to get that door." Corporal Rutherford stood east of the front door, facing the broken window. Multiple officers yelled, "Police." The front

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security screen door came into view as it was opened and Corporal Rutherford turned slightly to his left, pointing his rifle into the entryway. The security screen blocked the camera's view into the entryway and Pulido could not be seen. Yelling continued and seven gunshots were heard. Corporal Rutherford and the other officers entered the residence. Smoke was in the air and Pulido was seen lying on his left side on the ground. Officers were heard saying, "Cuff him." Corporal Rutherford told the officers they needed to "find grandma" and that they needed to find the fire.

When Corporal Rutherford went into the kitchen, flames were seen coming from a large cushion on the top of the stove. Corporal Rutherford grabbed the cushion and threw it onto the floor as he said, "Can we get some water?" Corporal Rutherford turned off the gas burners on the oven, quickly filled a pitcher with water from the kitchen sink and poured it onto the flames. Corporal Rutherford continued filling the pitcher with water and pouring it onto the flames until the fire was extinguished.

Corporal Rutherford and Officer Ledezma found Witness #3 in a room near the kitchen. Witness #3 was clearly distraught. The officers helped Witness #3 into a wheelchair and wheeled her out of the residence.

Officer Ledezma

Officer Ledezma's body-camera recorded his arrival to the scene, his commands in Spanish over the public address system, and the officer-involved shooting. When the officers approached the front door of the residence, Officer Ledezma joined them, falling in behind Corporal Rutherford and Officer Galarza. Officer Ledezma was positioned several feet behind Officer Galarza when Officer Galarza kicked the front entry door open. The entry door opened quickly, slammed against an interior wall, and immediately slammed back shut. At the same time, Officer Ledezma raised his handgun to chest level and pointed it at the entry. In so doing, Officer Ledezma's arms and handgun blocked the camera view into the entryway for the very brief moment the door was open. As soon as Officer Galarza pushed the door back open, Officer Ledezma lowered his arms and Pulido was seen standing inside the residence, in the entryway, facing the officers. Pulido walked toward the officers with a rifle in his right hand and a handgun in his left hand.²¹ As the officers yelled, Pulido continued walking toward the officers, quickly raised both guns and pointed them at the officers. When Pulido raised the guns, he leaned his upper body slightly forward into a fighting stance as he pointed the gun at the officers. Officer Ledezma quickly moved east as seven gunshots rang out in quick succession. Officer Ledezma faced east and his left hand holding a Taser came into camera view.

Officer Ledezma turned back toward the front of the residence and both of his hands came into camera view, one holding the Taser, the other holding his handgun. Officer

²¹ The interior of the residence was darker than the outside. A sliding glass door with open vertical blinds was behind Pulido, making it difficult to see the guns in the video.

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Ledezma holstered his Taser and quickly entered the residence behind Officers Galarza, Malman, and Corporal Rutherford.

Officer Lucero

Officer Lucero was positioned near a patrol unit parked on North Mountain View Avenue on the east side of the Araya residence. Officer Lucero stood near the passenger side/front of the patrol unit and faced west toward the home. From this position, his body-camera captured images of the east and north side of the home. Smoke was seen coming from the eaves on the north side of the residence. No footage of the officer-involved shooting was recorded as Officer Lucero remained in position on the east side of the residence until after the shooting had occurred. There was no audio.

INCIDENT SCENE INVESTIGATION

Detective W.R. Fleisher conducted the scene investigation. During his investigation, Detective Fleisher determined the scene was the front yard and interior of the residence located at the 3400 block of North Mountain View Avenue.²² The residence was a single story, single family dwelling located on the northwest corner of Mountain View Avenue and 34th Street. The front of residence faced south toward 34th Street. 34th Street was an east/west two-way paved roadway; North Mountain View Avenue was a north/south two-way paved roadway.

A concrete walkway extended north from the north sidewalk paralleling 34th Street to the front porch of the residence. Seven "WIN" 9 mm Luger fired cartridge casing (FCC's) were observed on the concrete walkway and the grass area east of the walkway. A narrow, covered porch was observed adjacent to the front entry door. An additional "WIN" 9 mm Luger FCC was observed on the front porch near the west edge of the entry door, under a cast iron bench.

A horizontal sliding glass window was located on the south wall, east of the front entry. The window's damaged screen was found leaning against a potted plant against the south wall of the residence. The sliding window glass pane was broken and was open. A plastic vertical window covering was disturbed as if entry had been made into the residence through the open window.

The front entry door was centrally located within the south wall of the residence, facing in a southerly direction. A metal security screen door was attached to the exterior door

²²The scene was large and included the area surrounding the property, the front yard, as well as the entire interior of the residence. Each piece of evidence was marked with placards and was photographed. The marked evidence included the patrol units parked in front of the residence on 34th Street, multiple areas of blood transfers inside the residence from Witness #1's injuries, and damage to the interior of the residence. Damage to the interior of the residence included damage to Witness #1's bedroom door and damage caused by the fire ignited on the stove in the kitchen. For purposes of this memorandum, only the evidence directly related to the officer-involved shooting will be summarized.

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frame. The screen door opened outward to the right. The solid wood entry door opened inward to the right. The outer edge of the entry door and the door frame were damaged near the locking mechanism. The damage was caused by law enforcement personnel when they forced entry to the residence. The doorknob strike plate and deadbolt retention plate were missing from the doorframe and were found on the floor within the entryway of the residence. The entry door provided access to the south, central entryway of the residence.

Visible from the front porch were the following:

1. The deceased body of Jesus Pulido. The body was in a supine position and extended in a northeasterly direction with his feet near the tile of the entryway;
2. A black rifle located on the entryway floor against the west interior wall. The black rifle was found to be a "Gamo Hunter-1200 pump action model velocity 1200, 4.5 mm, 1.77 caliber pellet rifle" and was unloaded,²³ and
3. A Glock .40 caliber pistol ammunition magazine located on the carpet near Pulido's left foot. The magazine was loaded with ten "WIN 40 S&W" cartridges. Blood transfers were on the outer surface of the magazine. The magazine was located approximately two feet west of Pulido's body.

See below for a picture of the Gamo Hunter-1200 pump action rifle found at the scene.

²³Per the manufacturer, the "air rifle" shoots up to 1,250 feet per second. The manufacturer's warning for the "air rifle" includes the following: "THIS AIRGUN IS NOT A TOY AND IS RECOMMENDED FOR ADULT USE ONLY. MISUSE OR CARELESS USE MAY CAUSE SERIOUS INJURY OR DEATH. DANGEROUS WITHIN 500 YARDS (457 METERS)."

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A Smith and Wesson, Model M&P Shield, 9 mm Luger semiautomatic pistol, with a black finish was found on the floor of the central living room, approximately three feet south of the sofa against the north wall. The firearm was unloaded and missing the ammunition magazine. Blood transfers were located on the exterior surface of the pistol. A records check revealed the firearm was reported stolen from a FedEx shipment to ATF on 7-28-20. A large pool of blood was located on the floor near the southwest corner of the sofa. Pulido's head was located directly west of the large pool of blood.

Three brass colored "RP" 9 mm Luger FCC's were located inside the residence. One was on the floor against the baseboard of the east wall of the entryway, one was found inside the left front pocket of Pulido's pants, and the third was found on the west edge of the sofa located against the north wall of the central living room.

The Smith and Wesson 9 mm Luger pistol and two of the RP 9 mm Luger FCC's were submitted to the San Bernardino County Sheriff's Department Scientific Investigations Division for examination and function testing. As a result of this examination, a NIBIN²⁴ Lead Notification was received indicating the two 9 mm FCC's were fired from the Smith and Wesson 9 mm Luger pistol.

²⁴ National Integrated Ballistic Information Network.

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Evidence of an arson was found on the kitchen stove located against the south wall of the northwest kitchen. Various sized batteries were observed on the stovetop near the burners with suspected flammable liquid and burnt fabric from a burnt sofa cushion located on the floor.

INJURED PARTY/DECEDENT

Jesus Pulido was pronounced deceased by Fire Fighter Paramedic R. Brown at approximately 6:29 p.m. on August 28, 2020.

AUTOPSY

Witness #8, Forensic Pathologist, conducted the autopsy of Jesus Pulido on September 11, 2020. Witness #8 noted five gunshot wounds. Witness #8 determined the cause of death was gunshot wounds of the chest and abdomen.

1. Gunshot wound of the right shoulder.
 - a. Entry: Anterior right shoulder.
 - b. Direction: Back to front, left to right, and downward.
 - c. Path: The bullet perforates the anterior right shoulder skin, right shoulder muscle, and right posterior proximal arm skin.
 - d. Exit: Posterior proximal right arm.
 - e. Projectile: None
 - f. Associated injuries: There is local tissue hemorrhaging present.
2. Gunshot wound of the chest.
 - a. Entry: Left chest
 - b. Direction: Front to back, left to right, and downward.
 - c. Path: The bullet perforates the left chest skin, left lateral 6th rib, left lower lung lobe, left side of the diaphragm, stomach, and left back subcutaneous tissue.
 - d. Exit: None.
 - e. Projectile: A deformed copper jacketed bullet is recovered from the left back; subcutaneous.
 - f. Associated injuries: There are projectile defects of the left lateral 6th rib, left lower lung lobe, diaphragm, and stomach. There is local tissue hemorrhaging present. There is 800 ml of left hemothorax.
3. Gunshot wound of the abdomen.
 - a. Entry: Right lower abdominal quadrant (superior).
 - b. Direction: Front to back, right to left, and downward.
 - c. Path: The bullet perforates the right lower abdominal skin, small bowel, and right lateral side of the 12th vertebral body.
 - d. Exit: None.
 - e. Projectile: A deformed copper jacketed bullet is recovered from the abdomen.

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- f. Associated injuries: There are projectile defects of the small bowel. There is local tissue hemorrhaging present. There is 100 ml of hemoperitoneum.
- 4. Gunshot wound of the abdomen and chest.
 - a. Entry: Right lower abdominal quadrant (middle).
 - b. Direction: Right to left and upward.
 - c. Path: The bullet perforates the right lower abdominal skin, liver, diaphragm, anterior and posterior aspect of the right atrium, and “left anterior 2nd wound.”²⁵
 - d. Exit: Left upper chest.
 - e. Projectile: None.
 - f. Associated injuries: There are projectile defects of the liver, diaphragm, right atrium of the heart, and left anterior 2nd rib. There is local tissue hemorrhaging present. There is 800 ml of left hemothorax. There is 20 ml of hemopericardium. There is 100 ml of hemoperitoneum.
- 5. Gunshot wound of the abdomen.
 - a. Entry: Right lower abdominal quadrant (inferior).
 - b. Direction: Front to back, right to left, and upward.
 - c. Path: The bullet perforates the right lower abdominal skin, small bowel, and right lower back tissue.
 - d. Exit: None.
 - e. Projectile: A deformed copper jacketed bullet is recovered from the right back.
 - f. Associated injuries: There are projectile defects of the small bowel. There is local tissue hemorrhaging present. There is 100 ml of hemoperitoneum.

TOXICOLOGY

Chest blood and vitreous were collected from Pulido during the autopsy.

Toxicology results for the Chest Blood Sample were as follows:

Ethanol 14 mg/dL
Blood Alcohol Concentration 0.014 g/100 mL
Amphetamine 170 ng/mL
Methamphetamine 2600 ng/mL

CRIMINAL HISTORY

Jesus Pulido has a criminal history that includes the following convictions:

²⁵ This language is taken verbatim from autopsy protocol; however, it appears the word, “wound,” was written in error and should have instead been, “2nd rib.” This is based upon the language used in the description of associated injuries which referenced the “left anterior 2nd rib.”

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1995, 488 of the Penal Code, Petty Theft, San Bernardino County case number MWV025461A, a misdemeanor.

1999, 11377 (a) of the Health and Safety Code, Possession of a Controlled Substance, San Bernardino County case number MSB036660, a misdemeanor.

1999, 496 (a) of the Penal Code, Receiving Stolen Property, San Bernardino County case number FSB022811, a misdemeanor.

2002, 459 of the Penal Code, Second Degree Burglary, San Bernardino County case number FSB035389, a felony.

2019, 422 of the Penal Code, Criminal Threats, San Bernardino County case number FSB19001860, a felony.

APPLICABLE LEGAL PRINCIPLES

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal Code §835a(b).) ²⁶ Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal Code §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal Code §835a(d).)

An arrestee has a duty to refrain from using force or any weapon to resist arrest, if he knows or should know that he is being arrested. (Penal Code §834a.) This duty remains even if the arrest is determined to have been unlawful. (*People v. Coffey* (1967) 67 Cal.2d 204, 221.) In the interest of orderly resolution of disputes between citizens and the government, a *detainee* also has a duty to refrain from using force to resist detention or search. (*Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 332-333.) An arrestee or detainee may be kept in an officer's presence by physical restraint, threat of force, or assertion of the officer's authority. (*In re Gregory S.* (1980) 112 Cal. App. 3d 764, 778, *citing, In re Tony C.* (1978) 21 Cal.3d 888, 895.) The force used by the officer to effectuate the arrest or detention can be justified if it satisfies the Constitutional test in *Graham v. Connor* (1989) 490 U.S. 386, 395. (*People v. Perry* (2019) 36 Cal. App. 5th 444, 469-470.)

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

PENAL CODE SECTION 196. Police officers may use deadly force in the course of their duties, under circumstances not available to members of the general public. Penal Code

²⁶ All references to code sections here pertain to the California Penal Code.

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Section 196 states that homicide by a public officer is justifiable when it results from a use of force that “is in compliance with Section 835a.” Section 835a specifies a ***police officer is justified in using deadly force*** when he reasonably believes based upon the totality of the circumstances, that it is necessary:

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

(Penal Code §835a(c)(1).)

Discharge of a firearm is “deadly force.” (Penal Code §835a(e)(1).) The “[t]otality of the circumstances’ means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.” (Penal Code §835a(e)(3).)

While the appearance of these principals is new to section 835a in 2020,²⁷ the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has committed a crime involving the infliction or threatened infliction of serious physical harm” to the officer or others, using deadly force to prevent escape is not constitutionally unreasonable. (*Tennessee v. Garner* (1985) 471 U.S. 1, 11-12.) California courts have held that when a police officer’s actions are reasonable under the Fourth Amendment of our national Constitution, that the requirements of Penal Code § 196 are also satisfied. (*Martinez v. County of Los Angeles* (1996) 47 Cal.App.4th 334, 349; *Brown v. Grinder* (E.D. Cal., Jan. 22, 2019) 2019 WL 280296, at *25.) There is also a vast body of caselaw that has demonstrated *how* to undertake the analysis of what is a reasonable use of force under the totality of the circumstances. (See *Reasonableness* discussion, *infra*.) As such, our pre-2020 state caselaw, developed upon the former iteration of section 196, is still instructive.

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

²⁷ Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

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§835a(c)(1).) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal Code §835a(c)(2).)

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

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it is reasonable, safe and feasible to do so;
- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence;²⁸
- (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 Code §835a(a).)

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

²⁸ Penal Code §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 Code §835a (a)(3).

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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 under section 835a(c)(1), as stated *supra*.

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 newly defined in the context of use of force to effect an arrest, is similar:

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

(Penal Code §835a(e)(2).)

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

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or seizure, deadly or otherwise, must be analyzed under the Fourth Amendment's "reasonableness" standard. (*Graham v. Connor, supra*, 490 U.S. at 395.)

The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.

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

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

When deciding whether a person's beliefs were reasonable, a jury is instructed to consider the circumstances as they were known to and appeared to the person and considers what a reasonable person in a similar situation with similar knowledge would have believed. (CALCRIM 505.) It was previously held that in the context of an officer-involved incident, this standard does not morph into a "reasonable police officer" standard. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147.)²⁹ 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.*)

²⁹ The legislative findings included in Penal Code section 835a(a)(4) suggest to the contrary that "the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation". As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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

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

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

under *Graham* we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.

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

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

unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because ‘the right to make an arrest or investigatory

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stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.’

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

NON-LETHAL FORCE. This does not suggest that anything *less than* deadly force requires no justification. “[A]ll force—lethal and non-lethal—must be justified by the need for the specific level of force employed.” (*Bryan v. MacPherson* (9th Cir. 2010) 630 F.3d 805, 825, citing *Graham v. Connor* (1989) 490 U.S. [386], 395.) The *Graham* balancing test, as described *supra*, is used to evaluate the reasonableness of lethal and non-lethal force, alike. (*Deorle v. Rutherford* (9th Cir. 2001) 272 F.3d 1272, 1282-83.)

Use of a taser or a shotgun-fired bean bag has been categorized as intermediate non-lethal force. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825[taser]; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80 [bean bag].) This designation exists despite the fact that such force is *capable* of being used in a manner causing death. (*Id.*) To be deemed “lethal force” the instrumentality must be force that “creates a substantial risk of death or serious bodily injury.” (*Smith v. City of Hemet* (9th Cir. 2005) 394 F.3d 689, 693.); use of a taser or shotgun-fired bean bag both fall short of this definition. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 825; *Deorle v. Rutherford*, *supra*, 272 F.3d at 1279-80.)

Beyond the traditional *Graham* factors, and particularly in the use of non-lethal force, the failure of officers to give a warning and the subject’s mental infirmity can also be considered when assessing the totality of the circumstances. (*Bryan v. MacPherson*, *supra*, 630 F.3d at 831; *Deorle v. Rutherford*, *supra*, 270 F.3d at 1283-84.)

Failure to pass-muster under *Graham* can deem the use of non-lethal force as “excessive” and therefore violate the Fourth Amendment. (*Id.*) On the other hand, active resistance could justify multiple applications of non-lethal force to gain compliance and would not be deemed “excessive” nor violate the Fourth Amendment. (*Sanders v. City of Fresno* (9th Cir. 2008) 551 F.Supp.2d 1149, 1182 [not excessive to use physical force and tase an unarmed but actively resisting subject with 14 taser cycles where such was needed to gain physical control of him].)

ANALYSIS

On August 28, 2020, officers from the San Bernardino Police Department were dispatched to Witness #1’s residence after Witness #1 reported his brother-in-law, Jesus Pulido, had broken into his home and attacked him. Witness #1 and his wife were able to escape but Witness #1’s mother who was wheelchair-bound was trapped inside the residence with Pulido. Once on scene, the officers made multiple attempts to get Pulido to come outside and surrender peacefully. However, Pulido refused to surrender and started a fire inside the residence, thereby endangering Witness #1’s mother’s life.

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Because of this, officers had to force entry into the residence in order to rescue her. When they did so, Pulido pointed two firearms at the officers, leading to the officers' use of deadly force. In determining whether the officers' use of deadly force was justified under Penal Code section 835a, a review of the facts and circumstances that led up to the use of force is necessary.

Officers Galarza and Malman were the first officers dispatched to the call. As they drove to the scene, they were given additional details by the dispatcher who remained on the phone with Witness #1. This dispatcher told the officers that Witness #1's mother was still inside the residence with Pulido and that she was disabled and unable to walk. The officers were given a description of Pulido and were told Pulido was reportedly armed with a black semi-automatic handgun and was possibly under the influence of drugs. The officers also learned Witness #1 was requesting medical aid for his injuries and that additional officers were dispatched to Witness #1's location away from the residence.

Officer Galarza and Officer Malman initially approached the residence on foot. Their body-camera videos clearly show they made this approach with great caution; both officers had their guns drawn as they slowly approached the front door. The officers could not see into the house through the windows or the front door and did not know where Pulido was located inside the house. They made this approach despite the fact that Pulido was reportedly armed with a handgun and had already assaulted someone so severely the person required aid. Officers Galarza and Malman knew there was an elderly and disabled woman trapped inside with Pulido and that she was in danger. Once they were near the front door, Officer Galarza tried to communicate with Pulido. Officer Galarza raised his voice and said, "Jesus, come on out." Officer Galarza did not escalate the situation by yelling angrily at Pulido. The words he used should not have elicited an angry response but were instead almost friendly. He addressed Pulido by his first name and said, "Come on out," in much the same way one would address a friend. When he got no response from Pulido, Officer Galarza again addressed Pulido by his first name and announced, "It's the San Bernardino Police Department." Officer Galarza then said, "Come on out and let us see your hands." Again, these words and the tone used by Officer Galarza were such that they would not ordinarily elicit an angry response. However, that was precisely Pulido's reaction. Pulido angrily replied with expletives, clearly signaling his unwillingness to comply.

In response to this, Officers Galarza and Malman backed away from the house and took cover behind a vehicle parked in the driveway. Even from this distance, Pulido could be heard yelling inside the residence. Officer Galarza recognized that Pulido was yelling in Spanish so he requested a Spanish speaker respond to the location so they could better communicate with Pulido. As Pulido continued yelling, the officers realized they were still unsafe there in the driveway, so they retreated from the residence, taking cover behind Officer Malman's patrol unit on the street. When Officer Ledezma arrived, he used the public address system to speak to Pulido in Spanish, attempting to get Pulido to come outside and to surrender peacefully. Pulido yelled back that he was not going to come out

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and that he was not going back to jail. Officer Ledezma told his police officer partners what Pulido was saying. Upon hearing this, the officers quickly learned that Pulido was unwilling to surrender. As Officer Ledezma continued trying to get Pulido to come outside and to surrender peacefully, Corporal Rutherford spoke with Officers Galarza and Malman about what they would do if they heard gunshots fired inside the house or if a hostage situation developed and they had to rescue Witness #3. Despite the officers' best efforts to resolve the situation peacefully, Pulido still refused to cooperate. Instead, Pulido escalated the situation by setting a fire inside the residence. The officers had no choice at that point but to force entry. The officers knew Witness #3 was inside and that she was unable to flee to safety on her own.

As they approached the residence, the officers continued to announce their presence, letting Pulido know they were going to force entry. They gave Pulido every opportunity to surrender, but in so doing, they also made themselves vulnerable to his attack. Pulido had the advantage as the officers approached and forced entry because they could not see where he was while they were clearly visible outside. As soon as Officer Galarza kicked the door open, they saw Pulido was approaching them from inside, armed with a rifle and a handgun. Officers Galarza and Malman saw the rifle in Pulido's right hand and the handgun in his left hand. From their positions, Officer Ledezma and Corporal Rutherford saw only the rifle in Pulido's right hand. As the door slammed back shut, Officer Malman yelled that Pulido had a gun. Other officers yelled out, "Police! Drop the gun!" Knowing the danger, but recognizing they had no choice but to face it, Officer Galarza quickly stepped forward and pushed the door back open. Meanwhile, Pulido continued moving closer and as soon as Officer Galarza pushed the door back open, the officers saw Pulido was only 10 feet away. Pulido quickly raised both the rifle and the handgun and pointed them at the officers who stood just outside the door. Fearing for their lives, and the lives of their partners, Officers Galarza and Malman fired their handguns at Pulido.

The fear felt by Officers Galarza and Malman was both honest and objectively reasonable. In fact, Corporal Rutherford and Officer Ledezma also feared for their lives and the lives of their partners. However, neither Corporal Rutherford nor Officer Ledezma were in a position to safely fire their duty weapons at Pulido. Corporal Rutherford was behind the metal security screen and could not see Pulido; he only saw the barrel of Pulido's rifle. Positioned behind Officer Galarza, Officer Ledezma was transitioning between his Taser and his handgun and was unable to fire either weapon safely. Officer Ledezma's only option was to get out of the way. Review of the body-worn camera shows Officer Ledezma did just that, quickly darting east, out of Pulido's line of fire. Officers Galarza and Malman had very little time to react to the perceived imminent threat posed by Pulido. Pulido was armed with two guns and when he pointed them at the officers from a distance of only 10 feet, he clearly demonstrated his intent to kill. Given the facts and circumstances confronting them, it was objectively reasonable for Officers Galarza and Malman to believe Pulido posed an immediate threat of serious bodily injury or death to them and their partners.

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That the rifle was an air rifle does not change the analysis. None of the officers knew this. The rifle was solid black and looked like a hunting rifle. In fact, it was a hunting rifle, albeit for hunting small game. From a distance of 10 feet, there is simply no way any of the officers could have known the rifle was an air rifle intended for hunting small game.³⁰ Additionally, the fact that the rifle was unloaded is of no consequence under the law. Neither Officer Galarza nor Officer Malman knew or could have known this. When Pulido pointed the rifle at them, it was reasonable for Officer Galarza and Officer Malman to believe the rifle was loaded and that Pulido intended to shoot them with it. The same is true for the handgun. While the handgun was later found to be unloaded and without a magazine, this does not change the analysis. Neither Officer Galarza nor Officer Malman knew or could have known the handgun was unloaded.³¹ Any officer presented with the same situation would reasonably believe Pulido had the present ability, opportunity, and apparent intent to cause death or serious bodily injury to the officers. Faced with Pulido quickly pointing both a rifle and a handgun at them, the belief held by Officer Galarza and Officer Malman that their lives and the lives of their partners were in imminent danger was objectively reasonable.

CONCLUSION

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

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

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

³⁰ It should be noted the manufacturer's warning for that specific air rifle is that it is capable of causing serious bodily injury or death from a distance of up to 500 yards. At a distance of only 10 feet, Officer Galarza was solidly within that distance and had the rifle been loaded, would have been in grave danger. In fact, each of the officers were closer than 500 yards, and accordingly, each of their lives would have been in great danger had the rifle been loaded.

³¹ In fact, the handgun may have been loaded when Pulido pointed it at the officers. It is possible the magazine was inserted but fell out of the gun when Pulido dropped it as he fell to the ground. The loaded magazine for the handgun was found near Pulido's body.

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