



## **PUBLIC INFORMATION RELEASE MEMORANDUM**

**DATE:** June 10, 2026

**SUBJECT:** Officer Involved Shooting (Non-Fatal) and Use of Force (K9)

**Officers:** Corporal Nicholas Hitter  
Ontario Police Department

Officer Justin Marszalek  
Ontario Police Department

Officer Jeffrey McDonald  
Ontario Police Department

Corporal Zachary McWaters  
Ontario Police Department

**Involved Subject:** Alfredo Armando Morales (Injured)  
Date of Birth \*\*/\*\*/\*\*

**Date of Incident:** March 15, 2016

**Incident location:** Quality Inn  
\*\*\* N. Vineyard Avenue  
Ontario, CA

**DA STAR #:** 2022-42760

**Investigating Agency:** Ontario Police Department

**Case Agents:** Detective Jeffrey Wentz and Detective Robert Marquez

**Report Number #:** DR# 16-03-00925

## **PREAMBLE**

This was a non-fatal officer involved shooting by officers from the Ontario Police Department. The shooting was investigated by the Ontario Police Department. This factual summary is based on a thorough review of all the investigative reports, photographs, audio recordings, and video recordings submitted by the Ontario Police Department, DR# 16-03-00925.

## **RELATED CASE**

As a result of this incident, the Ontario Police Department, submitted a case to the San Bernardino County District Attorney's Office to review for potential criminal charges against Alfredo Armando Morales. Criminal charges were filed against Morales in San Bernardino County Superior Court Case 16CR-004762. On April 5, 2023, the case went to trial. On April 21, 2023, the jury found Morales not guilty on Count 1, a violation of Penal Code Section 245(d)(1), and found the allegation Morales personally used a firearm in violation of Penal Code Section 12022.53(b) to be not true. The jury also indicated they were unable to reach a verdict as to Counts 2 and 3, violations of Penal Code Section 245(d)(1). The judge declared a mistrial as to those two counts. On September 9, 2024, the case proceeded to a second trial on Counts 2 and 3. On September 25, 2024, the jury indicated they were unable to reach a verdict and the judge declared a mistrial. On September 26, 2024, the court granted defense attorney's request for a dismissal pursuant to Penal Code Section 1385.

## **FACTUAL SUMMARY**

On March 15, 2016, Pomona Police Department was searching for a suspect wanted for making criminal threats. The suspect, identified as Alfredo Armando Morales, had made statements about committing suicide by cop. Pomona Police Department had tracked Morales to the Quality Inn located at \*\*\* N. Vineyard Avenue, in the City of Ontario. Ontario Police Department was asked to assist Pomona Police Department with locating Morales.

Officers with the Ontario Police Department Multi Enforcement Team (MET) were in the area. The officers were told Morales was potentially armed with a gun and warned that Morales had made statements about suicide by cop. Officer Justin Marszalek, Officer Jeffrey McDonald, and Corporal Nicholas Hitter formed an arrest team. Corporal Zachary McWaters, a K9 officer with Ontario Police Department, also joined the arrest team in case a K9 was needed. The officers were in uniforms and clothing which identified them as law enforcement officers with Ontario Police Department. Officer Marszalek drove the arrest team in an undercover van to the Quality Inn.

At the location, Officer Marszalek parked the undercover van in a parking stall. The plan was for Pomona Police Department to contact Morales at his hotel room and take him into custody. The arrest team would assist Pomona Police Department if needed. While they

were waiting in the van, Corporal Ruben Espinoza, from Ontario Police Department, advised over the radio that Morales was leaving the hotel room accompanied by another individual. Morales and that subject, later identified as Witness #1, started walking toward the parking lot. Given the nature of the investigation, the belief Morales was armed with a gun, and Morales' statements regarding suicide by cop, Officer Marszalek, Officer McDonald, Corporal Hitter, and Corporal McWaters did not want Morales to get into his vehicle and leave.

Officer Marszalek drove the van toward the hotel. When Officer Marszalek stopped the van, he activated the red and blue emergency lights on the vehicle. The officers exited the van, identified themselves as "police" and ordered Morales to get on the ground. Morales failed to comply with the officers' commands. Instead, Morales lifted the front of his shirt, reached into his waistband, and pulled out a gun. As he was exiting the van, Corporal Hitter heard a gunshot that appeared to come from where he had seen Morales. Corporal Hitter believed Morales was firing at the officers. Fearing for their safety and the safety of Corporal McWaters, Officer Marszalek, Officer McDonald, and Corporal Hitter fired their weapons at Morales.

Morales was struck by the gunfire and fell to the ground. Morales dropped his gun and it landed near his body. Corporal McWaters did not want Morales to reach for the weapon and released his K9. The K9 bit Morales on the leg and pulled Morales away from the gun. Officers were then able to approach Morales and take him into custody. Witness #1 was also taken into custody. Once officers saw Morales was injured, they immediately started to render medical aid. Morales was transported to the hospital.

Morales was treated at the hospital. Morales suffered the following injuries: two gunshot wounds to left groin, two gunshot wounds to right thigh, two gunshot wounds to lower right abdomen quadrant, two gunshot wounds to right upper chest, two gunshot wounds to right upper extremity, and a dog bite to his left leg. At the hospital, a nurse asked Morales what happened. Morales told the nurse, "They rolled up so fast in a van and they were with their guns drawn!" Morales stated, "I've never shot at the cops or a person." Morales explained "I don't know why I reacted and I shot at them."

A Rossi Model M677 .357 caliber revolver was recovered at the scene. The handgun contained one spent round and five live rounds.

### **STATEMENTS BY POLICE OFFICERS**

On March 16, 2016, **Corporal Ruben Espinoza** was interviewed by Detective David Rowe.

On March 15, 2016, **Corporal Ruben Espinoza**, from the Ontario Police Department was assigned to MET. He, along with other MET members were assigned to assist with security at a conference being held at the DoubleTree Hotel. Corporal Espinoza was told by his

supervisor, Sergeant Scott Payne, that Pomona Police Department was looking for a subject, later identified as Alfredo Morales, who was believed to be in the area of Vineyard just north of their location. Morales was wanted for making criminal threats and believed to be armed with a handgun. Corporal Espinoza also learned Morales had threatened suicide by cop. Pomona Police Department believed Morales may be in the area of Vineyard and G Street. Corporal Espinoza was also provided the name of a companion and a description of the vehicle they may be traveling in. The vehicle was a Ford Ranger pickup truck. The MET team formed a plan to search the area for Morales and the truck.

Corporal Espinoza was assigned to get an undercover vehicle and search the local parking lots for the truck. Corporal Espinoza found the truck in the parking lot of the Quality Inn located at \*\*\* N. Vineyard Avenue. Officer Justin Marszalek, from Ontario Police Department, verified with the hotel that Morales and Witness #1 were staying in room #\*\*\*. Corporal Espinoza parked his vehicle and watched the hotel room for approximately twenty to thirty minutes while the MET team organized a plan to take Morales into custody. The plan was to surround the location, call Morales, and get him to come outside. Officer Marszalek, Corporal Hitter, Officer McDonald, and Officer McWaters were assigned to be in the undercover van. That group would contact and arrest Morales if he came out of the room before the surround and call out was put in place.

Corporal Espinoza saw the front door to room #\*\*\* open. He saw a subject, later identified as Witness #1, walk out of the room followed closely behind by Morales. Morales closed the door and started walking with Witness #1 towards the parking lot. Corporal Espinoza informed the other officers what was happening. Witness #1 was slightly behind and to the left of Morales. Officer Marszalek, Corporal Hitter, Officer McDonald, and Officer McWaters drove up alongside of Witness #1 and Morales. Their van stopped just north of Morales.

When the van stopped, Corporal Espinoza saw Officer Marszalek, Corporal Hitter, and Officer McDonald jump out of the van. Corporal Espinoza had a clear view of the three officers, Witness #1, and Morales. Corporal Espinoza saw both Witness #1 and Morales suddenly stop. Corporal Espinoza heard the officers yell, "Police." Morales appeared stunned and momentarily froze with a surprised look on his face. After a brief second, it appeared to Corporal Espinoza that Morales recognized the officers because he started to back up.

Corporal Espinoza said Witness #1 did not move and put his hands on the top of his head. Corporal Espinoza saw Morales take his right hand and grab the lower part of his shirt by the left side of his front waistband. Corporal Espinoza saw Morales lift up the front of his shirt, take his left hand and grab an object that was in his front waistband. Morales extended the object straight forward and pointed it at the officers. Corporal Espinoza said he could clearly see the object was a handgun.

Corporal Espinoza saw several muzzle flashes and gunfire coming from the officers. He saw Morales get struck by the officers' bullets and fall to the ground. Corporal Espinoza got out of his vehicle and ran to assist the other officers. When he ran up to the scene,

Corporal Espinoza saw Morales lying on the ground bleeding. He also saw a small revolver on the ground next to Morales.

On March 16, 2016, **Officer Justin Marszalek** was interviewed by Detective Jeffrey Wentz and Detective Robert Marquez.

On March 15, 2016, **Officer Justin Marszalek**, from the Ontario Police Department, was assigned to the MET unit. On that date, Officer Marszalek was helping provide security for a conference of police chiefs. Officer Marszalek was wearing gray jeans, black tennis shoes, a blue department shirt with the Ontario Police MET Team insignia, and a load bearing vest with the Ontario Police Department insignia. The vest had "POLICE" across the front chest area and the back of the vest. Sergeant Payne advised Officer Marszalek that Pomona Police Department was conducting a criminal threats investigation. Pomona Police Department had pinged the suspect's phone to the City of Ontario. Sergeant Payne indicated they may be needed to assist Pomona Police Department locate the suspect, later identified as Alfredo Morales.

MET team members met up with officers from the Pomona Police Department. Officer Marszalek did not attend the full briefing because he needed to prep the undercover van. In addition to what he was initially told by Sergeant Payne, Officer Marszalek learned Morales was supposed to be armed with a handgun and may want to do suicide by cop. Officer Marszalek knew suicide by cop meant a person was going to shoot it out with police or do something that would cause the police to shoot the person. Officer Marszalek was provided the name of Morales and Witness #1, a photograph of Morales, and a general description of a suspect vehicle along with a license plate number.

Officer Marszalek drove to the Quality Inn located at \*\*\* N. Vineyard Avenue. Officer Marszalek parked his vehicle and spoke to a hotel employee. The employee confirmed that Morales was registered to room #\*\*\*. The employee provided Officer Marszalek with a room key, a map of the hotel area, and a sketch of the layout of the hotel room. The employee indicated there was nobody else registered in the hotel room. Officer Marszalek went back to his vehicle and gave the information to the other officers over the radio. Officer Marszalek returned to where the other MET team members and Pomona Police Department officers were meeting.

Officer Marszalek and the other MET team members put together a "react team" that was prepared to react if Morales came out of the hotel room. Officer Marszalek, Corporal Hitter, Officer McDonald, and Corporal McWaters got into the undercover van. Officer Marszalek drove the van to the hotel. Corporal Hitter was seated in the front passenger seat. Officer McDonald, Corporal McWaters, and Corporal McWaters' K9 were in the back of the van.

Officer Marszalek parked the van in a parking stall. They were going to assist Pomona Police Department officers as they went to contact Morales in the hotel room. However, prior to Pomona Police Department officers getting to the location, Corporal Espinoza put out over the radio that Morales was coming out of the hotel room.

Officer Marszalek started the van and drove toward Morales' location. Officer Marszalek saw Morales and Witness #1 in the area of the door to room #\*\*\*. Officer Marszalek stopped the van, unlocked the doors so the other officers could get out, and activated the emergency lights. Officer Marszalek noticed Morales recognized the police officers were there. Officer Marszalek said Morales' eyes opened up wide. Officer Marszalek said "Police" when he got out of the van and ordered Morales to get on the ground. Officer Marszalek was focused on Morales and was unsure what happened to Witness #1.

Officer Marszalek knew his partners were also exiting the van. Based on Morales' eyes opening wide, it was obvious to Officer Marszalek that Morales saw the officers. Officer Marszalek saw Morales start to lift up the front of his shirt. Morales put one hand underneath the shirt and removed an object from the front waistband area. Officer Marszalek said the object was dark in color. Officer Marszalek believed the object was a gun but was not completely sure that it was what he saw in Morales' hand.

Officer Marszalek removed his handgun from his holster. Officer Marszalek did not want to get shot and did not want his partners to get shot. Officer Marszalek feared for his safety and fired three rounds at Morales. Officer Marszalek estimated he was approximately ten yards away from Morales. Officer Marszalek did a tactical reload. After the shooting, Officer Marszalek saw Morales fall to the ground. Officer Marszalek saw the object in Morales' hand was clearly a handgun. The weapon fell out of Morales' hand and ended up on the ground next to Morales. After the shooting, the K9 was sent in and other officers responded to assist.

On March 16, 2016, **Corporal Nicholas Hitter** was interviewed by Detective Jeffrey Wentz and Detective Robert Marquez.

On March 15, 2016, **Corporal Nicholas Hitter**, from the Ontario Police Department, was assigned to the MET unit. On that date, Corporal Hitter was providing security for a conference of police chiefs. Corporal Hitter was wearing an Ontario Police Department "Class A" uniform. Sergeant Payne provided information to the MET team that Pomona Police Department officers were looking for a criminal threats subject, later identified as Alfredo Morales. Morales was believed to be armed with a handgun and possibly wanted to commit suicide by cop. Corporal Hitter was provided with a photograph of Morales.

Corporal Espinoza located Morales' vehicle in the parking lot of the Quality Inn located at \*\*\* N. Vineyard Avenue. Officer Marszalek checked with the front desk and advised the rest of the team that Morales was registered to room #\*\*\*. Corporal Hitter, Officer Marszalek, Officer McDonald, and Corporal McWaters and a K9 drove in a van to the Quality Inn. Officer Marszalek drove the van through the parking lot to get a visual of the room and Morales' vehicle. Officer Marszalek parked the van on the south side of the parking lot. Corporal Espinoza advised over the radio that Morales and a second subject, later identified as Witness #1, came out of room #\*\*\* and were walking toward the parking lot. The plan was for Corporal Hitter and the other officers to take Morales into custody.

Officer Marszalek drove northbound into the parking lot to where the breezeway was that led to room #\*\*\*. Corporal Hitter was seated in the front passenger seat. Officer McDonald, Corporal McWaters, and the K9 were in the back of the van. Corporal Hitter saw Morales, exited the van and went around the front of the van. Corporal Hitter heard someone say, "Police" and "Get on the ground." Corporal Hitter heard gunshots. Corporal Hitter briefly lost sight of Morales. When Corporal Hitter saw Morales again, Morales was standing just outside of the hotel room.

Corporal Hitter heard a gunshot from the area where he last saw Morales followed by multiple gunshots. Corporal Hitter estimated he heard six to eight gunshots. Corporal Hitter believed Morales was firing at him and the other officers. Corporal Hitter feared for his life and the lives of his partners. Corporal Hitter fired one round at Morales. At the time he fired his weapon, Corporal Hitter estimated he was twenty feet away from Morales. Corporal Hitter then lost sight of Morales and did not fire any more rounds. Corporal Hitter walked up towards the sidewalk and joined up with Officer McDonald and Officer McWaters. At that time, Corporal Hitter observed Morales on the ground. Officer McWaters had deployed his K9 and the K9 was biting Morales. Corporal Hitter saw a gun on the ground near the hotel room door. Corporal Hitter did not know what happened to Witness #1 during the incident.

On March 16, 2016, **Officer Jeffrey McDonald**, was interviewed by Detective Jeffrey Wentz and Detective Robert Marquez.

On March 15, Officer Jeffrey McDonald, from the Ontario Police Department, was assigned to the MET unit. On that date, Officer McDonald was providing security for a conference of police chiefs. Officer McDonald was wearing an Ontario Police Department "Class A" uniform. Sergeant Payne advised Officer McDonald that Pomona Police Department was looking for a criminal threats suspect. A description of the suspect vehicle was provided. It was a 1990 Ford Ranger truck. The suspect, later identified as Alfredo Morales, was believed to be armed and wanted to do suicide by cop.

Corporal Espinoza located the suspect vehicle at the Quality Inn located at \*\*\* N. Vineyard. Officer McDonald and the other MET team members met with officers from Pomona Police Department. Officer Marszalek advised he had earlier obtained information from a hotel employee that Morales was staying in room #\*\*\*. Officer Marszalek drove Officer McDonald, Corporal Hitter, and Corporal McWaters to the Quality Inn parking lot. Officer McDonald was seated in the back passenger seat behind Officer Marszalek.

Officer Marszalek parked the undercover van on the south side of the hotel. A plan was formulated that if Morales walked out of the hotel and walked towards the truck, the MET team would attempt to detain and arrest Morales. Officer McDonald did not want Morales to get out and possibly hurt innocent civilians. Given the fact Morales was believed to be armed with a gun, Officer McDonald was also concerned Morales may try to kill the officers if they confronted him.

Corporal Espinoza advised over the radio that Morales was leaving the hotel room. Corporal Espinoza said Morales was wearing a black shirt and walking eastbound towards the parking lot. Officer Marszalek drove the officers towards the hotel room and stopped the van. Officer McDonald said Morales appeared startled when he opened the van door. Officer McDonald exited the van and said "Police." Officer McDonald also told Morales something to the effect of show me your hands, but Officer McDonald could not recall specifically what he told Morales.

Next, Officer McDonald saw Morales reach for his waistband. Morales lifted up his shirt and appeared to be grabbing for something. Officer McDonald saw a black object that looked like a gun. Morales started to bring the gun up and point it at the officers. Officer McDonald was aware Morales may want to die by suicide by cop. Officer McDonald stated he was scared for both himself and his partners. Officer McDonald believed Morales was reaching for a gun that could potentially kill the officers. Officer McDonald fired approximately four rounds from his duty weapon at Morales. Officer McDonald estimated he was fifteen to twenty feet away from Morales at the time of the shooting.

At the time of the shooting, there was a second subject near Morales. Officer McDonald did not know whether the second subject, later identified as Witness #1, was armed. Officer McDonald grabbed Witness #1 and put him on the ground in the parking lot. Officer McDonald yelled for another officer to handcuff and search Witness #1. Witness #1 was taken into custody. Officer McDonald walked up to where Corporal Hitter, Officer Marszalek, and Corporal McWaters were standing. Officer McDonald saw a gun near the hotel room door. It appeared to be a black or blue steel revolver.

On March 16, 2016, **Corporal Zachary McWaters** was interviewed by Detective Robert Marquez and Detective Jeffrey Wentz.

On March 15, 2016, **Corporal Zachary McWaters**, from the Ontario Police Department, was assigned to the K9 unit. On that date, Corporal McWaters was working routine patrol. Corporal McWaters was wearing a uniform that consisted of a polo shirt with a cloth badge and two Ontario Police Department patches on the shoulders. Corporal McWaters also wore a ballistic vest that had a cloth shield over his left breast and the word "POLICE" across the back of the vest. Corporal McWaters saw a dispatch on the mobile data computer in his patrol vehicle referencing a criminal threats investigation officers being conducted by Pomona Police Department. The suspect, later identified as Alfredo Morales, was believed to be armed with a gun and contemplating doing suicide by cop.

Corporal McWaters monitored the radio traffic. He heard the MET team was working on a plan to get officers over to the Quality Inn to assist Pomona Police Department officers get Morales into custody. Corporal Hitter mentioned getting a van team set up. Corporal McWaters got on the radio and asked Corporal Hitter if he wanted a K9 for the van team. Corporal Hitter said yes and told Corporal McWaters to come over and assist. Corporal McWaters drove with his K9 to the Doubletree parking lot where the officers from Pomona Police Department and the MET team were getting ready.

When Corporal McWaters arrived at the location, the MET team and Pomona Police Department were still discussing what actions were going to take place. If Morales left the hotel room, the officers did not want Morales to get access to his vehicle. After the plan was finalized, Corporal McWaters and his K9 got into the undercover van with Officer Marszalek, Corporal Hitter, and Officer McDonald. Officer Marszalek drove the van to the Quality Inn. Corporal Hitter was seated in the front passenger seat. Officer McDonald sat behind Officer Marszalek and Corporal McWaters was seated behind Corporal Hitter.

When they got to the Quality Inn, Officer Marszalek parked the undercover van where they could intercept Morales if he left the hotel room. They were only in the parking stall a few minutes when Corporal Espinoza advised over the radio that Morales was leaving the hotel room. Officer Marszalek drove towards the breezeway near the door to Morales' room. Corporal McWaters knew he was responsible for handling the K9 and would be exiting the van without a gun in his hand. Corporal McWaters knew he was putting his life in the hands of the other officers.

Officer Marszalek stopped the van. Corporal McWaters saw Officer Marszalek and Officer McDonald exit the van. As they were exiting the van, Corporal McWaters heard Officer McDonald yell the word "Police." Immediately after that, Corporal McWaters heard the word "Gun." Corporal McWaters had not yet exited the van when he heard a barrage of gunfire. Corporal McWaters estimated he heard more than five gunshots. After Corporal McWaters exited the van, he initially saw Morales in a standing position but Morales was spinning. Morales fell in the breezeway. Corporal McWaters saw a gun fall away from Morales' body and onto the ground. The gun appeared to be a black revolver.

Corporal McWaters estimated the gun was approximately two feet away from Morales' hands. Knowing that Morales had made threats and statements about suicide by cop, Corporal McWaters did not want Morales to reach for the gun. Corporal McWaters gave his K9 an apprehension command and let go of his harness. The K9 immediately ran up to Morales and bit Morales' leg near the ankle. Morales rolled over into a seated position and put both of his hands on the K9. Morales was yelling. Corporal McWaters saw Morales was in pain but observed Morales was not reaching for the weapon.

One of the MET officers ordered Morales to lay back down on his stomach and Morales complied. Corporal McWaters noticed the gun was again within two feet of Morales' hands. Corporal McWaters grabbed the K9's harness and gave the K9 a pull command. Corporal McWaters started walking backwards away from the gun. Corporal McWaters and the K9 pulled Morales approximately five to seven feet away from the gun. At that time, other officers were able to approach and take Morales into custody.

On March 15, 2016, **Officer Randy Roman** responded to the Quality Inn located at \*\*\* N. Vineyard Ave.<sup>1</sup> Officer Roman was instructed to follow the ambulance which was

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<sup>1</sup> The summary of Officer Roman's statement is based upon his written police report and not an interview by Ontario Police Department detectives.

transporting Alfredo Morales to the hospital.

Officer Roman followed the ambulance to the hospital and stood in the emergency room while medical staff treated Morales. Morales was admitted and moved to a hospital room. After he was moved, Officer Roman heard a nurse ask Morales what happened to him. Morales told the nurse he left his house after having an issue with his wife. He said he went with a friend to a hotel and was going to leave to Mexico. Officer Roman heard Morales state he had a gun holstered on his waist when, "...they rolled up so fast in a van and they were with their guns drawn!" Officer Roman then heard Morales tell the nurse, "I've never shot at the cops or a person." Morales added, "I don't know why I reacted and I shot at them!" Morales said it was a natural reaction because he grew up in Compton.

### **STATEMENTS BY CIVILIAN WITNESSES**

On March 18, 2016, Detective Jeffrey Wentz and Detective Everardo Jimenez went to the hospital to interview **Alfredo Armando Morales** about the incident under review. Detective Wentz advised Morales of his Miranda rights. Morales indicated he understood his rights and requested to have a lawyer present if he spoke to the detectives. No interview was conducted.

On March 16, 2016, **Witness #1** was interviewed by Detective Gary Naranjo.

Witness #1 was Morales' friend and co-worker. Witness #1 and Morales worked together as machinists. Witness #1 had known Morales for approximately ten months. Two to three weeks earlier, Witness #1 noticed Morales was sad. Morales told Witness #1 he was having family issues.

On March 15, 2016, at around 2:00 in the afternoon, Morales left work early. Just prior to leaving work, Morales asked Witness #1 for a favor. Morales said he may need a ride later. Morales said he was going to talk to his wife and depending on what happened, Morales may leave behind his belongings and move somewhere else. Witness #1 told Morales he would be able to give him a ride.

Later, at around 6:30 in the evening, Morales called Witness #1. Morales told Witness #1 to pick him up on Orange Grove Avenue near his residence because he needed a ride to a motel. Approximately fifteen minutes later, Witness #1 picked up Morales near his residence. Morales got into the passenger seat of Witness #1's truck and directed him to a motel on Vineyard Avenue in Ontario. Witness #1 estimated they arrived at the hotel around 7:15 in the evening. Witness #1 parked his truck and they walked directly toward room #\*\*\*. Morales was carrying a key card in his hand.

When they were inside the hotel room, Morales asked to borrow Witness #1's cell phone. Witness #1 decided to wait in his truck so Morales would have some privacy while he spoke

on the phone. Witness #1 fell asleep in the truck. When Witness #1 woke up, he walked back to hotel room and knocked on the door. Witness #1 thought Morales may have slashed his wrist or taken some pills. When Morales opened the door, Witness #1 told Morales he was worried about Morales and he did not want Morales to do something to himself. Morales told Witness #1 not to worry because he would not do anything like that.

While they were inside the room, their boss called and spoke to Morales. Morales told their boss he was not coming back. Morales then told Witness #1 not to tell their boss where they were at. Morales borrowed Witness #1's cell phone again. Witness #1 believed Morales spoke to his daughter on the phone. Witness #1 overheard Morales say that her mother ruined Morales' life and he did not threaten anyone. Morales asked her who called the police. Morales said he did not want to be arrested and was going to disappear. After Morales had finished talking on the phone, he apologized for getting Witness #1 involved.

Witness #1 decided to leave because he had to work the next day. Morales opened the door and escorted Witness #1 back to his truck. Witness #1 stepped out of the hotel room first. Morales followed behind Witness #1. Witness #1 said he was slightly ahead and to the right of Morales as they headed towards the parking lot. Witness #1 estimated they took ten steps when approximately six police officers stepped in front of them. Witness #1 put both of his arms in the air because he did not want to get shot. Witness #1 heard approximately six to eight gunshots simultaneously fired from the police officers. Two police officers then grabbed Witness #1, took him to the ground, and handcuffed him.

Witness #1 described the lighting conditions as bright. Witness #1 saw the uniforms on the police officers, including their patches. Witness #1 indicated three to four police officers told them to put their hands up and then he heard the gunshots. Witness #1 said he never looked back at Morales and did not see how Morales reacted when he was confronted by the police officers. Witness #1 did not see Morales get shot.

Witness #1 never heard Morales mention anything about "suicide by cop" or wanting to commit suicide. Witness #1 never saw Morales with any weapon. Witness #1 also did not notice any large bulges in Morales' pocket. Witness #1 stated Morales indicated he had a gun and bullets for his protection because he was going to move to another state. Morales said something about the gun being a .44 caliber. Witness #1 said it was a surprise and never expected the police to be outside waiting for them.

On March 15, 2016, **Witness #2** was interviewed by Detective Robert Marquez.

**Witness #2**<sup>2</sup> is the wife of Alfredo Morales. Witness #2 said Morales suffered with depression for several years. Morales stopped taking medication for his depression about one year prior to the incident under review. Witness #2 indicated Morales' depression had gotten progressively worse. Witness #2 told Morales about one month ago that she was

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<sup>2</sup> Witness #2 shares the same last name as her husband Alfredo Morales. Therefore, Witness #2 will be referred to by her first name throughout the remainder of the memorandum.

going to leave him if he did not get psychiatric help. Morales had an appointment to see a psychiatrist scheduled for March 15, 2016.

During the evening hours of March 15, 2016, Morales returned home from work. Morales started reading a letter to Witness #2. Morales told Witness #2 he hated her and he was going to take himself out. Morales threw his cell phone at Witness #2 and told her he left a note on the phone describing how he felt. Morales kicked and punched a wall inside the residence. Morales then began to punch himself in the face. Morales eventually left the house. Witness #2 left the location, called Pomona Police Department and asked them to check on Morales' welfare.

A short time later, Witness #2 met with officers from the Pomona Police Department. Witness #2 called Morales' co-worker Witness #1. Morales answered the phone. The Pomona Police Department officers listened as Witness #2 tried to calm Morales down. While they were on the phone, Morales told Witness #2 he wanted the police to kill him. Witness #2 said the Pomona Police Department officers heard Morales say he wanted the police to kill him.

### **INCIDENT VIDEO**

**SURVEILLANCE VIDEO RECORDING.** There were surveillance video recordings obtained from the Quality Inn located at \*\*\* N. Vineyard Avenue. The lethal force encounter was not captured on surveillance video. One of the recordings showed a portion of the incident under review. The video was in black and white. There was no audio on the recording.

The recording showed vehicles in the hotel parking lot. A dark colored van drove up and stopped. The doors to the van opened and the emergency lights turned on. Officer Marszalek, Officer McDonald, and Corporal McWaters and the K9 exited the van on the driver's side. Corporal Hitter exited the van from the passenger side. Corporal Hitter moved around the front of the van. Officer Marszalek, Officer McDonald, and Corporal Hitter appeared to have their guns drawn. Witness #1 walked into view of the camera with both of his hands held up in the air. Officer McDonald, with his gun drawn, approached Witness #1 and placed Witness #1 on the ground. Additional officers then arrived at the location.

**AXON VIDEO RECORDINGS.** All body worn camera video recordings submitted were reviewed in their entirety. Axon body worn cameras have a standard thirty second delay before audio on the recordings can be heard.

### **Corporal McWaters**

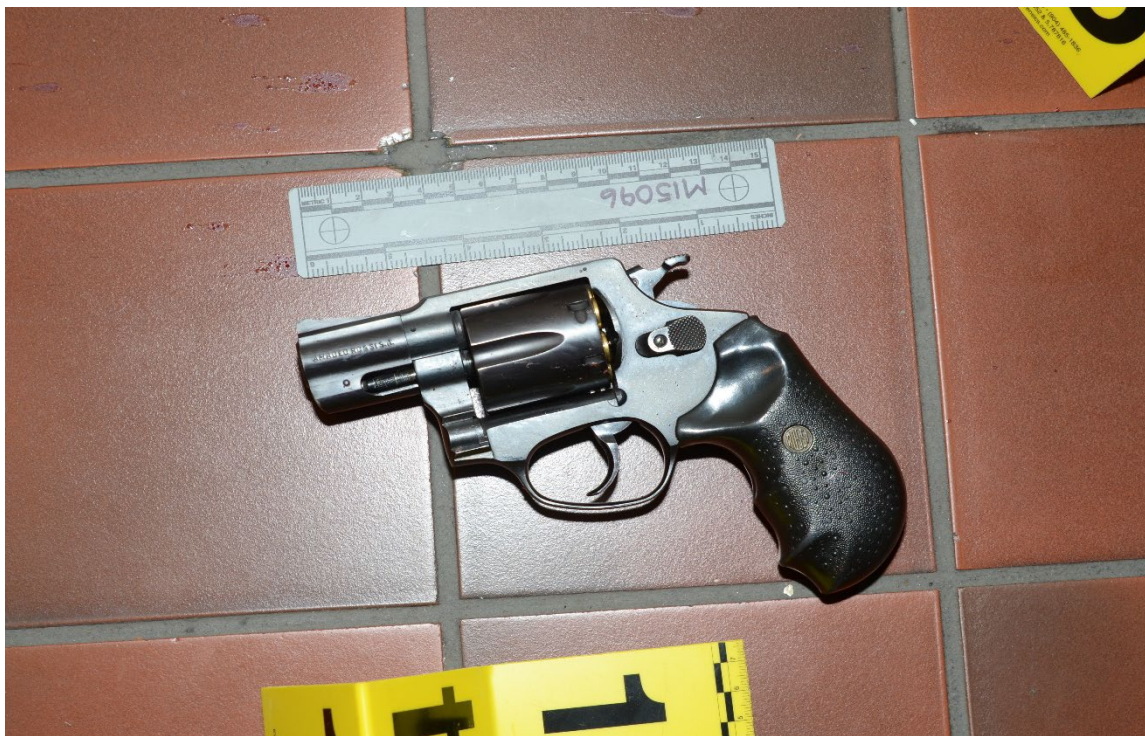
Corporal McWaters was equipped with a body worn camera on the date of the incident

under review. The body worn camera was activated and recording during the time of the lethal force encounter.

Corporal McWaters was seated in the back of the van with his K9. Officer Marszalek was driving the van and Corporal Hitter was seated in the front passenger seat. Officer Marszalek stopped the vehicle and got out. The driver side passenger door opened and Officer McDonald exited the vehicle. The K9 followed behind Officer McDonald. Corporal McWaters exited the van after the K9. The officers moved toward the breezeway of the hotel. Witness #1 stepped to the side into a planter with his hands up. Morales fell backwards toward the hotel. The K9 ran up to Morales who was lying on his stomach. A dark colored object was on the ground next to Morales. The K9 bit Morales on the left leg below the knee. Morales rolled over and sat upright, near the hotel room door. Morales had both hands stretched out in front of his body. There was blood visible on the ground and on Morales. Morales was ordered to get on his stomach. Morales rolled over on his stomach. Corporal McWaters gave the K9 multiple commands to "Aport."<sup>3</sup> The K9 pulled Morales by the leg away from the hotel room door. Officers took Morales into custody.

### **WEAPON**

A loaded Rossi Model M677 .357 magnum revolver was located at the scene near Morales. There was one spent round and five live rounds.



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<sup>3</sup> Aport is a Dutch command. When the command is given, the K9 knows to pull on whatever he is biting and bring it back to Corporal McWaters.

## **INJURIES**

Morales was treated at the hospital. Morales suffered the following injuries: two gunshot wounds to left groin, two gunshot wounds to right thigh, two gunshot wounds to lower right abdomen quadrant, two gunshot wounds to right upper chest, two gunshot wounds to right upper extremity, and a dog bite to the left leg.

**TOXICOLOGY.** Blood sample was collected from Alfredo Armando Morales at the hospital.

Toxicology results for the blood sample was listed as follows:

- Opiates screen - negative
- Amphetamines – negative
- Barbiturates – negative
- Cocaine – negative
- Alcohol, serum – less than 0.010 (none)

## **CRIMINAL HISTORY.**

1989, 10851(a) of the Vehicle Code, Driving or Taking Motor Vehicle Without Consent of Owner, and 136.1(c)(1) of the Penal Code, Preventing or Dissuading a Witness or Victim From Testifying. Los Angeles County Court case A652697, a misdemeanor.

## **DE-ESCALATION**

The time between when Corporal Espinoza advised over the radio that Morales was coming out of the hotel room to when shots were fired was less than one minute. In that extremely short time frame, there were efforts to de-escalate the situation. Officer Marszalek activated the red and blue emergency lights on the undercover van which would indicate they were law enforcement officers. In addition, the officers gave verbal commands to Morales. Officer Marszalek yelled “Police” and “Get on the ground.” Officer McDonald also yelled “Police” as he exited the van. Morales, however, refused to comply and get on the ground. Instead, Morales lifted up his shirt and started to pull a gun out of his waistband. There was no indication from Morales that he was going to cooperate with the officers.

## **APPLICABLE LEGAL PRINCIPLES**

A peace officer may use objectively reasonable force to effect an arrest if he believes that the person to be arrested has committed a public offense. (Calif. Penal C. §835a(b).)<sup>4</sup> Should an arresting officer encounter resistance, actual or threatened, he need not retreat from his effort and maintains his right to self-defense. (Penal C. §835a(d).) An officer may use objectively reasonable force to effect an arrest, prevent escape or overcome resistance. (Penal C. §835a(d).)

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

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

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

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

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

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<sup>4</sup> All references to code sections here pertain to the California Penal Code.

(Penal C. §835a(e)(3).) A peace officer need not retreat or desist from efforts to arrest a resistant arrestee. (Penal C. §834a(d).) A peace officer is neither deemed the aggressor in this instance, nor does he lose the right of self-defense by the use of objectively reasonable force to effect the arrest, prevent escape or overcome resistance. (*Id.*)

While the appearance of these principals was new to section 835a in 2020,<sup>5</sup> the courts have been defining the constitutional parameters of use of deadly force for many years. In 1985, the United States Supreme Court held that when a police officer has probable cause to believe that the suspect he is attempting to apprehend “has 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 C. §835a(c)(1).) This requirement will not apply if an officer has objectively reasonable grounds to believe that the person to be arrested is aware of those facts. (*Id.*) Second, deadly force cannot be used against a person who only poses a danger to themselves. (Penal C. §835a(c)(2).)

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

- (1) that the use of force should be exercised judiciously and with respect for human rights and dignity; that every person has a right to be free from excessive uses of force;
- (2) that use of force should be used only when necessary to defend human life and peace officers shall use de-escalation techniques if it

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<sup>5</sup> Assem. Bill No. 392 (2019-2020 Reg. Sess.) approved by the Governor, August 19, 2019. [Hereinafter “AB-392”]

is reasonable, safe and feasible to do so;

- (3) that use of force incidents should be evaluated thoroughly with consideration of gravity and consequence, lawfulness and consistency with agency policies;<sup>6</sup>
- (4) that the evaluation of use of force is based upon a totality of the circumstances, from the perspective of a reasonable officer in the same situation; and
- (5) that those with disabilities may be affected in their ability to understand and comply with peace officer commands, and suffer a greater instance of fatal encounters with law enforcement, therefore.

(Penal C. §835a(a).)

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

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

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

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<sup>6</sup> Penal C. §835a(a)(3) conflates a demand for thorough evaluation of a use of force incident with a dictate that it be done “in order to ensure that officers use force consistent with law and agency policies.” On its face, the section is clumsily worded. Nothing included in AB-392 plainly requires that a use of force also be in compliance with agency policies. A provision in the companion bill to AB-392—Senate Bill No. 230 [(2019-2020 Reg. Sess.) approved by the Governor, September 12, 2019] (Hereinafter “SB-230”), does explicitly state that “[a law enforcement agency’s use of force policies and training] may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §1.) It is noteworthy, however, that this portion of SB-230 is uncodified, unlike the aforementioned portion of Penal C. §835a(a)(3).

- (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 more recently 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 C. §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 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. (*Id.*)

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. (*Id.*) 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.)<sup>7</sup> To be clear, the officer’s conduct should be evaluated as “the conduct of a reasonable person functioning as a police officer in a stressful situation.” (*Id.*) The *Graham* court plainly stated that digestion of the “totality of the circumstances” is fact-driven and considered on a case-by-case basis. (*Graham v. Connor, supra*, 490 U.S. at 396.) As such, “reasonableness” cannot be precisely defined nor can the test be mechanically applied. (*Id.*) Still, *Graham* does grant the following factors to be considered in the “reasonableness” calculus: the severity of the crime committed, whether the threat posed is immediate, whether the person seized is actively resisting arrest or attempting to flee to evade arrest. (*Id.*)

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

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*.)

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<sup>7</sup> The legislative findings included in Penal C. section 835a(a)(4) suggest to the contrary that “the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation.” As such, if the officer using force was acting in an effort to *effect arrest*, as is governed by section 835a, then it appears the more generous standard included there would apply.

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

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

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

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

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

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

**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.) Similarly, the use of a trained police dog does not qualify as “deadly force” as it too has fallen short of the lethal force definition set forth in *Smith*. (*Thompson v. County of Los Angeles* (2006) 142 Cal.App.4th 154, 165-169.)

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**

In this case Corporal Hitter, Officer McDonald, Corporal McWaters, and Officer Marszalek each had an honest and objectively reasonable belief that Morales posed an imminent risk of serious bodily injury or death. Pomona Police Department was investigating a criminal threats investigation involving Morales. Corporal Hitter, Officer McDonald, Corporal McWaters, and Officer Marszalek were advised that Morales was believed to be armed with a gun. The officers were also warned Morales made statements about wanting to commit suicide by cop.

Corporal Hitter, Officer McDonald, and Corporal McWaters were all wearing uniforms or clothing that identified them as law enforcement officers with Ontario Police Department. The van in which the officers were traveling was equipped with red and blue emergency lights. When activated, those emergency lights would indicate to a person it was a law enforcement vehicle. When Officer Marszalek stopped the van, he activated the vehicle’s red and blue emergency lights. Officer Marszalek and Officer McDonald yelled “Police.”

Witness #1 immediately put his hands on top of his head. Officer Marszalek ordered Morales to get on the ground. Morales did not comply and remained standing. Instead of getting on the ground, Morales lifted up the front of shirt, reached into his waistband, and pulled out an object. Corporal Espinoza saw Morales extend the object straight forward and point it at the other officers. Corporal Espinoza clearly observed the object in Morales’ hand was a handgun.

Officer Marszalek saw an object in Morales' hand. Although Officer Marszalek was not entirely sure what the object was, Officer Marszalek said he was confident it was a gun. Officer Marszalek estimated he was ten yard away from Morales. Knowing that Morales was wanted for making criminal threats as well as statements about suicide by cop, Officer Marszalek reasonably believed Morales was going to shoot at the officers. Officer Marszalek feared for his physical safety and the safety of his partners. Officer Marszalek fired three rounds at Morales. Officer Marszalek's honest belief that Morales intended to inflict serious bodily injury or death was objectively reasonable.

Similarly, Officer McDonald saw Morales lift his shirt, reach for his waistband and grab for a dark object that looked like a gun. Officer McDonald feared Morales was reaching for a gun that could potentially kill the officers. Officer McDonald estimated he was fifteen to twenty feet away from Morales. Morales was in the process of presenting his weapon when Officer McDonald fired four rounds at Morales. At the time he fired his weapon, Officer McDonald reasonably believed Morales wanted to commit suicide by cop and that Morales wanted to cause harm to somebody. Officer McDonald's honest belief that Morales posed an imminent threat was objectively reasonable. After the shooting, Officer McDonald observed a gun on the ground near Morales. That gun was the same color as the gun Officer McDonald observed Morales pull from his waistband.

Unlike Officer Marszalek and Officer McDonald, Corporal Hitter did not see Morales with a weapon. As the officers drove up to the hotel in the van, Corporal Hitter saw Morales standing just outside of the hotel room. After Corporal Hitter exited the van and made his way around the front of the vehicle, he heard "Police. Get on the ground." Corporal Hitter then heard a gunshot which appeared to come from where he last saw Morales standing. Corporal Hitter's honest belief that Morales was firing at the officers was objectively reasonable. Corporal Hitter feared for his life and the lives of his partners. Corporal Hitter fired one round at Morales. Morales fell to the ground. After the shooting, Corporal Hitter saw a gun on the ground next to the hotel room door.

It is important to note, Morales, admitted to shooting at the police officers. Officer Roman went to the hospital and stood nearby while medical staff treated Morales. After Morales was moved to a hospital room, a nurse asked Morales what happened. Officer Roman heard Morales tell the nurse he had his gun holstered in his waist when "they rolled up so fast in a van and they were with their guns drawn!" Morales further stated, "I've never shot at the cops or a person," and "I don't know why I reached and I shot at them!" Officer Roman heard Morales explain to the nurse it was a natural reaction because he had grown up in Compton.

From the time Corporal Espinoza indicated Morales was leaving the hotel room to when shots were fired was less than one minute. The officers identified themselves and told Morales to get on the ground. Morales failed to comply and pulled a gun out from his waistband. Morales admitted to firing at the officers. There was one spent round in the revolver that was recovered at the scene. Morales' actions caused Officer Marszalek, Officer McDonald, and Corporal Hitter to reasonably believe Morales intended to harm the officers. The threat posed by Morales was immediate. Had the officers failed to fire their

weapons, they certainly risked suffering serious bodily injury or death. Given those circumstances, the decision by Officer Marszalek, Officer McDonald, and Corporal Hitter to use deadly force was justified.

Corporal McWaters did not discharge his duty weapon during the incident under review. He did, however, make the decision to utilize his K9 which resulted in an injury to Morales. Corporal McWaters had an honest and objectively reasonable belief that Morales posed an imminent threat to himself and his partners. When he exited the van, he heard Officer McDonald yell "Police." Immediately after that, Corporal McWaters heard one of his partners yell "Gun." That was followed by a barrage of gunfire. Corporal McWaters saw Morales fall to the ground. As Morales fell to the ground, Corporal McWaters saw a gun fall from Morales' body.

Corporal McWaters estimated the gun landed two feet away from Morales' hands. The gun was in close proximity to Morales, thus causing Corporal McWaters to believe Morales still posed a threat to the officers. Corporal McWaters did not want Morales to reach for the gun. Concerned about his safety and the safety of the other officers, Corporal McWaters gave his K9 an apprehension command and let go of the K9's leash. The K9 ran up to Morales and took a full mouth bite on Morales' leg, near the ankle. Corporal McWaters then gave commands for the K9 to pull Morales away from the gun. Once Morales was five to seven feet away from the gun, Corporal McWaters ordered the K9 to release Morales. Officers were then able to approach Morales and handcuff him. Under those circumstances, Corporal McWaters' decision to utilize the K9 was reasonable.

### **CONCLUSION**

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

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

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

Based on the facts presented in the reports and applicable law, Corporal Zachary McWaters' use of force was objectively reasonable and not excessive. It was therefore lawful.

**Submitted By:**  
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