



C A L I F O R N I A

DEPARTMENT OF JUSTICE

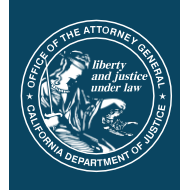
Report on the Investigation into the Death of Nelson Waynezhi Szeto on January 20, 2022

San Francisco County AB 1506

APRIL 2024

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INVESTIGATION OF OFFICER INVOLVED SHOOTING

BACKGROUND—AB 1506

Pursuant to California Assembly Bill 1506 (AB 1506), the California Department of Justice is required to investigate all incidents of an officer-involved shooting resulting in the death of an unarmed civilian in the state. Historically, these critical incidents in California had been primarily handled by local law enforcement agencies and the state's 58 district attorneys.

AB 1506, signed into law on September 30, 2020 and effective July 1, 2021, provides the California Department of Justice (DOJ) with an important tool to directly help build and maintain trust between law enforcement and the communities they serve by creating a mandate for an independent, statewide prosecutor to investigate and review officer-involved shootings of unarmed civilians across California. The DOJ investigates and reviews, for potential criminal liability, all such incidents covered under AB 1506, as enacted in California Government Code section 12525.3. Where criminal charges are not appropriate, the DOJ is required to prepare and make public a written report, like this one, communicating:

- A statement of facts, as revealed by the investigation;
- An analysis of those facts in light of applicable law;
- An explanation of why it was determined that criminal charges were not appropriate; and
- Where applicable, recommendations to modify the policies and practices of the involved law enforcement agency.

Recommendations to modify policies and practices of the involved law enforcement agency will be based on the facts of the incident, any known policies and practices of the relevant law enforcement agency, and the experience and expertise developed by DOJ personnel.

PRIVACY STATEMENT

This report includes redactions of the names and other identifying information of witnesses and family members of the decedent. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure outweighs any public interest in disclosure.

For reasons related to privacy, as well as readability of this report, the witnesses will be indexed as follows:

- Witness 1 (W-1), airport security supervisor, W-1
- Witness 2 (W-2), TSA PreCheck employee, W-2
- Witness 3 (W-3), man lying with sleeping bag behind hydraulic lift in the hallway, W-3
- Witness 4 (W-4), male airport patron who called SFO Dispatch, W-4
- Witness 5 (W-5), female airport patron who called SFO Dispatch, W-5
- Witness 6 (W-6), TSA PreCheck employee, W-6
- Witness 7 (W-7), TSA PreCheck manager, W-7
- Witness 8 (W-8), the mother of Mr. Szeto, W-8
- Witness 9 (W-9), the brother of Mr. Szeto, W-9

INTRODUCTION

On January 20, 2022, San Francisco Police Department police officers responded to a call regarding a man with a gun in the International Terminal of San Francisco International Airport (“SFO”). The officers contacted Nelson Waynezhi Szeto, who displayed what appeared to be two guns. For approximately 43 minutes, the officers repeatedly ordered Mr. Szeto to put down the guns and to move back when he took steps toward the officers or toward a nearby hallway entrance and TSA PreCheck office. When Mr. Szeto moved to raise a gun at the officers, the officers fatally shot him. After the shooting incident, the officers discovered that a bullet fired at Mr. Szeto had also struck and injured a second individual, W-3. Further, the guns held by Mr. Szeto were discovered to be airsoft pistols and not firearms. The orange barrel of the airsoft pistols had been painted black, making them appear like real guns.

The California Department of Justice (DOJ) investigated and reviewed the Officer-Involved Shooting (OIS) pursuant to Government Code section 12525.3 (enacted by Assembly Bill 1506 (2019-2020 Reg. Sess.)). This report is the final step in the DOJ’s review of the fatal OIS of Mr. Szeto and is limited solely to determining whether criminal charges should be brought against the involved officers and policy and practice recommendations as required by Government Code section 12525.3, subdivision (b)(2)(B)(iii). The review does not encompass or comment on any potential administrative or civil actions.

Upon thorough examination and as discussed in detail below, we conclude that no criminal charges will be filed because the evidence is insufficient to prove that the officers committed a crime and the OIS was justified.

CAUTION: The images and information contained in this report may be graphic and disturbing. Therefore, discretion is advised, especially for young children and sensitive individuals.

SUMMARY OF INCIDENT

On January 20, 2022, at approximately 8:12 AM, officers from the San Francisco Police Department (“SFPD”) were involved in an officer-involved shooting in the International Terminal of San Francisco International Airport (“SFO”), which is located in San Mateo County, California. The following summary is based on information obtained in the investigation from various sources including SFO and BART surveillance video camera footage, body worn camera (BWC) footage, involved officer interviews, incident reports prepared by assisting and percipient witness law enforcement personnel, dispatch records and logs of the incident, and audio recordings of dispatch calls and radio communications.

Mr. Szeto's Movements Before Contact With SFPD

On January 20, 2022, at 6:53 AM, SFO airport and BART surveillance video camera footage showed that Mr. Szeto entered the SFO International Terminal from the connecting BART station entrance/exit, walked through the International Terminal, traveled up the escalators, and boarded an SFO Air Train. At 6:56 AM, Mr. Szeto exited the Air Train and entered the BART station at the secondary BART fare gates. Mr. Szeto then walked around the BART station for a few minutes and boarded a BART train. At 7:05 AM, he exited the BART train, which had remained at the SFO BART station, and re-entered the SFO International Terminal at 7:06 AM. Surveillance video camera footage showed that, in the ten minutes that followed, Mr. Szeto moved around the area between the BART station entrance/exit and Transportation Security Administration (TSA) Checkpoint G in the International Terminal as follows:

- Mr. Szeto walked around the area of an Information Booth and nearby restrooms and then walked toward escalators located near the TSA security checkpoint.
- Mr. Szeto stood near the bottom of the escalators and appeared to watch the TSA security checkpoint line. (During this time, his left hand was inside his jacket pocket and his right hand appeared to be adjusting something inside his jacket.)
- Mr. Szeto walked back to the Information Booth while holding his right hand in his jacket pocket. He appeared to remove an item from his pocket and place it on the Information Booth counter. He removed a backpack that he was wearing and placed it on the floor. He removed an object from the backpack and placed it in his jacket pocket. He then placed his backpack on the floor inside the Information Booth and walked away. He stopped to speak briefly with another person. He then walked toward the entrance to the TSA security checkpoint.
- Mr. Szeto walked around near the TSA security checkpoint line and then spoke briefly to an SFO employee. He then walked back toward the escalators. (During this time, his left hand was in his jacket pocket and his right hand was inside the interior of his jacket.)
- Mr. Szeto walked toward the Information Booth and then walked back to the TSA security checkpoint line. He ducked under a nylon line divider and entered the line. He waited in line for approximately two minutes. As he approached the front of the security line, he ducked back under the line divider and exited the line.
- Mr. Szeto returned to the Information Booth, retrieved his backpack, and walked toward the BART station entrance/exit. At this time, he watched an SFPD officer enter the airport through the BART entrance/exit.
- Mr. Szeto then walked back to the Information Booth, placed the backpack inside the Information Booth again, and walked toward the area of TSA security checkpoint line.

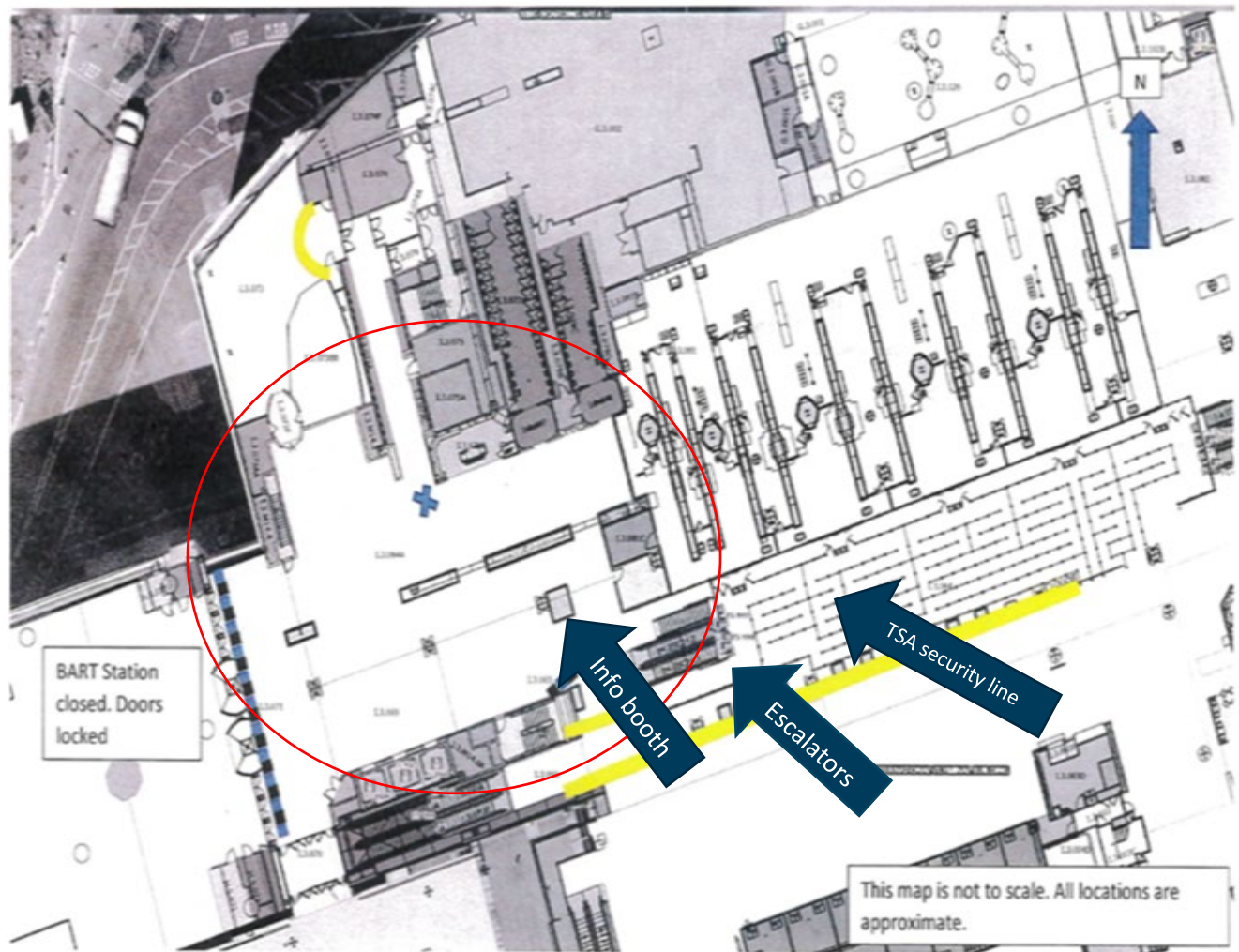


Figure 1 – Map of terminal. Red circle indicates incident scene area. “X” indicates approximate final location of Mr. Szeto. Yellow highlight indicates crime scene tape.

Mr. Szeto’s behavior concerned numerous SFO patrons, who reported their concerns to Covenant Aviation Security (CAS)¹ Supervisor W-1. Based on these reports, W-1 contacted Mr. Szeto. W-1 noted that Mr. Szeto had no luggage and when asked if he was traveling, Mr. Szeto answered “no.” W-1 thought that Mr. Szeto’s body language was “rigid” and “purposefully positioned.” W-1 observed Mr. Szeto holding his mid-section as if he was carrying something.

Based on his observations of Mr. Szeto and the reports from SFO patrons, W-1 became concerned about Mr. Szeto. At approximately 7:26 AM, W-1 contacted SFO Airport Communications (“Dispatch”) and told them that approximately five “passengers” had advised him of a “suspicious male” outside of Security Checkpoint G. W-1 further stated that the man had no luggage and was holding his mid-section as if he was carrying something. W-1 described the man as an Asian male, in his early 20s, black hair, 5’7”, 150 pounds, and wearing a gray jacket and black pants. Dispatch then broadcasted: “ ... For a 917 [Suspicious person], Information Booth across from BART, between the info booth and

¹ CAS is contracted to provide screening and security services at SFO.

the restrooms. There's 5-6 passengers reporting an Asian male, in his 20s, wearing a grey jacket, black pants, about 5'7, 150, holding on to his mid-section, looking as if he's trying to hide something."

SFPD's Initial Contact With Mr. Szeto

At 7:29 AM, SFPD police officers Nelson Yu, Erik Whitney, Randy Tiffany, and Derrick Lee, who were assigned to SFO, responded to the Dispatch call. They met with W-1, who directed them toward Mr. Szeto. At this point, Mr. Szeto was standing in the area between the Information Booth and a Bank of America Automated Teller Machine (ATM). SFPD Officer Lee approached Mr. Szeto and saw a knife in Mr. Szeto's right hand and Mr. Szeto's left hand inside of his jacket.² Officer Lee ordered Mr. Szeto to drop the knife, which Mr. Szeto failed to do. Mr. Szeto then removed his left hand from his jacket and exposed what appeared to be a black gun, which he pointed toward the floor. Officer Lee drew his service weapon and ordered Mr. Szeto to drop the gun. Mr. Szeto did not comply and walked toward the BART station entrance/exit.

Officer Whitney then broadcasted, "Gun, gun, code 33!" Dispatch repeated, "Code 33 on PD 2." Code 33 is a radio code indicating "emergency – clear the channel." An unknown officer broadcasted, "a gun and a knife," and Dispatch responded, "I copy it's a gun and a knife?" Responding officers confirmed, "221 [person with a gun] and a 222 [person with a knife]," indicating that Mr. Szeto had a gun and a knife.

Mr. Szeto then turned to face the officers and began walking backward into an open corridor. At the far, west end of the corridor was the BART station entrance/exit. Along the north-side of the corridor, from west to east were the closed doors to the Reflection Room, a blue hydraulic maintenance lift, an orange hydraulic maintenance lift, a hallway entrance, the glass window to the TSA PreCheck office, and public restrooms. There was a yellow, plastic, work zone barrier placed in front of the hydraulic maintenance lifts and another yellow, plastic, work zone barrier placed in front of the hallway entrance. Along the south-side of the corridor from west to east were a set of elevators that opened facing north.

In the middle of the corridor, running parallel to the length of the corridor was a wall ("middle wall 1") that did not run the entire length of the corridor but only approximately 20 feet and was located south of the hallway entrance. To the east of middle wall 1 approximately 10 feet was another wall ("middle wall 2") running parallel to the length of the corridor for approximately 30 feet and located south of the TSA PreCheck office.

² SFPD officers assigned to SFO were not assigned Body Worn Cameras ("BWCs"). Thus, there is no BWC footage of these particular SFPD officers' initial contact with Mr. Szeto.

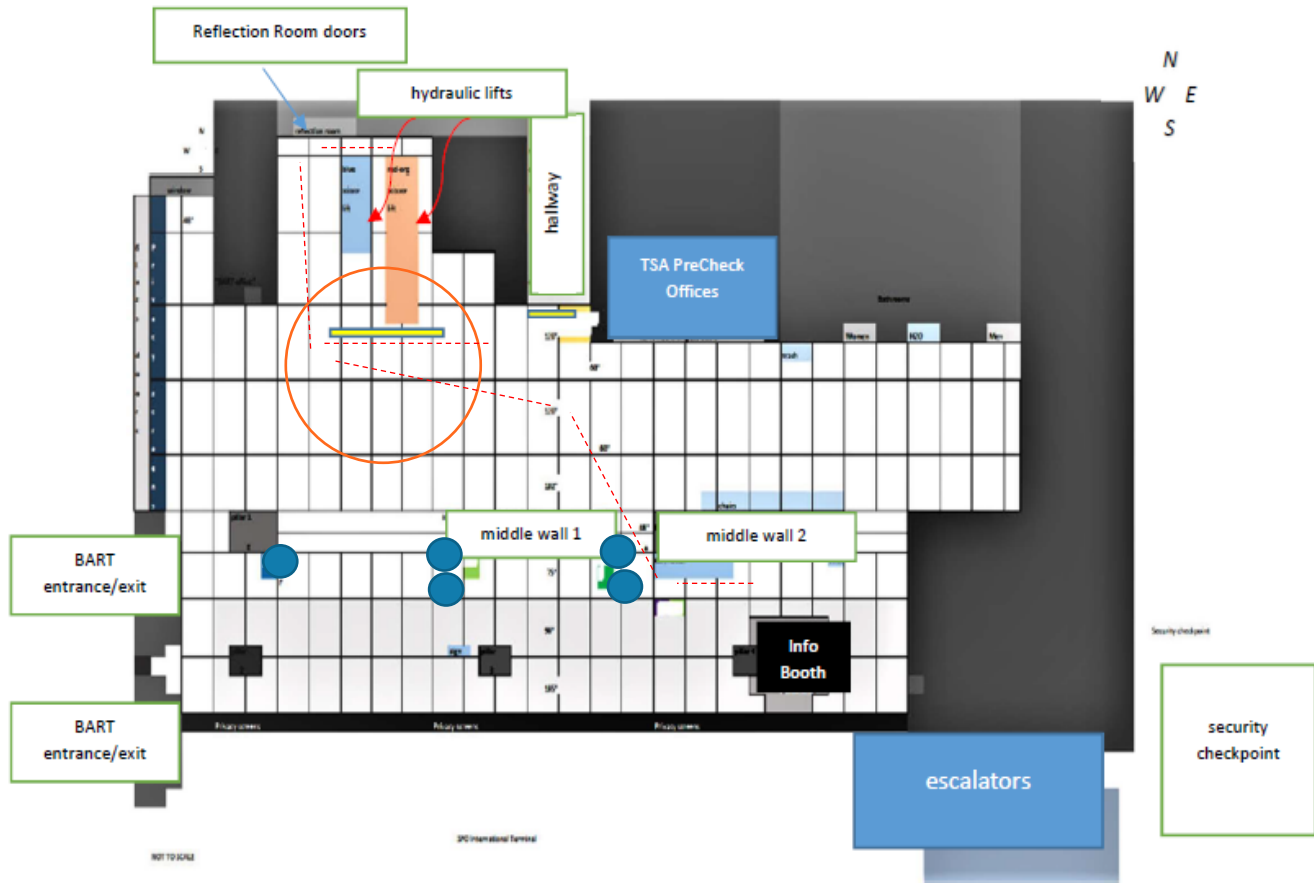


Figure 2 – Approximate diagram of incident area and locations. Not to scale. Thin yellow bar with blue outline represents a yellow, plastic, work zone barrier. The red dotted lines represent areas traveled by Mr. Szeto and the blue circles represent location of officers during SFPD’s initial contact with Mr. Szeto. The orange circle encompasses the area depicted by the photograph in Figure 3.

Mr. Szeto walked backward into the open corridor, through the space between middle wall 1 and middle wall 2, and toward the area in front of the closed Reflection Room doors and near the two hydraulic maintenance lifts. Officers began to take positions around the corridor and directed patrons to evacuate the area. They also directed Dispatch to notify BART to close the BART station entrance/exit and the nearby elevators.

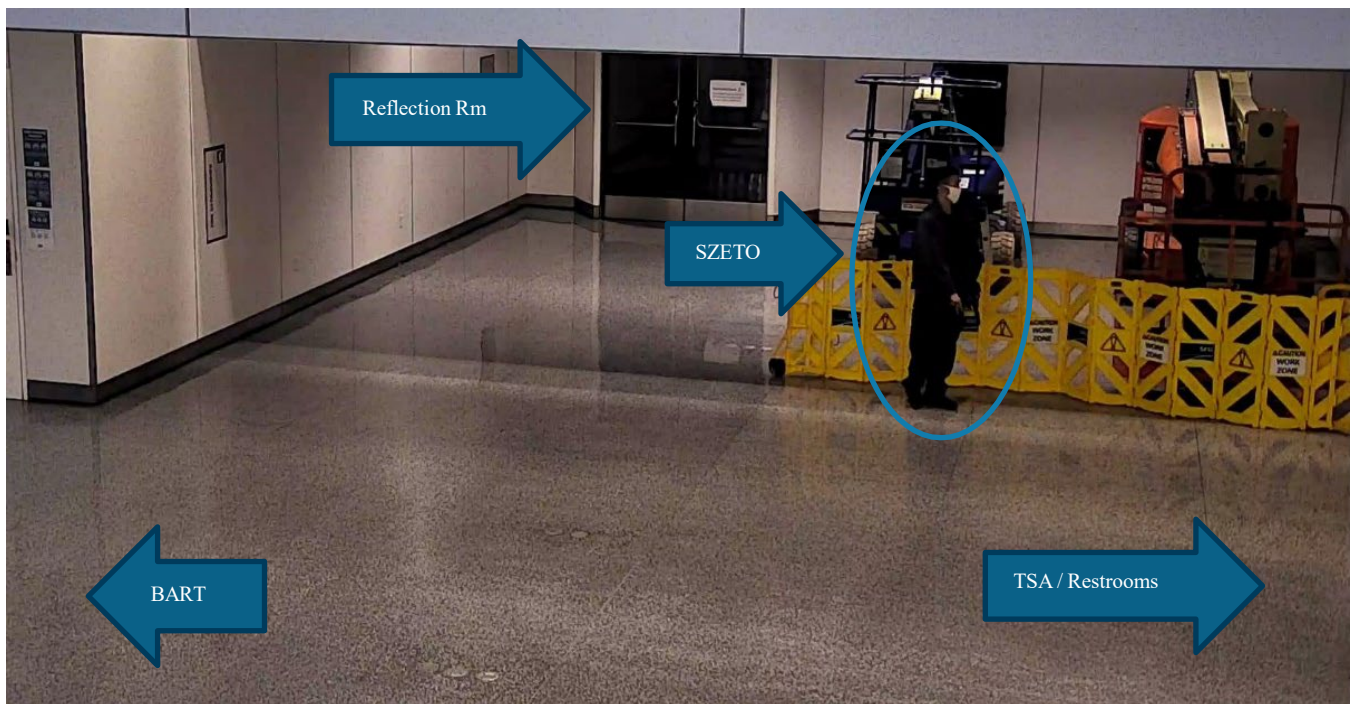


Figure 3 – Photograph of Mr. Szeto standing in the area marked by a orange circle in Figure 2.

Additional SFPD officers who were assigned to SFO responded to the scene. They were Officers Derrick Liang, Calvin Lew, Richard Kim, Almer Manrique (Specialist),³ Alvaro Mora, Erik Anderson, Michelle Spears, Lionel Lucas, Nelson Yu, and Patrick Brady and Sergeant Henry Lam, Sergeant Bobby Cheung, Lieutenant Rowena Hara and Captain Vintero. Officers Liang and Lucas responded with less-lethal Extended Range Impact Weapons (“ERIW”),⁴ which fired bean bags or other projectiles designed to temporarily subdue a subject. Specialist Almer Manrique responded with both a rifle and a ballistic shield.⁵ Officer Patrick Brady, also responded with a ballistic shield.

The officers took steps to evacuate and secure the immediate area and, as detailed further below, communicated with Mr. Szeto to establish rapport and to order him to drop the gun.

At 7:31 AM, Officer Tiffany broadcasted on the radio shared by the SFPD officers that a negotiator was needed as Mr. Szeto had requested one. No acknowledgment was heard on the radio.

At 7:32 AM, a TSA PreCheck employee (W-2) called Dispatch and said that she was in the TSA PreCheck office located adjacent to the corridor. She told Dispatch that there was “Somebody out here that has a gun.” She further told Dispatch that she was hiding and could hear officers outside. W-2 told Dispatch she had a co-worker in the office with her. Dispatch told her to lock the door and stay out

³ The SFPD Specialist Operational Manual defines a Specialist as follows: A volunteer of the rank of patrol officer who is specifically selected and trained for critical incident operations. Upon request Specialists respond to the scene of a critical incident and are under the operational control of the Tactical Commander. Specialists are usually deployed in pairs. Their duties include securing the inner perimeter to apprehend or neutralize any suspect(s) and assisting the entry team in accomplishing its objective.

⁴ According to SFPD General Order 5.01, Rev. 12/21/2016, Use of Force Policy, a less-lethal weapon, also known as an Extended Range Impact Weapon (ERIW), is a weapon that fires a bean bag or other projectile designed to temporarily subdue a subject. Generally, an ERIW is not considered to be a lethal weapon when used at a range of fifteen (15) feet or more.

⁵ A ballistic shield is a protective device deployed by police to stop or deflect bullets or projectiles fired at the carrier.

of view. The CAD log indicated at 7:32:11 "R/P is hiding in ofc." However, no broadcasting of this information to the officers was heard.

Specialist Manrique was positioned on the east-side of middle wall 1 and had a partial view down the hallway entrance that was located to the east of Mr. Szeto. Specialist Manrique saw a door begin to open at the end of the hallway and it appeared to him to be a custodian pushing a cart out the door. Specialist Manrique signaled with his hands to the custodian to go back inside and saw the custodian go back inside and shut the door. Specialist Manrique then asked Dispatch to call the TSA PreCheck office and "tell them to take cover until we can let them know what to do." One to two minutes later, Specialist Manrique asked Dispatch, "Any luck with those offices behind here?" and Dispatch stated, "Affirmative, they've been advised."

Officers Whitney, Tiffany, Lew, Anderson, Liang, Yu, Lucas, Cheung, Lee and Specialist Manrique remained at the scene⁶ and attempted to engage Mr. Szeto in conversation and ordered him to drop his guns. Officers Whitney, Tiffany, and Lew were the primary communicators.

As previously indicated, there was limited audio recording of the verbal communication between the officers and Mr. Szeto during this time because the SFPD officers assigned to SFO did not wear BWCs. Some of the officers' statements were captured by the BWC of BART Officer Gerald Washington who arrived on scene at approximately 7:34 AM. In his BWC recording, much of the communication and the identity of the officer speaking was indiscernible due to an audible alarm and other ambient noise. For these reasons, the exact sequence of the conversation between the officers and Mr. Szeto during this time is unknown. Officers reported that they repeatedly ordered Mr. Szeto to put his guns down, repeatedly asked Mr. Szeto what they could do to help him, offered him medical assistance, told him they did not want to shoot him, and attempted to resolve the situation through verbal negotiations with Mr. Szeto.

⁶ Other officers left the area to retrieve and distribute ballistic shields for the officers and to secure the elevators and escalators.

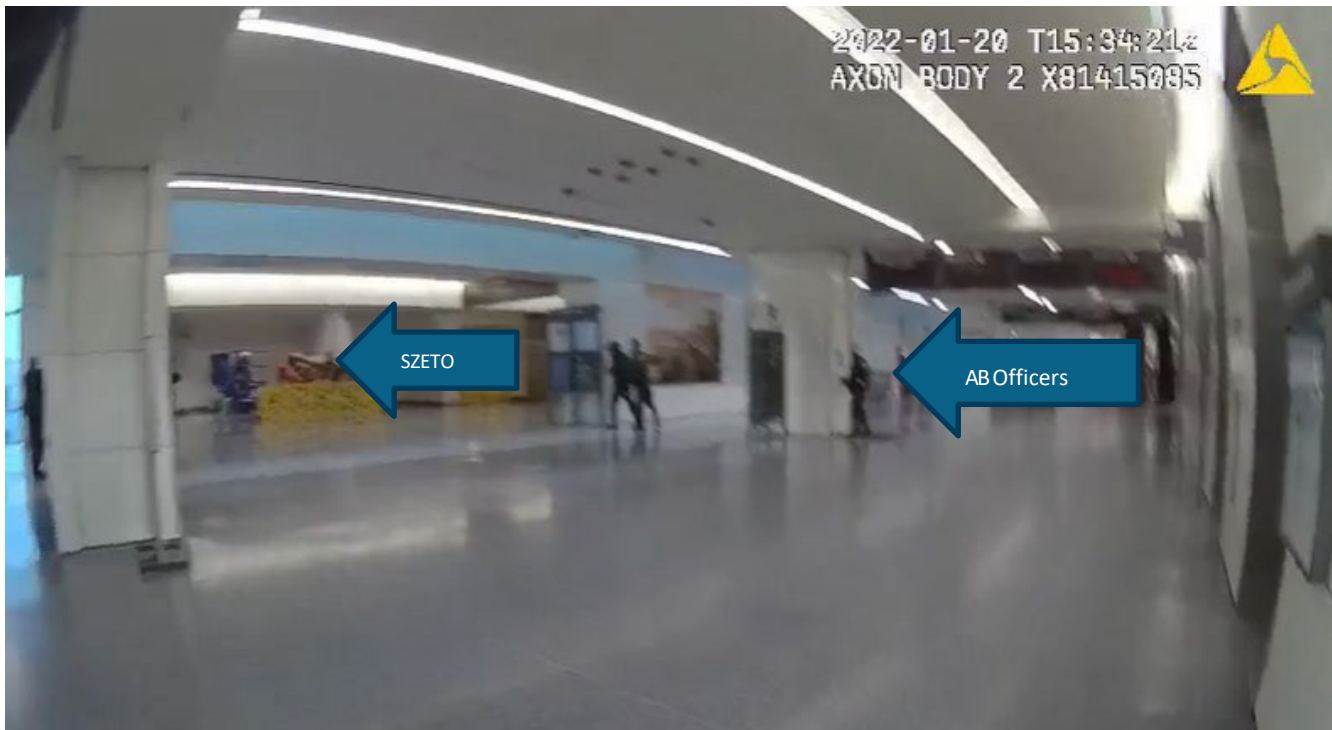


Figure 4 – View of incident area upon BART Officer Washington’s arrival. Screenshot from Officer Washington’s BWC. “AB Officers” indicates the SFPD officers assigned to SFO who responded to the scene. (“AB” is short for SFPD Airport Bureau).

On Officer Washington’s BWC recording, the following officer statements to Mr. Szeto could be heard:

“What’s your name? Nelson? What’s your last name?”

“It does matter, Nelson. Nelson, it matters.”

“Nelson, drop the gun.”

“Nelson, I’ll get you a water.”

“Stay right there.”

“Nelson, can we talk about this?”

“Nelson, let us help you. Come on, it doesn’t have to be like this.”

“Nelson, I know you want help. And the reason why I know that is because you’re wearing a mask. ... You don’t want to get the virus. Right? ... put the gun down, we can talk about this and get help, whatever you need Do you trust us? Because we want to trust you. ... It’s not too late. Nothing is ever too late. Let’s come to an agreement. ... Let us help you. ... Help us also. “

During this time while the officers tried to talk to him, Mr. Szeto slowly paced around the corridor. At 7:34 AM, Mr. Szeto placed the knife in his right hand onto the tire of a nearby hydraulic lift, reached his right hand into his jacket, and partially removed his right hand from his jacket exposing the grip of what appeared to be a second gun. Officer Tiffany reported hearing Mr. Szeto say, “I have another gun and this one is loaded.”

Mr. Szeto stood between the two hydraulic lifts holding what appeared to be one gun in his left hand pointed at the floor and a second gun in his right hand, partially secreted in his jacket.



Figure 5 – Mr. Szeto stood between two hydraulic lifts while officers attempted to communicate with him.

Officer Nelson Yu reported that Mr. Szeto asked for his “green backpack,” which he had left at the Information Booth. At 7:34 AM, Officer Yu checked the backpack for weapons and finding none, moved the backpack into Mr. Szeto’s view. At 7:35 AM, officers also used a K9 to check the backpack for explosives and found none.

At 7:37 AM, Mr. Szeto walked out from behind the hydraulic lifts and paced in front of the Reflection Room doors while holding both guns pointed at the floor.

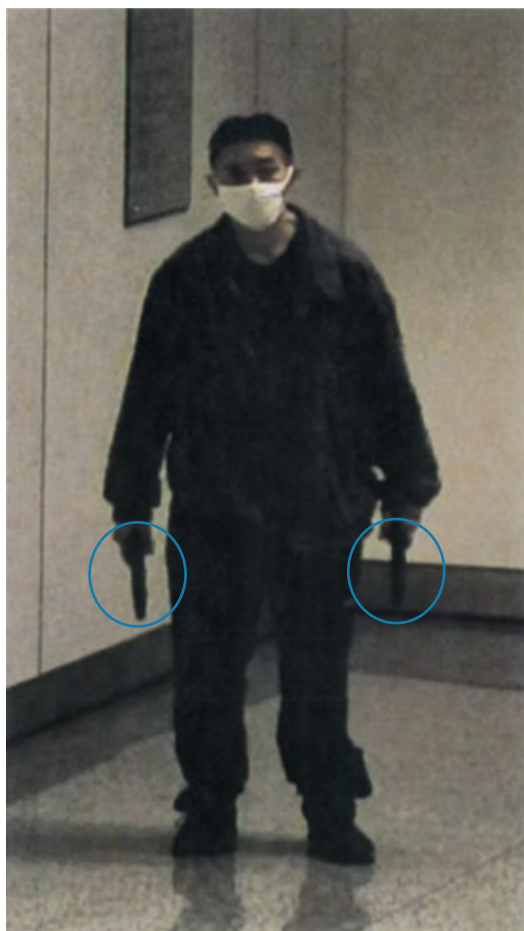


Figure 6 – Mr. Szeto in front of Reflection Room doors while holding what appeared to be two guns pointed at the floor.

Officers reported that, during their dialogue, Mr. Szeto: provided his first name and an address; stated he needed surgery on his throat but refused medical assistance when it was offered; told the officers "Thank you for your service," "I respect you guys," and "I'm sorry"; and instructed officers to "shoot center mass" and to "aim."

At 7:37 AM, Sergeant Lam asked for the SFPD Hostage Negotiations Team to respond to the incident, and Dispatch passed that request on to SFPD Operations. Emergency medical services were also requested.

During this time, Mr. Szeto continued to show the guns to the officers by raising both his arms outward and upward while pointing the muzzles of the guns at the floor. He did not point the guns at the officers at this time. The officers repeatedly ordered Mr. Szeto to drop the guns, but he did not comply.

Officer Lew asked Mr. Szeto where he lived, and Mr. Szeto provided an address in San Francisco. Officers asked Mr. Szeto, "Are you married? Do you have a girlfriend?," asked if he had children, asked about his family and his parents, and asked Mr. Szeto to put the guns down. One officer said "Hey Nelson, we know you don't want to do this" and asked to solve the situation "peacefully."

Mr. Szeto continued to pace around slowly in the area near the Reflection Room and in front of the yellow, plastic, work zone barrier positioned in front of the hydraulic lifts. Mr. Szeto did this while

holding both guns behind his back. When one officer told Mr. Szeto, “You need to put the guns down,” Mr. Szeto slowly turned around, exposing a black gun in each hand. Upon completing the turn and facing law enforcement personnel again, Mr. Szeto appeared to take a deep breath and walked slowly to his left toward the nearby hallway entrance. Mr. Szeto paused and stood still for periods of time.

Lieutenant (Lt.) Hara arrived and formulated an initial plan with Specialist Manrique to keep Mr. Szeto contained in the area near the Reflection Room so they could initiate and coordinate the response of the SFPD Tactical and Specialist Teams. At 7:42 AM, Lt. Hara, the Incident Commander, declared the incident a “Critical Incident.”⁷ Lt. Hara advised Dispatch to notify the SFPD Tactical and Specialist Teams.

Officers continued to negotiate with Mr. Szeto. At 7:45 AM, one officer said, “Nelson, let us help you. It doesn't have to be like this.” Officer Lew told Mr. Szeto, “Hey Nelson, I know you want help and the reason why I know that is you're wearing a mask. Okay, and you want to protect yourself. You don't want to get the virus. Right? If you didn't care, you wouldn't be wearing that mask.”⁸ Officer Lew told Mr. Szeto that if he put the guns down, they could talk about it and get Mr. Szeto “help, or whatever it is you need.” An officer then offered Mr. Szeto water and medical care in response to statements by Mr. Szeto that there was something in his throat. Another officer offered to take Mr. Szeto to San Francisco General Hospital and asked him what hospital he wanted to go to. Mr. Szeto told the officers it was “too late.” At 7:51 AM, Mr. Szeto put the gun he was holding in his right hand on a rear tire of one of the hydraulic lifts and picked up the knife that he had earlier placed on another hydraulic lift tire. Within seconds, he put the knife back and picked up the gun again. He continued to hold both guns pointed downward.

At 7:55 AM, Specialist Manrique advised Dispatch that Mr. Szeto may be trying to commit “suicide by cop.”

Continued Negotiation By SMCSO Detective J. Morgan

At 7:59 AM, San Mateo County Sheriff's Office (SMCSO) Detective Jeff Morgan arrived on scene. Detective Morgan stated in his interview that as he was looking at Mr. Szeto “for a threat assessment,” Mr. Szeto “looked directly” at him and they “made eye-to-eye contact.” Detective Morgan stated that Mr. Szeto “was walking and pacing and at that point, I believed I could engage in a conversation with him, and that's exactly what I did. So I said – I was asking him, hey, what's your name? I introduced myself as Jeff and we started having a conversation.” From that point, Detective Morgan took over primary negotiations with Mr. Szeto. The other officers deferred to Detective Morgan as the negotiator since he was able to engage Mr. Szeto in conversation. Det. Morgan took a position on the west-side of middle wall 1, south of Mr. Szeto.

⁷ The SFPD Specialist Operational Manual defines a Critical Incident as follows: An incident involving a hostage taking, a sniper situation or a barricaded suspect situation. Also known as a “serious incident.” A critical incident must involve a life-threatening situation, have a defined terrain objective, and require a coordinated response.

⁸ Mr. Szeto was wearing a white fabric mask of the type often worn to protect against COVID-19.

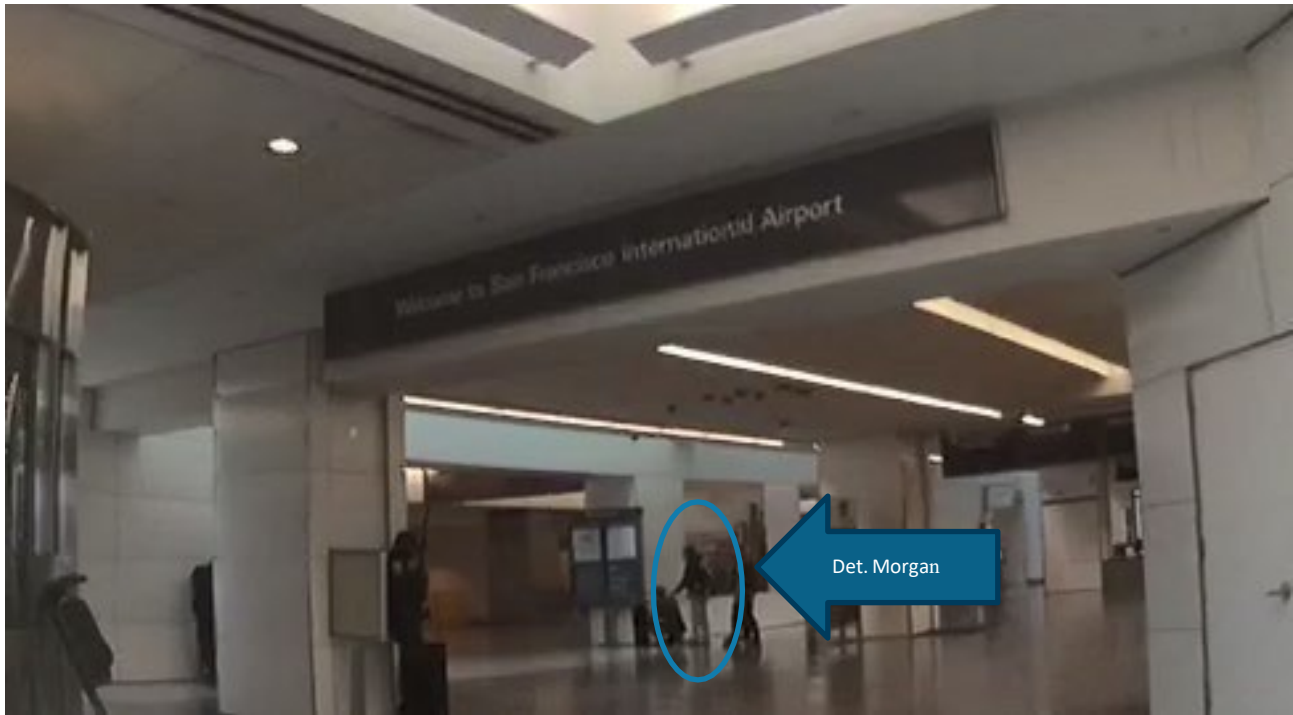


Figure 7 – Screenshot of Det. Morgan’s location from BART Officer Washington’s BWC.

At 8:02 AM, Det. Morgan told Mr. Szeto, "Just take a deep breath, man. All we want to do is help you out. Whatever you need, we’re gonna get." Mr. Szeto responded and told Det. Morgan, "I don't think you can help me."

As Det. Morgan continued to communicate with Mr. Szeto, SFPD Specialist personnel began to arrive at SFO. Specialists David Edgerson, Myles McMaster, Oliver Lim, and Steven Uang arrived on scene and began to replace the officers in the inner perimeter.⁹ Specialists Uang and Lim were armed with rifles and took positions on the east-side of middle wall 1. They asked an SFPD officer (unidentifiable) if there were people in the Reflection Room. The officer advised that he did not know but that he knew a subject had been in the nearby hallway behind a maintenance lift but was unsure if the subject was still there.

⁹ The SFPD Specialist Operational Manual defines Inner Perimeter as follows: Inner perimeter is that area which affords immediate containment and control of the objective to prevent the escape of the suspect(s) by restricting both horizontal and vertical mobility, and should be made as small and as safe as possible, within the limits of officer safety.



Figure 8 – Screenshot of incident area from Specialist Uang’s BWC.

Specialist Edgerson who was armed with a rifle and Specialist McMaster who was armed with an ERIW less lethal launcher took positions along the west-side of middle wall 1.

The Specialists were equipped with Body Worn Cameras (“BWCs”). Statements quoted in the rest of this summary come from Specialists’ BWC. Det. Morgan made the following statements to Mr. Szeto at approximately 8:04 AM:

"Just put it down."

"Hey, look at my face. Just look at me. I'm a nice guy. You look like a nice guy."

"We're here to help you."

"We don't want anything tragic to happen."

"Do you want something bad to happen to me?"

"No, you're a nice guy."

"Let's work through this."

Mr. Szeto made various responses to Det. Morgan, but they are inaudible on the recordings. At 8:04 AM, Mr. Szeto took slow steps to his right and moved from behind both hydraulic lifts to the west-side of the blue hydraulic lift. At approximately 8:05 AM, he placed one of the guns down on the blue hydraulic lift’s tire, adjusted his mask, and then picked the gun up again. He walked in front of the Reflection Room doors and slowly paced around the area. Det. Morgan and Mr. Szeto had the following exchange:

Det. Morgan: “Nelson, just take a deep breath. Think about me. Hey, what’s my name?”

Mr. Szeto: “Jeff.”

Det. Morgan: “Jeff, Jeff Morgan. I’m here to help you.”

An unknown officer then told Det. Morgan to tell Mr. Szeto not to come any closer to the officers. The officer then advised Mr. Szeto, “back up.” Det. Morgan stated, “Hey, don’t come any closer Nelson, unless you set that gun down. Set the gun down. Take a deep breath, set the gun down. Set the gun down.”

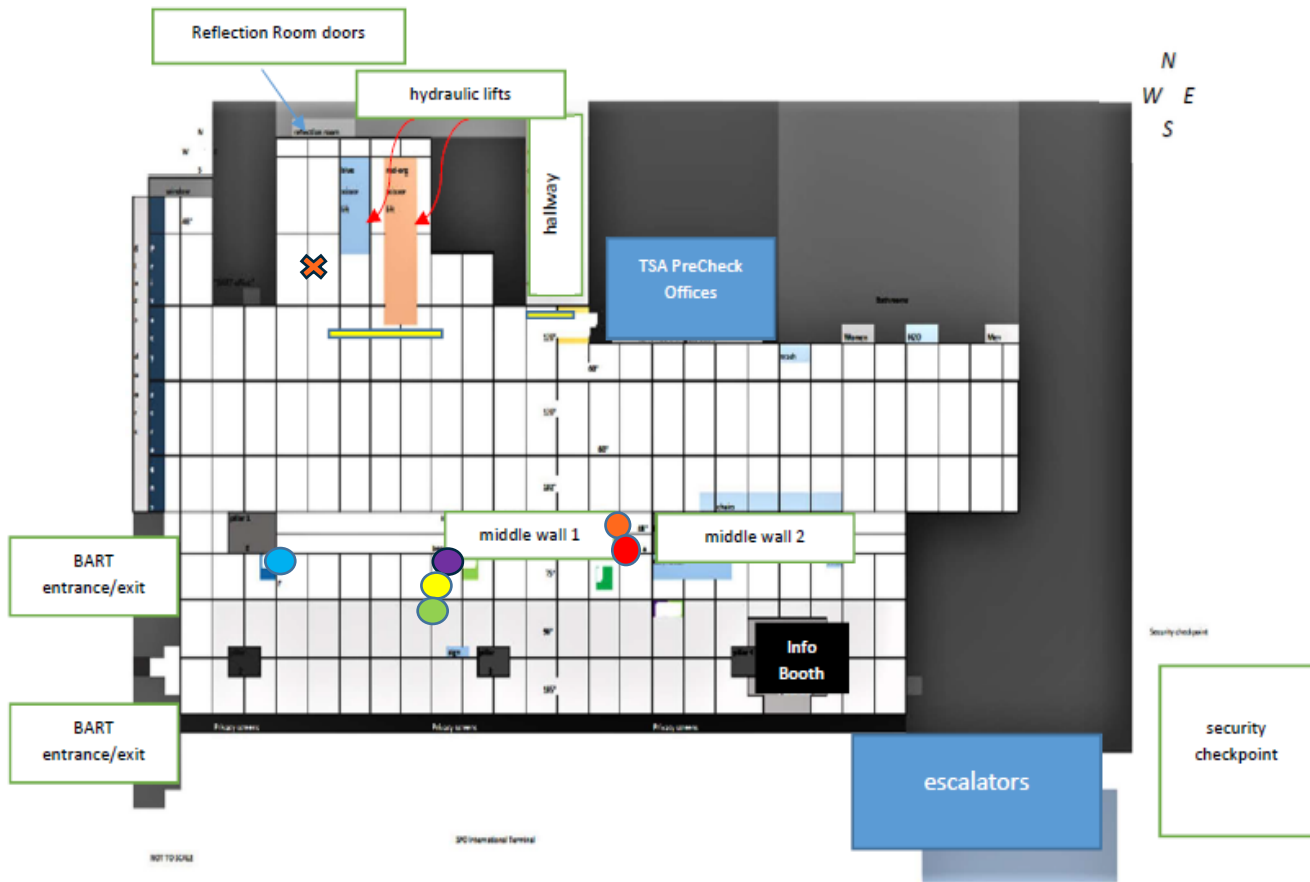


Figure 9 – Approximate diagram of incident area and locations. Not to scale. Thin yellow bar with blue outline represents a yellow, plastic, work zone barrier. During this part of the communication between Det. Morgan and Mr. Szeto, the orange “X” indicates where Mr. Szeto was located at approximately 8:05:36 AM, the yellow circle indicates where Det. Morgan was located, the purple circle indicates where Specialist Edgerson was located, the light green circle indicates where Specialist Mc Master was located, the blue circle indicates where Officer Whitney was located, the orange circle indicates where Specialist Lim was located, and the red circle indicates where Specialist Uang was located.

Mr. Szeto made a half turn to his right, allowing the officers to see that he continued to hold both guns behind his back. He then returned to the position of facing the officers again. He then took a few steps toward the officers and stopped while his hands remained behind his back.

Specialist McMaster, who was armed with a less-lethal ERIW and positioned behind Det. Morgan, stated that if Mr. Szeto “crosses that yellow, I’m going red light.”¹⁰ Another officer responded, “Go ahead, go ahead, get ready.”

¹⁰ Specialist McMaster’s reference to “red light” was a reference to SFPD policy regarding the use of less-lethal weapons. Prior to deploying an ERIW, an officer is directed to announce “Red light! Red light! Less lethal! Less lethal!” so that other officers know that the weapon being used is not lethal force. This is intended to prevent “sympathetic fire,” in which an officer fires a lethal round because the officer mistakenly believes that other officers are firing lethal rounds. His reference to “yellow,” referred to the yellow, plastic, work zone barrier.

Det. Morgan then told Mr. Szeto, "Hey, no, no, no, no, Nelson. Don't. Nelson, don't do this dude." Specialist McMaster stated twice, "Nelson, stop walking forward." At 8:05:36 AM, Mr. Szeto was approximately 45 feet from Detective Morgan.

Det. Morgan told Mr. Szeto, "Nelson, don't come any closer. Go back over there, Nelson. Just go back over. Go back over. Take... walk backwards, man. Walk backwards. Thank you, one step at a time, slowly, walk back."

Mr. Szeto and Det. Morgan then had the following exchange:

Mr. Szeto: "I want to tell you something."

Det. Morgan: "No, I want you to walk back. Walk back and we can talk."

Mr. Szeto: "There's something stuck in my throat."

Det. Morgan: "There's what?"

Mr. Szeto: "There's something stuck in my throat."

Det. Morgan: "Okay, no, there's nothing stuck in your throat. Just walk back."

Mr. Szeto: "Yes, there is."

Specialist McMaster then told Det. Morgan to tell Mr. Szeto that if there was something stuck in his throat, they could help him once he put the guns down. Det. Morgan repeated this to Mr. Szeto, "Hey, if there's something in your throat, we can help you, but you just got to put those guns down. Look over at me."

Specialist McMaster then told Mr. Szeto, "Hey. Do not cross that yellow line or I'm gonna, I'm gonna hit ya." At this point, Mr. Szeto was in front of the Reflection Room doors and west of the hydraulic lifts. Placed just south of the hydraulic lifts was a yellow, plastic, work zone barrier. When Specialist McMaster stated "Do not cross that yellow line," Specialist McMaster meant that he did not want Mr. Szeto to walk south, past the work zone barrier and toward himself and Detective Morgan. The work zone barrier was approximately 31 feet from Detective Morgan.

Mr. Szeto took several steps backward away from Det. Morgan and toward the closed Reflection Room doors. Det. Morgan continued to speak to Mr. Szeto, saying:

"Thank you for backing up, man. Now we're workin'. Now just set the guns down."

"Hey, just put the gun . . . Take a knee and put the guns down."

"You're good."

"Thank you for backing up. Now we're working, right?"

"Nelson, what's my . . . what's your last name, Nelson?"

Mr. Szeto responded to Det. Morgan twice by saying "It doesn't matter."

Mr. Szeto continued to move around the area, and Specialist McMaster told him, "Nelson, stop there." Specialist Edgeron, who was armed with a rifle, stated, "Nelson, you need to back up. Nelson, you need to back up or I'll shoot. Back up, Nelson. Please."

Det. Morgan also ordered Mr. Szeto to back up: "Take a step back, Nelson. You gotta work with me. You gotta work with me, Nelson. Thank you. Dude, you're doing good, man. All you need to do is take a deep breath bro and put the guns down. Then we can help. Hey, Nelson. Just set the guns down, dude."

Mr. Szeto made an inaudible statement and Det. Morgan said, "You are? Just put em' down. It's super easy. There we go, one knee at a time. Just, all you gotta do is just drop one knee. Drop one knee, and then drop the other knee. Good, there we go. Yeah, that's it, that's it, just take a knee. Just take a knee. Nelson, look at my hand, Nelson. Nelson, over here. Look at me. See my hand? That means stop, okay? You're moving up too much. Back up, take a knee." An unidentifiable officer stated, "Nelson, you gotta back up buddy, please."

As Det. Morgan continued to communicate with Mr. Szeto, Specialists Lim and Uang were positioned on the east-side of middle wall 1. Specialist Uang stepped back to meet with Lt. Hara and obtain information about the immediate area. Lt. Hara notified Specialist Uang that there were people in the nearby TSA PreCheck office and a person in the nearby hallway. Specialist Uang returned to his position next to Specialist Lim and relayed this information to Specialist Lim.

Det. Morgan continued to speak with Mr. Szeto, telling him, "Right there, don't come any closer dude. Right there." Specialist Edgeron also told Mr. Szeto to back up, "Nelson, you gotta back up, buddy. Please."

Det. Morgan again tried to get Mr. Szeto to drop his guns, and they had the following exchange:

Det. Morgan: "Yeah, just back up a little bit. Drop the guns. Just let em' hit the ground. Open your hand up, it's super easy. Open your hand up just like that, gun falls on the ground. Okay? There you go. Just open your hands up and let the guns go on the ground. Can you do that for me?"

Mr. Szeto: "I've seen a lot of, ah, situations like this."

Det. Morgan: "Yeah, and they get solved super easy. All you have to do in this situation is just open your hand up and let the gun fall to the ground. We'll take it from there. Okay? Okay, Nelson? Over here, Nelson. Look at me, man. Nelson, what's my name?"

Mr. Szeto: "Jeff."

Det. Morgan: "How many kids do I have, Nelson?"

Mr. Szeto: "Two."

Det. Morgan: "Two, okay. When I get home, we're gonna talk about how things, how well things went today. I'm gonna tell them how nice of a guy you are and that you dropped the guns and everything was fine. Just drop..."

At 8:10 AM, Mr. Szeto made an inaudible statement, and Det. Morgan responded, "You're gonna put the gun down?" Mr. Szeto replied, "One." Det. Morgan said, "Thank you. Okay, just set it down."

At this time, Mr. Szeto slowly brought his right arm out from behind his back, bent down, and placed the gun on the floor. Det. Morgan told Mr. Szeto, "Awesome. Okay."

Mr. Szeto then stood up and walked toward the yellow, plastic, work zone barrier positioned in front of the hydraulic lifts. He said, "Move this yellow..." and both Specialist McMaster and Det. Morgan instructed Mr. Szeto not to touch the barrier. Specialist McMaster instructed, "don't touch it."

Det. Morgan then said, "Hey, listen to me. Nelson, stop. You got, your other hand, do the same thing with your other hand. No. Set, no..."

Mr. Szeto proceeded to place his right hand on the yellow, plastic, work zone barrier and move it slightly to his right while he kept the second gun in his left hand behind his back. Specialist McMaster again stated, "Red light! Red light!" indicating that he was going to use a less-lethal round.

Det. Morgan then addressed Mr. Szeto again:

"Stop. Put the other gun down, just like you did with that one. We're working, Nelson. Nelson, look at me. We're working together. Do the same thing with your other hand. Set it down the same way, nice and slow. You did that on your own. Beautiful. Super slow. Go super slow again, and set it down. I'm gonna tell my kids how well things went today. Two kids. "

Mr. Szeto then backed away from the yellow, plastic, work zone barrier and walked back toward the gun that he had placed on the floor. He began to bend toward the gun. Multiple officers instructed Mr. Szeto not to pick the gun up. Specialist McMaster again advised, "Red light! Red light!" and an unidentifiable officer advised, "do not pick the gun up."

Firing of First Less-Lethal Round

Mr. Szeto stopped his motion toward the gun, stood back up, and raised his empty hand toward the officers. Det. Morgan responded, "Perfect. Set the other gun down. We're halfway there, Nelson. No, no, no."

Mr. Szeto then ducked under a part of one of the hydraulic lifts (between the lift's base and utility bucket) as he took steps to his left toward the hallway entrance. Det. Morgan said, "Hey, Nelson, Nelson. Listen to me. Set that other gun down." Mr. Szeto kept his left hand with the gun behind his back and continued to take steps to his left toward the hallway entrance.

The Specialists had been attempting to contain and keep Mr. Szeto away from the hallway entrance and the TSA PreCheck office because both areas were locations where civilian witnesses could be and where there might be access to the rest of the airport. Specialists Lim and Uang continued to be positioned on the east-side of middle wall 1 with the hallway entrance to their north about 29 feet. Specialist McMaster continued to be on the west-side of middle wall 1. When Mr. Szeto kept taking steps to his left toward the hallway entrance, he (Mr. Szeto) was breaking the containment the Specialists sought to establish.

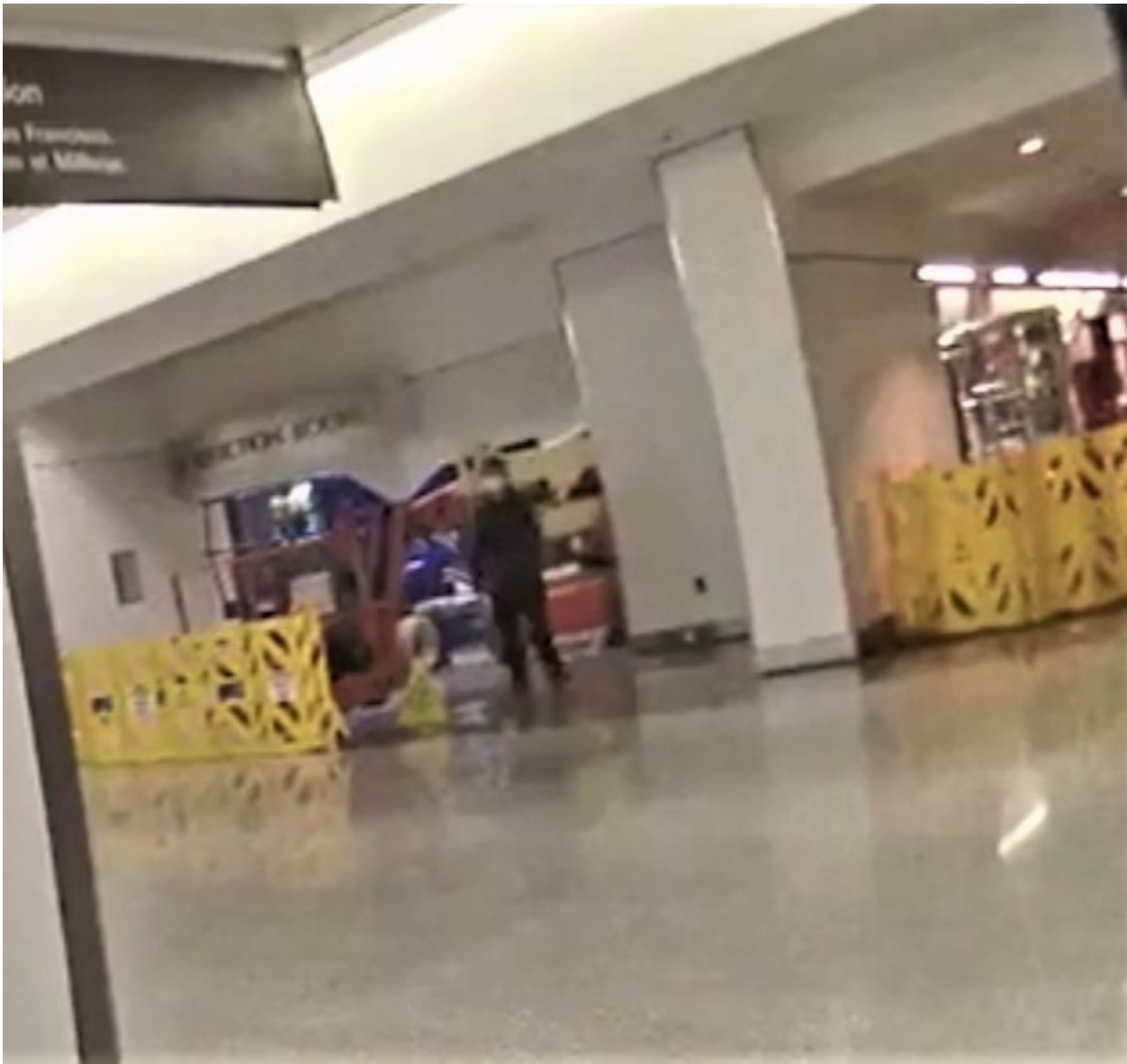


Figure 10 – Mr. Szeto’s approximate position moments before first less-lethal round was fired. Item that appeared to be a gun was in Mr. Szeto’s left hand behind his left leg.

At 8:11 AM, Specialist Lim stated, “Put it down, Nelson. Don’t come...” while Specialist McMaster advised, “Red light! Red light!” and fired one less-lethal foam baton projectile at Mr. Szeto. The foam baton projectile did not appear to impact Mr. Szeto and appeared to hit the wall behind Mr. Szeto.

Firing of Second Less-Lethal Round and Lethal Rounds

After Specialist McMaster fired the less-lethal foam baton projectile, Mr. Szeto continued to take steps to his left toward the hallway entrance. Mr. Szeto then briefly paused in the area between one of the hydraulic lifts and the hallway entrance and continued to hold the gun in his left hand positioned partially behind his left thigh. Specialist Lim yelled, “Nelson!” while Det. Morgan told Mr. Szeto “That’s alright. Don’t worry about that, Nelson.”

After Specialist McMaster fired the first less-lethal round, he (Specialist McMaster) moved to a position several feet to the east of Specialists Lim and Uang and advised, “ERIW right, ERIW right!” Additional Specialists arrived at the scene. Specialist Yaroslav Shablinskiy, who was armed with a rifle stated, “I see him. Gun in hand, gun in hand.” He took a position alongside Specialist Uang. Specialist John Grey, armed with a rifle, took a position near Specialists Lim and Uang, and Specialist David Wakayama, armed with a rifle, took a position alongside Specialist McMaster.

Specialist Lim repeatedly asked Specialist Uang about his “backdrop,” a term used to describe the area behind a subject that the officer is covering. Specialist Uang advised Specialist Lim the “Backdrop is good, backdrop is good,” indicating that he (Specialist Uang) believed there were no other persons visible behind Mr. Szeto.

Mr. Szeto then took slower steps, at times intermittently, to his left toward the hallway entrance with the gun in his left hand pointed toward the floor and held close to and slightly behind his left thigh, and multiple officers issued verbal commands for Mr. Szeto to stop moving and drop the gun. Specialist Lim stated again that Mr. Szeto had a “gun in his left hand,” and Specialist Uang acknowledged, “I see it, I see it.” Det. Morgan told Mr. Szeto, “look at me.” Specialists Lim and Uang ordered Mr. Szeto to “put it down,” and Specialist Uang ordered Mr. Szeto to “put it down, stop right there, put it down.” Specialist Lim stated, “Don’t move anymore, Nelson.”

Specialist McMaster advised, “If he crosses the yellow, I’m hitting him again.” Specialist Sergeant Patrick Griffin directed Specialist Shablinskiy to transition from his rifle to a less-lethal launcher. Specialist Shablinskiy did so and took position to the right of Specialist Uang.

At 8:12 AM, Specialist Uang asked, “Where’s a 40? Give me a 40?” Specialist Lim stated, “We gotta 40 him, we gotta 40 him.” In this context, “40” refers to a 40 mm less-lethal projectile. With these statements, Specialists Uang and Lim were asking other Specialists to deploy less-lethal rounds.

Specialist McMaster advised the other officers, “Hey, be careful. About to red light, about to red light. Red light! Red light!” He then addressed Mr. Szeto, “Nelson, move back to your right, or I’m going to hit you. Nelson, move back to your right, or I’m going to hit you.” Specialist Shablinskiy also stated, “Red light! Red light!” Specialist Lim directed Mr. Szeto, “go back” while Specialist Uang stated, “Give me a 40, give me a 40, give me a 40. Is there a 40 here?”

Mr. Szeto took another step to his left toward the hallway entrance.

Specialist McMaster then yelled, “Red light! Red light! Less lethal!” and fired one less-lethal foam projectile at Mr. Szeto. Specialist Shablinskiy also gave the “red light” advisement and fired one less-lethal foam projectile at Mr. Szeto. One projectile appeared to strike Mr. Szeto, and one appeared to strike the wall behind Mr. Szeto.



Figure 11 – Mr. Szeto’s approximate position in front of the hallway entrance before the second less-lethal round was fired. Item that appeared to be a gun was in Mr. Szeto’s left hand behind his left leg.

Mr. Szeto then took a step forward as he brought the gun in his left hand out from behind his left thigh and as he (Mr. Szeto) began to move his right hand toward the gun.



Figure 12 - Mr. Szeto's approximate position before the first lethal round was fired. Item that appeared to be a gun was in his left hand.

At 8:12:10 AM, Specialist Lim fired two rounds from his rifle.¹¹ Mr. Szeto fell to the floor while turning to his right and landed in a partially seated position facing west. The gun remained in or near his left hand, which appeared to be on the floor along the left side of Mr. Szeto's body.

Mr. Szeto then reached across his body with his right hand, picked up the gun, and began to raise the gun in the direction of the officers.

¹¹ Based on video analysis, it appeared that Specialist Lim fired his rifle between 434 milliseconds and 732 milliseconds after Mr. Szeto began to step forward and revealed what appeared to be a gun in his left hand.

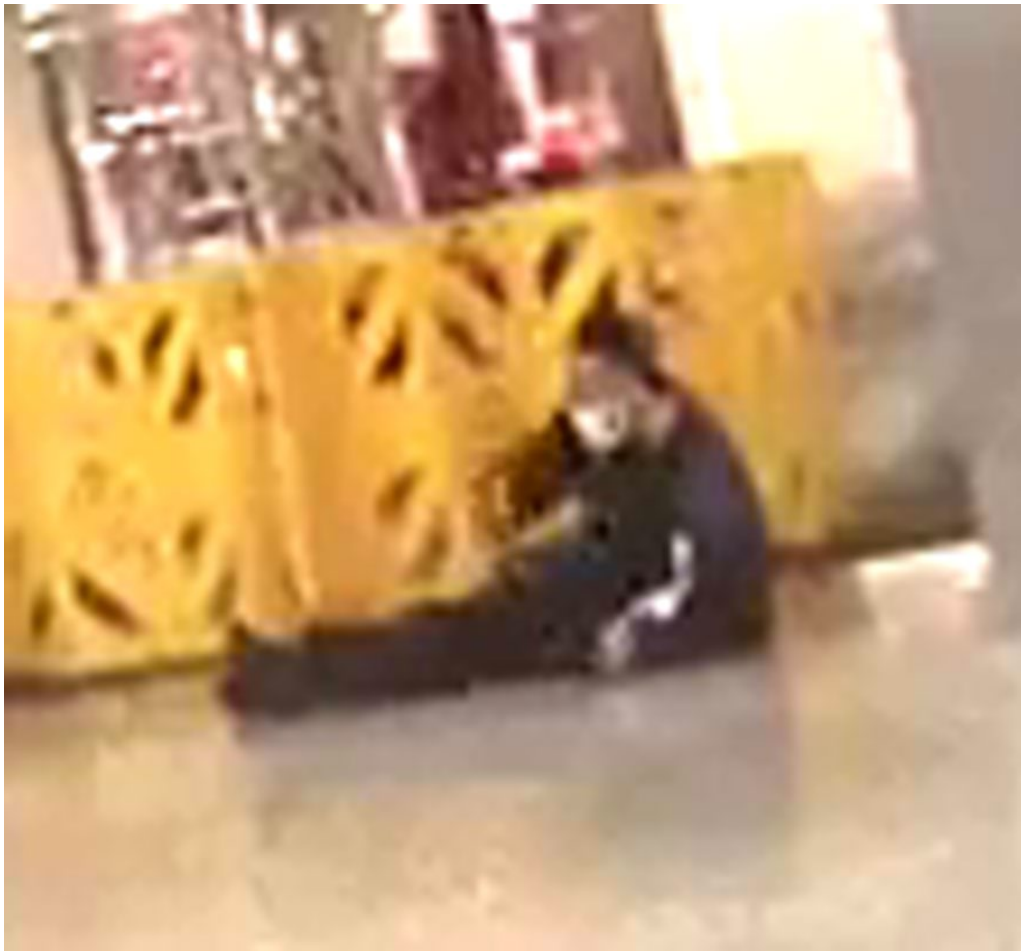


Figure 13 - Mr. Szeto's approximate position before the subsequent volley of lethal rounds. Mr. Szeto is seen raising what appeared to be a gun, now in his right hand, in the direction of the officers.

At this moment, 8:12:15 AM, Specialists Lim, Uang, and Wakayama fired their rifles at Mr. Szeto, and Officer Whitney fired his pistol at Mr. Szeto.¹² Mr. Szeto collapsed to the floor. At the time of this volley of lethal rounds, Officer Whitney was positioned behind a building pillar close to the BART entrance/exit and to the west of Specialists Lim and Uang.¹³

¹² Based on video analysis, it appeared that this volley of lethal gunfire proceeded between 379 milliseconds and 677 milliseconds after Mr. Szeto began to raise what appeared to be a gun in the direction of the officers.

¹³ In short, lethal rounds were discharged at 8:12:10 AM when Specialist Lim fired the first two lethal rounds (Mr. Szeto was standing) and at 8:12:15 AM when Specialists Lim, Uang, Wakayama and Officer Whitney fired lethal rounds in a volley of gunfire (Mr. Szeto was on the floor). This is based on BWC footage, DOJ Bureau of Forensic Services (BFS)'s analysis that two rounds were fired from Specialist Wakayama's rifle, and video analysis that Specialist Lim fired the first two lethal rounds. Specialist Lim and Officer Whitney's statements are consistent with this. Specialists Uang and Wakayama's statements are inconsistent with this.

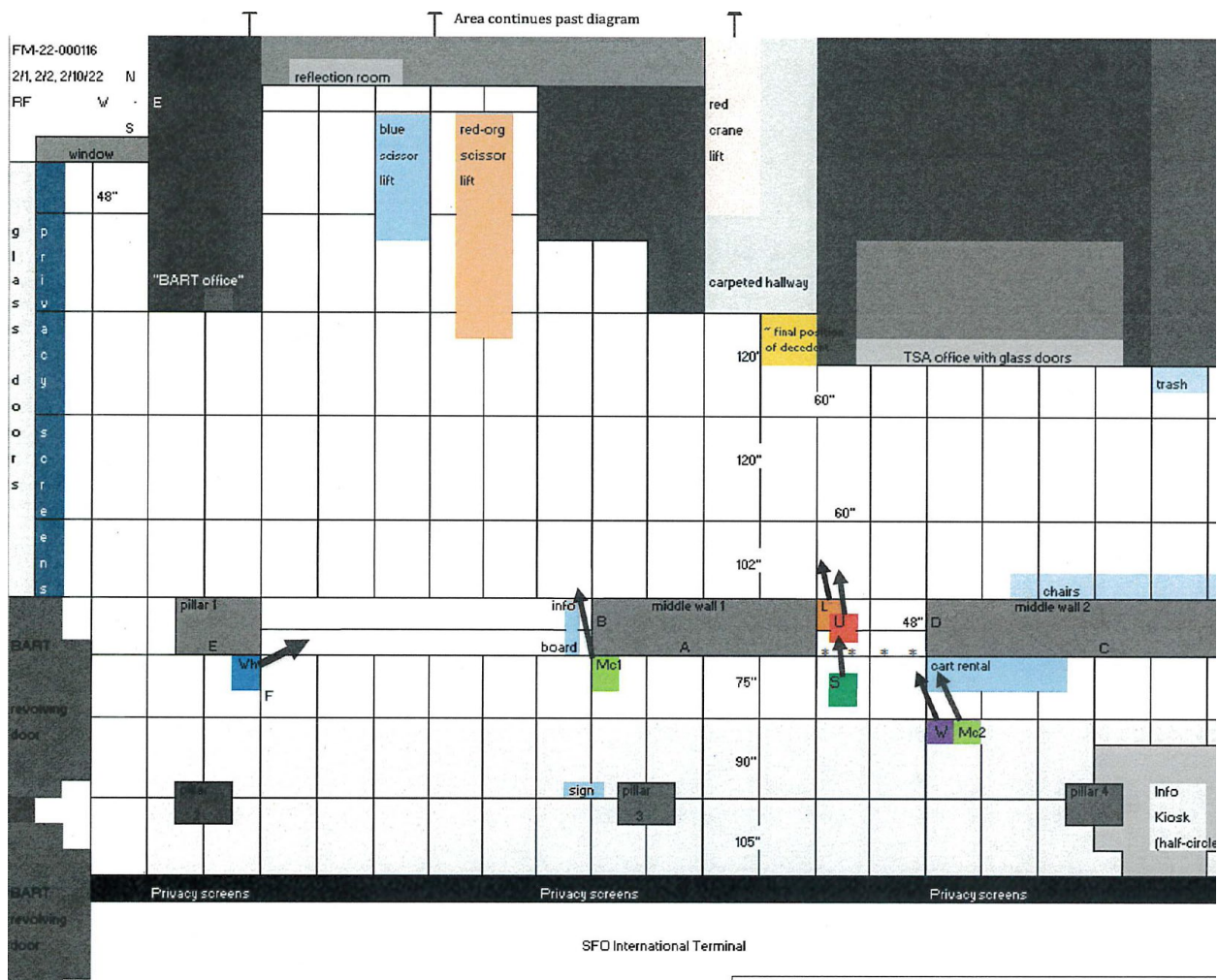


Figure 14 - Diagram is based on officer interviews and depicts each involved officer's position at the time the officer employed use of force. Orange depicts Specialist Lim's position. Red depicts Specialist Uang's position. Purple depicts Specialist Wakayama's position. Light green depicts Specialist McMasters' positions. Dark green depicts Specialist Shablinskiy's position. Dark blue depicts Officer Whitney's position. The arrows depict the direction each officer was pointing his gun or ERIW. The yellow depicts Mr. Szeto's final position.

At 8:12:31 AM, officers approached Mr. Szeto, removed the gun from his reach, and rendered medical aid to Mr. Szeto. Sgt. Griffin stated, "secure the gun and render medical aid." Specialist Lim carried a protective ballistic shield in front of him until the gun had been secured. Specialist Andrew Clifford observed that Mr. Szeto had several gunshot wounds. He slung his rifle behind his back and immediately began to render aid to Mr. Szeto, retrieving first aid items from his first aid kit that he had attached to his vest. He opened a package of gauze and handed it to Specialist Shablinskiy who applied it to Mr. Szeto's abdomen area. Specialist Clifford used his shear scissors and began cutting off the clothing to locate any more possible injuries. He located what appeared to be a gunshot wound to Mr. Szeto's upper left arm and applied a tourniquet to Mr. Szeto's upper left arm. He located what appeared to be a gunshot wound to Mr. Szeto's upper left thigh and applied a tourniquet to the upper left leg. He then applied pressure using a seal to the gunshot wound that he had located on Mr. Szeto's left leg. Specialist Clifford continued to apply pressure to the gunshot wounds that were on Mr. Szeto's upper left leg and upper left arm, and he took over providing CPR to Mr. Szeto until relieved by a medic.

Specialist Edgerson observed that Mr. Szeto was struck multiple times during the shooting, and he began to render medical treatment to Mr. Szeto by applying chest seals to his chest and abdominal area and Quik combat clot gauze to the extremities. Specialist Edgerson assessed Mr. Szeto and determined he was unconscious and not breathing and started providing CPR until he was relieved by Specialist Clifford. The officers also requested assistance from paramedics, who were staged nearby. At approximately 8:15 AM, paramedics arrived on the scene.

As medical aid was being provided to Mr. Szeto, additional officers moved down the hallway in search of witnesses or victims. The officers found a man, later identified as W-3, lying with a sleeping bag behind a hydraulic lift parked along the west-side of the hallway. W-3 had sustained a gunshot wound to his leg. The officers gave W-3 medical aid and called for assistance from paramedics.

At 8:24 AM, paramedics arrived to provide medical aid to W-3, and four minutes later the paramedic team transported W-3 to Zuckerberg San Francisco General Hospital. W-3 underwent surgery and was later treated and released from the hospital.

At 8:30 AM, resuscitative efforts were concluded and Mr. Szeto was pronounced dead by a responding paramedic in conjunction with a physician from Stanford Hospital (with whom the paramedic was communicating).

Following the shooting, Specialists Lim, Uang, and Wakayama, and Officers Whitney, McMaster, and Shablinskiy were removed from the scene and sequestered. Specialists Lim, Uang, and Wakayama and Officer Whitney discharged their firearms during the incident, and Officers McMaster and Shablinskiy discharged their 40 mm less-lethal launchers during the incident.

INVESTIGATION

Overview

On January 20, 2022, the DOJ Division of Law Enforcement (DLE) California Police Shooting Investigation Team (CaPSIT) received notification of an officer involved shooting (OIS) in the International Terminal of the San Francisco International Airport (SFO). The incident involved San Francisco Police Department (SFPD) officers and was determined to be a qualifying event within the meaning of Government Code section 12525.3. (For more information on the DOJ's practices and procedures, see <https://oag.ca.gov/ois-incidents>.)

CaPSIT promptly responded to the incident scene to initiate a criminal investigation on behalf of the DOJ. A Deputy Attorney General (DAG) from the Attorney General's Special Prosecutions Section also responded. When CaPSIT agents arrived, the incident location was being guarded by SFPD personnel, and the entire surrounding area was blocked off with crime scene tape to preserve evidence.

The DOJ team observed the location of key items of evidence, paying particular attention to the area where the shooting had taken place. The DOJ Bureau of Forensic Services (BFS) also responded to the scene to monitor the processing of the incident scene and the collection of evidence by San Mateo County Sheriff's Office Forensic Laboratory personnel.

After walking the incident scene and reviewing evidence, CaPSIT and the San Mateo County District Attorney Investigators conducted a joint briefing with both agencies to provide an overview of the incident so that investigators had the same information before further steps were taken. After the briefing, CaPSIT special agents were assigned investigative tasks.

Specialists Lim, Uang, and Wakayama, and Officers Whitney, McMaster, and Shablinskiy were sequestered and later provided voluntary statements to investigators. Statements were taken from percipient witnesses, including other law enforcement officers, paramedics, airport employees, and civilian witnesses. The DOJ team reviewed airport surveillance camera footage, body worn camera (BWC) footage, dispatch recordings, written reports of law enforcement officers, physical evidence, and the autopsy and toxicology reports.

The DOJ investigation into the death of Mr. Szeto was comprehensive, thorough, objective, and independent. As a whole, hundreds of hours of investigation were conducted by the DOJ, SFPD, San Mateo County Sheriff's Office Forensic Laboratory, and the DOJ BFS.

Evidence Reviewed

The DOJ conducted an extensive investigation and reviewed comprehensive investigation materials regarding the incident, including:

- The incident scene at the SFO International Terminal
- SFO and BART surveillance camera footage
- Body worn camera (BWC) footage from the Specialist officers
- Photographs of the incident scene and of the involved officers
- Dispatch records and logs of the incident

- 911 audio recordings
- Interviews of the involved officers
- Interviews of other law enforcement officers at the scene of the incident
- Interviews of all of the civilian witnesses associated with this incident
- Interviews of Mr. Szeto's family members
- Interviews of the responding medical personnel
- Physical evidence recovered from the scene of the incident
- Autopsy and toxicology reports
- Forensic video analysis of the OIS
- Firearms and ballistic analysis by DOJ BFS
- DOJ criminal history information of Mr. Szeto
- Prior police contacts involving Mr. Szeto

Incident Scene Description

This incident took place in an open corridor in the International Terminal of San Francisco International Airport, Departure Level, G Side. On the day of the incident, along the north-side of the corridor, from west to east were the closed doors to the Reflection Room, two hydraulic maintenance lifts, a hallway entrance, the glass window to the TSA PreCheck office, and public restrooms. There was a yellow, plastic, work zone barrier placed in front of the hydraulic maintenance lifts and another yellow, plastic, work zone barrier placed in front of the hallway entrance.

To the west of the Reflection Room doors was an entrance/exit connecting the airport to a BART station.

Across the corridor from the Reflection Room, along the south-side of the corridor, there was a bank of elevators, whose doors opened to the north, facing the Reflection Room.

In the middle of the corridor, running parallel to the length of the corridor was a wall ("middle wall 1") that did not run the entire length of the corridor but only approximately 20 feet and was located south of the hallway entrance. To the east of middle wall 1 approximately 10 feet was another wall ("middle wall 2") running parallel to the length of the corridor for approximately 30 feet and located south of the TSA PreCheck office.

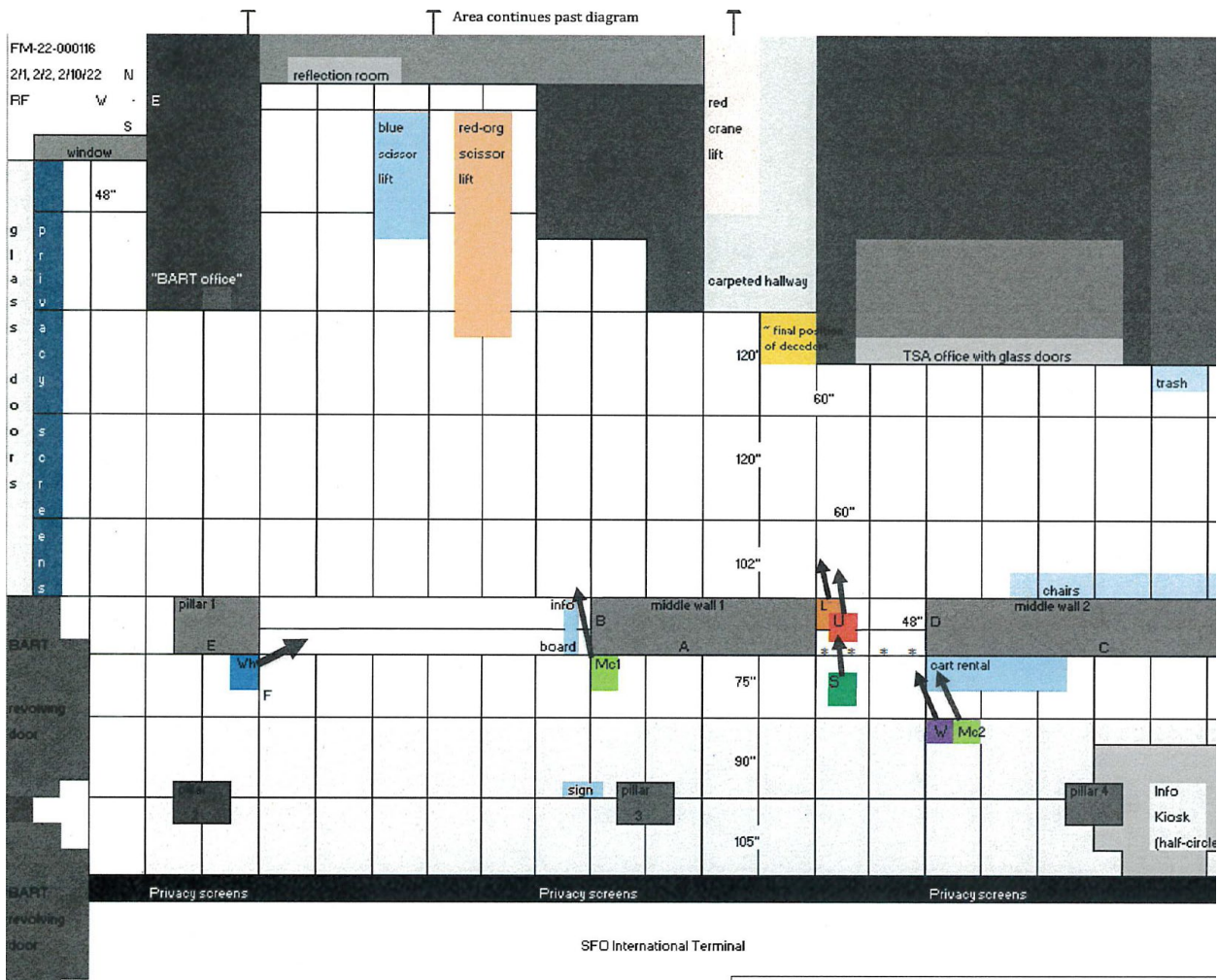


Figure 15 - Diagram of incident scene



Figure 16 - Photo of an area of incident scene

The OIS occurred during daylight hours on a Thursday when the airport was open to the public. The elapsed time between the officers' first contact with Mr. Szeto and the fatal shooting was approximately 43 minutes.

Incident Scene Evidence Recovery

Evidence located at the incident scene was processed by personnel from the San Mateo County Sheriff's Office Forensic Laboratory (SMCSO FL). Personnel from the DOJ Bureau of Forensic Services (BFS) also responded to the incident scene and monitored the processing of the incident scene and collection of evidence, photographed the incident scene, and received items of evidence collected by SMCSO FL.

Airsoft Pistols and Knife

Item KW1

Two spring-loaded airsoft pistols, not firearms, were recovered at the scene of the incident. One of the pistols, labelled as "item KW1," was a 6 mm spring-powered airsoft pistol that looked like a Taurus 9 mm semi-automatic pistol. In addition to the similar design, item KW1 had easily visible Taurus markings on it similar to the model 92 line of Taurus semi-automatic pistol. The orange tip on item KW1 appeared to have been painted black. Only a small area of the orange coloring remained exposed.

This item was recovered from the floor near Mr. Szeto's body, close to Mr. Szeto's left hand.



[Item KW1 – “Forjas Taurus S.A. PT92AF.” Photograph was taken by the SMCSO Forensic Lab]

Figure 17 – Item KW1



The left side of item KW1.



A current Taurus 92 model from their website – a 9mm Luger caliber semi-automatic pistol. See printout for web page.



The right side of item KW1.



The same as above, current listing of a 9mm Taurus 92 firearm.

Figure 18 – Photos of Item KW1 and photos of the 9 mm Taurus

Item KW27

The other airsoft pistol, labelled as “item KW27,” was a 6 mm spring-powered airsoft pistol with a design similar to a Beretta 9 mm semiautomatic pistol. Several websites selling the same product as item KW27 market it as a “1:1 replica” of the Beretta 9 mm semi-automatic pistol. The orange barrel appeared to have been painted black. Only a small area of the orange coloring remained exposed. This item was recovered from the floor in the northwest corner of the corridor near the two hydraulic maintenance lifts by the Reflection Room.



[Item KW27 – “UKARMS M757.” Photograph was taken by the SMCSO Forensic Lab]

Figure 19 – Item KW27

Item KW29

A black knife, labeled “item KW29,” was recovered from the tire of one of the hydraulic maintenance lifts by the Reflection Room.



[Item KW29 – Knife. Photograph was taken by the SMCSO Forensic Lab]

Figure 20 – Item KW29

Firearms and Ballistics Evidence

DOJ BFS examined and analyzed cartridge cases collected at the incident scene by San Mateo County Sheriff’s Office Forensic Lab personnel and determined the following:

- Four .40 S&W caliber cartridge cases were fired in Officer Whitney’s pistol
- Four .223 Remington caliber cartridge cases were fired in Officer Uang’s rifle
- Two .223 Remington caliber cartridge cases were fired in Officer Wakayama’s rifle
- Eleven .223 Remington caliber cartridge cases were fired in Officer Lim’s rifle.

DOJ BFS examined and analyzed bullets and bullet fragments that San Mateo County Sheriff’s Office Forensic Lab collected from the autopsy of Mr. Szeto and from the incident scene. DOJ BFS determined that the “result of the comparison of the bullets from autopsy and the incident scene were inconclusive”:

- Two .223 caliber bullets collected from the autopsy may have been fired from Officer Uang's rifle.
- Another .223 caliber bullet collected from the autopsy was likely fired from Officer Wakayama's rifle.
- One .40 caliber bullet collected from the incident scene was highly likely fired from Officer Whitney's pistol.
- One .223 caliber bullet collected from the incident scene could have been fired from any of the officer's rifles.
- Two bullet fragments collected from the autopsy were unsuitable for comparison.
- One bullet fragment collected from the incident scene was not suitable for comparison.

Body-Worn Camera & Surveillance Camera Footage

Involved officers, Specialists Lim, Uang, and Wakayama, had assigned BWCs, which were activated at the time of the incident and provided video and audio recording of the officer's response to the incident notification, scene, and Mr. Szeto's actions. Each officer wore his BWC on his chest and activated the BWC as he responded to the scene. Each BWC captured the incident from the position of the involved officer.¹⁴

SFPD officers assigned to SFO, including Officer Whitney, were not assigned BWCs.

SFO and BART surveillance camera footage showed Mr. Szeto's movements on BART, in SFO, and on the SFO Air Train.

The BWC and the SFO and BART surveillance camera footage were reviewed by Video, Image & Audio Analyst Justin Rosander of JSM Forensics to determine "who fired the first two lethal rounds; timing correlation between Mr. Szeto's actions and when shots were fired; and timing correlation between deployment of the less than lethal projectile through the last deployment of lethal gunfire." Based on his analysis, Analyst Rosander formed the following opinions:

- Specialist Lim "fired the first two lethal rounds."
- The "first lethal shot was fired approximately 583ms [milliseconds] after the Subject [Mr. Szeto] began to step forward and revealed what appeared to be a firearm, with a minimum time value of 434ms and a maximum value of 732ms."

¹⁴ The other Specialists also had assigned BWCs, which were activated. The exception was Specialist Edgerson who activated his BWC upon arrival at SFO. However, Specialist Edgerson reported that when he retrieved his rifle and helmet from the rear of the vehicle, his "camera was deactivated unknown to me by my rifle." Due to the danger presented by the incident he was responding to and the speed with which events were unfolding, Specialist Edgerson did not check to see if his BWC was on as he ran into the airport. He observed that his BWC was not on when he was providing medical treatment to Mr. Szeto after the OIS had occurred. When he observed that his BWC was not on, Specialist Edgerson immediately notified Sergeant Pavel Khmarskiy that his BWC was off during the incident.

- The volley of lethal gunfire “proceeded approximately 528ms after the Subject [Mr. Szeto] began to raise what appeared to be a firearm in the general direction of the officers, with a minimum time value of 379ms and maximum value of 677ms.”
- “The total duration time from when the less than lethal projectile was fired, until the last lethal shot was fired, equals approximately 7sec 992ms.”

Communications

Copies of dispatch calls, 911 calls, radio communications, Computer-Aided Dispatch (CAD) logs/records, and Specialist Team message notifications were obtained and reviewed.

Photographs

San Mateo County Sheriff’s Office Forensic Lab personnel photographically documented the involved officers wearing the uniform and equipment the involved officers had on during the incident. DOJ BFS personnel took digital photographs of the incident scene.

Social Media

On January 31, 2022, at 3 PM, SFPD held a Virtual Town Hall Meeting to update the community on the OIS. The meeting lasted three hours and showed some of the BWC and surveillance camera footage: <https://www.youtube.com/watch?v=wtFfsd-vwZ0>.

Autopsy

On January 23, 2022, Forensic Pathologist Michael Hunter, M.D., of the San Mateo County Coroner’s Office (SMCCO), conducted an autopsy of Mr. Szeto at the San Mateo Medical Center located at 222 West 39th Avenue, San Mateo, California. The cause of death was determined to be multiple gunshot wounds in the following locations:

- Gunshot wound A of the left temporal scalp. No projectile material was recovered.
- Graze wound B of the mid right chest. No projectile material was recovered.
- Gunshot wound C of the inferior right chest. No projectile material was recovered.
- Gunshot wound D of the mid right abdomen. No projectile material was recovered.
- Gunshot wound E of the distal anterior left thigh. No projectile material was recovered.
- Gunshot wound F of the upper anterior left thigh. No projectile material was recovered.
- Gunshot wound G of the anterior medial right thigh. “The projectile perforates the soft tissues of the lower right thigh and impacts the distal right femur where projectile fragments are recovered, subsequently photographed, and placed into properly labeled evidence contained ‘projectile from lower right thigh’.”
- Gunshot wound H of the proximal anterior medial right thigh. “The projectile perforates the anterior right thigh and the proximal right femur and comingles with projectile fragments in the area of the right pelvis and proximal right femur (partially recovered).”

- Gunshot wound I of the lower right abdomen. No projectile material was recovered.
- Gunshot wound J of the lower left abdomen. No projectile material was recovered.
- Gunshot wounds K of the anterior lateral left arm. No projectile material was recovered.
- Gunshot wound L of the anterior left arm. No projectile material was recovered.
- Gunshot wound M of the inferior right abdominal wall. No projectile material was recovered.
- Gunshot wound N of the superior left abdominal flank. Projectile was recovered.
- Gunshot wound O of the superior left abdominal flank. No projectile material was recovered.
- Gunshot wound P of the superior anterior medial left shoulder. No projectile material was recovered.
- Gunshot wound Q of the mid lateral left chest. No projectile material was recovered.

The toxicology test did not detect ethanol or controlled or illicit substances.

The Coroner’s Office also reviewed Mr. Szeto’s medical records from San Francisco General Hospital, which were reported to indicate the following: On December 21, 2021, Mr. Szeto was treated in the emergency department with complaints of “feeling like a radio frequency” was “stuck in his throat” and that Mr. Szeto believed “someone was turning up the radio frequency.” “Szeto denied suicidal history and homicidal history. Clinical impressions note paranoia and schizophrenia.”

Interviews of Involved Police Officers

There were four officers who fired lethal rounds at Mr. Szeto. Each officer was interviewed. The interviews described the incident from the point of view of the individual officers. The interviews contained facts relayed by the officers that may be inaccurate or inconsistent with the facts of this incident as they are currently understood. The following are summaries of these interviews.

SFPD Specialist Oliver Lim

On February 10, 2022, Specialist Oliver Lim gave a voluntary statement. DOJ Special Agents H. Nelsen and R. Knippschild conducted the interview. Officer Lim’s attorney, Scott Burrell, was present in person. The following persons attended the interview remotely, through an audio link: DOJ Special Agent in Charge J. Teague, DOJ Special Agent Supervisor T. Brass, DOJ Deputy Attorney General M. McCarthy; SFPD Internal Affairs (IA) Lieutenant David Do, SFPD IA Sergeant Louie Benavidez, Department of Police Accountability (DPA) Attorney Sara Maunder, and DPA Investigator Ellen Dolese.

Prior to the interview, Specialist Lim indicated that he reviewed portions of the BWC and surveillance camera footage that was made public at the SFPD Virtual Town Hall Meeting on January 31, 2022.

At the time of the OIS, Specialist Lim was 37 years old and was an SFPD police officer. He had been in law enforcement with SFPD for fifteen years. He had also been on the SFPD Specialist Team since 2014.

The Specialist Team was a special operations group in SFPD. SWAT was another separate operations group in SFPD. The Specialist Team was a part-time assignment. Everyone on the Specialist Team also had a primary assignment. The Specialist Team's mission is containment. The Specialist Team received extra training and equipment (e.g., 40 mm extended-range impact weapons (ERIW), AR-15 rifles) to respond to high-risk incidents such as barricaded suspects and hostage situations. The Specialist Team had a messaging app for the specific purpose of communicating with each other during critical incidents.¹⁵

On the day of the incident, Specialist Lim started his shift at 6:00 AM, on patrol. That morning, Specialist Lim was notified through the messaging app by Specialist Manrique (who was assigned at SFO) that there was a subject with a gun at SFO. The incident became a declared critical incident, and Specialist Lim messaged that he was responding. Specialist Lim arrived at SFO, geared up, and grabbed his rifle and not his 40 mm because the notification was of a person armed with a gun. He met with Specialist Manrique and got a quick rundown of what was going on and direction regarding where the incident was located. Specialist Lim partnered with Specialist Uang, walked to the incident area, relieved an SFPD airport officer, and took a position on the east-side of middle wall 1. Directly in front of him was the entrance to a hallway. When Specialist Lim got to the incident area, he was told that in the hallway there was likely a civilian sheltering in place. To the west of the hallway entrance were two hydraulic lifts. Specialist Lim could see Mr. Szeto pacing back and forth behind these two lifts. Through his magnified optic, Specialist Lim saw that Mr. Szeto had what appeared to be two guns in his hands. Specialist Lim knew that another officer was talking to Mr. Szeto, and Specialist Lim knew Mr. Szeto was responding, but he could not make out the details of what was being said.

At one point, Specialist Lim saw Mr. Szeto put down one gun. Then Specialist Lim heard a lot of yelling from other officers that made him believe that Mr. Szeto was doing something that escalated the situation. Specialist Lim saw that Mr. Szeto was still holding a gun in his left hand and pressing the barrel of the gun against his thigh. Specialist Lim believed Mr. Szeto's actions looked very deliberate.

Specialist Lim saw Mr. Szeto moving toward Specialist Lim and the other officers, which concerned Specialist Lim because Mr. Szeto was almost in front of the hallway where Specialist Lim believed a civilian to be sheltering. Specialist Lim did not want things to turn into a hostage situation. Specialist Lim was concerned also because he did not know where the hallway led and believed it could lead to the rest of the airport or even to the airport exterior where runways were located. Specialist Lim was also concerned about the empty space to the east of the hallway entrance and believed the area led to the rest of the airport terminal. Specialist Lim wanted to get Mr. Szeto away from the hallway so that the officers could try to deescalate. Specialist Lim ordered Mr. Szeto to move away, but Specialist Lim did not want to talk too much because Specialist Lim wanted the lead negotiator to talk to Mr. Szeto.

Specialist Lim heard officers coming up to the right of him. Specialist Lim stated "we need a 40." Specialist Lim wanted a less than lethal round deployed because he saw that Mr. Szeto "broke the threshold of the hallway" and "now he could go left and into the hallway." Specialist Lim wanted to try to get Mr. Szeto to go back to the contained area. Specialist Lim heard and saw a less-lethal round¹⁶ deployed and hit Mr. Szeto with no effect on Mr. Szeto. About a second later, Specialist Lim saw Mr. Szeto take a step forward and that Mr. Szeto "kind of swing[] the gun around the left side and start[] bringing it up in front of him," which Specialist Lim recognized as "someone that's punching out and taking a shot." At this time, Specialist Lim fired his rifle at Mr. Szeto aiming at center mass because Specialist Lim was scared that Mr. Szeto was

¹⁵ See also fn. 5.

¹⁶ Also often referred to as "ERIW, 40, or 40 mm."

going to shoot either Specialist Lim, or more likely, the officer that just “40’d” Mr. Szeto. Specialist Lim stopped shooting when he saw Mr. Szeto fall to the floor.

Specialist Lim then saw that Mr. Szeto fell into a sitting position but was still holding the gun in his left hand. Specialist Lim yelled “drop the gun, drop the gun, drop the gun” because Specialist Lim did not know if the other officers knew that Mr. Szeto still had the gun on him, and Specialist Lim wanted to make the other officers aware that Mr. Szeto still had the gun. Specialist Lim then saw Mr. Szeto raise the gun towards Specialist Lim. Specialist Lim saw a round barrel pointed at him and thought Mr. Szeto was going to shoot him. This was why Specialist Lim fired his rifle in the subsequent volley of lethal rounds. After a couple of rounds, Specialist Lim felt “something impact” to his left and thought Mr. Szeto had gotten “a round off at” him that hit the wall, and Specialist Lim thought Mr. Szeto was shooting at him. So, Specialist Lim fired until he saw Mr. Szeto drop and the gun fall out of Mr. Szeto’s hand. Specialist Lim aimed center mass when he shot. Specialist Lim stopped firing during this volley of lethal rounds when he saw that Mr. Szeto was lying on the floor, not moving, not holding onto the gun anymore, and thus, not an imminent threat.

Specialist Lim yelled “Barrel’s down, barrel’s down,” to convey that the gun was out of Mr. Szeto’s hand. Specialist Lim went down the hallway to see if he could find the person sheltering in place and to see if that person had been shot. Specialist Lim located W-3, who had been injured. Specialist Lim then checked the rest of the hallway and checked to see if anyone else had been hit by gunfire.

Specialist Lim had asked Specialist Uang about the “backdrop” during the incident because Specialist Lim knew that he (Specialist Lim) had tunnel vision on Mr. Szeto’s hands, and Specialist Lim was concerned that there might be civilians down the hallway behind Mr. Szeto. Specialist Lim wanted to make sure that if he fired, he would not hit anyone else. Specialist Uang told Specialist Lim that the backdrop was good.

Specialist Lim had said “we need a 40” during the incident because he wanted other officers to use a less-lethal round to contain Mr. Szeto to avoid escalating the situation. Specialist Lim was concerned that the hallway might lead to the rest of the terminal and that if Mr. Szeto went down the hallway, the officers would lose control over the situation.

SFPD Specialist Steven Uang

On February 10, 2022, Specialist Steven Uang gave a voluntary statement. DOJ Special Agents H. Nelsen and R. Knippschild conducted the interview. Officer Uang’s attorney, Mike Hinckley, was present in person. The following persons attended the interview remotely, through an audio link: DOJ Special Agent Supervisor T. Brass, DOJ Deputy Attorney General M. McCarthy, SFPD Internal Affairs (IA) Sergeants Cristina Franco and Inspector Samson Chan, Department of Police Accountability (DPA) Attorney Sara Maunder, and DPA Investigator Ellen Dolese.

Prior to the interview, Specialist Uang indicated that he reviewed portions of the BWC and surveillance camera footage that was made public at the SFPD Virtual Town Hall Meeting on January 31, 2022.

At the time of the OIS, Specialist Uang was 50 years old and was an SFPD police officer. He had been in law enforcement with SFPD for sixteen years. He had also been on the SFPD Specialist Team since 2009, and he was a sniper on the Specialist Team.

On the day of the incident, Specialist Uang started his normal shift at 6:00 AM, on patrol. He received notification of the incident at SFO and responded. When Specialist Uang got to SFO, he quickly switched out his gear, grabbed his rifle, and went to the terminal. Specialist Uang was directed to where the incident was occurring and saw that two Specialists had taken position already and that he (Specialist Uang) was probably the third or fourth Specialist to arrive on scene. Someone was already verbally engaging Mr. Szeto and attempting to build rapport and negotiating with Mr. Szeto. Specialist Uang and another Specialist (Lim) partnered up and took a position on the east-side of middle wall 1 with the idea to contain the incident as much as possible. They replaced the SFPD airport officers in position and received a quick briefing from the airport officers.

Specialist Uang saw that Mr. Szeto had a handgun in each hand and that Mr. Szeto's arms were down to his side. The handguns were held "to his back" where the rear pockets would be on his pants. Mr. Szeto was walking back and forth slowly.

Specialist Uang "pulled back" to see what other areas of containment needed to be addressed. Specialist Uang spoke to Lt. Hara briefly who told Uang that there were people sheltering in place further down the hallway and that there was no way for the sheltering people to get out at the time. Lt. Hara mentioned that there was possibly an unhoused person back in the hallway behind a lift who had to shelter in place too, because the responding officers could not get to that person. Specialist Uang then returned to his partner, Specialist Lim, and relayed the information regarding the people sheltering in place. Specialist Lim asked Specialist Uang for a shield, which Specialist Uang provided to Specialist Lim.

The negotiation was continuing, and then Mr. Szeto put the handgun that was in his right hand down on the floor. Mr. Szeto then stood up and reached back down as if to pick the handgun back up. When Mr. Szeto was reaching back down, the officers told Mr. Szeto, "Don't do that. Don't do that." Mr. Szeto stood up without the handgun, but he still had the other handgun in his left hand. Mr. Szeto then walked from behind the yellow, plastic, work zone barrier in front of the hydraulic lifts toward the officers, and an officer ordered Mr. Szeto, "Don't walk forward. Don't walk forward' or something to that effect." Mr. Szeto did not comply with that order and appeared to move slowly and deliberately. At this point, at least one less-lethal round was fired. Then, Mr. Szeto walked slowly toward the area in front of Specialists Uang and Lim and stopped in front of the hallway entrance. At this point, Specialist Uang thought, "He's awfully close." Specialist Uang started calling for less-lethal support. At this time, more Specialists showed up. Officers were calling at Mr. Szeto, "Hey, stop. Stop. Don't walk forward."

Then, another less-lethal round was fired, which made contact with Mr. Szeto's leg. As this happened, Specialist Uang remembered Mr. Szeto's left arm coming out to his (Mr. Szeto's) side and Specialist Uang saw the handgun in Mr. Szeto's hand. Specialist Uang saw the handgun start coming to the front of Mr. Szeto's body, and then Specialist Uang heard two gunshots. Specialist Uang recalled that then, Mr. Szeto transferred the gun from his (Mr. Szeto's) left hand to his right hand and started to raise the gun towards Specialists Uang and Lim. As the gun was coming up, Specialist Uang realized that he (Specialist Uang) along with everyone around him was facing a threat. Specialist Uang then raised his rifle and shot twice, aiming at center mass, and Mr. Szeto fell to the floor with the gun still in his (Mr. Szeto's) right hand. Mr. Szeto was then lying down with the gun across his body and still in his (Mr. Szeto's) right hand. Specialist Uang could see right down the muzzle and could see that the gun was still pointed at him (Specialist Uang) and Specialist Lim. At this point, Specialist Uang fired at Mr. Szeto's head because the previous shots to center mass were ineffective. This was Specialist Uang's last shot because he (Specialist Uang) saw Mr. Szeto's body "went limp" and was motionless. Specialist Uang perceived the threat to be over and did not fire any more rounds.

During the incident, Specialist Uang believed that the guns Mr. Szeto was holding were real firearms based on their appearance and the way Mr. Szeto handled them. At the time Specialist Uang fired lethal rounds, Specialist Uang believed that if he did not shoot, Mr. Szeto would have shot him, another officer, or someone in the background.

SFPD Specialist David Wakayama

On February 1, 2022, Specialist David Wakayama gave a voluntary statement. DOJ Special Agents H. Nelsen and C. Hansen conducted the interview. Officer Wakayama's attorney, Christopher Shea, was present in person. The following persons attended the interview remotely, through an audio link: DOJ Special Agent Supervisor T. Brass, DOJ Deputy Attorney General M. McCarthy, SFPD Internal Affairs (IA) Sergeants Cristina Franco and Aaron Foltz, Department of Police Accountability (DPA) Attorney Stephanie Wargo-Wilson, and DPA Investigator Ellen Dolese.

Prior to the interview, Specialist Wakayama indicated that he reviewed portions of the BWC and surveillance camera footage that was made public at the SFPD Virtual Town Hall Meeting on January 31, 2022.

At the time of the OIS, Specialist Wakayama was 50 years old and was an SFPD police officer. He had been in law enforcement with SFPD for twenty years. Specialist Wakayama was also on the SFPD Specialist Team.

The Specialist Team was a special operations group in SFPD. SWAT was another separate operations group in SFPD. The Specialist Team was a part-time assignment. Everyone on the Specialist Team also had a primary assignment. The Specialist Team's mission was perimeter containment: when a critical incident is declared (e.g., armed suspect), Specialists will respond to the scene, relieve station officers from the perimeter and move them back to an outer perimeter. Specialists will be the inner perimeter, i.e., as close to the scene as possible to observe and help the hostage negotiation team establish communication. The Specialist Team contained the inner perimeter until the tactical team, SWAT, can get there to make entries.

On the day of the incident, Specialist Wakayama started his normal shift at 6:00 AM. Specialist Wakayama was at the station doing computer work when he received notification of the incident at SFO by text through the Specialist Team's group messaging app. The notification said there was a report of a man with two guns in the International Terminal at SFO, and Specialist Wakayama responded. When Specialist Wakayama arrived at SFO, he grabbed his equipment and met Specialist Manrique who pointed to where Mr. Szeto was located and gave a quick rundown. As directed, Specialist Wakayama started hanging and taping tactical command post paperwork on a nearby building pillar, and when he was almost done, Specialist Wakayama heard the deployment of a less-lethal round. With another officer, Specialist Wakayama ran to the incident area where he saw Mr. Szeto standing outside the entrance of a hallway. Specialist Wakayama saw Specialist McMaster to his right holding a less-lethal weapon. So, Specialist Wakayama went to his right to be Specialist McMaster's lethal cover. Specialist Wakayama heard an officer say that Mr. Szeto "still has either a weapon or he has a gun. It's in his left hand. He's holding it behind his back." Specialist Wakayama could see Mr. Szeto had his left hand behind his (Mr. Szeto's) back and his right hand by his (Mr. Szeto's) side with nothing in the right hand.

Specialist McMaster gave the red-light warning for a less-lethal round and a command saying, “go to your right or I’m going to hit you again’ or something like that.” Specialist Wakayama heard another red light warning and then Specialist Wakayama heard the less-lethal round fired. Specialist Wakayama saw Mr. Szeto’s pants ruffle from the less-lethal round. Specialist Wakayama then saw Mr. Szeto stand straight back up with a “really odd stare,” take a step forward, and bring “the gun out his left hand from behind his back.” Specialist Wakayama “could see what he recognized as a handgun” that he thought was a Berretta. Mr. Szeto “took one more step forward and he took a step forward. He [Mr. Szeto] began raising the handgun and I believe at that time, he was an immediate threat and was probably going to shoot at us and try to kill us so I --- that’s when I fired.” Mr. Szeto was pointing the gun in the direction of the officers to his (Specialist Wakayama’s) left “who were probably more directly in line of sight with [Mr. Szeto], like standing probably directly --- almost directly in front of him.” Specialist Wakayama believed Mr. Szeto “was going to shoot and kill us” if Specialist Wakayama had not taken a shot at that time. Specialist Wakayama “recognized the shape of the handgun because we used to carry Berettas when I first got in the department. It’s got a very distinct shape and I remember thinking ... that’s a Berreta. That’s a Beretta.”

Specialist Wakayama saw Mr. Szeto turn and go down. Specialist Wakayama thought, “did he get rounds off and is anybody hurt?” Specialist Wakayama glanced up really quickly at Specialist McMaster and also looked down at himself really quickly to see if he got shot. When Specialist Wakayama looked back up, Mr. Szeto was sitting up. Specialist Wakayama could see the gun coming up again and that is when Specialist Wakayama made the decision to fire some more rounds, and he (Specialist Wakayama) stopped shooting when Mr. Szeto went down on his (Mr. Szeto’s) back. Specialist Wakayama then heard Specialist Lim yelling, “I see the gun, I see the gun’ and ‘it’s out of his hands’ or something like that.”

Prior to firing his weapon, Specialist Wakayama was not informed that there were people in the area other than Mr. Szeto.

SFPD Officer Erik Whitney

On February 2, 2022, Officer Erik Whitney gave a voluntary statement. DOJ Special Agents C. Hansen and H. Nelsen conducted the interview. Officer Whitney’s attorney, Christopher Shea, was present in person. The following persons attended the interview remotely, through an audio link: DOJ Special Agent Supervisor T. Brass, DOJ Deputy Attorney General M. McCarthy, SFPD Internal Affairs (IA) Sergeants Cristina Franco and Inspector Samson Chan, Department of Police Accountability (DPA) Attorney Sara Maunder, and DPA Investigator Ellen Dolese.

Prior to the interview, Officer Whitney indicated that he reviewed portions of the BWC and surveillance camera footage that was made public at the SFPD Virtual Town Hall Meeting on January 31, 2022, and portions of airport surveillance camera footage. At the time of the incident, as an SFPD officer assigned to SFO, Officer Whitney was not assigned a BWC.

At the time of the OIS, Officer Whitney was 53 years old and was an SFPD patrol officer assigned to SFO. He had been in law enforcement with SFPD for twenty-one years. He had been assigned to SFO since 2014 or 2015.

On the day of the incident, Officer Whitney started his normal shift at 6:00 AM at the International Terminal of SFO. Dispatch notified Officer Whitney of a suspicious person in the International G area

with his hands in his pockets “maybe holding something.” So, Officer Whitney and his partner responded on foot from the 5th floor to the identified location. When Officer Whitney and his partner were by the “G food court area,” two bicycle units merged with them, and they walked and the bicycle units rode to the “front area of the International G side.” As they did, Officer Whitney saw “a Covenant employee” who confirmed that he had put in the call about a suspicious person. At this time, Officer Whitney saw Officer Lee, one of the bicycle units, on the far side of the Information Booth, get off his bike and make contact with an individual that was “described by Dispatch” and later determined to be Mr. Szeto. Officer Whitney started to walk in that direction when Officer Lee yelled “gun” and backed away from Mr. Szeto toward cover.

Officer Whitney saw the gun that Mr. Szeto had in his hand. Mr. Szeto started to walk behind the Information Booth in the direction toward BART. Officer Whitney started to “parallel him” to keep an eye on Mr. Szeto, and Officer Whitney saw Mr. Szeto had a gun in one hand and a knife in the other. Officer Whitney then “radioed Dispatch 221, Code 33” and advised that Mr. Szeto had a knife. Officer Whitney yelled at the civilians coming from the BART entrance/exit “get back – get back,” and Officer Whitney moved to a building pillar close to Mr. Szeto and BART to prevent Mr. Szeto from going into BART. Officer Whitney was on the BART side of the pillar and could see Mr. Szeto with a gun and a knife. Officer Whitney tried to start a dialogue with Mr. Szeto. Some time after Officer Lee yelled “gun” and before Officer Whitney saw Mr. Szeto’s gun and knife, Officer Whitney had pulled out his own gun. Officer Whitney started speaking to Mr. Szeto, asking Mr. Szeto for his name and where he lived. Officer Whitney and other officers asked Mr. Szeto what was wrong and offered to get Mr. Szeto medical help. Mr. Szeto responded that it was too late and that they could not help him. During this time, Officer Whitney told Mr. Szeto to move back when Mr. Szeto “approached too close,” and Mr. Szeto would move back. Officer Whitney and the other officers engaged Mr. Szeto and tried to have Mr. Szeto drop the gun and the knife. Mr. Szeto asked for a negotiator, and Officer Whitney requested a negotiator from Dispatch.

At one point, Mr. Szeto put down his knife and pulled out another gun with his other hand. Officer Whitney advised on the radio that Mr. Szeto had two guns. Officer Whitney believed both guns to be black, semiautomatic pistols.

At some point, a detective from the San Mateo County Sheriff’s Office arrived and started verbally engaging with Mr. Szeto. Also, a BART officer was behind Officer Whitney at some point, and Officer Whitney told the BART officer to lock the BART doors. Officer Whitney dispatched for the bathrooms to be cleared. At some point, an officer brought Officer Whitney a shield, and Sgt. Lam and Lt. Hara advised Dispatch that the incident was a critical incident. At one point, Officer Whitney had asked Dispatch for an ambulance to stage outside. Then, the Specialists arrived and replaced the SFPD airport officers. The Specialists talked with Mr. Szeto, trying to “have” Mr. Szeto drop the gun. Mr. Szeto put down the knife at one point. Mr. Szeto had two guns, and he put down one gun at one point and then picked it up again.

Officers told Mr. Szeto to move back. Then, Mr. Szeto would “walk closer” again, and at some point, a less-lethal round was fired, which did not have any effect on Mr. Szeto. Then, Mr. Szeto moved closer to the hallway entrance, and an officer yelled that if Mr. Szeto moved past a certain line, the officer was going to hit Mr. Szeto with a less-lethal round again. The officer “called out” less-lethal and deployed it, and the less-lethal round did not have any effect on Mr. Szeto.

Officer Whitney then heard the discharge of lethal rounds. From his angle, Officer Whitney could not see the physical circumstance surrounding the discharge of lethal rounds. Mr. Szeto “went down.” Officer Whitney could see that Mr. Szeto “was kind of on his side with his back towards the wall, so I could see the front of him,” and Mr. Szeto’s “front side was sort of, kind of like in my direction and then I saw him grab or hold the firearm in his hand and he started to stretch it out towards the officers.” Officer Whitney continued to state that he “saw a firearm in his right hand, and he stretched it out toward the officers.” Officer Whitney believed Mr. Szeto was going to shoot at the officers with the gun. Officer Whitney shot a lethal round at this point because he (Officer Whitney) feared for the life of the other officers since Mr. Szeto’s gun “was pointed towards the other officers when he [Mr. Szeto] purposely stretched out his arm with the firearm, pointing towards those officers.” Officer Whitney “made a decision to discharge my firearm to try to reduce the threat of him harming other officers.” Officer Whitney stopped shooting because Officer Whitney heard an officer yell “something like cease fire or stop.” Officer Whitney stated that “after the shots happened and then there was get the medics,” Officer Whitney remembered telling one of the Specialists “two guns, one knife” to make sure the Specialists knew that Mr. Szeto had two guns and one knife.

Interviews of Civilian Witnesses

Numerous civilian witnesses, including W-3 (a bystander who suffered a gunshot wound in the incident), were interviewed by DOJ investigators. The following are summaries of the relevant civilian witness interviews, which describe the incident from the point of view of each person. The interviews contain facts relayed by the witnesses that may be inaccurate or inconsistent with the facts of this incident as they are currently understood. Also included below are summaries of the interviews of Mr. Szeto’s mother and brother.

W-3

On January 20, 2022, at 11 AM, W-3 was interviewed by DOJ Special Agents E. Coats and V. Rotberg.

On January 20, 2022, at approximately 2:00 AM, W-3 entered a hallway in the International Terminal and went to sleep there. W-3 awoke to hearing police officers tell someone to “put the gun down.” W-3 saw several SFO employees enter a set of secured doors in the hallway. W-3 attempted to go through the doors as well, but the employees refused access to W-3 and directed W-3 back into the hallway. W-3 laid back down on the floor in a prone position and took “cover” behind a hydraulic maintenance lift parked along the west-side of the hallway. W-3 indicated he did not believe he would get shot and stated, “That bullet found me.”

W-3 recalled hearing Mr. Szeto provide his name to the police officers and heard Mr. Szeto tell the officers it was “too late.” Although he did not see it “very good,” W-3 believed Mr. Szeto had “two big, black things,” which W-3 believed were guns. W-3 recalled hearing one gunshot followed by approximately four more, which is when W-3 sustained the wound to his leg. W-3 indicated he believed “SWAT” shot him. W-3 indicated he heard someone say, “good shot, good shot,” after the gunfire erupted. W-3 saw police officers administering CPR to Mr. Szeto.

W-1

On January 21, 2022, W-1 was interviewed by DOJ Special Agents A. Powell and V. Rotberg.

W-1 was employed as a supervisor with Covenant Aviation Security and was assigned to the International Terminal, Checkpoint G, at SFO. On January 20, 2022, W-1 was advised by an SFO patron

that a male subject was exhibiting suspicious behavior. The SFO patron directed W-1 to the subject (later identified as Mr. Szeto). W-1 contacted Mr. Szeto and noted Mr. Szeto had his left hand "hanging by his side" and his right hand holding his midsection against his jacket as if he was "holding something." W-1 noted Mr. Szeto had no luggage with him and had no visible ticket either. W-1 asked Mr. Szeto if he was flying out and Mr. Szeto indicated he was not. W-1 described Mr. Szeto posture as "rigid." W-1 stated that Mr. Szeto's right hand was not moving and his left hand remained by his side as if Mr. Szeto was carrying something. W-1 became concerned about Mr. Szeto. So, W-1 maintained sight of Mr. Szeto and requested a law enforcement response.

Upon the arrival of law enforcement officers, who subsequently had Mr. Szeto at "gunpoint," W-1 notified his supervisor and worked to evacuate and shut down Checkpoint G and the nearby food court area.

W-4

On January 24, and February 7, 2022, W-4 was interviewed by DOJ Special Agent A. Samano.

W-4 and his wife, W-5, arrived at SFO on January 20, 2022, at approximately 7:10 AM to board a flight to Mexico. W-4 and W-5 checked in, checked luggage, and entered the security line. As W-4 entered the security line, W-4 saw a subject (later identified as Mr. Szeto) "sneaking" into the security line in front of him. Mr. Szeto had his hands "deep" in his sweatshirt, holding something. W-4 observed a "bulk" on the left side of Mr. Szeto's sweatshirt.

Mr. Szeto reached into the sweatshirt and appeared to adjust something. W-4 stated, "It was a strange thing he was doing." W-4 became concerned about Mr. Szeto. So, W-4 and W-5 (who had also noticed Mr. Szeto) exited the security line. W-4 believed Mr. Szeto began to look at W-4 and W-5 and possibly follow them. So, W-4 and W-5 ran outside.

W-4 and W-5 contacted multiple SFO/TSA employees and reported that they believed Mr. Szeto might have a gun. W-4 and W-5 were directed to report the information to SFO through the white phones. W-4 called SFO Dispatch through a white phone and reported his concerns. W-4 and W-5 eventually got back into the security line and boarded their plane. As they were going through the security process, TSA closed the security line and advised patrons there was an "active situation" occurring. W-4 heard police sirens but did not hear or see anything further related to the incident.

W-5

On February 7, 2022, W-5 was interviewed by DOJ Special Agent A. Samano.

W-5 and her husband, W-4, arrived at SFO on January 20, 2022, at approximately 07:10 AM and checked in for their flight to Mexico. W-5 and W-4 entered the security area and asked an employee where the CLEAR line was located. The employee directed W-5 and W-4 to the CLEAR line, and W-5 noted the CLEAR line was not attended to by an employee. W-5 noticed that a male subject (later identified as Mr. Szeto) was trying to get into the security line but had not been "CLEAR checked" because there was no employee to conduct the check. W-5 noticed that Mr. Szeto had his left hand in his pocket, and it appeared Mr. Szeto was carrying "something in that pocket."

W-5 indicated that the combination of Mr. Szeto sneaking into the security line, Mr. Szeto's hand secreted in his pocket, and Mr. Szeto's general mannerisms concerned her. W-5 and her husband exited the security line, and as they did, W-5 looked back and saw Mr. Szeto give a "thumbs up,"

which she felt was possibly directed to someone in the security line. W-5 and her husband exited SFO, re-entered through another door, and immediately reported their concerns to an SFO ticket agent. W-5 stated they told the ticket agent that the subject might be "carrying a gun."

W-2

On January 26, 2022, W-2 was interviewed by DOJ Special Agents A. Powell and E. Coats.

W-2 worked as an enrollment agent at the TSA PreCheck office in the International Terminal. On January 20, 2022, at approximately 7:30 AM, W-2 had just clocked in at her office. W-2 and her co-worker, W-6, were getting ready to open their office doors when W-6 shouted to W-2, "Get down, get down, there's a man outside with a gun!" W-2 initially thought W-6 was joking. W-2 looked through the glass door and saw an officer with his gun drawn and heard the officer say, "Drop your weapon, drop your weapon!" W-2 immediately "ducked for cover" in the office and remained hidden for the duration of the incident. W-2 heard the officers "repeatedly" tell the person with the gun, "Drop your weapon, drop your weapon. We can help you. Drop your weapon."

W-2 called 911 and advised there was a man outside the office who had a gun. The dispatcher reportedly told W-2 to remain hidden in the office and advised W-2 not to make noise. After contacting 911, W-2 called her manager, W-7, and W-2 remained on the call throughout the incident.

W-2 estimated the communications between law enforcement and the subject had gone on for approximately three to four minutes when W-2 heard "one shot go off," and approximately ten seconds later, W-2 heard "multiple shots went off right after that." W-2 then heard "Shield up, shield up."

When W-2 heard "normal conversations" outside the office, W-2 looked out the door and saw two officers putting crime scene tape up. W-2 waved to the officers, who immediately opened the door and asked if she and W-6 had been in the office the "whole time."

W-2 never saw the subject with the gun but could "vaguely" hear someone other than police officers talking. W-2 believed she heard the other voice saying, "No, no. I can't, I can't." W-2 indicated the other voices she heard during the incident were from the police officers.

W-6

On January 21, 2022, W-6 was interviewed by DOJ Special Agents A. Powell and E. Coats.

W-6 worked as an enrollment agent in the TSA PreCheck office in the International Terminal. On January 20, 2022, at approximately 7:30 AM, W-6 and her co-worker, W-2, were in their office getting ready to open their office doors. W-6 walked toward the doors (which are glass), and she saw a "gunman" in possession of a gun in his left hand.

W-6 told W-2, "W-2, hide! There's a gunman out here! Hide! Hide!" W-6 hid in the office and was "terrified." W-6 indicated she too called 911 to advise them of the situation and that she and W-2 were inside the office. After placing the call to 911, W-6 hid in the office and texted her husband.

W-6 heard "commotion going on," and "after a while," she heard two "shots" followed by a "bunch of other shots." W-6 explained she was "terrified" and was still upset by the incident. One of W-6's main concerns was that their office doors did not lock from the inside and the gunman could get into their office.

During the incident, W-6 heard the officers tell the subject, "Put the gun down, put the gun down" and heard the officers ask him his name. W-6 estimated the officers tried to communicate with the subject for approximately fifteen to twenty-five minutes before the shots. W-6 indicated she heard two shots, and seconds later she heard multiple shots.

W-8

On January 20, 2022, at approximately 11:30 PM, San Mateo County Deputy Coroner Investigator Laura Bailey contacted Mr. Szeto's mother, W-8, to notify her of the OIS and death of Mr. Szeto. W-8 was willing to talk and was interviewed by Investigator Bailey. Also present in person were DOJ Special Agent Supervisor T. Brass and Special Agent E. Coats.

W-8 stated that Mr. Szeto had a "disturbance" and had been hearing voices for approximately two to three months. W-8 indicated that Mr. Szeto believed someone had put a device in his throat and that Mr. Szeto had previously sought medical care and possibly mental health care at the San Francisco General Hospital. W-8 was unaware of an official mental health diagnosis. Mr. Szeto told his mother time was "running out." W-8 stated Mr. Szeto also told her he wanted to die on a nearly daily basis in the week prior to Mr. Szeto's death. Mr. Szeto never advised his mother of a specific plan to commit suicide. W-8 did not know Mr. Szeto to use drugs or alcohol.

W-9

On January 22, 2022, Mr. Szeto's brother, W-9, was interviewed by Special Agents E. Coats and V. Rotberg.

W-9 and Mr. Szeto were raised in the family home, in San Francisco, California. Following Mr. Szeto's completion of high school in 2002, Mr. Szeto enrolled in community college and earned an Associate's Degree. W-9 indicated Mr. Szeto may have been employed with a non-profit organization located in the Tenderloin District in San Francisco that served the "mentally ill" and "homeless population."

Mr. Szeto was prescribed "anxiety medication," but W-9 encouraged him not to take it because W-9 did not want Mr. Szeto to become dependent upon that medication. W-9 and Mr. Szeto had been talking about the "issues he [Mr. Szeto] was facing and if I can be of any help to him." Mr. Szeto was hearing "voices" telling him what to do and controlling him. Mr. Szeto often told his brother the "world was coming to an end soon" but never indicated he planned to harm himself.

W-9 last spoke with Mr. Szeto, by telephone, on the evening of January 19, 2022. They talked more about the "voices" Mr. Szeto had been hearing. W-9 encouraged Mr. Szeto to focus on the positive voices Mr. Szeto was hearing and not the negative voices.

Prior Contacts with Law Enforcement

Between March 2017, and December 2021, Mr. Szeto had three law enforcement contacts related to his mental health.

In March 2017, Mr. Szeto was contacted by the SFPD, after a citizen reported that Mr. Szeto was climbing a crane at a construction site. SFPD responded and noted Mr. Szeto had climbed up the crane, to approximately 500 feet in altitude without any safety gear or measures in place. The responding SFPD officer determined Mr. Szeto was a danger to himself due to a mental illness, and Mr. Szeto was transported to the San Francisco General Hospital- Psychiatric Emergency Services.

In June 2017, Mr. Szeto was contacted by the Daly City Police Department (DCPD) as a passerby reportedly saw Mr. Szeto trying to climb over a fence on an overpass over Highway 280. DCPD responded and ultimately took Mr. Szeto into custody. When asked why he had been trying to climb the fence on the overpass, Mr. Szeto reportedly told DCPD officers, "I don't know, suicide or something." Mr. Szeto denied being depressed at that time but told officers he had been diagnosed as schizophrenic.

In December 2021, SFPD officers contacted Mr. Szeto in response to a 911 call Mr. Szeto had placed, in which Mr. Szeto reported he had found a camera outside of his room. Mr. Szeto reportedly told the responding officers he was hearing multiple voices from unknown subjects, and one of the subjects had placed a camera outside of his 5th-floor apartment window. Mr. Szeto believed the camera was recording his actions, as the voices began to narrate his own actions to him. During the contact, Mr. Szeto reportedly told officers he had recently started hearing voices, but Mr. Szeto claimed he did not have suicidal ideations or desires to harm himself or others.

APPLICABLE LEGAL STANDARDS

Homicide is the killing of one human being by another. (*People v. Beltran* (2013) 56 Cal.4th 935, 941.) There are two types of criminal homicide, murder and manslaughter.

Murder

Murder is the unlawful killing of a human being with malice aforethought. (Pen. Code, § 187, subd. (a).) Murder is divided into first and second degrees. A willful, deliberate, and premeditated killing is murder of the first degree. (Pen. Code, § 189; *People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1332.)

Second degree murder is the unlawful killing of a human being with malice aforethought but without the additional elements of willfulness, premeditation, and deliberation that would support a conviction of first degree murder. (*People v. Knoller* (2007) 41 Cal.4th 139, 151.) The malice required for second degree murder may be express or implied. (Pen. Code, § 188; *Hernandez, supra*, 183 Cal.App.4th at p.1332.) Malice is express when there is an "intent to kill." (Pen. Code, § 188; *People v. Delgado* (2017) 2 Cal.5th 544, 571.) Malice is implied "when the killing results from an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his [or her] conduct endangers the life of another and who acts with conscious disregard for life." (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1215.)

A homicide may also be reduced to second degree murder if premeditation and deliberation are negated by heat of passion arising from subjective provocation. If the provocation precludes a person from deliberating or premeditating, even if it would not cause an average person to experience deadly passion, the crime is second degree murder. (*People v. Padilla* (2002) 103 Cal.App.4th 675, 678.)

Voluntary Manslaughter

Manslaughter is an unlawful killing without malice. (Pen. Code, § 192; *People v. Thomas* (2012) 53 Cal.4th 771, 813.) Several factors may preclude the formation of malice and reduce a killing that would otherwise be murder to voluntary manslaughter including: (1) heat of passion, and (2) imperfect self-defense. (*People v. Moye* (2009) 47 Cal.4th 537, 549.)

Imperfect self-defense is the killing of another human being under the actual but unreasonable belief that the killer was in imminent danger of death or great bodily injury and that the use of deadly force is necessary to defend against that danger. Such a killing is deemed to be without malice and thus

cannot be murder. (*People v. Cruz* (2008) 44 Cal.4th 636, 664.) The doctrine of imperfect self-defense cannot be invoked, however, by a person whose own wrongful conduct (for example, a physical assault or commission of a felony) created the circumstances in which the adversary's attack is legally justified. (*People v. Booker* (2011) 51 Cal.4th 141, 182.)

Self-Defense

A homicide is justified and lawful if committed in self-defense. Self-defense is a complete defense to a homicide offense, and, if found, the killing is not criminal. (*People v. Sotelo-Urena* (2016) 4 Cal. App.5th 732, 744.) When a person is charged with a homicide-related crime and claims self-defense, the prosecution must prove beyond a reasonable doubt that the homicide was not committed in self-defense. (*People v. Winkler* (2020) 56 Cal.App.5th 1102, 1167.)

Penal Code sections 196 *et. seq.* sets forth the law of self-defense in homicide cases. Penal Code section 196 provides that a homicide committed by a peace officer is justified when the use of force complies with Penal Code section 835a. (*Cf.* Pen. Code, § 197 [listing circumstances where homicide committed by “any person” is justifiable, which includes self-defense or the defense of others].)

Under Penal Code section 835a, an officer may use deadly force only when the officer “reasonably believes, based on the totality of the circumstances, that such force is necessary”: (1) “to defend against an imminent threat of death or serious bodily injury to the officer or to another person”; or (2) to apprehend a fleeing person who has committed a felony “that threatened or resulted in death or serious bodily injury,” and the officer “reasonably believes that the person will cause death or serious bodily injury” if not immediately apprehended. (Pen. Code, § 835a, subd. (c)(1); see Pen. Code, § 835a, subd. (a)(2) [peace officers may lawfully use deadly force “only when necessary in defense of human life”]; see *People v. Randle* (2005) 35 Cal.4th 987, 994 [self-defense arises when a person actually and reasonably believes in the necessity of defending against imminent danger of death or great bodily injury], overruled on other grounds by *People v. Chun* (2009) 45 Cal.4th 1172.)

To determine whether deadly force is necessary, “officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” (Pen. Code, § 835a, subd. (a)(2); *People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630 [“only that force which is necessary to repel an attack may be used in self-defense; force which exceeds the necessity is not justified” and “deadly force or force likely to cause great bodily injury may be used only to repel an attack which is in itself deadly or likely to cause great bodily injury”].)

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 to another person. (Pen. Code, § 835a, subd. (e)(2); see *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1305-1306 [imminent peril is “immediate and present” and “must be instantly dealt with”; it is not prospective or even in the near future].)

“Totality 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. (Pen. Code, § 835a, subd. (e)(3).) De-escalation methods, tactics, the availability of less than lethal force, and department policies may be used when evaluating the conduct of the officer. However, when an officer's use of force is evaluated, it must be considered “from the perspective of a reasonable officer in the same

situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” (Pen. Code, § 835a, subd. (a)(4); accord, *Graham v. Connor* (1989) 490 U.S. 386, 396-397 [“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight”]; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-1083 [to determine whether use of force is objectively reasonable for self-defense, trier of fact must consider all the circumstances that were known or appeared to the officer as well as consideration for what a reasonable person in a similar situation with similar knowledge would have believed]; *People v. Bates* (2019) 35 Cal.App.5th 1, 9-10 [knowledge of another person’s prior threatening or violent conduct or reputation for dangerousness may provide evidence to support a reasonable belief in imminent harm].)

Self-defense also has a subjective component. (*Humphrey, supra*, 13 Cal.4th at p. 1082.) The subjective element of self-defense requires that a person actually believes in the need to defend against imminent peril or great bodily injury. (*People v. Viramontes* (2001) 93 Cal.App.4th 1256, 1262.)

Transferred Intent

Under the doctrine of transferred intent, an individual that fatally kills a bystander may be liable for criminal homicide of the bystander. The doctrine is a “classical formulation” created within California’s common law: an individual who shoots with the intent to kill a certain person, misses, and hits a bystander instead, is subject to the “same criminal liability that would have been imposed had the fatal blow reached the person for whom intended.” (*People v. Bland* (2002) 28 Cal.4th 313, 321, citation and internal quotation marks omitted; see *People v. Scott* (1996) 14 Cal.4th 544, 551 [the doctrine does not denote an actual transfer of intent based on its literal meaning, but rather a policy—that an individual who shoots at an intended target and hits a bystander should be subject to the same criminal liability had the individual hit the intended mark].) The individual’s criminal intent of the intended target transfers to the unintended bystander, and as such, “the [individual] is deemed as culpable as if [the individual] had accomplished what he [or she] set out to do.” (*Scott, supra*, 14 Cal.4th at p. 546; *Bland, supra*, 28 Cal.4th at pp. 323-324.)

The doctrine of transferred intent, however, applies equally to self-defense and defense of others. Where an individual uses deadly force in lawful self-defense or defense of others, the individual’s lack of criminal intent for homicide of the intended target transfers to the killing of the bystander. In such an event, where the individual intends to “injure or kill the person who poses the threat” and “inadvertently kills an innocent bystander,” the individual’s actions “insulate[s] [him or her] from criminal responsibility.” (*People v. Curtis* (1994) 30 Cal.App.4th 1337, 1357 [“[U]nder the doctrine of transferred intent, self-defense may also apply where the defendant intends to injure or kill the person who poses the threat, but inadvertently kills an innocent bystander instead”]; *People v. Mathews* (1979) 91 Cal.App.3d 1018, 1024 [“[W]e conclude that the doctrine of self-defense is available to insulate one from criminal responsibility where his act, justifiably in self-defense, inadvertently results in the injury of an innocent bystander.”].)

Burden of Proof

A prosecutor bears the burden of proving a criminal defendant’s guilt beyond a reasonable doubt. (Pen. Code, § 1096.) Where an investigation is complete and all of the evidence is available for review, prosecutors should file charges only if they believe there is sufficient admissible evidence to prove the charges beyond a reasonable doubt at trial. (See, e.g., Nat. Dist. Attys. Assn., National Prosecution

Standards (3d ed. 2009) Part IV, § 2 pp. 52-53; United States Department of Justice Manual § 9-27.220; Melilli, Prosecutorial Discretion in an Adversary System (1992) B.Y.U. L.Rev. 669, 684-685 [surveying ethical standards used in the exercise of charging discretion by prosecutors]; accord, *People v. Catlin* (2001) 26 Cal.4th 81, 109 [“A prosecutor abides by elementary standards of fair play and decency by refusing to seek indictments until he or she is completely satisfied the defendant should be prosecuted and the office of the prosecutor will be able to promptly establish guilt beyond a reasonable doubt,” quotation and internal quotation marks omitted]; *People v. Spicer* (2015) 235 Cal.App.4th 1359, 1374 [explaining that a prosecutor may have probable cause to charge a crime but reasonably decline to do so if they believe there is a lack of sufficient evidence to prove the charge beyond a reasonable doubt at trial]; cf. Rules Prof. Conduct, Rule 3.8(a) [prosecutor should not initiate or continue prosecution of charge that is not supported by probable cause].)

Further, the prosecution has the burden of proving beyond a reasonable doubt that a killing is not justified. It is not a criminal defendant’s burden to prove that the force was necessary or reasonable. (*People v. Banks* (1976) 67 Cal.App.3d 379, 383-384.) Thus, in an officer-involved shooting, the prosecution must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others.

LEGAL ANALYSIS

The DOJ has completed an independent investigation and review of the facts and circumstances that led to the death of Mr. Szeto and the non-fatal injury of W-3. This analysis is based on all of the evidence provided to the DOJ in this matter, including witness interviews, law enforcement reports, analyses of firearms and ballistics, physical evidence, the autopsy and toxicology reports, BWC and surveillance camera footage, photographs, and communication evidence.

The issues presented in this OIS are whether Specialists Lim, Uang, and Wakayama and Officer Whitney acted lawfully in self-defense or defense of others, and whether their actions are subject to criminal prosecution. A detailed analysis of the evidence pertaining to the OIS shows that Specialists Lim, Uang, and Wakayama and Officer Whitney actually believed in the need to defend against imminent peril or great bodily injury and reasonably believed that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to the officers or others. Therefore, the shooting was justified, and a criminal prosecution is unsupported by the evidence.

I. The evidence shows that the involved officers reasonably believed that deadly force was necessary to defend against imminent threat of death or serious bodily injury to the officers or others.

The involved officers reasonably believed based on the totality of the circumstances that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to the officers or others. A reasonable officer in the same situation would believe that Mr. Szeto had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officers or others.

A. Present ability and opportunity to immediately cause death or serious bodily injury to the officers or others

A reasonable officer in the same situation as the involved officers would believe that Mr. Szeto was holding real guns and thus had the present ability to immediately cause death or serious bodily injury

to the officers or others. The BWC and surveillance camera footage show that the witnesses to the incident, both civilian and law enforcement, who saw the airsoft pistols in Mr. Szeto's hands, behaved in a manner consistent with the belief that Mr. Szeto was holding real guns. No witness understood that Mr. Szeto was holding non-firearm airsoft pistols. Additionally, as the photos of Item KW 1 compared with the 9 mm Taurus show, the airsoft pistol looks just like the real gun especially when the orange coloring has been painted black.

Each witness who saw the airsoft pistols in Mr. Szeto's hands reacted to Mr. Szeto with the belief that he was holding real guns. The SFPD officers who contacted Mr. Szeto first immediately stepped back and ordered him to drop his gun when they caught sight of the airsoft pistol exposed by Mr. Szeto. Other responding officers when they arrived on scene and observed Mr. Szeto with his airsoft pistols, took cover behind the middle walls, building pillar, and ballistic shields and maintained cover until they were relieved by the Specialist Team members. SFPD officers and SMCSO Det. Morgan carefully negotiated with Mr. Szeto in attempt to persuade him to drop his airsoft pistols because of the belief that Mr. Szeto was holding real guns.

The Specialists sought to contain Mr. Szeto and prevent him from moving to the hallway entrance and TSA PreCheck office because of the belief that Mr. Szeto was holding real guns. The officers evacuated the corridor and had the nearby elevators and BART entrance/exit closed off to protect the public from Mr. Szeto because responding officers believed the airsoft pistols Mr. Szeto was holding were real guns. The involved officers stated that they had "recognized" the airsoft pistols Mr. Szeto was holding to be real guns. Officer Wakayama thought one of the airsoft pistols was a Beretta. Officer Whitney, after the volley of lethal rounds had been fired, told one of the Specialists "two guns, one knife" to ensure that everyone knew what to look out for.

Specialist Uang, talking about the airsoft pistol that Mr. Szeto was holding in his left hand while he (Mr. Szeto) was on the floor in the moments before the volley of lethal rounds, stated that the airsoft pistol appeared to be a real gun and that Mr. Szeto carried it like a real gun including "indexing" the gun with what appeared to be his shooting finger and being careful not to point it at the officers except in the moments before the lethal rounds were fired.

DOJ BFS examined the airsoft pistols and as discussed above, found one of them to look like a Taurus 9 mm semi-automatic pistol, including having similar Taurus markings. DOJ BFS found the other airsoft pistol had a design similar to a Beretta 9 mm semiautomatic pistol and noted that websites selling this airsoft pistol marketed it as "1:1 replica" of the Beretta 9 mm semi-automatic pistol. DOJ BFS noted that the orange tips on both airsoft pistols were painted black, making them appear like real guns.

A reasonable officer in the same situation as the involved officers would believe that Mr. Szeto also had the present opportunity to immediately cause death or serious bodily injury to the officers or others. Despite persistent negotiation by law enforcement officers to drop his guns and stay in a contained area near the Reflection Room and away from the hallway entrance and TSA PreCheck office, Mr. Szeto continued to hold the pistols and walk the entire incident area. Mr. Szeto walked from in front of the Reflection Room, to behind the hydraulic lifts, back to the area in front of the Reflection Room, then to the area in front of the yellow plastic work zone barrier in front of the lifts, then back to the area in front of the Reflection Room, then back to the area in front of the work zone barriers in front of the lifts and then toward the area in front of the hallway entrance and the TSA PreCheck office. The hallway entrance was just down the hallway from W-3's location, and the TSA PreCheck office was where W-2 and W-6 were sheltering in place. Mr. Szeto's proximity to the SFPD Specialists in the moment before the lethal rounds were discharged was approximately 29 to 42 feet.

B. Apparent intent to immediately cause death or serious bodily injury to officers or others

A reasonable officer in the same situation as the involved officers would believe that Mr. Szeto had the apparent intent to immediately cause death or serious bodily injury to the Specialists in the moment before the first lethal rounds and in the moment before the subsequent volley of lethal rounds.

The BWC and surveillance camera footage and Specialists Lim, Uang, and Wakayama and Officer Whitney's statements depict Mr. Szeto's movements. A reasonable officer confronted with these movements by Mr. Szeto would believe that Mr. Szeto had the apparent intent to immediately cause death or serious bodily injury to the Specialists in the moment before the first lethal rounds and in the moment before the subsequent volley of lethal rounds. The BWC and surveillance camera footage show that in the moments before the first lethal rounds, Mr. Szeto took a step eastward toward the space in front of the hallway entrance after Specialist McMaster had just ordered Mr. Szeto not to take a step "or I'll hit you." After Mr. Szeto took this step, a less-lethal round was fired with no effect on Mr. Szeto except ruffling his pant leg. Then, Mr. Szeto took a step forward, swung his left arm out from behind his left leg revealing the airsoft pistol in his left hand, and began raising his right hand toward his left hand. Then, the first lethal rounds were fired. As discussed, the BWC and surveillance camera footage show Mr. Szeto then fell to the floor while turning to his right and landed in a partially seated position facing west. Mr. Szeto then used his right hand to pick up the airsoft pistol that was in or near his left hand and began to raise the airsoft pistol in the direction of the officers. At this point, a volley of lethal rounds was fired. The video footage was consistent with and corroborated the officers' statements.

Specialist Lim fired the first lethal rounds, and he fired lethal rounds during the subsequent volley of gunfire. Specialist Lim stated that in the moments before he fired the first lethal rounds, a less-lethal round had just hit Mr. Szeto with no effect on Mr. Szeto. Specialist Lim stated that about a second later, Mr. Szeto took a step forward and Specialist Lim saw Mr. Szeto "kind of swing[] the gun around the left side and start[] bringing it up in front of him," which Specialist Lim recognized as "someone that's punching out and taking a shot." Specialist Lim stated that at this time, he fired his rifle at Mr. Szeto aiming at center mass because Specialist Lim was scared that Mr. Szeto was going to shoot either Specialist Lim, or more likely, the officer that just "40'd"¹⁷ Mr. Szeto. Specialist Lim stated that he stopped shooting during this time when he saw Mr. Szeto fall to the floor.

Specialist Lim then saw that Mr. Szeto fell into a sitting position but was still holding the gun in his left hand. Specialist Lim stated that he (Specialist Lim) yelled "drop the gun, drop the gun, drop the gun." Specialist Lim stated that he then saw Mr. Szeto raise the gun at Specialist Lim, and that he (Specialist Lim) saw a round barrel pointed at him and thought Mr. Szeto was going to shoot him. Specialist Lim stated that this was why he fired his rifle in the subsequent volley of lethal rounds. Specialist Lim stated that after a couple of rounds, he felt "something impact" to his left and thought Mr. Szeto had gotten "a round off at" Specialist Lim that hit the wall, and Specialist Lim thought Mr. Szeto was shooting at him. So, Specialist Lim "kept firing ... until I saw him drop and I saw the gun fall out of his hand." Specialist Lim stated that he stopped firing during this time when he saw that Mr. Szeto was lying, not moving, not holding onto the gun anymore, and thus, not an imminent threat.

Specialists Uang and Wakayama and Officer Whitney also fired lethal rounds during the volley of gunfire. Specialist Wakayama stated that he saw Mr. Szeto turn right and "went down" and he (Specialist Wakayama) then glanced up really quickly at Specialist McMaster and looked down at

¹⁷ Another term for deploying a less-lethal round.

himself really quickly to see if he got shot. Specialist Wakayama stated that when he looked back up, Mr. Szeto was sitting up. Specialist Wakayama could see the gun “coming up again” and Specialist Wakayama then fired. Specialist Wakayama stopped shooting during this volley of lethal rounds when Mr. Szeto went down on his back. Specialist Wakayama stated that he then heard Specialist Lim yelling “I see the gun, I see the gun” and “it’s out of his hands or something like that.”

Officer Whitney stated that in the moments before he fired, he heard the discharge of the first lethal rounds, and when Mr. Szeto “went down,” Officer Whitney could see that Mr. Szeto “was kind of on his side with his back towards the wall, so I could see the front of him” and Mr. Szeto’s “front side was sort of, kind of like in my direction and then I saw him grab or hold the firearm in his hand and he started to stretch it out towards the officers.” Officer Whitney stated that he saw the firearm in Mr. Szeto’s right hand, which Mr. Szeto stretched toward the officers. Officer Whitney shot a lethal round at this point because Officer Whitney feared for the life of the other officers. Officer Whitney said Mr. Szeto’s firearm “was pointed towards the other officers when he (Mr. Szeto) purposely stretched out his arm with the firearm, pointing towards those officers.” Officer Whitney “made a decision to discharge my firearm to try to reduce the threat of him harming other officers.” Officer Whitney stated that he stopped shooting when he heard an officer yell “something like cease fire or stop.”

Specialist Uang stated that after Mr. Szeto fell to the floor, Specialist Uang could see right down the muzzle of the gun that Mr. Szeto was holding and could see that the gun was still pointed at him (Specialist Uang) and Specialist Lim. Specialist Uang fired and stopped firing when he saw Mr. Szeto’s body “went limp” and was motionless. Specialist Uang perceived the threat to be over and did not fire any more rounds. At the time Specialist Uang fired lethal rounds, Specialist Uang believed that if he did not shoot, Mr. Szeto would have shot him, another officer, or someone in the background.

II. The evidence shows that the involved officers actually believed in the need to defend against imminent peril.

In addition to showing that the involved officers reasonably believed that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to the officers or others, the evidence shows that the involved officers - Specialists Lim, Uang, and Wakayama and Officer Whitney - actually believed in the need to defend against imminent peril or great bodily injury. Each of the involved officers stated that they fired lethal rounds at Mr. Szeto because they each believed Mr. Szeto was about to shoot at him or the other officers. The officers’ statements and actions before, during, and even after the lethal rounds were fired reflect their belief that they were defending against imminent peril. Even after Mr. Szeto collapsed and “went limp” and motionless after the volley of lethal rounds, BWC and surveillance camera footage show the continued use of ballistic shields to defend against what the officers believed to be a real gun in Mr. Szeto’s hands. In addition, an officer issued an order to “secure the gun and render aid.”

III. No criminal responsibility for inadvertent injury to bystander.

Because the evidence shows that Specialists Lim, Uang, and Wakayama and Officer Whitney actually believed in the need to defend against imminent peril or great bodily injury, and reasonably believed that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to the officers or others, the shooting was justified as lawful self-defense or defense of others. As such, under the doctrines of transferred intent and self-defense, the involved officers’ lack of criminal intent for homicide of the intended target, Mr. Szeto, transfers to the injury of the bystander, W-3, and the involved officers have no criminal responsibility for the inadvertent injury to

W-3. (*People v. Curtis* (1994) 30 Cal.App.4th 1337, 1357 [“[U]nder the doctrine of transferred intent, self-defense may also apply where the defendant intends to injure or kill the person who poses the threat, but inadvertently kills an innocent bystander instead”]; *People v. Mathews* (1979) 91 Cal.App.3d 1018, 1024 [“[W]e conclude that the doctrine of self-defense is available to insulate one from criminal responsibility where his act, justifiably in self-defense, inadvertently results in the injury of an innocent bystander.”] .)

CONCLUSION

Based on the investigation and review of evidence, along with the applicable statutes, legal principles, and the subsequent analysis, Specialists Lim, Wakayama, and Uang, and Officer Whitney acted in lawful self-defense and the defense of others when each officer fired lethal rounds at Mr. Szeto. Each officer’s lack of criminal intent for homicide of the intended target, Mr. Szeto, transferred to the inadvertent injury to W-3. As such, Specialists Lim, Wakayama, and Uang and Officer Whitney are not criminally liable for W-3’ injury. Therefore, there is insufficient evidence to support a criminal prosecution of Specialists Lim, Wakayama, or Uang, or Officer Whitney for the death of Mr. Szeto, and there is insufficient evidence to support a criminal prosecution of Specialists Lim, Wakayama, or Uang or Officer Whitney for the injury to W-3. As such, no further action will be taken in this matter.



C A L I F O R N I A

DEPARTMENT OF JUSTICE

**Policy and Practice Recommendations for the
San Francisco Police Department Related to the
Officer-Involved Shooting of Nelson Waynezhi Szeto
on January 20, 2022**

ISSUED PURSUANT TO CALIFORNIA GOVERNMENT CODE
SECTION 12525.3, SUBDIVISION (B)(2)(B)(III)

April 2024



POLICY AND PRACTICE RECOMMENDATIONS

The Attorney General is required to include “[r]ecommendations to modify the policies and practices of the law enforcement agency, as applicable” as a component of this report. (Gov. Code, § 12525.3 subd. (b)(2)(B)(iii).) To that end, the DOJ conducts an additional review of the information obtained through the criminal investigation (for example, body-worn camera footage, interview recordings, video recordings, witness statements and other records) as well as the publicly-available policies of the agency employing the officer(s) who are subject to the criminal investigation. The DOJ uses the review process to identify “applicable” recommendations, including any recommendation to modify policy and practices that may reduce the likelihood that officers use deadly force as well as recommendation to address any other deficiency or concern related to the officers’ conduct or the agency’s response that the DOJ observes. Because of the nature of this process, the DOJ does not generally obtain additional information from the employing law enforcement agency or conduct independent investigation of the agency’s practices outside of the single incident under review, which makes this process different from the DOJ’s formal Civil Code section 52.3 investigations and oversight reviews of local law enforcement agencies. DOJ’s goal is that these recommendations will assist the agency and the officer(s) involved in the incident in understanding, from an independent perspective, improvements that could be made to address what we have observed through this incident.

Pursuant its obligations under Government Code section 12525.3, subdivision (b)(2)(B)(iii), the DOJ offers the following recommendations:

1. BODY WORN CAMERA

SFPD’s Body Worn Camera policy (Policy 10.11) requires officers to activate body-worn camera equipment to record in various circumstances. These include when an officer uses force, during consensual encounters with a criminal suspect, during Penal Code section 5150 [psychiatric] evaluations, and when a member of the public becomes hostile. Failure to activate an officer’s body-worn camera subjects the officer to an administrative investigation and, if warranted, discipline.

Here, SFPD police officers Nelson Yu, Erik Whitney, Randy Tiffany, and Derrick Lee, who were assigned to San Francisco International Airport (SFO), responded to the dispatch call and were the initial primary communicators with Mr. Szeto. However, SFPD had not assigned body-worn cameras to any SFO-SFPD officers. Thus, there is no body-worn camera footage of these SFPD officers’ initial contact with Mr. Szeto, nor of when Officer Lee initially drew his service weapon and ordered Mr. Szeto to drop his gun.

The DOJ recommends that SFPD equip all officers with body-worn cameras, including officers assigned to SFO. The additional visual and audio information afforded by body-worn-cameras would enable SFPD, as well as any oversight or investigatory agency, or the DOJ, to more thoroughly review the incident and analyze legal standards and tactical decisions made by the officers. Body-worn-camera footage may also provide further support for any conduct on the part of the officer that either would exonerate them from allegations of illegal or improper behavior, or that is worthy of commendation. Finally, body-worn-camera footage would also provide SFPD with valuable insight into gaps in training, policy, and procedure.

2. COMMUNICATION WITH THE SUBJECT

At various points during the incident, multiple officers gave verbal commands to Mr. Szeto in short succession or simultaneously. SFPD's prior Use of Force Policy (Policy DGO 5.01 (Rev. 12-21-16)), which was in place at the time of this shooting, had provisions regarding funneling communications to subjects through a single officer that did not apply to armed subjects.

This prior version of the policy did not require communication through one officer when a subject was armed. Here, at various points during the incident, multiple officers engaged Mr. Szeto with verbal commands, including both before and after the arrival of the lead negotiator, Detective J. Morgan. In the minute and last few seconds leading up to the officer-involved shooting, several officers gave orders to Mr. Szeto. Examples from body-worn camera footage include (1) Specialist Lim commanding Mr. Szeto to "put it down" "go back," and "don't move anymore" (2) Specialist Uang ordering Mr. Szeto to "put it down, stop right there, put it down" (3) Specialist McMaster advising "Nelson, move back to your right, or I'm going to hit you" and (4) Detective Morgan (lead negotiator) asking Mr. Szeto to "look at me" instead of the other officers. At earlier points during the critical incident, officers who were not the lead negotiator at the time told Szeto to "back up," "stop walking forward," "you need to back up or I'll shoot," "don't touch it," "do not pick the gun up," and "Nelson, you gotta back up buddy, please." These communications, while well-intentioned and within the prior policy, were not best practice.

We are pleased to see, however, that subsequent to this incident, SFPD updated its policy. SFPD's Use of Force Policy, effective December 8, 2022,¹ now contains a revised section titled "Considerations Governing All Uses of Force" that provides officers with a new protocol on how to handle communications with an armed subject. The policy notes the goal of minimizing overwhelming or conflicting information, and advises officers that "one officer should be responsible at any given time for reasonable attempts to establish rapport and engage in strategic communication with the subject." Funneling communication to a single point of contact with a subject is a best practice, and is made more important during a critical incident where multiple stimuli can create mental duress and frustrate a subject that the negotiator is attempting to calm. DOJ commends SFPD for revising its policy on December 8, 2022, to conform to best practice.

SFPD's Use of Force Policy provides that an officer should "[a]nnounce to other officers the intent to use the [extended range impact weapon (ERIW)] by stating, 'Red Light! Less Lethal! Less Lethal!'" and that other officers at the scene should "acknowledge imminent deployment of ERIW by echoing, 'Red Light! Less Lethal! Less Lethal!'" (Use of Force Policy at 5.01.08 (E)(4)). This is intended to prevent sympathetic fire, in which an officer fires a lethal round because the officer mistakenly believes that other officers are firing lethal rounds. During this incident, and others, the shouting of "Red Light! Less Lethal! Less Lethal!" could potentially cause confusion for a subject because a subject likely does not know what shouting "Red Light!" means, and may fear it is a signal of impending lethal gunfire or other action, potentially creating an escalation in the mind of the subject. This concern was also voiced by a community member during SFPD's January 31, 2022 town-hall meeting regarding this incident. Similarly, the shouting of "less lethal" could lead to confusion especially where listeners are not able to clearly hear the word "less." While the DOJ agrees with the intent of the policy, in line with the other recommendations in this report regarding communication lapses between officers and between the

1 SFPD also updated its Use of Force Policy 3.01 in January 2022, but the relevant provisions of that policy discussed herein were the same as those from the 2016 policy.

officers and the subject, DOJ suggests that SFPD examine alternatives that do not potentially heighten tension in similar situations.

3. COMMUNICATION AMONG OFFICERS

SFPD's Use of Force Policy provides for officers to "take reasonable care when discharging their firearm so as not to jeopardize the safety of the public." Communication among officers is important to ensure officers are aware of risks to bystanders. Officers communicated verbally regarding bystanders, but there was miscommunication or misunderstanding of the position of a bystander. After Specialist Lim arrived on scene and approximately eight minutes before the officer-involved shooting, he was informed, along with Specialist Uang, that there might be someone in the Reflection Room and that "there is someone in the corridor over here to your right, ok, right behind the lift." Approximately three minutes before the officer-involved shooting, Specialist Uang told Specialist Lim of other bystanders sheltering in place at the end of the hallway. Approximately one minute before the officer-involved shooting, Specialist Lim asked Specialist Uang "how's my backdrop" and was told his backdrop was "good." The bystander by the lift was struck in the leg by what appeared to have been a bullet or bullet fragment during the incident. The DOJ recommends that SFPD conduct an after-action review to determine whether communication regarding the presence of bystanders can be improved and whether the communication in this incident may warrant an administrative review.

4. RADIO EQUIPMENT

During the critical incident, SFPD officers not assigned to SFO had difficulty with getting their radio equipment to cycle and get on the correct channel with SFO-SFPD officers. As a result, the non-SFO assigned officers arrived at the scene without knowing the status of the critical incident, and were only informed about the incident in-person and under exigent circumstances. SFPD's policy on the 800 MHz Portable Radio (Policy 10.4) designates individual officers as responsible for radio maintenance and operability, and officers must report defective radios. However, it is unclear whether this was an individual issue or a systemic issue with non-SFO SFPD officers accessing SFO-SFPD radio frequencies, as during the incident multiple officers reported difficulty with radio communication. The DOJ recommends that SFPD 1) review its radio interoperability across SFO-SFPD and SFPD officers to ensure that the systems are compatible, and 2) review the issues identified herein to determine if additional training of the officers is necessary.

5. CRISIS INTERVENTION RESPONSE

Under SFPD's policy, a Crisis Intervention Team is deployed when a call for service identifies a person suffering from a mental health crisis (Crisis Intervention Team Response policy at DGO 5.21). Members of the Crisis Intervention Team are trained in both the POST 40-hour Crisis Intervention Training and a 10-hour Crisis Intervention Team Field Tactics training. Upon arriving at a scene, the Crisis Intervention Team assumes roles of the contact officer, lethal cover, less lethal cover, and resource officer. Additionally, where a person in crisis is armed, SFPD's policy requires that supervisors must respond to the scene and assume command, presumably because of the increased risks to officer and public safety when law enforcement is engaged with an armed subject. The policy further requires that the supervisor "should consider and evaluate the need to consult with the person's mental health professionals."

Here, although the initial call for service did not identify a person suffering from a mental health crisis, SFO-SFPD airport officers, responding SFPD officers, and San Mateo County Sheriff's officers engaged with Mr. Szeto for approximately 43 minutes, during which time they had information suggesting Mr.

Szeto may have been experiencing a mental health crisis. During this time the officers did not appear to consider additional resources such as a Crisis Intervention Team response or consultation which possibly could have provided further assistance. The DOJ recommends that SFPD review this incident to determine potential policy and training updates that account for a scenario where the initial call for service may not be covered by the existing Crisis Intervention Team Response policy (DGO 5.21) but which could include an intervening point at which a subject is or should be determined to actually be experiencing a crisis, while of course balancing officer and public safety. The review should also include assessing how to ensure existing CIT resources are understood across the SFPD and made available for all incidents in which they are needed.