



C A L I F O R N I A

DEPARTMENT OF JUSTICE

Report on the Investigation into the Death of Ruben Ramos on May 27, 2023

Los Angeles County AB 1506

October 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 (“the Department” or “DOJ”) 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 have been handled primarily 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 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 discovered 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 any witnesses. 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 clearly 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), an employee at The Home Depot
- Witness 2 (W-2), observed OIS from vehicle in The Home Depot parking lot
- Witness 3 (W-3), a customer at The Home Depot
- Witness 4 (W-4), observed OIS from Flower Street
- Witness 5 (W-5), observed OIS from The Home Depot parking lot
- Witness 6 (W-6), observed OIS from The Home Depot parking lot
- Witness 7 (W-7), observed OIS from The Home Depot parking lot
- Witness 8 (W-8), observed Mr. Ramos driving prior to OIS
- Witness 9 (W-9), observed Mr. Ramos driving prior to OIS
- Witness 10 (W-10), an employee at The Home Depot
- Witness 11 (W-11), an employee at The Home Depot
- Witness 12 (W-12), observed OIS from The Home Depot parking lot
- Witness 13 (W-13), a customer at The Home Depot
- Witness 14 (W-14), an employee at The Home Depot

INTRODUCTION

On May 27, 2023, in Burbank, California, several Burbank Police Officers, including Officers Jose Plascencia, Geovanny Fabian and Peter Choi, responded to a report of an individual with a gun in the parking lot of Home Depot located at 1200 South Flower Street. After Ruben Ramos was identified as the person reported to have a gun, law enforcement contacted him and attempted to take him in to custody. Mr. Ramos pulled an unknown object, later identified as a black knife, out of his right pocket and pointed it at the officers while maintaining a shooting stance at which point he was fatally shot by Officers Plascencia, Fabian, and Choi.

The 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. Ramos and is limited solely to determining whether criminal charges should be brought against the involved officers, as well as possible policy and practice recommendations. The review does not encompass or comment on any potential administrative or civil actions. It does, however, include policy and practice recommendations, as required by Government Code section 12525.3, subdivision (b)(2)(B)(iii). Upon thorough examination, and as discussed in detail below, we conclude that no criminal charges will be filed because the evidence is insufficient to support filing criminal charges against Officers Plascencia, Fabian, and Choi.

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

SUMMARY OF INCIDENT

On May 27, 2023, at approximately 2:54 PM, Burbank Police Department (BPD) dispatch received a call of a reckless driver in the area of Olive Avenue and Verdugo Avenue. The 911 caller stated that a male driver in a champagne colored minivan had run several stop signs and red lights. BPD officers responded to the location but were unable to locate the vehicle.

At 3:50 PM, Ruben Ramos called 911.¹ Mr. Ramos told California Highway Patrol (CHP) dispatch that he believed his daughter had been abducted. As CHP dispatch attempted to connect Mr. Ramos with LAPD to report a missing person; Mr. Ramos also said that he had a gun on him at The Home Depot and that he was going to start shooting.

At 3:52 PM, CHP dispatch transferred the call to the BPD dispatch. Mr. Ramos reiterated to BPD dispatch that he was armed with a Beretta 25² and was in a silver van near the south entrance of the parking lot. Mr. Ramos also told BPD dispatch that his daughter had been abducted and was currently being murdered.

BPD dispatch broadcasted this information over the radio to nearby BPD officers, including that Mr. Ramos indicated that he was armed with a gun. BPD dispatch asked Mr. Ramos if he would exit his vehicle with his hands empty and in the air when officers arrived but he said he would not. BPD dispatch relayed this information to the responding officers as well.

At approximately 3:55 PM, BPD Officer Ricardo Perez arrived at The Home Depot. He was concerned for the safety of customers and employees at the location because The Home Depot is known to have a lot of people present during the weekends. Officer Perez positioned his patrol vehicle behind Mr. Ramos' vehicle, activated his overhead lights, and exited the front driver-side door. According to his report, The Home Depot parking lot was extremely busy and filled with customers. Mr. Ramos exited the front driver side door of his vehicle approximately 25 seconds later and faced Officer Perez with his right hand inside his right pant pocket. Mr. Ramos was positioned between the front driver-side door of his vehicle and the front passenger-side door of a Volkswagen Tiguan parked in the adjacent spot. Officer Perez took cover behind the front driver-side wheel of his patrol vehicle, unholstered his gun, and aimed it at Mr. Ramos.

¹ All 911 calls from a cell phone are directed to the local CHP office.

² A Beretta 25 is a compact semi-automatic pistol intended to be easily concealed on a person.



Figure 1 – Still image taken from Officer Perez’ body worn camera showing Mr. Ramos exiting his vehicle

At approximately 3:58 PM, Officer Jose Plascencia arrived on scene. He positioned his patrol vehicle approximately ten feet north of Officer Perez’ patrol vehicle, facing Mr. Ramos. Officer Plascencia relayed over the radio that Mr. Ramos’ vehicle was related to the earlier call of service for reckless driving. Officer Plascencia contacted Mr. Ramos with his gun drawn and directed him several times to put his hands up. Mr. Ramos refused to remove his right hand from his pocket. Officer Corey Salas overheard Officers Perez and Plascencia broadcast over the radio that they located Mr. Ramos, he had his hand in his pocket, and he was refusing to comply with commands.

At approximately 4:00 PM, Officer Plascencia attempted to gain Mr. Ramos’ confidence by offering assistance with finding his daughter and Mr. Ramos was responsive. Mr. Ramos momentarily removed his right hand from his pocket and placed both hands in the air. Mr. Ramos had nothing in his hands at this time. He then pulled on the collar of his shirt, exposing his waistband, and turned in a circle. The officers did not observe anything in his waistband. Officer Plascencia asked Mr. Ramos to walk backward toward the patrol vehicles. Mr. Ramos stood in the same spot with his hands on his head for approximately one minute then walked away from the officers and stood at the front of the Volkswagen Tiguan with his hands on the hood of the vehicle. Officer Plascencia issued approximately 33 commands for Mr. Ramos to show his hands over the course of 14 minutes.



Figure 2 – Still image taken from Officer Plascencia’s in-car camera showing Mr. Ramos pulling his shirt up by the collar



Figure 3 – Still image taken from Officer Plascencia’s ICC showing Mr. Ramos pulling his shirt up as he faced BPD officers

Sergeant Aaron Kay responded to The Home Depot and observed a large number of civilians located near the entrance of the store and walking to and from their vehicles. Sergeant Martha Jimenez, Officer Geovanny Fabian, Officer Peter Choi, Officer Salas, Officer Manuel Maldonado, Officer Austin McKinney, Officer Ricardo Gutierrez, and Officer Thomas Garner also arrived on scene as Officer Plascencia continued to speak with Mr. Ramos. Officer McKinney noted that the officers’ voices [Officer Plascencia] were heightened and distressed and revealed that the situation was potentially

dire. When Officer Maldonado arrived he unholstered his firearm and directed a group of nearby civilians near the store entrance/exit doors to go back into the store.

Sergeants Jimenez and Kay oversaw the formation of an initial reaction team and assigned officers with specific lethal, less-lethal, and non-lethal tasks to take Mr. Ramos into custody. According to Officer Salas, Mr. Ramos appeared to be nervous and continuously looked around. Sergeant Jimenez assigned Officer Maldonado to a 40-millimeter less-lethal sponge round launcher and assigned Officer Fabian to the ballistic shield. A ballistic shield is a piece of protective equipment designed to provide protection from particles, fragmentation, or projectiles. Officers Salas, Garner, and Caldwell were assigned to assist in rendering medical aid, and Officers Garner and Caldwell were tasked with handcuffing Mr. Ramos.

Officer Gutierrez observed Mr. Ramos remove his hands from the top of the white Volkswagen and pace back and forth. He reached into his right pocket and appeared to manipulate something. Officer Gutierrez was fearful that Mr. Ramos would produce a handgun from his pocket so he broadcast his observations over the radio; "grabbing right pocket from this angle, can't see his hand."



Figure 4 – Still image taken from Officer Maldonado’s BWC showing Officer Maldonado pointing the 40-millimeter less-lethal sponge launcher at Mr. Ramos who stood at the hood of the white Volkswagen Tiguan

Mr. Ramos looked towards Officer Maldonado, who was aiming the 40-millimeter sponge round launcher at him, and moved to the opposite side of the Volkswagen Tiguan, out of Officer Maldonado’s view. Officer Maldonado repositioned himself to gain a clear view of Mr. Ramos, but Mr. Ramos moved away to conceal himself. This happened several times. At 4:05 PM, while Mr. Ramos stood near the hood of the Volkswagen Tiguan near the passenger-side, Officer Maldonado yelled “40! 40!” and fired a sponge round at him from the 40-millimeter launcher. The sponge round struck Mr. Ramos in the torso area and caused him to flinch.

Officer Garner heard a single popping noise that he recognized as the sound of a 40-millimeter less-lethal launcher. He observed the round strike Mr. Ramos in the torso and heard Officer Salas yell, “Again, again!” Mr. Ramos immediately walked towards the front driver-side of the Volkswagen Tiguan, pulled out a black “L” shaped object from his front right pant pocket, took a shooting stance, and pointed the object in the direction of the officers as if he were aiming a gun. Officer Salas yelled, “Gun! Gun! Gun!”



Figure 5 – Still image taken from Officer Fabian’s BWC showing Mr. Ramos pointing the black object in the direction of Officer Plascencia and Officer Fabian (insert photograph enlarged)

At 4:05:46 PM, Officers Plascencia, Choi and Fabian fired a total of 15 rounds at Mr. Ramos, striking him eight times. Officer Caldwell yelled, “Cease fire!,” and the shooting stopped. Mr. Ramos was approximately 28.8 feet away from Officer Plascencia and Officer Fabian, and was approximately 34 feet away from Officer Choi at the time of the OIS.



Figure 6 – Still image taken from The Home Depot rooftop security camera showing Mr. Ramos point the dark object at BPD officers (photograph enlarged)

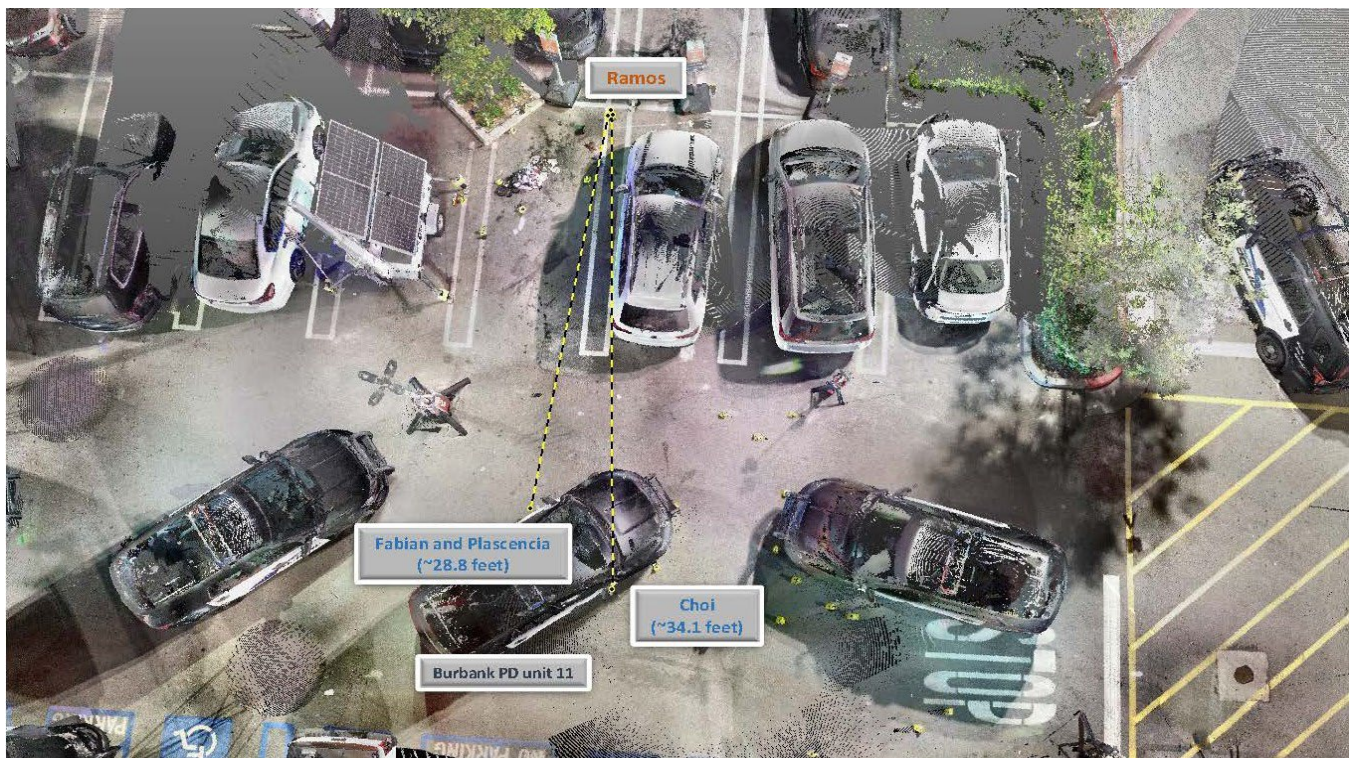


Figure 7 – Faro Scan image of the OIS scene from above showing the approximate distances between the shooting officers and Mr. Ramos

At 4:05:52 PM, Sergeant Kay reported shots fired and requested emergency medical personnel to respond. At approximately 4:06:15 PM, Sergeant Jimenez, Sergeant Kay, Officer Fabian, Officer Salas, Officer McKinney, Officer Garner, and Officer Caldwell approached Mr. Ramos. Mr. Ramos was nonresponsive. Officer Caldwell and Officer Salas handcuffed him, and Officer Caldwell applied tourniquets to the wounds on both of Mr. Ramos' thighs to stop the bleeding. Officer Caldwell rendered medical aid until paramedics arrived. At approximately 4:13 PM, Burbank Fire Department (BFD) paramedics arrived. BFD transported Mr. Ramos to Holy Cross Trauma Center where died at 4:53 PM.

The shooting officers were sequestered and transported separately to Burbank Police Department pending the OIS investigation.

After searching the area, officers identified a partially opened black folding knife on the ground approximately 5 feet away from Mr. Ramos' body. It was later determined that Officer Salas kicked the knife away from Mr. Ramos after the shooting so the exact location of the knife at the time of the shooting is unknown. The overall length of the knife was 7 ½ inches and the length of the blade was 3 inches.

INVESTIGATION

DOJ Response

After the OIS occurred, BPD investigators were notified and responded to the scene. Thereafter, notification was made to DOJ's California Police Shooting Investigation Team (CaPSIT).

DOJ Special Agents, Special Agent Supervisors, and the assigned Deputy Attorney General responded to the scene of the shooting on May 27, 2023 at approximately 10:20 PM. DOJ criminalists from the Riverside Office of the Bureau of Forensic Services (BFS) also responded to document the scene and to collect and preserve evidence.

On the date of the shooting and in the weeks and months thereafter, the shooting scene was examined, evidence was collected, and the officers' firearms were examined. In Car Cameras (ICC) were obtained from the officers' patrol cars and Body Worn Camera (BWC) from the officers' persons were reviewed by DOJ and BPD personnel. Security videos from The Home Depot were obtained and reviewed, as were cell phone videos captured by civilian witnesses.

Scene Description

The OIS occurred at the front of the parking lot near the main entrance to The Home Depot. The Home Depot is bordered on the south by Allen Avenue, on the west by Flower Street, on the north by a CarMax, and on the east by railroad tracks. The Home Depot parking lot is a black asphalt lot with marked parking stalls in seven north/south rows. On the north side of the parking lot is a through lane that runs east/west and on the north side of the through lane is a row of parking stalls. The Home Depot store is on the south side of the parking lot. In the northwest corner of the parking lot is a building and table for day laborers. The OIS occurred during daylight hours.

911 Calls and Dispatch Recordings

In-Car Camera (ICC), Body-Worn Camera (BWC), and Other Recordings

All three shooting officers, Officer Plascencia, Officer Fabian, and Officer Choi had BWC that were activated at the time of the OIS. The witnessing officers, Sergeants Kay Sergeant Jimenez, Officer Perez, Officer Salas, Officer Maldonado, Officer McKinney, and Officer Garner had BWC that were activated at the time of the OIS. DOJ identified several BWC as being related to the incident. The BWCs recorded the response to the radio call, Mr. Ramos' actions, and the OIS.

The OIS was captured on the ICC of the following patrol cars: Officer Plascencia, Officer Perez, Officer McKinney, Officer Maldonado, Officer Kay, Officer Garner, and Officer Fabian. ICC recordings were saved on the patrol car's internal hard drive. The ICC system constantly records video (without audio), even when it is not activated.

The incident was also captured on a security camera affixed to the top of The Home Depot which provided a birds-eye view of the incident.

Officer Processing

Shortly after the OIS, Officers Plascencia, Fabian and Choi were examined and photographed by BPD to preserve information about their appearance at the time of the OIS.

Officer Plascencia wore a complete BPD uniform with "Burbank Police" shoulder patches, a load-bearing patrol vest with "Police" on the right chest portion and back, a badge on the right chest, and a name tag on the left chest. Officer Plascencia also wore a hat with "Burbank Police" on the front. He carried a Glock 17 Gen 5 handgun in a holster on the right side of his duty belt. The handgun was loaded with one round of ammunition in the chamber and 11 rounds of ammunition in a 17-round capacity magazine. He carried a Taser on the left side of his patrol vest.

Officer Fabian wore a complete BPD uniform with "Burbank Police" shoulder patches, a load-bearing patrol vest with "Police" on the right chest portion and back, a badge on the right chest, and a name tag on the left chest. He carried a Glock 17 Gen 5 handgun in a holster on the right side of his duty belt. The handgun was loaded with one round of ammunition in the chamber and 15 rounds of ammunition in a 17-round capacity magazine. Officer Fabian carried a Taser on the front-left side of his patrol vest.

Officer Choi wore a complete BPD uniform with "Burbank Police" shoulder patches, a load-bearing patrol vest bearing the words "Police" on the right chest portion and back, a badge on the right chest, and a name tag on the left chest. He carried a Glock 17 Gen 5 handgun in a holster on the right side of his duty belt. The handgun was loaded with one round of ammunition in the chamber and 10 rounds of ammunition in a 17-round capacity magazine. Officer Choi carried a Taser on the front-left side of his patrol vest.

Scene Processing

The scene was processed by both DOJ Bureau of Forensic Services (BFS) and BPD.

BPD collected evidence including 15 fired cartridge cases, two less-lethal cartridge cases from a 40-millimeter launcher, a black knife, Mr. Ramos's clothing, eight projectiles, a less-lethal 40-millimeter sponge round, and impacts. It was subsequently decided that DOJ would take over documenting, scanning, and the collection of the evidence. The scene was documented with notes, photographs, and Faro 3D scanning. All evidence was collected by BFS.



Figure 8 – Still image of the black knife found near Mr. Ramos' body

Autopsy

On May 30, 2023, Los Angeles County Deputy Medical Examiner Dr. Richard Ou performed a post-mortem examination of Mr. Ramos' body. Mr. Ramos was a 47 year old man, five feet seven inches tall and 213 pounds. Dr. Ou's examination revealed that Mr. Ramos sustained eight gunshot wounds: one bullet entered Mr. Ramos' left back nine inches below the top of his head and remained in his body; one entered the front of his right thigh and exited the rear of his right thigh; one entered the front of his right thigh and exited the right side of his right thigh; two entered the left side of his right knee and exited the right side of his right knee; two entered the front of his left thigh and remained in his body; one entered the front of his left thigh and exited his left buttock. Three rounds remained in the body. Dr. Ou determined that the cause of death was, "gunshot wounds," but did not identify any single gunshot wound as fatal. A laboratory analysis performed by the coroner's forensic science laboratories showed the presence of Benzodiazepines, Midazolam, Amphetamine, and Methamphetamine in Mr. Ramos' blood.

Statements of Involved Officers

Police officers, like all individuals, have the right to remain silent and decline to answer questions in the face of official questioning. (*Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 714; see generally *Miranda v. Arizona* (1966) 384 U.S. 436.) Officers Plascencia, Fabian, and Choi did not provide voluntary statements.

Public employees, including police officers, may be compelled by an employer to answer questions for administrative purposes, but the use of such statements in criminal proceedings is prohibited. (*Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 827-828, citing *Lefkowitz v. Turley* (1973) 414 U.S. 70, 77-79, *Garrity v. State of New Jersey* (1967) 385 U.S. 493, 500.) Accordingly, Officers Plascencia, Fabian, and Choi's compelled statements were not considered as part of this investigation.

However, the compelled statements of witness officers, including Officers Perez, Salas, Maldonado, McKinney, Gutierrez, Garner, and Sergeants Jimenez, and Kay were reviewed. The following statements are summaries of their statements, which describe the incident from the point of view of the individual officers. Please note that the statements contain facts relayed by the witness officers that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

Officer Ricardo Perez

BPD Officer Ricardo Perez prepared a report on May 27, 2023, memorializing the OIS. His report detailed the following:

Officer Perez was the first officer on scene. At approximately 3:55 PM on May 27, 2023, Officer Perez responded to 1200 South Flower Street concerning a male (Mr. Ramos) inside a vehicle with a 25 Beretta threatening to shoot people at The Home Depot. Officer Perez was concerned for the safety of customers and employees at the location because The Home Depot is known to have lots of people present during the weekends.

Upon his arrival, Officer Perez observed Mr. Ramos seated in the driver seat of a Toyota Sienna wearing a baseball hat and talking on the phone. The vehicle was parked facing east, four parking columns east of the southern parking lot entrance and two spaces north of The Home Depot store entrance. Officer Perez asked BPD dispatch to ask Mr. Ramos if he was wearing a hat to confirm that he was contacting the correct subject. BPD dispatch confirmed that Mr. Ramos was wearing a hat.

Officer Perez parked his patrol vehicle behind Mr. Ramos' vehicle, turned on his overhead red and blue lights and exited his vehicle. Approximately 25 seconds later, Mr. Ramos exited the Toyota Sienna and faced Officer Perez with his right hand inside of his right pant pocket. Mr. Ramos was positioned between his Toyota Sienna and a parked Volkswagen Tiguan.

Officer Perez felt that Mr. Ramos posed a significant threat to the public and responding officers because he knew that Mr. Ramos admitted he was armed, threatened to shoot people, and exited his vehicle with his right hand concealed in his pant pocket. Consequently, Officer Perez took cover behind the front driver side wheel-well of his patrol vehicle, unholstered his firearm, and pointed it at Mr. Ramos.

Officer Plascencia arrived on scene and positioned his patrol vehicle approximately ten feet north of Officer Perez' vehicle and facing Mr. Ramos. Officer Plascencia confirmed with dispatch that Mr. Ramos' vehicle was related to an earlier call for service for reckless driving. Officers Perez and Plascencia issued several commands for Mr. Ramos to turn and face away from the responding officers but he failed to comply. Officer Plascencia again ordered Mr. Ramos to place his hands on top of his head and face away from officers. Mr. Ramos temporarily complied. However, when Officer Plascencia ordered him to walk backwards towards the officers, Mr. Ramos refused. He walked away from the officers and stood near the hood of the Volkswagen Tiguan.

Mr. Ramos looked behind him, to the left and to the right, paced back and forth, and reached his right hand into his right pocket. It appeared to Officer Perez that Mr. Ramos was contemplating a plan to either shoot officers or nearby civilians. During the incident, Officer Maldonado arrived on scene. Officer Maldonado fired a 40-millimeter less lethal sponge round at Mr. Ramos as he concealed himself behind the Volkswagen Tiguan. The less lethal sponge round struck Mr. Ramos in the torso but was ineffective.

Mr. Ramos immediately walked to the driver side of the parked Volkswagen (opposite of Officer Perez) and Officer Perez lost sight of him. Several seconds later, Officer Perez heard several gunshots but was unable to identify who discharged their firearms and what caused the gunfire. Officers Caldwell, McKinney, and Garner immediately rendered medical aid to Ramos. BFD arrived shortly after and took over medical aid. BFD transported Mr. Ramos to Holy Cross Medical Center where he later died.

Officer Corey Salas

BPD Officer Corey Salas prepared a report on May 27, 2023, memorializing the OIS. His report detailed the following:

Officers Salas and Maldonado responded to The Home Depot regarding a call of a man who was armed and threatening to shoot people. Mr. Ramos had told BPD Dispatch that he was being followed and that his daughter had been abducted earlier in the day. Officer Salas overheard Officers Perez and Plascencia broadcast over the radio that they had located Mr. Ramos, he had his hand in his pocket, and he was refusing to comply with commands. Based on all of this information, Officer Salas feared that Mr. Ramos had a firearm concealed in his pocket and posed a significant threat to public safety.

Officer Salas arrived on scene and immediately noticed Mr. Ramos' right hand concealed in his pocket. Mr. Ramos appeared to be manipulating an object inside his right pant pocket. Officer Salas and Officer Maldonado discussed force options and agreed that Officer Salas would assume the role of deadly force while Officer Maldonado retrieved the less-lethal 40-millimeter sponge launcher. Officer Plascencia issued additional commands and attempted to deescalate by offering to help Mr. Ramos

and his daughter. Mr. Ramos briefly complied with Officer Plascencia's command and offer to help. Mr. Ramos placed both of his hands on the back of his head and faced away from the officers, but he refused to walk backwards towards them. Mr. Ramos appeared to be nervous and continuously looked around. Officer Salas believed Mr. Ramos was formulating a plan to either run into the store or turn and shoot at the officers.

After several minutes, Mr. Ramos walked away from officers, to the front of the Tiguan and placed both hands on the hood. Mr. Ramos was facing towards the officers but his pockets were concealed by the vehicle. Mr. Ramos continued to look around as if he were considering his next move. Officer Salas was still in fear that Mr. Ramos was formulating a plan to either shoot officers or civilians inside The Home Depot.

While Mr. Ramos paced and reach his right hand into his pocket, Officer Maldonado yelled, "40!" and fired one 40-millimeter less-lethal sponge round. The round struck Mr. Ramos in the torso causing him to wince. Mr. Ramos moved to his right towards the driver-side door of the Tiguan. Officer Salas directed Officer Maldonado to fire a second less lethal 40-millimeter round. Before Officer Maldonado could do so, Mr. Ramos quickly reached into his right pant pocket and produced a black object that appeared to be a gun. Officer Salas yelled, "Gun! Gun! Gun!" and simultaneously heard several officers discharge their firearms. Mr. Ramos immediately fell to the ground and dropped the small black object. Officer Salas believed that Mr. Ramos no longer posed a risk.

Officers Fabian, McKinney, Caldwell, Garner, Maldonado and Salas formed an arrest team and approached Mr. Ramos who was laying on his back. Officers Caldwell and Garner placed Mr. Ramos in handcuffs for officer safety. A black folding pocketknife extended in the shape of an L was lying on the ground directly next to Mr. Ramos on his right. Officer Salas kicked the knife away and the officers immediately administered first aid until BFD paramedics arrived and took over the rendering of aid. Officer Salas rode in the ambulance with BFD paramedics as they transported Mr. Ramos to Holy Cross Medical Center.

Officer Manuel Maldonado

BPD Officer Manuel Maldonado prepared a report on May 27, 2023, memorializing the OIS. His report detailed the following:

Officers Maldonado and Salas arrived on scene at approximately 3:59 PM in response to the BPD dispatch broadcast of a man with a gun. Mr. Ramos was standing between his van and a white SUV (Tiguan) with his right hand concealed in his right pocket. The Home Depot parking lot was full of customers and Officer Maldonado believed that Mr. Ramos posed a significant risk to public safety. Officer Maldonado originally unholstered his firearm and directed a group of nearby civilians near the store entrance/exit doors to go back into the store.

Officer Maldonado heard Officer Plascencia issue several loud and clear commands for Mr. Ramos to remove his hand from his pocket, turn around, and walk backwards. Mr. Ramos refused to comply with the commands. Mr. Ramos possessed an expression of distrust and anger on his face and looked at officers with a long distant stare. Officer Maldonado believed that he was contemplating shooting at police or citizens. Sergeant Jimenez issued Officer Maldonado a 40-millimeter less lethal sponge round launcher as a means of less lethal force if the opportunity presented itself. He pointed the 40-

millimeter sponge round launcher at Mr. Ramos' torso to assist when necessary with taking safe control of Mr. Ramos and the situation.

Mr. Ramos briefly complied with officers' orders to face away from officers and place his hands on top of his head. He was then asked to walk backwards to officers so he could safely be taken into custody. Mr. Ramos refused to comply with the command and positioned himself approximately 15 to 20 feet from Officer Maldonado near the front of Tiguan parked adjacent to his van. Mr. Ramos placed both hands on the hood of the vehicle and "glared" at officers.

No officers were present on the north and east sides of Mr. Ramos to avoid a crossfire. Officer Maldonado was concerned that Mr. Ramos would attempt to escape in that direction and repositioned himself to get a better viewpoint. Mr. Ramos looked towards Officer Maldonado who was aiming the 40-millimeter sponge round launcher at him and moved to the opposite side of the Tiguan, out of Officer Maldonado's view. Officer Maldonado repositioned himself again to establish a clear line of sight. In response, Mr. Ramos moved to the opposite side of the Tiguan to conceal himself from the 40-millimeter sponge round launcher. Mr. Ramos continued his evasive behavior for approximately three minutes.

At approximately 4:05 PM, Officer Maldonado gained a clear view of Mr. Ramos and attempted to fire the 40-millimeter sponge round launcher but it did not fire. Officer Maldonado reloaded a 40-millimeter sponge round in to the launcher, aimed it at Mr. Ramos' torso, yelled "40! 40!" and fired the sponge round in his direction. The round struck Mr. Ramos in the torso but had no effect. Mr. Ramos winced at the impact and rapidly moved in the opposite direction of Officer Maldonado. As Officer Maldonado reloaded the launcher he heard multiple gunshots fired by officers to his left. He ran over towards the shooting officers, drew his firearm, and observed Mr. Ramos lying on his back.

Officer Maldonado searched Mr. Ramos' vehicle for additional suspects and/or victims, cleared the vehicle and immediately assisted in rendering life saving measures until BFD paramedics arrived and took over. BFD transported Mr. Ramos to Holy Cross Medical Center and Officer Maldonado followed behind in his patrol vehicle. Hospital staff took over medical aid and Mr. Ramos was pronounced deceased at approximately 4:53 PM.

Officer Austin McKinney

BPD Officer Austin McKinney prepared a report on May 28, 2023, memorializing the OIS. His report detailed the following:

At approximately 3:52 PM, Officer McKinney responded to The Home Depot regarding a call of a man with a gun threatening to shoot people. As he responded to the scene he heard Officers Perez and Plascencia broadcast over the radio that they had Mr. Ramos at gunpoint and that Mr. Ramos had his hand in his pocket and he was refusing to comply with their commands. He noted that the officers' voices were heightened and distressed, revealing that the situation was potentially dire. Officer McKinney determined that Mr. Ramos posed a significant risk to the public.

When he arrived, Officer McKinney observed Officer Plascencia standing at the driver side door of his patrol vehicle with his firearm pointed at Mr. Ramos. Mr. Ramos was standing at the driver side door of his Toyota Sienna near the entrance of The Home Depot with his right hand in his pocket. Mr. Ramos appeared to be manipulating an object concealed in his front right pocket. Officer McKinney exited his patrol vehicle, obtained his department issued rifle, and pointed it in the direction of Mr. Ramos.

Several officers attempted to issue commands to safely detain Mr. Ramos, but Mr. Ramos failed to comply. Due to the number of officers present at the scene and providing cover, Officer McKinney placed his rifle in the trunk of a patrol car and formed an arrest team with Officers Garner and Choi near the driver side door of Officer Plascencia's vehicle. Officers instructed Mr. Ramos to put his hands on top of his head and he briefly complied. However, Mr. Ramos appeared nervous, which caused Officer McKinney to believe he had no interest in listening to commands.

Officer McKinney took a position of cover with Officer Maldonado behind a BPD patrol vehicle. Mr. Ramos attempted to hide between his vehicle and the adjacent white sedan. Officers McKinney and Maldonado continuously adjusted their positioning in an effort to get a clear sight path to effectively deploy the 40-millimeter less lethal launcher. Officer McKinney directed Officer Maldonado to deploy the 40-millimeter less lethal round at Mr. Ramos because he believed that Mr. Ramos was going to produce a firearm.

Officers Maldonado and McKinney finally found a clear line of sight behind the driver side door of a BPD patrol vehicle. Officer Maldonado deployed the less than lethal round and struck Mr. Ramos in the torso. Mr. Ramos quickly winced and advanced to the driver's side of the Tiguan. Officer McKinney directed Officer Maldonado to reload the launcher. As the two officers attempted to regain a line of sight on Mr. Ramos, Officer McKinney heard several officers fire their guns. Officers Fabian, Salas Caldwell, Garner, Maldonado, and McKinney formed an arrest team and approached Mr. Ramos as he lay on his back. Officer McKinney observed a black folding pocketknife half-extended in the shape of the letter "L" on the ground near Mr. Ramos. Officers immediately rendered first aid until BFD paramedics arrived. BFD paramedics took over medical aid and transported Mr. Ramos to Holy Cross Medical Center.

Officer Ricardo Gutierrez

BPD Officer Ricardo Gutierrez prepared a report on May 28, 2023, memorializing the OIS. His report detailed the following:

Officer Gutierrez arrived on scene at approximately 4:00 PM and blocked off the southwest entrance of the parking lot. He took a position of observation behind a patrol vehicle on the south side of the parking lot alongside Officer Alexy and observed Mr. Ramos standing in front of a white Volkswagen. Officer Gutierrez heard Officer Plascencia issue loud, clear commands and heard him instruct Mr. Ramos to put his hands on his head. Mr. Ramos did not comply with these commands, and instead, placed his hands on top of the white Volkswagen. Officer Plascencia and other officers continued to issue commands but Mr. Ramos did not comply. Mr. Ramos appeared to Officer Gutierrez to be nervous and looking for avenues of escape.

Mr. Ramos removed his hands from the top of the white Volkswagen and paced back and forth. He reached in to his right pocket and appeared to manipulate something. Fearing that Mr. Ramos would produce a firearm, Officer Gutierrez broadcast his observations over the radio. Officer Gutierrez heard the sound of a 40-millimeter less-lethal sponge launcher and observed Mr. Ramos move away from the white Volkswagen. Mr. Ramos crouched, reached in to his right pant pocket and produced a black object. He took a shooting stance and pointed the object at the officers. Officer Gutierrez heard someone yell "gun!" and immediately after, heard several officers deploy their firearms. Mr. Ramos fell to the ground and BPD officers immediately rendered medical aid. Officer Gutierrez searched Mr.

Ramos' van to ensure nobody else was present in the vehicle and canvassed the area for others who may have been struck by gun fire.

Officer Thomas Garner

BPD Officer Thomas Garner prepared a report on May 27, 2023, memorializing the OIS. His report detailed the following:

Officer Garner arrived on scene at approximately 4:00 PM. He observed Officer Perez and Officer Plascencia near their respective patrol vehicles with their firearms drawn. Mr. Ramos was standing near the driver side door of a Toyota Sienna. Officer Garner positioned himself behind Officer Plascencia's passenger side door directly behind Officers Salas and Maldonado. Officers Choi, McKinney, and Garner formed a hands-on contact team.

Officer Garner heard Officer Plascencia direct Mr. Ramos to walk backwards towards the officers, but Mr. Ramos failed to comply with the commands. Mr. Ramos continuously placed his hand in his front right pocket. He walked towards the hood of a white Volkswagen parked adjacent to the Toyota Sienna and placed his hands on the hood. Officer Plascencia attempted to gain some rapport with him and offered to help him. Mr. Ramos did not listen to these offers of help and continued to make "furtive movements."

Mr. Ramos' continued movement made it difficult for Officer Garner to see him clearly. Officer Garner repositioned himself several times until Sergeant Jimenez ordered him to move to the driver side door of Sergeant Kay's patrol vehicle. Mr. Ramos continued to pace and appeared to Officer Garner to be growing agitated and nervous. Mr. Ramos put his right hand inside of his front right pant pocket, and Officer Garner yelled "Keep your hands out of your pockets." Mr. Ramos continued to disobey the officers' commands and appeared to be manipulating something inside his front right pant pocket. Officer Garner noticed something bulging in his front right pant pocket and believed the item to be a firearm.

Officer Garner heard a single popping noise that he recognized as the sound of a 40-millimeter less lethal launcher. He observed the round strike Mr. Ramos and heard Officer Salas yell, "Again, again!" Mr. Ramos pulled out a black "L" shaped object from his front right pant pocket, took a shooting stance, and pointed the object at the officers. Officer Garner took cover behind Sergeant Kay's patrol vehicle and subsequently heard several gun shots. Officer Caldwell yelled, "Cease fire!" and the shooting stopped.

Officers Garner, Fabian, McKinney, Caldwell, Salas, and Maldonado approached Mr. Ramos as he was lying on his back and placed him in handcuffs. A black folding knife shaped like an "L" was lying on the ground near Mr. Ramos. The officers rendered medical aid until BFD arrived and transported Mr. Ramos to Holy Cross Memorial Hospital.

Sergeant Martha Jimenez

BPD Sergeant Martha Jimenez prepared a report on May 28, 2023, memorializing the OIS. Her report detailed the following:

When Sergeant Jimenez arrived on scene, she observed several officers contacting Mr. Ramos. She approached the officers and observed Officer Fabian preparing a 40-millimeter less lethal launcher. Sergeant Jimenez grabbed the 40-millimeter launcher from Officer Fabian and directed him to retrieve a shield from her patrol vehicle. Sergeant Jimenez provided the 40-millimeter launcher to Officer

Maldonado. Officer Plascencia directed Mr. Ramos to place his hands up and walk backwards towards officers. Mr. Ramos initially complied but after a few moments, he stopped and walked away from officers towards a white Volkswagen SUV just to the left of his vehicle. Mr. Ramos placed his hands on the hood of the vehicle and ignored additional commands.

Sergeant Jimenez positioned herself to the left of Officer Garner near the open driver side door of a patrol vehicle. Officers Salas and Maldonado responded to this location armed with a rifle and a 40-millimeter less-lethal launcher. Sergeant Jimenez described Mr. Ramos as nervous, fidgety, and believed he was exploring avenues of escape. Mr. Ramos continued to furtively pace back and forth and reached his right hand in to his right pocket. Mr. Ramos appeared to be manipulating something inside his front right pocket. Sergeant Jimenez moved to the passenger side of the patrol vehicle to gain a better view of Mr. Ramos. As officers issued additional commands, Sergeant Jimenez heard the sound of a 40-millimeter less-lethal launcher deployment.

Mr. Ramos moved to his right, away from the hood of the white Volkswagen SUV and pulled his right hand out of his pocket. Mr. Ramos raised his hands, extended his arms in the direction of officers and took a shooting stance. Sergeant Jimenez observed a black object in his right hand and believed the object was a small firearm. Sergeant Jimenez repositioned herself to get a better view of Mr. Ramos and simultaneously heard gunshots. Mr. Ramos fell to the ground and officers immediately approached him to render medical aid. Following the shooting, Sergeant Jimenez observed black pocket knife on the ground near Mr. Ramos.

Sergeant Aaron Kay

BPD Sergeant Kay Jimenez prepared a report on May 7, 2023, memorializing the OIS. Her report detailed the following:

Sergeant Kay responded to The Home Depot and observed a large number of citizens located near the entrance of the store and walking to and from their vehicles. Given the circumstances of the 911 call and Mr. Ramos' proximity to the entrance, Sergeant Kay directed BPD officers to clear the public from the location. Officer Plascencia established primary contact with Mr. Ramos and issued verbal commands to remove his hands from his pockets. Mr. Ramos refused to comply with the commands, so Officer Plascencia attempted to develop rapport with him by offering assistance with finding his daughter.

Officer Plascencia was able to gain temporary compliance, and Mr. Ramos began to respond to his commands. Mr. Ramos placed his hands in the air, lifted the collar of his shirt, exposed his waistband and turned in a circle. Sergeant Kay did not observe a firearm in Mr. Ramos' waistband. While Officer Plascencia continued to speak with Mr. Ramos, Sergeant Kay considered requesting a Mental Health Evaluation Team ("MHET") to assist, but the MHET was not available.

Mr. Ramos' compliance quickly dissipated, and he refused to respond to further commands. He dropped his hands to his sides and walked towards the front of the Volkswagen. Mr. Ramos crouched down in front of the Volkswagen in an effort to conceal his movements. This made it difficult for Sergeant Kay to see Mr. Ramos and determine whether he was arming himself. It appeared to Sergeant Kay that Mr. Ramos was paying close attention to BPD's tactical set up to delay any progress with taking him in to custody. Sergeant Kay believed that Mr. Ramos was formulating a plan to attack BPD officers or flee towards The Home Depot entrance.

Sergeant Kay and Sergeant Jimenez oversaw the formation of the initial reaction team. Sergeant Kay designated Officer Maldonado as a less lethal option and several other officers as the “hands on” team to take Mr. Ramos in to custody once it was safe to do so. Sergeant Kay also assigned several other officers to provided lethal coverage from different angles.

Interviews of Civilian Witnesses

The following statements are summaries of the civilian interviews, which describe the incident from their individual point of view. Please note that the interviews contain facts relayed by the civilians that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

Statement of Witness 1

On May 27, 2023, W-1 was interviewed by BPD Officer Colton Burns. W-1 was working at The Home Depot when he heard police sirens and observed a large gathering of customers peering through the entrance/exit glass doors at the front of the building. W-1 looked through the window and observed multiple Burbank Police Officers pointing their firearms at Mr. Ramos. The officers issued verbal commands, but it appeared that Mr. Ramos was not listening. Mr. Ramos appeared to be extremely aggressive towards the officers and continuously made furtive movements. Mr. Ramos then took a shooting stance and was motioning his arms as if he was drawing a firearm and pointing it at the officers. W-1 heard multiple gunshots fired but did not observe the OIS.

Statement of Witness 2

On May 27, 2023, W-2 was interviewed by BPD Officer Ibanez. W-2 had an unobstructed view of Mr. Ramos from their vehicle in The Home Depot parking lot. W-2 observed Mr. Ramos put his hands in the air but did not see anything in his hands. W-2 heard several gunshots and observed Mr. Ramos fall to the ground.

On May 28, 2023, W-2 was re-interviewed by BPD Officer Ibanez. W-2 changed his statement and provided information related to the shooting that conflicted with his original statement. W-2 had watched the news regarding the shooting and believed it was not factual. W-2 was 50 feet away from Mr. Ramos and had an unobstructed view of the incident. Mr. Ramos was waving his hands above his head and had nothing in his hands. W-2 heard gunshots and saw Mr. Ramos fall to the ground. W-2 drove northbound before turning southbound in the parking lane located just east of the patrol vehicles. W-2 did not observe officers render medical aid to Mr. Ramos and did not see an ambulance arrive until one hour after Mr. Ramos was shot.

Statement of Witness 3

On May 27, 2023, W-3 was interviewed by BPD Officer Rovira. W-3 was near the middle entrance of The Home Depot, approximately 20 yards from the location of the OIS. W-3 observed Mr. Ramos through the glass doors moving around a vehicle and acting agitated. W-3 heard approximately five gun shots fired by multiple officers and saw the officers handcuff Mr. Ramos. W-3 was unable to identify the officers who shot Mr. Ramos.

Statement of Witness 4

On May 27, 2023, W-4 was interviewed by BPD Officer Gutierrez. W-4 was standing on the east curb of Flower Street when he observed multiple police vehicles arrive on scene with lights and sirens. The responding officers talked to Mr. Ramos. During the encounter, Mr. Ramos got on his knees, stood up, and attempted to enter his vehicle. W-4 observed Mr. Ramos attempt to hide in front of his car. Mr.

Ramos then stood up, moved to the driver side of the vehicle, and point a “gun” towards the officers. W-4 heard “so many shots.” W-4 demonstrated how Mr. Ramos moved. W-4 raised his thumb above his fist to act as a hammer and extended his index fingers perpendicular acting as a barrel.

Statement of Witness 5

On May 27, 2023, W-5 was interviewed by BPD Officer Ryan Alexy. W-5 was standing in the southwest portion of the marking lot by the storage shed displays, approximately 50-60 yards from the scene. W-5 witnessed multiple patrol vehicles pulling in to The Home Depot parking lot as he departed The Home Depot. Police officers were giving commands to Mr. Ramos as he stood near a van. W-5 observed Mr. Ramos quickly hold up a black gun, “possibly a 9-mm,” and heard one shot. W-5 heard several additional shots which he believed were from the police. Mr. Ramos fell to the ground and the police officers ran over to him.

Statement of Witnesses 6 and 7

On May 27, 2023, W-6 and her boyfriend, W-7, provided a joint statement to BPD Officer McKinney. W-6 stated they were loading their recently purchased The Home Depot items in to the trunk of their vehicle one row west of the OIS location. W-6 observed Officer Perez arrive on scene and immediately draw his firearm and point it at Mr. Ramos as he sat in his vehicle. W-6 and W-7 ran westbound towards Flower Street, approximately 70 yards west of the crime scene. W-6 initially recorded the incident on her cell phone as it unfolded but stopped recording prior to the OIS. W-7 stated that Mr. Ramos was clearly not complying with the officers’ commands. In fear of potential injury, he directed W-6 to duck behind a vehicle. W-6 and W-7 ducked behind a vehicle and heard approximately eight to nine shots fired.

Statement of Witness 8

On May 28, 2023, W-8 and W-9 were interviewed by BPD Lieutenant Mark. W-8 and W-9 were driving on Clark Avenue when a champagne-colored Toyota Sienna drove past them on the wrong side of the road at a high rate of speed. The van failed to stop for several stop signs and then turned on to Buena Vista Street. W-8 and W-9 followed the van and took a picture of the vehicle when it was stopped for a red light at Buena Vista Street and Verdugo Avenue. The van drove through a solid red left turn arrow on to Verdugo Avenue. The van drove through at least one more red light near the CVS on Verdugo Avenue and Parish Place. The vehicle then drove into the bike line on the right-hand side of the road near Verdugo Avenue and Olive Avenue and drove through a solid red light. W-8 and W-9 stopped following the vehicle. W-8 was unsure if anyone else was in the vehicle but believed the driver was possibly talking to someone. W-8 called 911 to report the driver and his reckless behavior.

Statement of Witness 9

W-9 provided a similar statement as W-8 regarding the observed reckless driving. W-9 could not tell if anyone else was in the vehicle because the rear window was tinted.

Statement of Witness 10

On May 27, 2023, W-10 was interviewed by BPD Officer Torres. W-10 was working at The Home Depot when his attention was drawn to the parking lot due to significant police activity. W-10 was looking through the west entrance/exit glass door and observed multiple Burbank Police Officers pointing their firearms at Mr. Ramos. The officers issued short and specific commands to Mr. Ramos, but he did not listen. W-10 heard officers yell, “No! Don’t! Stop!” W-10 did not have a clear line of sight on Mr. Ramos but observed “commotion” through his vehicle’s windows. Suddenly, W-10 observed the officers fire

approximately eight shots. W-10 did not observe anything further and assisted the customers inside the store.

Statement of Witness 11

On May 27, 2023, W-11 was interviewed by BPD Officer Munn. W-11 indicated that she had video footage that she captured on her cellular phone. She began recording as soon as she saw Mr. Ramos. W-11 observed Burbank Police Officers pointing their firearms at Mr. Ramos while he stood by the large pole in The Home Depot parking lot. Mr. Ramos was moving around a lot and talking. W-11 did not observe anyone firing a weapon and as soon as she heard the shots she retreated further back into the store.

Statement of Witness 12

On May 27, 2023, W-12 was interviewed by BPD Officer Daniel Lindquist. W-12 arrived at The Home Depot and observed several police vehicles in the parking lot. Officers contacted Mr. Ramos, who appeared agitated and refused to comply with officers' commands. Mr. Ramos was walking back and making weird movements. Officers subsequently shot Mr. Ramos five to seven times. An ambulance arrived a short time later.

Statement of Witness 13

On May 27, 2023, W-13 was interviewed by BPD Officer Lindquist. W-13 was driving in The Home Depot parking lot when he observed Burbank Police Officers contact Mr. Ramos while inside his minivan. Mr. Ramos exited his minivan and officers issued verbal commands, but Mr. Ramos failed to comply. Officers then ordered Mr. Ramos to put his hands in the air but Mr. Ramos refused. W-13 watched as Officers gave Mr. Ramos commands for approximately five to seven minutes, and then W-13 entered the store. Once inside the store, W-13 heard gunfire.

Statement of Witness 14

On May 27, 2023, W-14 was interviewed by BPD Officer Christopher Caldwell. W-14 arrived at The Home Depot for his shift at the time of the incident. W-14 parked his vehicle on the east side of The Home Depot parking lot. As W-14 exited his vehicle, he observed several Burbank Police Officers speaking to Mr. Ramos in the center parking aisles. Mr. Ramos was very non-complaint and appeared to be looking around as if he were trying to get away. W-14 observed Mr. Ramos retrieve an item from his right pocket and lift it in the air. Based on Mr. Ramos actions, W-14 believed that he was retrieving a weapon from his pocket so W-14 took cover behind a vehicle. W-14 heard at least 20 rounds fired. After the gunfire ceased, W-14 entered The Home Depot.

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 murder required for second degree murder may be express or implied. (Pen. Code, § 188; *People v. 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.4th 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.)

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. set 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.)

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; see *People v. Breverman* (1998) 19 Cal.4th 142, 156 [when defendant claims self-defense or defense of others, or there is substantial evidence supportive of defense, the jury will be instructed that prosecutor bears the burden of disproving this defense beyond a reasonable doubt].) 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

DOJ has completed an independent investigation and review of the facts and circumstances that led to the death of Mr. Ramos. This analysis is based on all of the evidence obtained by DOJ in this matter, including police reports, witness statements, forensic evidence, Coroner's report, body-worn camera footage, digital in-car video, and surveillance footage from the incident location.

Because a prosecuting agency would need to affirmatively prove beyond a reasonable doubt that Officers Plascencia, Fabian, and Choi did not act in lawful defense of himself or others, this is the primary issue in determining whether criminal charges should be filed. A detailed analysis of the evidence pertaining to the OIS shows that Officers Plascencia, Fabian, and Choi actually and reasonably believed that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to the officers and others. Therefore, the evidence is insufficient to support criminal charges.

Subjective Intent of Officers Plascencia, Fabian and Choi

Officers Plascencia, Fabian and Choi's subjective intent must be inferred from the words they said and actions they took that were captured on the camera footage because they did not give a statement. Several factors demonstrate that Officers Plascencia, Fabian and Choi actually believed Mr. Ramos posed an imminent threat of death or great bodily injury to themselves, their partners, and to the nearby The Home Depot customers:

- Officers Plascencia, Fabian, and Choi were told by dispatch that Mr. Ramos was in possession of a 25 Beretta and threatened to shoot people at The Home Depot;
- The incident occurred at approximately 4:00 PM and the area was heavily populated by customers of The Home Depot;
- Mr. Ramos refused to comply with Officer Plascencia's commands to show his hands and walk towards the officers'
- Officer Plascencia issued 33 commands for Mr. Ramos to show his hands;

- Officer Garner described Mr. Ramos as hostile and agitated;
- Officer Gutierrez stated that Mr. Ramos was nervous and appeared to be exploring possible avenues of escape.
- Officers next to Officers Plascencia, Fabian, and Choi observed that Mr. Ramos repeatedly concealed his right hand in his right pant pocket as if he were hiding something;
- Mr. Ramos positioned himself between the Toyota Sienna and the Volkswagen Tiguan to conceal his movements from officers;
- Mr. Ramos was undeterred by Officer Maldonado’s use of less lethal-force;
- After being struck by the less-lethal foam round, Mr. Ramos took a shooting stance and pointed a black object in the direction of Officers Officer Plascencia, Fabian, and Choi.
- Sergeant Jimenez, Officer Salas, Officer Gutierrez, Officer Garner, W-1, W-4, W-5, and W-14 believed the black object in Mr. Ramos’ hands was a gun.

Objective Intent of Officers Plascencia, Fabian and Choi

The evidence shows that Officers Plascencia, Fabian, and Choi objectively and reasonably believed, based on the totality of the circumstances, that the threat of death was imminent given that Mr. Ramos appeared to have the present ability, opportunity, and intent to cause death or great bodily injury to them and to the customers and employees of The Home Depot. Mr. Ramos told 911 dispatchers that he possessed a gun and was going to shoot people at The Home Depot. Officer Perez was concerned for the safety of customers and employees of The Home Depot because the location was busy at the time of the incident. When Officer Perez arrived, Mr. Ramos exited his vehicle with his right hand concealed in his right pant pocket as if he were hiding something. Officer Plascencia arrived on scene and directed Mr. Ramos to show his hands approximately 33 times, but Mr. Ramos refused to comply. Officers Fabian and Choi arrived shortly after and positioned themselves near Officer Plascencia; Officer Fabian on the driver-side of Officer Plascencia’s vehicle and Officer Choi on the passenger-side of the patrol vehicle. Noticing that Mr. Ramos was unresponsive to his verbal commands, Officer Plascencia attempted to deescalate the situation by offering to help find Mr. Ramos’ daughter. De-escalation attempts were unsuccessful and Mr. Ramos attempted to conceal his movements from law enforcement by standing near the hood of a white Volkswagen Tiguan parked next to his vehicle. At one point, he reached in to his right pocket and appeared to manipulate something.

While Officer Plascencia communicated with Mr. Ramos, BPD officers formed a response team and assigned individuals to specific lethal and non-lethal tasks to ensure a safe and effective arrest of Mr. Ramos. Sergeants Jimenez and Kay, and Officers Fabian, Salas, McKinney, Garner, and Caldwell were designated as the “hands on” team and tasked with taking Mr. Ramos in to custody. Officer Maldonado was assigned to less-lethal force. Sergeant Kay considered requesting a Mental Health Evaluation Team to assist but the team was unavailable.

After approximately 14 minutes and 33 commands from Officer Plascencia, Officer Maldonado fired a less-lethal sponge round at Mr. Ramos. The less-lethal round struck Mr. Ramos but had little to no effect. Mr. Ramos stepped out from behind the white Volkswagen Tiguan, produced a black L shaped

object from his right pant pocket, and pointed the object towards Officers Plascencia, Fabian, and Choi as if he were pointing a gun. Sergeant Jimenez, and Officers Salas, Gutierrez, and Garner, along with four civilian witnesses described the object in Mr. Ramos' hands as a gun. As Mr. Ramos produced the object, Officer Salas yelled, "Gun! Gun! Gun!" A reasonable officer, in the same circumstances as Officers Plascencia, Fabian, and Choi, with the same knowledge, would have felt that deadly force was necessary to defend against an imminent threat to life. Accordingly, the decision to shoot was objectively reasonable.

W-2's contrary account was contradicted by other evidence. W-2 told investigators that "Mr. Ramos was waving his hands above his head and had nothing in his hands." However, W-2's statement is contradicted by several factors. At least four responding officers and four civilian witnesses observed an object in Mr. Ramos' hands at the time of the OIS. Moreover, Home Depot surveillance video, BWC from responding officers, and ICC from nearby patrol vehicles clearly show that Mr. Ramos was holding a black object in his hands. W-2 made other inconsistent statements to investigators as well. According to W-2, officers did not render medical aid to Mr. Ramos and he did not see an ambulance arrive until one hour after Mr. Ramos was shot. This is also contradicted by witness statements, Home Depot surveillance cameras, BWCs, and ICCs. BPD officers began rendering medical aid approximately 23 seconds after the OIS and paramedics arrived on scene approximately seven minutes and eight seconds after the OIS.

Furthermore, the various locations and roles of the officers explains why Officers Plascencia, Fabian, and Choi were the only officers to fire their guns. Officers Plascencia and Fabian were located near the front driver-side door of Officer Plascencia's patrol vehicle which was situated directly in front of Mr. Ramos. Officer Choi was located near the front passenger-side door of Officer Plascencia's patrol vehicle. The remaining eight officers were located in strategic locations further away from Mr. Ramos. All 11 officers on scene had different roles. This included lethal coverage, less-lethal coverage, supervisory roles, a team to arrest Mr. Ramos, and a team to render medical aid if needed. As seen on the pertinent BWCs and ICCs, when Mr. Ramos emerged from behind the Volkswagen, he aimed the object in the direction of Officers Plascencia, Fabian, and Choi. Within seconds, all three officers fired their weapons. It does not appear that Mr. Ramos aimed the object in the direction of any other officers. Also, no other witnesses observed Mr. Ramos aim the object at any other officers.

Thus, the totality of the circumstances suggests that Officers Plascencia, Fabian, and Choi held the subjective belief that deadly force was necessary to defend themselves, their partners, and nearby customers of The Home Depot from an imminent threat of death or serious bodily injury and that their belief was objectively reasonable.

CONCLUSION

Based on the investigation and review of evidence, along with the applicable statutes, legal principles, and subsequent analysis, there is insufficient evidence to support the criminal prosecution of Officers Plascencia, Fabian, and Choi. As such, no further action will be taken in this case.



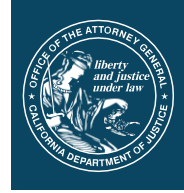
C A L I F O R N I A

DEPARTMENT OF JUSTICE

Policy and Practice Recommendations for the Burbank Police Department Related to the Officer-Involved Shooting of Ruben Ramos on May 27, 2023

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

October 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).) Therefore, the Department of Justice (DOJ) through its Police Practices Section (PPS) conducts a review of the information obtained through the criminal investigation, which may include a review of policies concerning 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 officers who are subject to the criminal investigation. PPS uses the review process to identify applicable recommendations, including any recommendations to modify policies and practices that may reduce the likelihood that officers use deadly force, as well as recommendations to address any other deficiency or concern related to the officers’ conduct or the agency’s response. PPS’s goal is that these recommendations will assist the agency and the officers involved in the incident in understanding, from an independent perspective, improvements that may be made to address what was observed through this incident.

As background, Burbank Police Department (BPD) officers responded to a report of an individual with a gun in the parking lot of Home Depot and threatening to shoot people inside the store. The individual, identified as Ruben Ramos, reported that he had a concealed handgun. Responding officers, including Officers Plascencia, Fabian, Choi, and Maldonado, attempted to speak with Mr. Ramos to de-escalate the situation. After Mr. Ramos failed to comply with orders to keep his hands out of his pockets, Officer Maldonado fired a 40-millimeter less lethal sponge round at Mr. Ramos, striking him in the torso. Mr. Ramos drew an item from his pocket, later identified as a knife, and assumed a shooting stance toward the officers. Officers Plascencia, Fabian, and Choi fired their service weapons at Mr. Ramos, striking and killing him.

PPS evaluated all the facts and available evidence, and pursuant to its obligations under Government Code section 12525.3, subdivision (b)(2)(B)(iii), PPS advises Burbank Police Department to review and implement two recommendations:¹

NEGLIGENT DISCHARGE AND ROUND COUNT

After Mr. Ramos repeatedly failed to comply with orders to show his hands, BPD officers determined that the use of a 40-millimeter launcher was appropriate. Pursuant to BPD policy, Officer Maldonado announced that he was going to fire the 40-millimeter launcher by shouting “40! 40!” Officer

¹ DOJ applauds BPD’s efforts to secure the perimeter and ensure the safety of the individuals who were already at the location when the incident began. BPD officers were able to block off the entrance to the parking lot and assist Home Depot employees in preventing customers from leaving the store. However, several people who were already in the parking lot can be seen walking near the scene of the incident, including in the area where the officers ultimately fired their weapons. While the efforts to secure the perimeter and protect the public were adequate, it appears additional steps could have been taken to protect bystanders from potential harm. BPD should ensure that its efforts to secure a perimeter and maintain the safety of bystanders are as thorough as possible given the time and resources available.

Maldonado then fired the 40-millimeter launcher, with the sponge round striking Mr. Ramos in the torso. During the DOJ investigation following the incident, investigators discovered that Officer Caldwell had *unintentionally* fired a round from his 40-millimeter launcher. According to Officer Caldwell's supplemental report, he was pulling the hammer to the rear of the launcher to put the weapon into a single action state.² Officer Caldwell was startled by the sound of the gunshots and released the hammer, unknowingly firing the 40-millimeter launcher. The sponge round was found in an unoccupied vehicle in the parking lot, and it was determined the round had been fired from Officer Caldwell's 40-millimeter launcher.

BPD Policy requires that "Any time a kinetic energy projectile, (40mm sponge round) is expended, other than during training, an on-scene supervisor should ensure that the round is located and booked in as evidence." (BPD Policy No. 308.9.3.)

PPS recognizes that the 40-millimeter round in question was fired unintentionally during the particularly stressful moment of an officer involved shooting. During DOJ's investigation, it was discovered that the 40-millimeter launcher was apparently placed back into its case without being checked.

PPS recommends that BPD should amend its policy to require officers to check all weapons used during a critical incident to identify and preserve any potential evidence. This will ensure that information or evidence regarding the discharge of firearms and less lethal weapons is not missed in the event of a negligent or unknown discharge.

CRISIS INTERVENTION RESPONSE

Although the initial call for service did not identify a person suffering from a mental health crisis, Mr. Ramos' conduct during the initial interaction suggested that Mr. Ramos may have been experiencing a mental health crisis. Mr. Ramos was also a parolee, with a documented history of mental health issues and substance use.

BPD Use of Force Policy No. 300.3.5 provides that:

...when reasonable, officers should evaluate the totality of the circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force ([sic] Gov. Code, § 7286, subd. (b).)

One of the alternatives specifically identified by the policy is "If reasonably available, the use of crisis intervention techniques by properly trained personnel." (BPD Policy No. 300.3.5(b).)

BPD reports indicate that Sergeant Kay considered requesting a Mental Health Evaluation Team (MHET) to assist in speaking with Mr. Ramos. However, the MHET was unavailable at the time of the incident because BPD's MHET was staffed with one police officer and one Department of Mental Health clinician, Tuesday through Friday between 10:00 a.m. and 8:00 p.m.

² Single action state means the hammer has been cocked and the weapon is ready to fire upon pulling the trigger.

PPS is informed and appreciates that BPD has already commenced efforts to add additional staff to its MHET, with a plan to expand its availability seven days per week. PPS recommends that BPD continue its efforts. BPD should also consider extending the hours of MHET availability. PPS further recommends that BPD consider implementing a POST certified course to further train personnel on recognizing the most common mental illnesses encountered by law enforcement, and the use of effective de-escalation techniques to resolve an incident involving a person suffering from a mental health crisis.