



C A L I F O R N I A

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# DEPARTMENT OF JUSTICE

## **Report on the Investigation into the Death of Austin Flores on May 19, 2022**

Fresno County AB 1506

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December 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 witnesses and any 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 clearly outweighs any public interest in disclosure.

For reasons related to privacy, as well as readability of this report, the witnesses and key locations will be identified as follows:

- Location #1 (L-1) – Mr. Flores’ Grandmother’s residence
- Witness #1 (W-1) – Mr. Flores’ Mother
- Witness #2 (W-2) – Mr. Flores’ Grandmother

## INTRODUCTION

On May 19, 2022, an officer involved shooting occurred at a single-family residence located in the City of Fresno, Fresno County. During an attempt to serve and enforce a restraining order at the residence, officers encountered Austin Flores, who brandished what appeared to be a firearm and aimed it at Corporal Christopher Cooper. The firearm was actually a replica. In response, Corporal Cooper fired nine rounds at Mr. Flores, who was fatally wounded.

The Department of Justice (DOJ) investigated and reviewed this officer-involved shooting pursuant to Government Code section 12525.3 (enacted by Assembly Bill 1506). This report is the final step in the DOJ’s review of the fatal shooting of Mr. Flores. The scope of this report is limited to determining whether criminal charges should be brought against the involved officers and 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 prove that Corporal Cooper committed a crime.

***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

### Initial 911 Call

On May 19, 2022, at about 11:17 AM, Fresno Police Department (Fresno PD) Dispatch received a 911 call from W-1, the mother of Austin Flores, a 27-year-old male. She informed the Fresno PD that the family had a restraining order against Mr. Flores, and that he was currently at L-1, a single story, single-family residence in the City of Fresno. W-1 stated that Mr. Flores was “passed out” at the back door of the residence. W-1 also stated that she saw burnt foil next to Mr. Flores, so she believed he was “high” on an unknown type of drug. She said that Mr. Flores sometimes carried a knife, but she was unaware if Mr. Flores was armed. W-1 also stated that she was at the home with her mother, W-2 [who resides at L-1]. Dispatch instructed W-1 to go inside with her mother and lock the doors.

At 11:22 AM, Dispatch entered the following initial information in the police department’s Computer Aided Dispatch (CAD)<sup>1</sup> system:

PRIORITY: 1 - TYPE: 40 - RESTRAINING ORDER VIOLATION - DISPATCH AREA: CE -  
LOCATION: [REDACTED] FRESNO - EVENT SOURCE: NEM - SYNOPSIS: VIO OF  
RO..RESTRAINED AUSTIN FLORES [DATE OF BIRTH REDACTED]...RP JUST PULLD UP AND  
SON PASSED OUT BY BACK DOOR....HMA...27YR...6-1...SLIM...DARK PANTS DARK BLK  
SHIRT BB CAP/BLK...MALE HI ..THERE IS A PIECE OF FOIL THAT APPEARS BURNT..UNK  
TYPE OF DRUG...NO WEAPONS SEEN..BUT SOMETIMES HE CARRYS A KNIFE...IN AFS  
SHOWS MALE REGISTERED W/1 GUN FIRESTORM 380.....MALE SITTING OUTSIDE THE  
BACK DOOR EATING CEREL...

At 11:23 AM, Dispatch announced the following over radio: “Violation of restraining order at [address]. RP just pulled up and her estranged son is passed out by her back door. HMA, 27 years old, six feet, one inch, wearing dark pants and a dark black shirt. Possibly high, RP says there is a piece of foil that appears burnt, unknown what type of drug, and no weapons seen.”

### Pre-incident Briefing

Nine officers comprised the team that initially responded to the incident scene prior to shots being fired: Officer D. Mumm, Officer B. Hutchins, Officer M. Padilla, Officer R. Hill, Officer Z. Richards, Corporal Christopher Cooper, Officer G. Valdez, Officer B. Sturgeon, and Sergeant T. Kazarian. The officers, including Corporal Cooper, met near L-1 for a briefing and to receive assignments before reporting to the incident scene. Officer Hutchins initially took the lead in developing a plan and Sergeant Kazarian gave assignments to officers after he arrived. Officer Sturgeon arrived just before the briefing concluded.

While Corporal Cooper was driving to the briefing location, he called W-1 for further information. W-1 informed Corporal Cooper that Mr. Flores was still at L-1 and was sitting in a vehicle that was parked in the backyard. When Corporal Cooper asked whether Mr. Flores had a gun, W-1 said, “No.” Corporal Cooper broadcast over the radio that Mr. Flores was in an inoperable car in the backyard, which he also told officers at the briefing.

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<sup>1</sup> Dispatchers use the computer aided dispatch (CAD) system to send written communications to officers who access the information on computer screens in their patrol vehicles.

During the briefing, officers shared and discussed information received from Dispatch and 911 calls, including that Mr. Flores had prior incidents with police at L-1, that there was a restraining order requiring him to stay away from his grandmother's residence, L-1, and that, according to a law enforcement database search, Mr. Flores had one firearm registered to him, as well as an active felony arrest warrant for being a felon in possession of ammunition, and outstanding misdemeanor arrest warrants for resisting a peace officer and unlawful possession of tear gas. Officers at the briefing meeting looked at a booking photo of Mr. Flores and pulled up geographic images of L-1 on Google Maps as well.

During the briefing, officers who had prior contacts at L-1 involving Mr. Flores also shared information that on both Monday, May 16, 2022, and Wednesday, May 18, 2022, W-1 and W-2 called Fresno PD and reported that Mr. Flores frequented L-1 to use narcotics and became verbally and physically abusive. During the incident on May 16, 2022, W-1 and W-2 reported that Mr. Flores had a metal pole in his hand and had threatened to hit W-2 in a dispute over money for drugs. On that basis, W-2 obtained a restraining order against Mr. Flores. When Fresno PD attempted to make contact with Mr. Flores on May 18, 2022, Mr. Flores fled the scene on foot and was not apprehended.

Before the briefing concluded, W-1 again called 911 and reported that she saw a gun in Mr. Flores' possession. This information was displayed in the CAD system. Officer Sturgeon read the information while en route to the briefing, but he was not sure if officers at the briefing saw it, and Dispatch had not yet communicated the information over the radio. As a result, Officer Sturgeon contacted the responding officers by radio and shared the information with them. The officers at the briefing heard Officer Sturgeon state over the radio that Mr. Flores was seen with a gun. Corporal Cooper confirmed in his interview that he heard the transmission from Officer Sturgeon while at the briefing with the other officers.

## **Pre-incident Radio and Dispatch Communications**

The following is a timeline of key events and communications. Information broadcast over the radio:

At about 11:23 AM, Officer Hutchins stated via radio, "there's priors with this male...there is an officer safety attachment, we might need one more unit," indicating that there was prior history between Fresno PD and Mr. Flores, and there was an officer safety concern noted in the CAD system regarding Mr. Flores. Officer Hutchins also stated over the radio that Mr. Flores "was the male 202 was talking about yesterday morning at the briefing . . . the guy who always runs . . . believe the officer safety hit mentioned him being violent towards LE."<sup>2</sup>

At about 11:33 AM, Dispatch broadcast over the radio that Mr. Flores had three active arrest warrants: one felony warrant for being a felon in possession of ammunition, one misdemeanor warrant for resisting a peace officer, and one misdemeanor warrant for unlawful possession of tear gas.

At about 11:34 AM, Corporal Cooper stated over the radio that, according to the reporting party (W-1), Mr. Flores was in a white inoperable vehicle in the backyard. Sergeant Kazarian immediately repeated the information in a second broadcast.

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<sup>2</sup> "202" is the radio designation identifying the officer who provided this information in the briefing.

At about 11:35 AM, a police helicopter arrived above L-1, but left the location around 11:42 AM due to a fuel shortage.

At 11:41 AM, the police helicopter announced over radio that they saw “a female at the front of the house, purple top and shorts, not sure if RP [W-1].” Sergeant Kazarian then broadcast to Corporal Cooper and instructed Corporal Cooper to “keep the RP [W-1] on the line, she is going to be our eyes,” and that they would meet before heading to the scene.

At about 11:40 AM, Dispatch stated over the radio that Mr. Flores “comes back to registered owner on a .380 semi-automatic for Austin [Flores].” Sergeant Kazarian then asked dispatch to “put it on the call for us” so that other reporting officers could see the information.

At about 11:42 AM, Sergeant Kazarian asked Corporal Cooper over the radio for a status update from W-1. Corporal Cooper stated that, according to W-1, Mr. Flores was still in the white vehicle in the backyard, and that W-1 unlocked the gate and gave officers permission to enter the backyard.

At about 11:46 AM, Dispatch said over the radio that Mr. Flores’ warrants were confirmed to be his and rebroadcast the warrant information.

At about 11:47 AM, Fresno PD Dispatch received another 911 call from W-1. She stated that Mr. Flores came out of the backyard and met her in the driveway, where he showed her a firearm in his waistband that she described as a “big black revolver.” W-1 also said that Mr. Flores told her “if they come for me, I’ll be ready for them.” W-1 stated that W-2 believed the firearm to be fake, but that W-1 did not know. W-1 then told the dispatcher that, according to W-2, Mr. Flores “always said he’ll go down fighting.” W-1 stated that she and W-2 had moved to a neighbor’s house across the street and that officers could find Mr. Flores in the breezeway or backyard, as Mr. Flores usually hid in the white car.

At about 11:50 AM, the following CAD note was added:

MOTHER ON LL ... ADVS SUBJ CAME OUT OF THE SIDE OF THE HOUSE BRANDISHED A FIREARM IN HIS WASTEBAND ... SAID HE "WAS READY IF THEY COME FOR ME" ... MOTHER ADVSING IT WAS A BIG BLACK REVOLVER ... GRANDMOTHER BELIEVES IT MAY BE A TOY, THINKS SHE SAW SOMETHING SIMILAR IN THE DIRT IN THE BACKYARD

At 11:51 AM, an unknown officer broadcast to Sergeant Kazarian that there was an update and that “the primary is willing to leave peacefully.” Another officer then asked over the radio, apparently directed at Corporal Cooper, if they “picked up the update that he came out of the side [of the house].” Corporal Cooper responded by saying the Reporting Party [W-1] “won’t pick up the phone.” Another officer, possibly Officer Sturgeon, then responded, “there’s an update right now that he came out of the side and he brandished a black revolver.”

At 11:52 AM, Dispatch broadcast over the radio the information from the 11:50 CAD entry: “The update states the mother is now advising the male came out of the side of the house brandishing a firearm from his waistband, said he was ‘ready if they come for me,’ and that it “was a big black revolver, grandmother thinks it might be a toy. The mom is just getting that info from the grandmother.” An officer then responds asking for a “physical description of the clothing” for the male.

Corporal Cooper tried to call W-1 back multiple times before the pre-incident briefing ended, but his attempted calls went straight to voicemail. Corporal Cooper stated to the other officers that he believed something was happening, because he was unable to reach W-1.



Figure 1: Photo of the front of L-1, facing West, depicting the black metal gate that leads to the backyard (left) and the entry to the breezeway (right) marked by the arrow.



Figure 2: Photo of backyard as seen behind the black metal gate, facing West.





Figure 3: Photo of the portion of the backyard visible from the corner of the breezeway, facing South.

Prior to officers arriving at the incident scene, as indicated above in the 11:47 AM CAD entry, W-1 and W-2 moved to the neighbor's home across the street, which provided a direct view of the front door of L-1. The family members were inside the neighbor's home with their neighbor, waiting for law enforcement to arrive and serve the warrants on Mr. Flores. The subsequent CAD entry and radio broadcast by Dispatch did not inform officers that the family members had moved from L-1 to the neighbor's house.

### **At the Incident Scene**

At about 11:52 AM, Fresno PD officers arrived at L-1 in full uniform and in marked police vehicles. Officers took their assigned positions, with Corporal Cooper assigned the less-lethal 40-millimeter launcher, which is designed to fire large hard foam projectiles.

At the same time, the following CAD note was added concerning the 911 call at 11:47 AM:

VIA MOTHER **[NAME REDACTED]**, GETTING INFO FROM GRANDMOTHER .... SUBJ HAS SAID HE WOULD ALWAYS GO DOWN SWINGING

MOTHER **[NAME REDACTED]** ADVS SUBJ HAS NO ACCESS TO WEAPONS .... MOTHER IS ACROSS THE STREET AT NEIGHBORS IN **[ADDRESS AND PHONE NUMBER REDACTED]**

RO ISSUED 05162022 / EXPIRED 05232022 HASN'T BEEN SERVED PER RECORDS<sup>3</sup>

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<sup>3</sup> It is unclear whether officers at the scene were aware of the above CAD entry. The information from this specific CAD note was not broadcast over the radio, and, when the officers were interviewed, they did not mention information provided in it.

Once at L-1, officers established a perimeter and blocked off the street around the residence. Other officers approached the gate at the top of the driveway, closest to the house, which led into the backyard. The gate was black, comprised of two metal doors with bars, and a metal screen over the bars that was partially see-through (see Figure 4).

As observed in Corporal Cooper's body-worn camera video, the officers could see over the fence into the backyard.<sup>4</sup> There was a small two-passenger white "Smart car" vehicle parked within feet of the metal gate, with the passenger-side door wide open.



Figure 4: Photo of the backyard gate, partially open, and the vehicle Mr. Flores was sitting in when officers arrived.

Corporal Cooper estimated that the gate was about five feet high. Corporal Cooper reached over the top of the gate and unlocked it from the inside. Corporal Cooper then quietly opened the left door of the gate, leaving that portion of the door open. Once the gate was open, Corporal Cooper backed up several feet and joined the other officers who were standing behind a set of hedges at the bottom of the driveway, closest to the street.

As the officers were standing behind the hedges and looking into the backyard at the vehicle, two officers, who were standing to Corporal Cooper's left, had their firearms drawn and aimed at the

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<sup>4</sup> The summary of what happened at L-1 after officers arrived derives largely from Corporal Cooper's body-worn camera video.

passenger door of the white vehicle. Other officers said that they noticed movement and saw Mr. Flores briefly exit the white vehicle. At that time, Corporal Cooper placed the 40-millimeter launcher on the ground next to the garage door, drew his firearm, a Glock 45 nine-millimeter pistol, and yelled out three times, "Fresno Police Department show me your hands!" Corporal Cooper then says, "we have a Police K-9 here, if you take off running we are going to send in the dog," followed by "you may be bitten by the dog, come out now!" Corporal Cooper also yelled, "Fresno Police Department, you're surrounded dude," and again instructed Mr. Flores, "come out now." Mr. Flores did not show his hands to the officers and no verbal response can be heard from Mr. Flores.

At that time, Sergeant Kazarian, Officer Sturgeon, and Corporal Cooper understood that Mr. Flores' grandmother and possibly Mr. Flores' mother were still in the home. The officers, therefore, devised a plan to protect the family from any potential gunfire. According to that plan, Corporal Cooper and the K-9 officer would move across the driveway to the breezeway entry (see Figure 1).

As they moved up the driveway from the street towards the breezeway, Corporal Cooper and Officer Sturgeon had a line of vision past the metal gate and into the backyard where Mr. Flores was located. Corporal Cooper stated in his interview that, when he was about five to ten feet from the garage, he saw Mr. Flores "put a big chrome-colored gun out the passenger side of [the car], hold it up, and yell something ... 'I'm going to shoot you.'"

At about 11:54 AM, Corporal Cooper said over the radio "be advised he brandished weapon, chrome in color" and Officer Sturgeon stated "large frame, semi auto."

Officer Sturgeon was standing in the driveway as well, but closer to the street than Corporal Cooper. Officer Sturgeon said that he also heard someone yelling from inside the car and saw "a hand come out [of] the open ... door" of the vehicle with "a large frame silver ... semi-automatic handgun ... pointed out, kind of almost directly out of the vehicle and up ... and kind of shook around." In his interview, Officer Sturgeon stated that after he saw the "handgun," he backed up with his K-9, because they were exposed.

Corporal Cooper yelled out "gun!" about seven times, and multiple officers also called out "gun." Corporal Cooper next yelled out, "Show me your hands, dude, don't do it! Show me your hands!" then repeated "show me your hands!" at least two more times. At this point, none of the officers had fired their firearms.

Corporal Cooper instructed the other officers to back up and stay behind him. Corporal Cooper again yelled out to Mr. Flores, "Show me your hands, dude, don't do it! Show me your hands!" Corporal Cooper then picked up his less-lethal shotgun and Officer Sturgeon then continued moving towards the breezeway.

## The Shooting

The breezeway, which is a covered corridor between the driveway and the front door of L-1 (Figure 5), provided direct access to one side of the backyard.



Figure 5: Photograph of breezeway, facing West and towards the backyard. The driveway and white car were positioned around the corner to the left side of the photo.

At about 11:57 AM, Corporal Cooper, walking from the driveway, entered the breezeway first, with Officer Sturgeon right behind him. Corporal Cooper opened the metal entry gate of the breezeway, put his less-lethal launcher on the ground at the entry of the breezeway (see Figure 6), and held his nine-millimeter pistol in his right hand. Officer Sturgeon's K-9 continued to serve as the less lethal option when Corporal Cooper switched to his firearm. There were no other officers armed with lethal force in the breezeway area. Corporal Cooper then walked into the breezeway with his firearm in hand and stopped at the corner of the garage wall (marked with a circle in Figure 6).



Figure 6: Photograph of Corporal Cooper’s less-lethal launcher at the entry of the breezeway gate. The red circle indicates Corporal Cooper’s position when Mr. Flores appeared and the OIS occurred.

Corporal Cooper’s body camera video shows that during the minute he was in the breezeway, Corporal Cooper alternated between holding his pistol up at the shoot-ready position, and holding it low, as he looked around the corner of the wall. When another officer yelled out, “show me your hands!,” Corporal Cooper aimed his pistol straight ahead and looked past and around the corner of the wall.

As Corporal Cooper said, “watch to the west” over the radio, Mr. Flores suddenly appeared, moving laterally in front of the corner wall that connected the breezeway to the backyard. As soon as Mr. Flores passed the corner wall, he faced Corporal Cooper. Mr. Flores (at 4 minutes and 56 seconds in the body camera video) began to run across the backyard, and as he did, Mr. Flores aimed what appeared to be a firearm directly at Corporal Cooper (Figure 7). Corporal Cooper yelled, “gun! gun!” in rapid succession. Within one second of Corporal Cooper yelling “gun!” again (at 4 minutes and 57 seconds in the body camera video), Corporal Cooper fired nine shots. At 11:58 AM, an unidentified officer announced over the radio that shots had been fired.



Figure 7: Still frame from Corporal Cooper's Body Worn Camera of Mr. Flores taking aim with a replica firearm pointed at Corporal Cooper as Mr. Flores runs across the backyard.



Figure 8: Still frame from Corporal Cooper's Body Worn Camera of Mr. Flores' position as Corporal Cooper fired his second shot.



Figure 9: Still frame photo from Corporal Cooper’s Body Worn Camera showing Mr. Flores’ position (within the red circle) immediately after Corporal Cooper fired his third bullet.



Figure 9a: Enlarged image of Mr. Flores’ position in Figure 9, immediately after Corporal Cooper fired his third bullet.

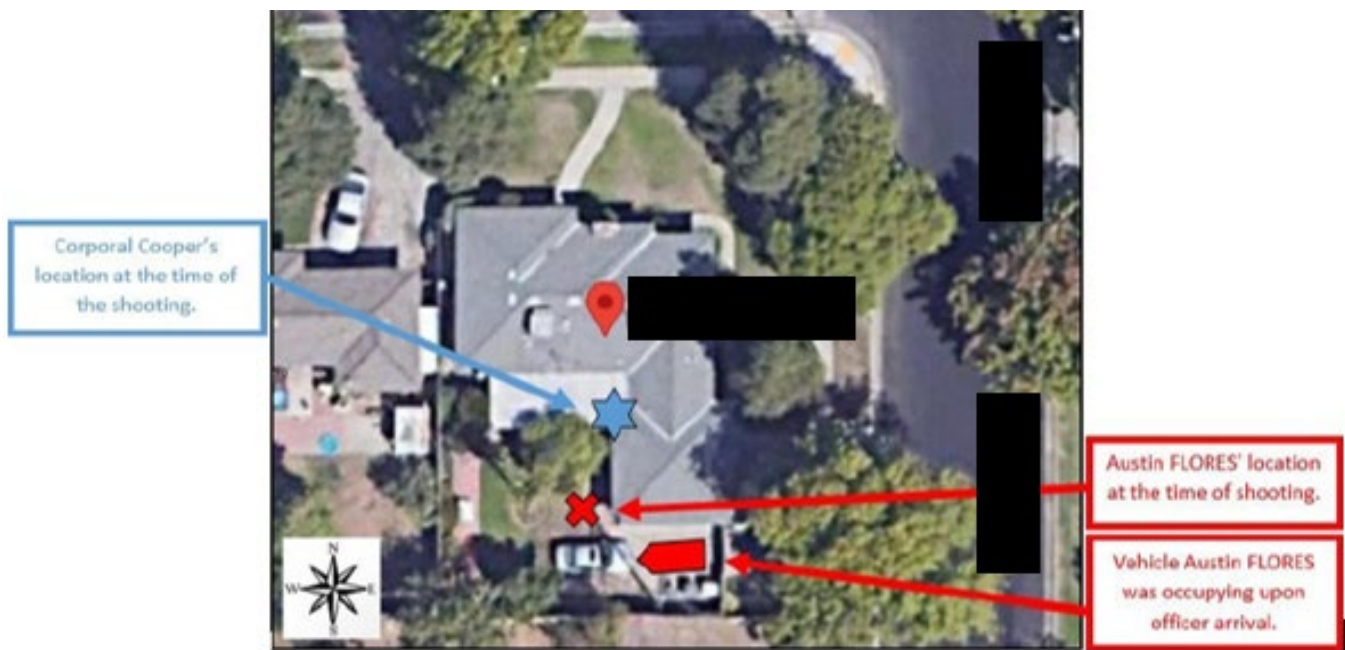


Figure 10: Aerial view depicting where Corporal Cooper and Mr. Flores were located at the time of the shooting.

Corporal Cooper fired nine shots in 2.551 seconds, with Mr. Flores falling to the ground. After Corporal Cooper fired his first three shots (Figure 9), there was a half-second pause before he fired the remaining six shots, all in rapid succession. In the video, Mr. Flores appears to remain upright until shot number three, then turns with what appears to be his back to Corporal Cooper and falls to the ground at shot number four. By shot number six, Mr. Flores is out of frame of Corporal Cooper’s BWC. After shot number nine, Mr. Flores was lying face down on the ground, showing no visible movement. At that point, Mr. Flores’ firearm was no longer visible. Corporal Cooper (at 5 minutes in the body camera video) stopped shooting and yelled, “show me your hands” and “gun” multiple times with his pistol still aimed in Mr. Flores’ direction. Corporal Cooper did not fire any more shots.

### Post-Shooting Response

Corporal Cooper called out that Mr. Flores had a firearm “in his right hand,” and that he “cannot see his right hand.” Corporal Cooper then asked his Sergeant and other officers if they could see the firearm. During this brief period, Corporal Cooper kept his firearm pointed at Mr. Flores. After approximately 45 seconds (at about 5 minutes and 41 seconds in the video), Mr. Flores moved his head, and Corporal Cooper yelled, “don’t move” and “show me your hands.” Mr. Flores’ head is seen moving for multiple seconds (until about 6 minutes and 16 seconds in the video), after which no further movement is seen from Mr. Flores.

One minute and eleven seconds after Mr. Flores fell to the ground (at 6 minutes and 9 seconds in the video), other officers called out, “let go of the gun.”

Corporal Cooper put his arms down and stepped back to reload his firearm (at 6 minutes and 37 seconds in the video). Officer Padilla covered Corporal Cooper by taking the front position and aiming his firearm at Mr. Flores. After reloading, Corporal Cooper then stood behind the right shoulder of Officer Padilla with his gun in hand.



One second later, an officer said, “his right hand is clear,” and Corporal Cooper replied “ok.” Sergeant Kazarian and other officers devised a plan to approach Mr. Flores. Officers said that Mr. Flores’ right and left hands were clear, and that they were ready to approach. Corporal Cooper put on latex gloves, pulled out his handcuffs, and announced to the other officers that he was ready to approach Mr. Flores.

After Mr. Flores was on the ground for two minutes and thirty-eight seconds (at 7 minutes and 39 seconds in the video), Corporal Cooper and Officer Padilla approached him. Mr. Flores was lying face down on the ground with his arms and legs spread apart and a visible wound to his upper head or neck area. Mr. Flores made no visible movement.

Corporal Cooper grabbed both of Mr. Flores’ arms and pulled him across the backyard to the concrete area of the breezeway. Corporal Cooper and Officer Padilla searched Mr. Flores’ pockets and person before turning him over. Once Mr. Flores was turned over on his back, blood was visible on the front of his face. Mr. Flores also appeared to move his head slightly. Corporal Cooper and Officer Padilla then searched Mr. Flores again by looking under his shirt and checking for weapons under his belt and pant legs. After they searched Mr. Flores for close to 20 seconds, three officers joined Corporal Cooper and Officer Padilla in the breezeway and began to administer first aid to Mr. Flores. Medical care from the officers started three minutes and fourteen seconds after Mr. Flores first fell to the ground.

Corporal Cooper then walked away as Mr. Flores was being treated and moved back towards the area where Mr. Flores was shot. Corporal Cooper saw Mr. Flores’ firearm on the ground, pointed to it, and instructed another officer to “secure that, do not let that go anywhere.” The black and metal-colored firearm, which was located near where Mr. Flores fell after he was shot, was later determined to be a non-operational, replica firearm.

At approximately 12:04 PM, Fresno Fire Department arrived at the incident scene and rendered first aid, chest compressions, and rescue breaths. Emergency medical responders with American Ambulance arrived on scene at 12:10 PM and took over medical care from Fresno Fire Department. American Ambulance then transported Mr. Flores to Fresno Community Regional Medical Center. Mr. Flores arrived at the hospital at 12:25 PM and was declared deceased at approximately 12:30 PM.

## **INVESTIGATION**

### **Evidence Reviewed**

The evidence reviewed in this investigation includes, but is not limited to, interviews of the 911 callers, family members at the incident scene, radio dispatch employees, law enforcement personnel at the scene, and shooting and witness officers, as well as the review of law enforcement body camera video and communications before and during the incident (radio, calls, body camera videos, images, etc.), and the autopsy report of Mr. Flores.

### **Incident Scene Description**

L-1 is a single-family residence. The backyard of the residence was covered in debris and contained two parked cars: a white Mazda sedan, and a white Smart vehicle. The white Smart vehicle was located closest to the backyard gate that opened up to the front driveway.



Figure 11: Evidence photo of a portion of the backyard from the incident scene showing a white Mazda sedan.

### **Incident Scene Evidence Recovery**

At L-1, Fresno PD began processing Corporal Cooper and Sergeant Kazarian, who turned over their firearms pursuant to Fresno Police Department protocol. Technicians C. Ens and A. Sanchez also assisted with the processing of evidence from Corporal Cooper and the collection and photographing of his firearms. At the scene, Technician Ens conducted an initial round count of Corporal Cooper's firearm, a nine-millimeter Glock 45, noting one live nine-millimeter cartridge located in the chamber of the firearm and 17 live cartridges in the magazine inserted into the firearm. Away from the scene, Technician Ens examined the expended magazine that Corporal Cooper used during the shooting, noting 8 live cartridges and a capacity of 17 cartridges.

DOJ's Bureau of Forensic Science criminalists took over the incident scene, and photographed and documented the scene with a digital camera and a three-dimensional (3D) imaging device.

DOJ's Senior Criminalist C. Johnson created Figure 12, which depicts the backyard of the residence and the location of evidence items that were obtained at the incident scene.

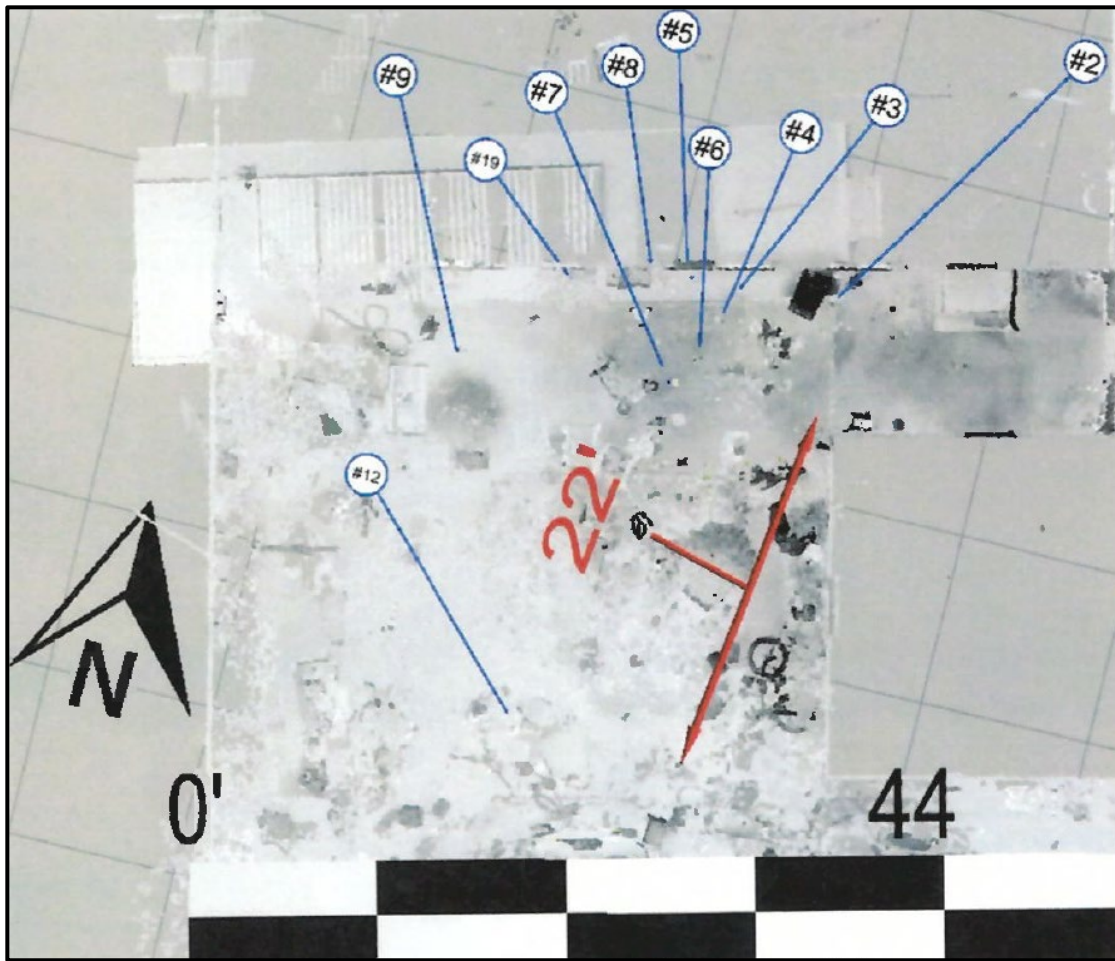


Figure 12: Numbered evidence items recovered from the incident scene.

Depicted in Figure 12, items 2 through 9, and 19 are the locations where fired cartridge cases were found. Item 12 is where the replica firearm was found. Blood stains were found on the ground in the backyard, where Mr. Flores is estimated to have fallen. The distance depicted in red, "22" feet, is the approximate distance between where the bloodstains were found and the northwest corner of the detached garage where Corporal Cooper was standing when he fired his weapon.

The "firearm" that Mr. Flores had in his hand when he was shot was recovered at the scene, located in the backyard where Mr. Flores fell to the ground after he was shot (Figure 13). Fresno PD secured the firearm and contacted DOJ, as Fresno PD believed the firearm to be a replica. The firearm was examined by DOJ Criminalist Supervisor J. Winn, who confirmed that the firearm was an imitation or replica firearm that was incapable of firing a live cartridge.



Figure 13: The firearm recovered in the backyard following the shooting.

Other evidence recovered at the incident scene included Mr. Flores' clothing and shoes, a black knife, a Motorola cellphone.

### ***Body Worn Camera (BWC) Video and Other Recordings***

The most relevant evidence reviewed was the body worn camera video of Corporal Cooper, which was the primary source of evidence used to summarize the incident as described above. Other recordings reviewed include audio interviews from witnesses and officers present during the incident, radio transmissions, CAD logs, and recordings of the 911 calls.

### **Interviews of Police 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.)

Corporal Cooper and Officer Sturgeon gave voluntary statements.<sup>5</sup> The following are summaries of their interviews, which describe the incident from the point of view of each individual officer. Please note that the interviews contain facts relayed by the officers that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

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<sup>5</sup> The other officers involved in this incident were interviewed, but they did not see shooting and could not provide additional information beyond that captured by the video, recordings, and the other officer interviews. Therefore, a summary of their interviews is not included.

### ***Corporal Cooper***

Corporal Cooper was interviewed by DOJ Special Agent J. Vignau on May 25, 2022, in the presence of Corporal Cooper's Attorney, Roger Wilson, and Detective Victor Miranda with Fresno PD.

Corporal Cooper's employment history included 26 years as a law enforcement officer, first as a police officer for the Kerman Police Department, then the Fresno PD. With the Fresno PD, Corporal Cooper began as a neighborhood police officer assigned to a high-crime neighborhood with the goal of reducing crime under the Police Activities League (PAL) program. He then served as a police K-9 handler for seven years, as well as a field training officer (FTO) for officers, cadets, and community service officers (CSO). As a Corporal and FTO for Fresno PD, his duties included training officers and standing in as a supervisor as needed.

On the date of the incident, Corporal Cooper was with a trainee when he heard a call over the radio about Mr. Flores' address. Corporal Cooper was familiar with the address due to a briefing that officers received the day before, during which Fresno Police supervisors discussed reporting to the address, the restraining order, and that Mr. Flores had previously fled from officers. Corporal Cooper informed dispatch that he and his trainee would be reporting to the location.

Corporal Cooper called the reporting party, Mr. Flores' mother (W-1), while his trainee drove them to the location where officers were going to conduct a briefing before heading to L-1. W-1 confirmed to Corporal Cooper that she was the person who called police, and that she, her mother, and Mr. Flores were at L-1. W-1 also told Corporal Cooper that Mr. Flores at first was inside the residence eating cereal, she had just kicked him out of the house, and that he was now in the backyard in a Smart car. Corporal Cooper said that the officers were going to have a meeting before arriving at the incident scene, and that he would call her back.

A police helicopter arrived at the incident scene, and Corporal Cooper informed officers in the helicopter that Mr. Flores was in the backyard in a Smart car.

Corporal Cooper called W-1 once more. She confirmed Mr. Flores was still at L-1, and that she gave the officers permission to enter the backyard. Corporal Cooper relayed this information to the other officers via radio, then concluded the call with W-1, and said he would call her back again.

At the briefing meeting, dispatch confirmed to the officers that Mr. Flores' warrants were active. Corporal Cooper could not recall at the time of his interview what the warrants were for, but he knew at least one was a felony warrant. Corporal Cooper said that dispatch also confirmed that Mr. Flores had a firearm registered to him. Corporal Cooper informed the officers at the briefing that he believed Mr. Flores was consuming narcotics because W-1 told Corporal Cooper that she saw Mr. Flores with burnt aluminum foil. Corporal Cooper said he knew from experience that this was a typical way people consumed narcotics. Officers at the briefing meeting looked at a booking photo of Mr. Flores and pulled up geographic images of the residence on Google Maps.

Corporal Cooper then called W-1 back at least twice, but each time, the calls went straight to voicemail, which concerned Corporal Cooper.

Corporal Cooper learned from Officer Sturgeon's radio communication that Mr. Flores had a firearm in his possession. Officer Sturgeon, who was headed to the incident scene and was communicating with the other officers over radio, asked the other officers if they heard the most recent radio update about

Mr. Flores being seen with a firearm. The briefing meeting then ended and Sergeant Kazarian assigned Corporal Cooper the less-lethal launcher role for the incident scene.

Corporal Cooper arrived at the incident scene and stood in the driveway with Officer Sturgeon and the K-9 dog. Corporal Cooper opened the metal gate leading to the backyard, so that if Mr. Flores fled, Officer Sturgeon could immediately deploy the K-9. Officer Sturgeon announced that he saw movement in the white car. Corporal Cooper then made multiple announcements that the officers were from the Fresno Police Department and that a K-9 dog was present. He also gave the standard K-9 announcement and other commands for Mr. Flores to surrender.

While they continued to give commands to Mr. Flores to come out, both Corporal Cooper and Sergeant Kazarian were positioned closest to the metal gate. Sergeant Kazarian had his firearm drawn and Corporal Cooper had his less lethal launcher. Corporal Cooper was right at the metal gate, standing partially behind the garage wall for cover, while Sergeant Kazarian was positioned about eight feet behind Corporal Cooper, also on the driveway, taking steps closer to Corporal Cooper, then taking steps back, as needed to gain visual sight of Mr. Flores.

With his less-lethal launcher in hand, Corporal Cooper estimated he was about five to ten feet from the garage, which is connected to the backyard gate. At that point, Corporal Cooper said Mr. Flores “puts a big chrome-colored gun out the passenger side of [the car], holds it up, and yells something to the [effect] that I’m going to shoot you.” Corporal Cooper called out “gun” multiple times. At this point Corporal Cooper put down his less lethal launcher, stating that “I don’t want to be tied up with it again and have it strapped to me.” Corporal Cooper then heard Mr. Flores yelling something, so Corporal Cooper issued additional commands, such as “telling him don’t do this ... show me your hands, show me your hands.” Corporal Cooper stated in his interview, “Again, I’ve already identified ourselves as the Fresno Police Department. I’ve given him the K-9 warning ... asking him to slow down, show us his hand ... I believe I told him something to the effect of, let’s not do this. Don’t do this.” Mr. Flores remained in the white Smart car and did not surrender.

Sergeant Kazarian then directed Corporal Cooper and Officer Sturgeon, to move into the breezeway to secure the family inside the home. Corporal Cooper picked up his less lethal launcher from where he had placed it on the ground, led the way and ran towards the second garage door that is closer to the breezeway. Before entering the breezeway, Corporal Cooper put down his less-lethal launcher at the entrance of the breezeway and pulled out his Glock firearm. Corporal Cooper entered the breezeway with Officer Sturgeon. Corporal Cooper said he could “hear voices yelling,” but he could not hear what was being said.

As Corporal Cooper looked around the corner wall of the breezeway into the backyard, he saw Mr. Flores “running around the ... garage from the ... Smart car, comes directly towards me.” Corporal Cooper described the following as his immediate reaction: “I yell . . . gun. He looks right at me. The gun’s in his right hand. It’s coming my direction . . . discharge my firearm at him. He goes down . . . I yell gun, keep yelling, gun out.” Corporal Cooper said he stopped firing his gun as soon as Mr. Flores fell to the ground. At that same time, Corporal Cooper’s fellow officers came to where Corporal Cooper was located in the breezeway.

Corporal Cooper stated that he felt it was necessary to fire his weapon because, “I knew that he was going to do whatever he had to do to get away, and if that meant shoot me, he was going to shoot me.

Because the gun was coming up and the position that he was taking -- his stance -- he was going to do whatever it meant to, and I believed that he was going to shoot me, kill me, and then go inside." When asked what he thought Mr. Flores would do if Corporal Cooper did not fire his weapon, Corporal Cooper responded, "He was going to kill me."

Corporal Cooper said that when Mr. Flores fell to the ground, he could see where Mr. Flores was lying, but "because the backyard was cluttered" and "full of trash," Corporal Cooper could not see Mr. Flores' hands, or where the firearm was at that point. Corporal Cooper said that as he continued to give commands to Mr. Flores to "show [his] hands," he could "see [Mr. Flores'] head was still moving. His upper body was moving. But [he] couldn't see where the gun was due to the trash and due to...his position that he was at." Because Corporal Cooper could not see whether Mr. Flores still had the firearm in his hands, Corporal Cooper relied on other officers to help him determine where the firearm held by Mr. Flores was located. Sergeant Kazarian and Officer Hutchins moved to Corporal Cooper's left side to gain visual sight of Mr. Flores' hand and the firearm.

Corporal Cooper estimated that within "30 seconds to a minute," he heard another officer say that the firearm was in Mr. Flores' right hand. Corporal Cooper continued giving Mr. Flores commands to "show his hands," but Corporal Cooper did not see Mr. Flores move. Corporal Cooper stated in his interview that he was concerned about whether Mr. Flores had another weapon.

Officer Padilla then took over Corporal Cooper's position, allowing Corporal Cooper to step back and complete a "tactical reload," where he "ejected [his] first magazine," placed it in his left rear pocket, and "loaded a fresh magazine" containing 17 rounds.

Corporal Cooper then put blue gloves on and informed the other officers he would be the person to go "hands on" to take Mr. Flores into custody. Corporal Cooper approached Mr. Flores with Officer Padilla next to him.

In his interview, Corporal Cooper explained that Mr. Flores was face down. Corporal Cooper grabbed both of Mr. Flores' hands, and with Officer Padilla's help, Corporal Cooper pulled Mr. Flores away from the debris and moved Mr. Flores into the breezeway. The officers placed Mr. Flores on the ground of the breezeway, rolled Mr. Flores over, and searched his pockets for weapons. Corporal Cooper and other officers called for first aid equipment.

As other officers began rendering first aid to Mr. Flores, but before medical personnel arrived, Corporal Cooper left the breezeway and stood at the front of the residence, as Sergeant Kazarian instructed him to do. About two blocks away from L-1, Fresno Police Department Crime Scene Investigation Technicians A. Sanchez and C. Ens met with Corporal Cooper, processed him for evidence, and photographed his guns and duty belt before Corporal Cooper was cleared to leave the scene.

### ***Officer Sturgeon***

Officer Sturgeon was interviewed by DOJ Special Agent J. Vignau on May 19, 2022, at 8:31 PM, in the presence of Officer Sturgeon's attorney Roger Wilson, and Detective Victor Miranda of the Fresno PD.

Officer Sturgeon had been a law enforcement officer for 25 years, starting as a patrol officer with the Dinuba Police Department for a year-and-a-half. Officer Sturgeon then became an officer with the Fresno PD and had worked several assignments as a patrol officer in the drug enforcement unit and in the problem-oriented-policing unit, as a K-9 dog handler, and as a Field Training Officer for 16 years.

Officer Sturgeon responded to the call earlier that day because Fresno PD dispatch requested a K-9 unit and informed officers that the incident involved a restraining order violation, and that the subject was in a broken down car in a backyard. As Officer Sturgeon drove to the incident scene, dispatch also reported that the subject had an active felony “weapons violation” warrant and at least one other active misdemeanor warrant for resisting arrest.

As he made his way to the incident scene, Officer Sturgeon read a CAD log entry<sup>6</sup> stating that the subject had a firearm in his possession, and that the subject had made some comment to the reporting party that he was “not going to go peacefully” and was “going to do something with the police.” Officer Sturgeon said the entry caught his attention because it was “in red” text, which he said he had not seen before, and that it was about one minute old when he saw it, so Officer Sturgeon knew that the other responding officers were at a briefing and were likely outside of their vehicles.

Because Officer Sturgeon was not sure if the other officers received the update regarding the subject’s comments, he relayed the information over the radio, and the other officers met him at the incident scene. [A review of the radio transmission from Officer Sturgeon at 11:51 AM reveals that he stated that Mr. Flores came out of the side of the house with a firearm.]

After arriving at L-1, Officer Sturgeon stood near the metal gate with Corporal Cooper and Sergeant Kazarian closest to him when Officer Sturgeon saw movement in the backseat of the white Smart car, which was located in the backyard just inside of the gate. As other officers gave commands, Officer Sturgeon could hear someone inside the car yelling.

Officer Sturgeon then saw, “a hand come out the open ... door, and a large-frame silver semi-automatic . . . handgun was pointed out, kind of almost directly out of the vehicle and up . . . and kind of shook around.” At that point, other officers yelled “gun,” and Officer Sturgeon moved his K-9 dog back for cover, because he and the K-9 were completely exposed.

Officer Sturgeon heard Corporal Cooper and Sergeant Kazarian giving loud commands to the person in the car, including that there was a police K-9 dog present that would be deployed if he did not surrender, and repeatedly telling the person in the white Smart car to surrender.

Officer Sturgeon asked Sergeant Kazarian if the reporting party was still in the house, because Officer Sturgeon was aware that there was an elderly woman involved, and that the subject had “brandished the weapon to her.” Officer Sturgeon said to Sergeant Kazarian that he wanted to secure the breezeway in order to provide some cover and protect the family members from potential gunfire. Officer Sturgeon followed Corporal Cooper into the breezeway, located between the front driveway and the front door area. Officer Sturgeon told Corporal Cooper that they needed to protect the

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<sup>6</sup> The CAD entry read:

05/19/22 11:50:50 CT05 - Hackney, M (D3192) :

MOTHER ON LL ... ADVS SUBJ CAME OUT OF THE SIDE OF THE HOUSE BRANDISHED A FIREARM IN HIS WASTEBAND ... SAID HE "WAS READY IF THEY COME FOR ME" ... MOTHER ADVSING IT WAS A BIG BLACK REVOLVER ... GRANDMOTHER BELIEVES IT MAY BE A TOY, THINKS SHE SAW SOMETHING SIMILAR IN THE DIRT IN THE BACKYARD



reporting party who was inside the house. Officer Sturgeon said that Corporal Cooper “acknowledged he heard me.”

Then, after both officers were in the breezeway for a “bit of time,” Officer Sturgeon heard general “yelling,” followed by “gun, gun, gun,” and what Officer Sturgeon described as a “volley of shots.” Officer Sturgeon did not have a clear view of the subject and could not see him. Officer Sturgeon indicated that as Corporal Cooper “motioned to the southwest,” Officer Sturgeon saw pants or shoes in the tall brush, which he believed to be Mr. Flores.

Sergeant Kazarian and other officers then joined the officers in this breezeway area. Officer Sturgeon offered to use the K-9 dog to approach Mr. Flores so that the officers could safely “pull him away from the weapon,” but that the leash Officer Sturgeon had on the K-9 dog was not long enough. Officer Sturgeon at that point returned to his patrol vehicle to retrieve a longer leash.

When Officer Sturgeon returned to the breezeway, the other officers had already moved Mr. Flores into the breezeway area, so Officer Sturgeon returned his K-9 dog to his patrol vehicle. Officer Sturgeon then escorted Fresno Fire Department personnel to the breezeway area after they arrived.

## **Interviews of Civilian Witnesses**

### ***Interview of W-1***

Mr. Flores’ mother, W-1, was interviewed on May 19, 2022, at 12:50 PM by Fresno PD Detective Baroni and Detective Alvarez.

W-1 said she arrived at their neighbor’s house across the street (L-2) at about 11:17 AM with her mother. Her goal was to find Mr. Flores and have the police serve Mr. Flores with the restraining order. She saw Mr. Flores asleep in the backyard of L-1 with aluminum foil near him that was burned on one side, which she suspected to be drugs, because W-1 knew that Mr. Flores normally used heroin.

Mr. Flores woke up and asked for a bowl of cereal. W-1 instructed her mother to prepare Mr. Flores a bowl of cereal. Meanwhile, W-1 exited the house and called the Fresno PD, asking the police department to serve Mr. Flores with the restraining order. The dispatcher told W-1 to stay inside of the home and to lock the door. W-1 went back inside the home, told Mr. Flores he had to go outside, and when Mr. Flores went to the backyard, she locked the door behind him. W-1 told detectives that she was scared because Mr. Flores had threatened her and her mother in the past, and W-1 was not sure how Mr. Flores would react once police arrived.

Before police officers arrived, the neighbor of W-1 offered to have her and her mother stay in the neighbor’s home, so W-1 and her mother went to the neighbor’s house and remained there. Next, W-1 received a phone call from the Corporal Cooper asking for updated information about Mr. Flores’ whereabouts. W-1 then told the officer that when she last saw Mr. Flores, he was in the backyard inside the Smart car. When Corporal Cooper asked whether Mr. Flores had a gun, W-1 said, “No.”

After this call ended, W-1 exited the neighbor’s home and walked back to L-1 to see if Mr. Flores was still in the backyard. W-1 stated that, at that time, Mr. Flores came out from the breezeway area, walked towards her, and lifted his shirt to show her “what looked like a gun in his belt.” Then, W-1 indicated that Mr. Flores said to her, “if they come for me, I’m ready.” W-1 stated that she “scolded”

Mr. Flores and told him to return to the backyard. W-1 said that Mr. Flores then retreated into the breezeway in the same direction that he had come from, towards the backyard.

In her interview, W-1 described the firearm Mr. Flores had, saying it “looked like a gun. It was a gun. He had a gun .... It was a big gun. It was a black gun and it had a revolver in it.” W-1 said she did not know how Mr. Flores knew that W-1 had called 911, and that she did not know when she first called police that Mr. Flores had a gun.

W-1 then returned to the neighbor’s house because she “felt safer” there, and called 911 again to tell the Fresno PD that she had seen Mr. Flores with a firearm. W-1 told police dispatch that officers were not yet on scene, and that she saw Mr. Flores with a firearm. W-2 could hear this phone call with police, and told W-1 that “she thought it was a fake gun, because she had seen a fake gun in the past, in the backyard a few weeks ago.” W-2 repeated to W-1, “it’s not a real gun...it’s a fake gun...I’ve seen it before, I’ve touched it.”

W-1 said that dispatch asked what W-2 was saying, so W-1 told dispatch, “My mother says that it’s probably a fake -- it’s probably a fake gun.” W-1 said that the call ended at that point, because the dispatcher said that they needed to communicate that information to officers.

A few moments later, officers arrived and W-1 heard the police officers giving commands to Mr. Flores, “to come out” and “something about dogs ... a K-9 unit ... come out or we’ll send the dogs.” W-1 heard the officers “yell very loudly.” W-1 could see that officers had their “guns drawn,” but she could not see anything else. W-1 said she later heard about five gunshots.

During her interview, W-1 was asked if Mr. Flores had ever made statements about police that were similar to the statement he made that day, “if they come for me, I’m ready.” W-1 stated that Mr. Flores had made similar statements. “A few times” in the past, Mr. Flores had said to W-1 that, “He would want to be taken by death by police officer or suicide by police officer.”

### ***Interview of W-2***

Mr. Flores’ grandmother, W-2, was interviewed on May 19, 2022, at about 2:35 PM by Fresno PD Detective Baroni and Detective Alvarez. W-2 provided background about Mr. Flores, stating that Mr. Flores lived with W-2 at L-1 his entire life, and even though W-2 kicked Mr. Flores out, she would allow Mr. Flores to come to her house for food.

Mr. Flores was addicted to multiple narcotics but did not have money, so Mr. Flores borrowed money from W-2, which caused friction between them. On May 16, W-2 called police and requested a restraining order because Mr. Flores threatened to hit her with a metal pole, and because W-2 refused to give Mr. Flores five dollars and told Mr. Flores she was unhappy with him.

On the day of the incident, W-2 gave Mr. Flores a bowl of cereal. When police were called to serve the restraining order, W-2 went to the neighbor’s house and remained there for the entirety of the incident. W-2 recalled hearing officers order Mr. Flores to “come out,” but W-2 said she could not see any of the officers. W-2 also said she could not see Mr. Flores at all.

While W-2 did not see Mr. Flores with a firearm that day, W-2 said that in the one or two weeks before the incident, W-2 had seen “a brown toy gun” on her property, but could not provide additional detail

because, in her words, “I’m going blind.” W-2 then said that she believed “the toy gun” was a wooden firearm with flower decorations. W-2 said she threw the “toy gun” in the trash.

W-2 did not witness the incident, but stated that she was inside her neighbor’s house when police arrived, and that she heard about five gunshots.

## **Autopsy**

Mr. Flores’ autopsy was conducted on May 23, 2022, by Doctor Gopal, and Forensic Autopsy Technicians M. Prieto and G. Franco. The following individuals were present from the DOJ: Special Agent K. Mansfield, Supervising Special Agent A. Romero, Deputy Attorney General A. Mohmoud, Senior Criminalist C. Johnson, and Criminalist K. Ortega. Also present from other agencies were: Fresno County Deputy District Attorney B. Whalen, Fresno County District Attorney Investigator V. Rodriguez, and Fresno PD Detectives J. Alexander and V. Miranda.

The coroner’s report determined the cause of death to be “[p]erforation of the heart and left lung due to multiple gunshot wounds.” The report noted five gunshot entrance wounds:

1. “front of [the] chest”
2. “ride side back”
3. “front of [the] abdomen”
4. “the back of the right elbow”
5. “right gluteal region”

The toxicology report showed the following substances present in Mr. Flores’ system: ethyl alcohol, methamphetamine and opiates, fentanyl, and Citalopram.

## **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. 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.) 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. Flores. 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, and body-worn camera video.

Because a prosecuting agency would need to affirmatively prove beyond a reasonable doubt that Corporal Cooper 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 shows that a prosecuting agency would not be able to establish that Corporal Cooper was objectively unreasonable in his determination that lethal force was necessary to protect himself and others, or that Corporal Cooper did not actually hold this view. Therefore, the evidence is insufficient to support criminal charges.

Before arriving at the incident scene, the responding officers, including Corporal Cooper, held a briefing to share critical information about the 911 call from Mr. Flores' mother, Mr. Flores' background with family members, and his criminal history and outstanding warrants. Officers were informed that Mr. Flores had been to L-1 twice in the previous three days, where he had used narcotics, become abusive with family members, and had threatened to hit his grandmother with a metal pole during a dispute over drugs. Following the latest incident, a restraining order was issued, prohibiting Mr. Flores from being at L-1. Corporal Cooper and the other officers were also informed that a firearm was registered to Mr. Flores, and that Mr. Flores had an active felony arrest warrant for possessing ammunition as a felon, and two outstanding misdemeanor arrest warrants for resisting a peace officer and unlawful possession of tear gas. Officers were thus aware that Mr. Flores had a history of volatile and threatening behavior and might have access to a firearm.

Officers received several reports regarding whether Mr. Flores possessed a weapon on the day of the incident. The first 911 call from W-1, which was communicated to officers on the CAD system, indicated that Mr. Flores did not have a gun, but that a gun was registered to him and he was known to carry a knife. W-1 also told Corporal Cooper on the phone that Mr. Flores did not have a gun. However, in a later 911 call, W-1 told Dispatch that she saw Mr. Flores on the driveway with a large black revolver in his waistband, but that W-2 thought it might be fake. A related CAD note informed officers that Mr. Flores had a firearm in his waistband, that W-2 believed it might be a toy, and that Mr. Flores had said he "was ready if they come for me." Officer Sturgeon relayed on the radio that Mr. Flores had a gun. A subsequent CAD note stated that, according to W-1 and W-2, Mr. Flores would "go down swinging," had "no access to weapons," and that W-1 was located at a neighbor's residence. However, it is unknown whether responding officers read the latter CAD note while they were arriving at the incident scene.

Regardless of the varying reports, officers were aware that W-1 saw Mr. Flores with a gun in his waistband, although W-2 thought it could be a toy. Sergeant Kazarian and the other officers responded with a plan that incorporated less lethal options, including the 40-millimeter launcher and a K-9 dog. However, when Mr. Flores held up a gun from the white car and threatened to shoot, the attention of officers immediately focused on the potential deadly threat posed by Mr. Flores.

When officers first arrived at L-1, they encountered Mr. Flores sitting in a car next to the garage. Mr. Flores was repeatedly ordered to surrender and told that a police dog was present and could be deployed. Instead of obeying commands, Mr. Flores held up what appeared to be a firearm from the window of the car and threatened to shoot. The firearm had no orange tip or any other markings indicating it was a replica rather than a real firearm. At this point, Mr. Flores posed a potentially deadly threat. Corporal Cooper responded, “don’t do this,” and “show me your hands.” Corporal Cooper, who at that point of the incident was standing near the corner of the garage and was armed with his nine-millimeter pistol, did not shoot at Mr. Flores.

The incident further evolved when Sergeant Kazarian instructed Corporal Cooper and Officer Sturgeon, along with the K-9, to report to the breezeway to secure the family believed to be inside. Corporal Cooper entered the breezeway and walked towards the backyard area. Corporal Cooper and Officer Sturgeon were positioned in the breezeway specifically to protect the family members that they believed were inside the residence and make sure that Mr. Flores did not “hold them hostage” or go in the house and harm them. This belief was not unreasonable. Responding officers had been informed that Dispatch told family members to stay inside L-1 and lock the doors. The officers were apparently unaware of the later CAD entry indicating that family members had moved across the street to a neighbor’s house. Corporal Cooper and Officer Sturgeon, therefore, believed that by positioning themselves in the breezeway corridor, they would serve as a buffer between the backyard area, where Mr. Flores was apparently armed with a firearm, and the family, in order to protect the home occupants from potential gunfire. In any case, Mr. Flores eventually presented an imminent threat to Corporal Cooper and Officer Sturgeon.

When Mr. Flores suddenly emerged and ran across the backyard, Corporal Cooper’s body camera video shows that Corporal Cooper did not immediately fire at Mr. Flores, but waited until Mr. Flores held his firearm up and aimed it directly at Corporal Cooper (see Figure 8). Mr. Flores’ injuries to the front and right side of his body were consistent with the video and Corporal Cooper’s interview, which portrayed Mr. Flores initially facing Corporal Cooper then moving to Mr. Flores’ left and falling as Corporal Cooper fired the shots. In response to the apparent imminent threat posed by Mr. Flores, Corporal Cooper fired a rapid series of nine shots until Mr. Flores fell to the ground and no longer presented a deadly threat. Once Mr. Flores was on the ground, no further shots were fired by Corporal Cooper.

Under the circumstances, the number of shots fired by Corporal Cooper was not unreasonable. Mr. Flores precipitated the shooting by suddenly pointing a gun at Corporal Cooper at close range, after reportedly saying to his mother he “was ready” when police came, and would “go down swinging,” and after waving the gun in the white car once police arrived and repeatedly ordered him to surrender. Corporal Cooper’s reaction to the threat posed by Mr. Flores was immediate. With only a brief half-second pause between shots 3 and 4 as Mr. Flores began to turn his body, the nine shots were continuous, lasting until just after Flores landed on the ground and appeared to stop moving. Before that point, there is no indication from the body worn video that Mr. Flores dropped the gun or no longer posed an imminent threat.

Under the totality of circumstances, a reasonable officer in Corporal Cooper's position could reasonably believe that Mr. Flores intended to shoot his firearm and could seriously injure or kill Corporal Cooper and anyone nearby, including Officer Sturgeon. That no other officer discharged a firearm is understandable because Corporal Cooper was uniquely positioned in the breezeway. Even Officer Sturgeon, who was right behind Corporal Cooper, made it clear during his own interview that he did not see Mr. Flores at all until after Corporal Cooper had fired shots at Mr. Flores. And even if Officer Sturgeon had seen Mr. Flores, Officer Sturgeon was not in a position to unholster and discharge his handgun quickly because Officer Sturgeon was guiding his K-9 dog at the time.

Thus, the evidence fails to show, beyond a reasonable doubt, that Corporal Cooper acted without the intent to defend himself and others from what he reasonably believed to be imminent death or serious bodily injury. Taking into account the totality of circumstances involved in this incident, it was not unreasonable for Corporal Cooper to believe that Mr. Flores aimed what appeared to be an operable firearm directly at him and to respond with deadly force.

## **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 a criminal prosecution of Corporal Cooper. As such, no further action will be taken in this case.





C A L I F O R N I A

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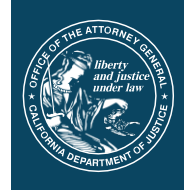
DEPARTMENT OF JUSTICE

**Policy and Practice Recommendations for the  
Fresno Police Department Related to the Officer-Involved  
Shooting of Austin Flores on May 19, 2022**

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

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December 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 supplemental 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, Fresno Police Department (FPD) officers were dispatched to a call for service involving a restraining order against Austin Flores, requested by his grandmother, in the City of Fresno. Officers were aware that Mr. Flores had a handgun registered in his name. FPD officers received additional information regarding Mr. Flores brandishing a gun just prior to their arrival on scene. Mr. Flores had barricaded himself inside a vehicle parked in the backyard. Officers arrived on scene, announced their presence, and instructed Mr. Flores to come out with his hands raised. Several minutes later, Mr. Flores exited the vehicle he was in, while holding the apparent handgun, and ran towards FPD Corporal Cooper, pointing the gun in the direction of Corporal Cooper. Corporal Cooper fired his service weapon at Mr. Flores, striking and killing him.

### **PPS CONCLUDES NO RECOMMENDATIONS ARE WARRANTED**

PPS has completed a thorough review of the Division of Law Enforcement’s investigation file, and review of the involved agency’s policies and training materials. Based upon that review, FPD officers completed substantial briefing and planning in preparation for their response to the call. FPD requested additional resources, including backup officers, a canine, helicopter, and unmanned aerial vehicle. FPD officers were prepared with numerous less-lethal force options, including a less-lethal shotgun and canine. Finally, the body worn camera footage demonstrates numerous efforts to verbally de-escalate the situation before resorting to the use of force when Mr. Flores charged towards one of the officers with a firearm. Therefore, based on a review and evaluation of all the facts and evidence, PPS issues no recommendations.