



C A L I F O R N I A

DEPARTMENT OF JUSTICE

Report on the Investigation into the Death of Marcos Maldonado on July 27, 2022

Los Angeles County AB 1506

February 2025

TABLE OF CONTENTS

ASSEMBLY BILL 1506 BACKGROUND	1
PRIVACY STATEMENT	2
INTRODUCTION	3
SUMMARY OF THE INCIDENT	4
INVESTIGATION	6
Evidence Reviewed.....	6
Incident Scene Description.....	6
Incident Scene Evidence Recovery	8
Video Evidence	9
911 Call	12
Emergency Medical Response.....	12
Officer Processing and Ballistics.....	12
Autopsy and Toxicology.....	12
Interviews of Involved Officers.....	13
Interviews of Civilian Witnesses.....	13
APPLICABLE LEGAL STANDARDS	19
Murder.....	19
Voluntary Manslaughter.....	19
Self-Defense.....	19
Burden of Proof	21
LEGAL ANALYSIS	21
CONCLUSION	23



INVESTIGATION OF OFFICER INVOLVED SHOOTING

ASSEMBLY BILL 1506 BACKGROUND

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

AB 1506, signed into law on September 30, 2020, and effective July 1, 2021, provides the California Department of Justice (DOJ) with an important tool to directly help build and maintain trust between law enforcement and the communities they serve by creating a mandate for an independent, statewide prosecutor to investigate and review officer-involved shootings of unarmed civilians across California.

The DOJ investigates and reviews, for potential criminal liability, all incidents covered under AB 1506, as enacted in California Government Code section 12525.3. Where criminal charges are not appropriate, the DOJ is required to prepare and make public a written report, like this one, communicating:

- A statement of facts, as revealed by the investigation;
- An analysis of those facts in light of applicable law;
- An explanation of how 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 will be identified as follows:

- Witness 1 (W-1): Pedestrian eyewitness
- Witness 2 (W-2): Pedestrian eyewitness, said spoke to Mr. Maldonado
- Witness 3 (W-3): Proprietor of nearby business
- Witness 4 (W-4): Restaurant customer
- Witness 5 (W-5): Driving van to Dodgers game
- Witness 6 (W-6): Van passenger
- Witness 7 (W-7): Van passenger
- Witness 8 (W-8): Van passenger
- Witness 9 (W-9): Van passenger
- Witness 10 (W-10): Van passenger
- Witness 11 (W-11): Driving car to Dodgers game
- Witness 12 (W-12): Car passenger
- Witness 13 (W-13): Driving to work
- Witness 14 (W-14): Restaurant customer
- Witness 15 (W-15): Restaurant customer
- Witness 16 (W-16): Telecommunications maintenance employee
- Witness 17 (W-17): Nearby resident
- Witness 18 (W-18): Witnessed incident while working at nearby business
- Witness 19 (W-19): Driving to Dodgers game
- Witness 20 (W-20): Bus driver
- Witness 21 (W-21): Mr. Maldonado's sibling

INTRODUCTION

On July 27, 2022, Los Angeles Police Department (LAPD) Officer Daniel Kearney was conducting an investigation related to a traffic accident on Broadway and Avenue 19 near downtown Los Angeles. While doing this, he was approached by civilians who told him there was a man armed with a gun down the street from him. Officer Kearney asked for help over the radio after hearing this report. Shortly thereafter, another civilian called 911 to report a man with a gun in the same area.

As a result of these reports, LAPD Officers David Gallardo and Alonso Vasquez were sent to the area. They found the man, who was later identified as Marcos Maldonado, and saw that he was holding what appeared to be a gun. They ordered Mr. Maldonado to drop the gun, but he did not comply. After a short period of time, Mr. Maldonado pointed the gun at the officers. When he did so, they fired their own guns, killing Mr. Maldonado.

The California Department of Justice (DOJ) investigated and reviewed this 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. Maldonado 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 prove that Officers Gallardo or Vasquez 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 THE INCIDENT

On July 27, 2022, at 10:58 AM, LAPD Officer Kearney was near the intersection of Broadway and Avenue 19 in Los Angeles investigating a traffic collision when he was approached by civilians who told him there was a man nearby with a gun. Officer Kearney requested backup over the radio. In response to that request, LAPD Officers Gallardo and Vasquez were sent to the location where the man had been seen.

At 11:00:25 AM, a passerby¹ wearing a Dodgers jersey pointed Mr. Maldonado out to Officer Kearney and said, "I don't know if it's a toy gun or what." At 11:01:50 AM, another passerby, W-3, approached Officer Kearney and said he did not know if Mr. Maldonado's gun "was real or not."

At 11:02:53 AM, Officers Gallardo and Vasquez responded to Broadway just west of the busy intersection at Avenue 19. Cars were parked on both sides of the street, civilians were in the area, and some vehicle traffic continued to drive down Broadway. As soon as Officers Gallardo and Vasquez arrived, Officer Kearney pointed out Mr. Maldonado. At 11:02:57 AM, Officer Vasquez can be heard on his body-worn (BWC) saying that Mr. Maldonado "has a gun." Both officers took cover behind the open doors of their police car and drew their own guns, which they pointed toward Mr. Maldonado. Both officers repeatedly shouted for Mr. Maldonado to "drop the gun" and "drop that gun." At approximately 11:03:30 AM one of the officers ordered Mr. Maldonado to "get on the ground." Mr. Maldonado did not comply with these commands.

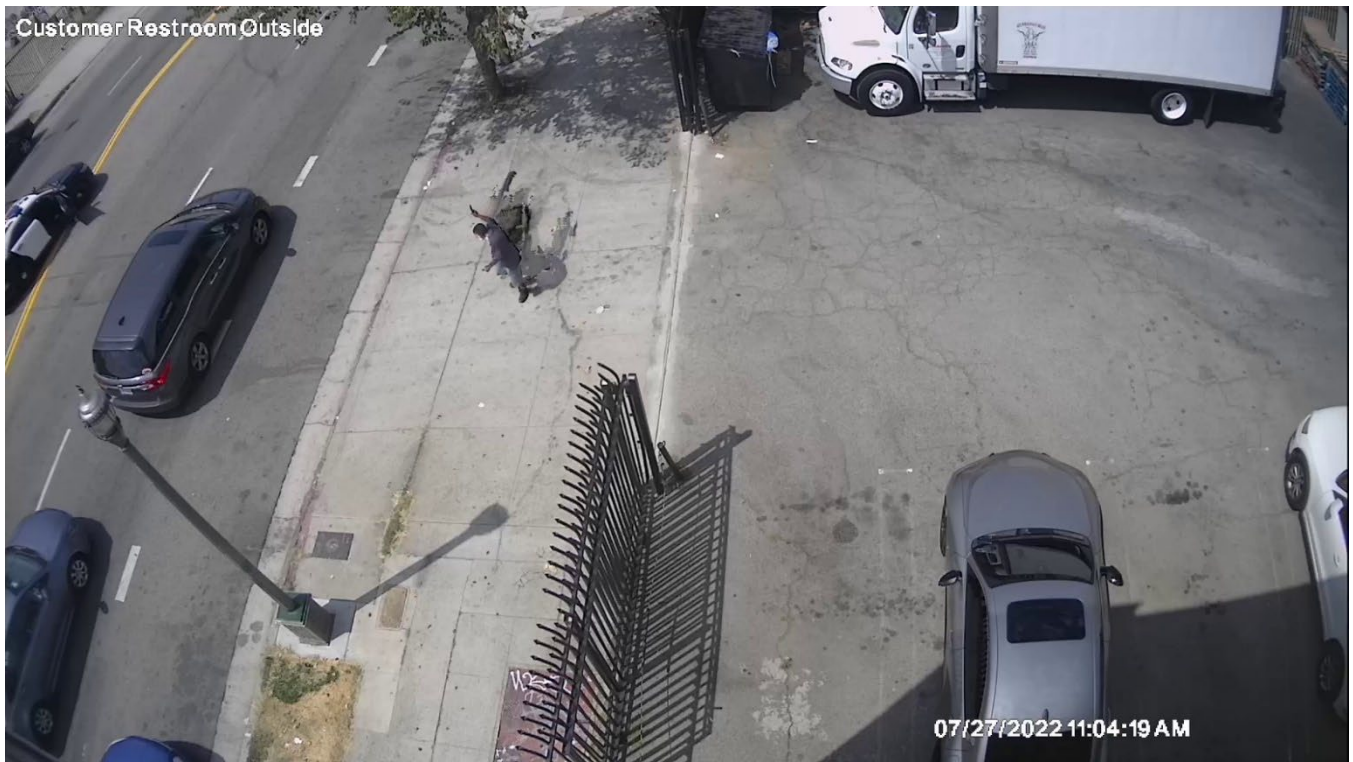
At 11:03:46 AM, W-2 approached the officers and said, "[i]t's a BB gun." Both officers can be heard saying, in response, "We don't know that." Officer Kearney asked W-2 how he knew that and W-2 replied, "He showed me."

At about 11:04 AM, both officers repositioned themselves. Until that point, Mr. Maldonado had been on Broadway, east of Avenue 19, separated from the officers by two crosswalks. At 11:04 AM, Officer Gallardo drove his police car across the intersection closer to Mr. Maldonado. Officer Vasquez, who at that point was not inside the car, ran across the intersection on foot, and rejoined Officer Gallardo at the car once it stopped moving.

At 11:04:14 AM, Officer Gallardo stopped the police car, got out, and again took cover behind the open driver-side door. He immediately told Mr. Maldonado, "Hey, drop that gun! Drop that gun!" Mr. Maldonado was on the sidewalk, walking away from Officer Gallardo. At 11:04:18 AM, Officer Vasquez caught up to the police car. Also at 11:04:18 AM, as soon as Officer Gallardo finished telling Mr. Maldonado to drop the gun, BWC video shows Mr. Maldonado turn his body toward Officer Gallardo. Mr. Maldonado raises his arm up, holding the gun, while extending it from his body and pointing towards Officer Gallardo. At 11:04:19 AM, Officer Gallardo fired his gun once and Officer Vasquez fired his gun twice.² Surveillance video from Al's Wholesale Meats also shows Mr. Maldonado turning his body and raising the gun in the direction of the officers, at which point the officers fire their own guns at him. Mr. Maldonado fell to the ground.

1 Law enforcement were not able to identify this person.

2 Audio and video from both BWCs and the in-vehicle camera, and reports documenting the number of remaining rounds of ammunition found in their guns after the incident, reflect that Officer Gallardo had fired one round and Officer Vasquez fired two.



Al's Wholesale Meats surveillance video showing Mr. Maldonado on the sidewalk. He is holding the gun with his arm extended.



In this surveillance video from Al's Wholesale Meats, Mr. Maldonado is walking down the sidewalk with his arm extended.

At 11:04:23 AM, Officer Gallardo approached Mr. Maldonado, who by then was on the ground. By 11:04:34 AM, multiple other officers converged on Mr. Maldonado and he was handcuffed at 11:04:47 AM. Officers requested medical aid for Mr. Maldonado. Los Angeles Fire Department was dispatched at 11:05:47 AM and arrived at 11:09:52 AM. On their arrival, paramedics determined that Mr. Maldonado did not have a pulse and was not breathing. They performed CPR and rescue breathing, and transported him to USC Medical Center, where he was pronounced dead at 11:45 AM.

After the incident, it was determined that Mr. Maldonado actually possessed an Airsoft gun, not a real firearm.

INVESTIGATION

On July 27, 2022, at 1:36 PM, DOJ's California Police Shooting Team ("CaPSIT") was notified of the incident and responded to the scene. When CaPSIT arrived, they surveyed the scene and began a criminal investigation. When they arrived, the scene was secured with an outer and an inner perimeter. Police tape had been placed across the intersections surrounding the scene. In addition, California Bureau of Forensic Services criminalists responded to the scene at approximately 3:20 PM. BFS criminalists shadowed LAPD criminalists during the investigation and recovery of evidence.

Evidence Reviewed

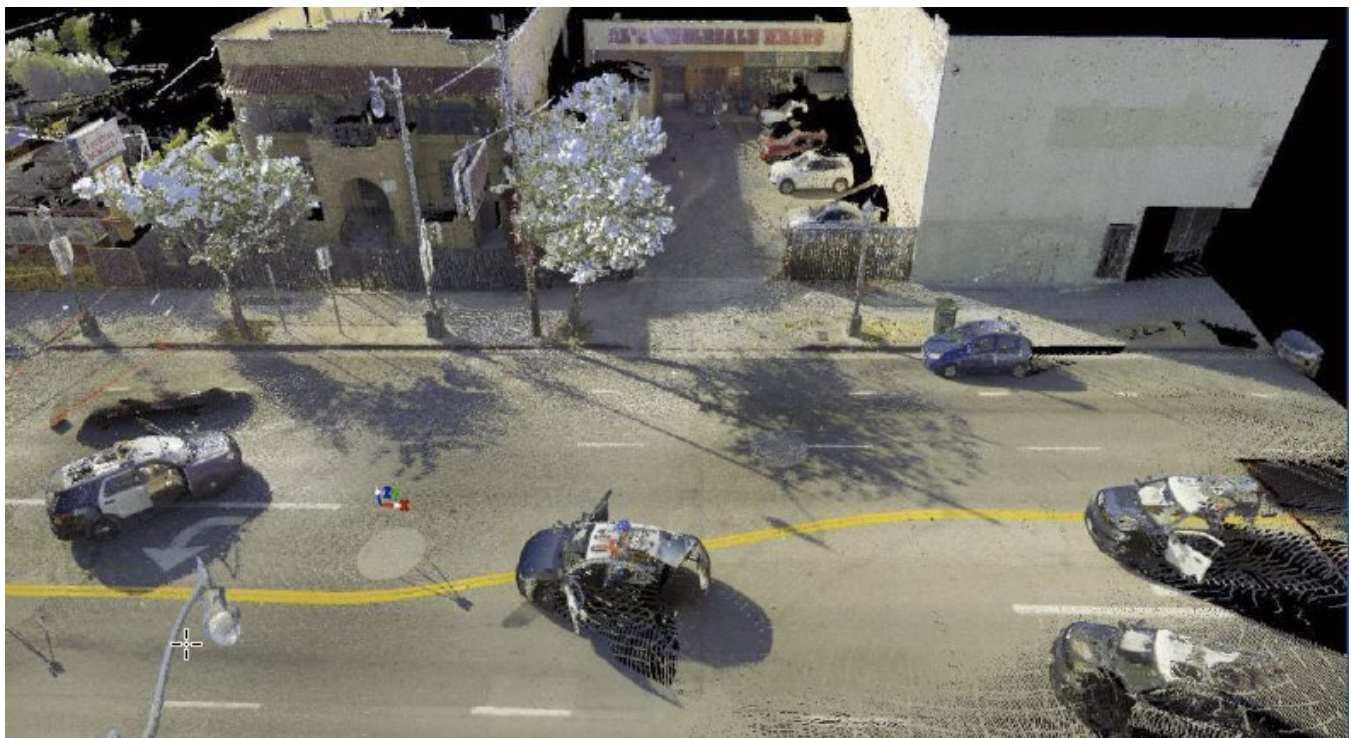
DOJ reviewed extensive investigation materials related to this shooting including: reports from investigating officers, the autopsy report, BWC footage, dashcam footage, crime scene photographs, surveillance video, interview transcripts and audio recordings of interviews conducted by CaPSIT, 911 call, and recovered items of physical evidence.

Incident Scene Description

The incident scene was on the north side of North Broadway in the driveway leading to the parking lot of Al's Wholesale Meats, located at 1915 North Broadway, Los Angeles, California 90031. South Avenue 19 runs north-south, east of the incident scene. The intersection is controlled by traffic lights. North Broadway itself is an asphalt paved street with lanes of travel in each direction and sidewalks on both sides of the street. As visible in the videos capturing the incident, multiple civilian cars were on the street, both driving and parked, at the time of the shooting.



Overhead view of the incident scene showing the locations of the traffic collision (“T/C”) and the place where the shooting occurred. At the time, Mr. Maldonado’s identity was not known to officers, which is why in this image that location is marked as “Jon Doe.”



This overhead view of the scene shows the locations of the police cars at the time of the incident.

Incident Scene Evidence Recovery

LAPD personnel processed the scene for evidence. The scene was documented in reports, in photographs, in 3D scans, and evidence collection. They were shadowed by BFS Criminalists Dernoncourt, Peña, and Hughes. The following items of physical evidence were collected during the processing of the scene:

1. Mr. Maldonado's Airsoft gun
2. Methamphetamine pipe recovered from Mr. Maldonado
3. Lighter found on the sidewalk in front of Al's Wholesale Meats
4. Mr. Maldonado's shirt, cut from him in the course of rendering aid
5. Fired bullet collected from a grassy area near the driveway
6. Fired bullet stuck to a metal gate in front of Al's Wholesale Meats
7. Nine-millimeter ammunition casing from the driver's side of the police car
8. .40-caliber ammunition casing nearby the police car
9. .40-caliber ammunition casing in a lane of eastbound traffic
10. Bullet impact points were noted on a metal gate in front of Al's Wholesale Meats



Black plastic Airsoft handgun recovered at the scene.



Black plastic Airsoft handgun recovered at the scene.

Video Evidence

The photographs in this section are stills from surveillance cameras, BWC, and in-vehicle cameras.



Gallardo BWC, after moving across the intersection, showing Mr. Maldonado on the sidewalk (left) at the incident location.



Vasquez BWC after moving across the intersection, showing Mr. Maldonado on the sidewalk at the incident location.

The camera in Officers Gallardo and Vasquez’s patrol car shows Mr. Maldonado on the sidewalk with his arm raised and extended, pointing the gun in front of him down the sidewalk. At that time, Mr. Maldonado had not complied with any of the officers’ orders to drop the gun or get on the ground.



(1/3) Still from Officers Vazquez and Gallardo’s dashcam at approximately 11:04 AM showing Mr. Maldonado walking on the sidewalk.



(2/3) Still from Officers Vazquez and Gallardo's dashcam at approximately 11:04 AM showing Mr. Maldonado walking on the sidewalk.



(3/3) Still from Officers Vazquez and Gallardo's dashcam at approximately 11:04 AM showing Mr. Maldonado walking on the sidewalk.

The dashcam video and the BWC video also show multiple cars stopped in the middle of the road next to the incident. One of them, an occupied grey minivan, was next to and in front of Mr. Maldonado when he began pointing the Airsoft gun in front of himself. Over the next few seconds, Mr. Maldonado pointed the gun forward, possibly towards the minivan, lowered the gun to his side, turned back towards the officers, and raised and pointed the gun towards officers. As this unfolded, the grey minivan briefly moved. Officers gave Mr. Maldonado multiple commands to “drop that gun,” but Mr. Maldonado ignored them and walked down the sidewalk. Mr. Maldonado initially lowered his arm, holding the gun along his right side but seconds later (timestamp 11:04:19 AM), Mr. Maldonado, turned his body towards the officers while raising his arm and pointing the gun towards the officers. At that point, both officers fired their guns at Mr. Maldonado.

Surveillance video from Al’s Wholesale Meats captured the sidewalk where Mr. Maldonado was walking from both from two vantage points. The video captioned “customer restroom outside” captured a viewpoint above the sidewalk where Mr. Maldonado was walking and the video captioned “Northside Parking lot” captured Mr. Maldonado from behind. (Photos in Summary above.)

911 Call

On July 27, 2022, at 11:01:21 AM, a civilian called 911 to report that “a guy walked up to us asking for [unintelligible], came back, asked again ... we said we can’t help you out no more. And he just smoking a crack pipe, and then he pulled out a gun and said some shit. And then he walked off. He pulled a gun. He didn’t point it at us, he just pulled it out.”

Emergency Medical Response

Los Angeles Fire Department (LAFD) were dispatched at 11:05 AM and the first responders arrived on scene at 11:08 AM. LAFD’s report notes that by 11:11 AM Mr. Maldonado was unresponsive and did not have a pulse and was not breathing. LAFD performed CPR, rescue breathing, and administered one shock. However, despite their efforts, Mr. Maldonado did not respond.

Officer Processing and Ballistics

Both officers were processed for evidence at LAPD’s Hollenbeck Division. An LAPD photographer took photographs of the officers as they were at the time of the incident. A magazine count was conducted and a round count sheet completed. Officer Gallardo had three magazines, one of which contained 16 rounds, the remaining two of which contained 17 rounds. Officer Vazquez also had three magazines, one of which contained 13 rounds, the remaining two of which contained 15 rounds.

Autopsy and Toxicology

An autopsy was performed on August 11, 2022. It determined that Mr. Maldonado died of a single gunshot wound to the chest. The round entered the right side of his chest and was recovered from the left side of his chest. According to the autopsy report, this type of wound “is considered rapidly fatal.” Laboratory analysis of his blood revealed that he had methamphetamine in his system.

Interviews of Involved Officers

All of the LAPD officers involved in this case declined to provide statements. 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.)

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, no compelled statements were considered as part of this investigation.

Interviews of Civilian Witnesses

The following are summaries of the relevant civilian witness interviews, which describe the incident from the point of view of each person. The interviews contain facts relayed by the witnesses that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

W-1 was interviewed on July 27, 2022, at 3:27 PM, by Special Agent U. Carlos and LAPD Detectives J. Diego and J. Cruz. W-1 stated he was walking on North Broadway and he saw Mr. Maldonado holding a gun and pulling the trigger. W-1 heard Mr. Maldonado “babbling” but could not understand what was being said. W-1 said he believed the gun did not work, or was a toy, because although Mr. Maldonado pulled the trigger the gun did not fire. W-1 saw officers arrive and saw Mr. Maldonado pointing the gun at their car as it drove near him. W-1 saw Mr. Maldonado “do something” with his hands “like fast” but he could not see what that was. “That’s when the police [shot] at” Mr. Maldonado.

W-2 was interviewed on July 29, 2022, by Special Agent D. Ibarra and LAPD Detective T. Brown. W-2 stated a woman walking next to him on the street was scared and she told him that Mr. Maldonado had pointed a gun at her. W-2 said he approached Mr. Maldonado and asked to see the gun. W-2 stated Mr. Maldonado showed him the gun and W-2 noticed it was not real. W-2 told CaPSIT the gun was a BB gun that was “all taped up” and that “it had that orange thing in the middle.” W-2 insisted throughout his interview that the gun had tape on it and an orange tip. W-2 stated he witnessed the shooting and that at the time officers fired Mr. Maldonado had the gun in his hand but “[h]e wasn’t pointing it at all. He was walking.” W-2 subsequently stated that Mr. Maldonado was not holding the gun at the time of the shooting but instead had it in his waistband.³

W-3 was interviewed on July 29, 2022, by Special Agent D. Ibarra and LAPD Detective T. Brown. W-3 owned a business located near where the shooting occurred. He witnessed the earlier unrelated car accident. As he watched the aftermath, he saw Maldonado pull out the gun. W-3 saw Mr. Maldonado pull out the gun “[m]aybe three or four times” and saw him take it out “to show it to someone.” W-3 saw police arrive and aim their own guns at Mr. Maldonado and heard them shouting repeatedly for Maldonado to “[p]ut the gun down. Put the gun down.” W-3 said that Mr. Maldonado “didn’t listen[.]”

³ W-2’s statement is contradicted by the statements of multiple other witnesses who described the gun as all black and visually indistinguishable from a real firearm. Photographs of Mr. Maldonado’s gun, recovered at the scene after the incident, confirm that the gun was all black, did not have an orange tip, and, to the contrary, had a silver barrel, just as W-9, whose statement is recounted below, observed. W-2’s statement that Mr. Maldonado was not pointing the gun is contradicted not only by the statements of multiple witnesses but also by video surveillance that showed Mr. Maldonado pointing the gun.

W-3 heard the gunshots fired by police and saw Mr. Maldonado fall to the ground. Prior to the shooting, while W-3 was standing outside of his store, he had a brief conversation with W-2. During that conversation, W-2 told W-3 that Mr. Maldonado's gun was "fake."

W-4 was interviewed on July 29, 2022, by Special Agent T. Baca and LAPD Detectives Amy and Avina. At the time of the incident, W-4 was drinking coffee at a nearby restaurant. He saw Mr. Maldonado with the gun and heard police telling Mr. Maldonado to drop it. W-4 did not get a good look at Mr. Maldonado, but might have recognized him from the 35 years W-4 had lived in the area. W-4 said there was "yelling ... [and] confusion." W-4 saw Mr. Maldonado "pointing the gun like towards where the police officer was coming," and W-4 demonstrated this to police by stretching out his arm. W-4 said "it was the police officer he was pointing [the gun] at, because the police officer showed up instantly. That's when we all ran.... With all the confusion, what one wants is to save themselves, you know?" W-4 told police Mr. Maldonado's gun was black and medium in size.

W-5 was interviewed on August 1, 2022, by Special Agents D. Ibarra and A. Hernandez. W-5 was the driver of a passenger van on her way, with her family, to a Dodgers game. W-6, W-7, W-8, W-9, and W-10 were in the car with her. While driving, her son, W-7 told her that he saw a man with a gun in the middle of the street. Mr. Maldonado walked onto the sidewalk, at which point W-5 saw him with the gun. At that point, the gun was not in his hands but was at his back in his pants. "[I]t wasn't long after that that he had taken it actually out of that position and had it actually fully exposed in the air." W-5 saw that it was a black gun and saw Mr. Maldonado "pointing it just in the air." He was "saying stuff," but she could not hear him because the windows were rolled up. When the officers arrived, W-5 saw Mr. Maldonado "pointing it in their direction." W-5 said she could not hear commands from the officers to Mr. Maldonado, but did hear the eventual gunshots, and she saw Mr. Maldonado fall to the ground after being shot. W-5 said that at the time of the incident "we all thought that ... he was definitely going to shoot the van, shoot at the van, and at the – at the car, you know, for sure."

W-6 was interviewed on August 1, 2022, by Special Agent T. Baca and LAPD Detective T. Brown. W-6 was the front passenger in the van with W-5, W-7, W-8, W-9, and W-10 on their way to the Dodgers game. They were stopped at a red light. W-6 saw Mr. Maldonado with a gun in his hands and then saw him put it in his back pocket. Shortly thereafter, W-6 saw Mr. Maldonado remove the gun from his back pocket and hold it "like he was going to shoot something and he sort of started waving it along like this on the highway... sort of waving it back and forth." W-6 saw Mr. Maldonado hold the gun with his arm out at chest level. She was afraid to make eye contact with him because she was afraid he would see her and shoot her. She explained that she was "stuck there" at the light and recognized that "moving's wrong. Not moving's wrong." Mr. Maldonado then "went along," at which point police arrived. W-6 wanted to leave, but a police car stopped nearby and the officer told her to wait. W-6 saw officers draw their guns and heard them order Mr. Maldonado "to stop or whatever he's going to do. And the guy didn't stop and so he – I heard three shots." At the time, W-6 did not know that Mr. Maldonado's gun was not real and she was afraid he would shoot her "through the door and kill [her.]" W-6 "thought it was a real gun. There was not a doubt in [her] mind."

W-7 was interviewed on August 16, 2022, by Special Agent T. Baca and LAPD Detective T. Brown. W-7 was another passenger in the van with W-5, W-6, W-8, W-9, and W-10. W-5, his mother, was driving. While driving to the Dodgers game, W-7 saw Mr. Maldonado on the side of the road, or on the sidewalk, with a gun up in the air. A car accident had occurred nearby, where police were already on the scene, and W-7 said their car was "just stuck there between the officers and [Mr. Maldonado]."

W-7 saw Mr. Maldonado point his gun at their car, so W-7 “ducked down[.]” W-7 saw Mr. Maldonado when “he pointed the gun at the officers. Then the officers fired[.]” He saw Mr. Maldonado go down on the sidewalk, “and that’s when [W-5] drove away.” Before Mr. Maldonado was shot, W-7 saw him pointing the gun “towards people, towards the street, towards like anyone in the area.” W-7 believed it was a real gun. He said, “There was no orange tip to indicate it wasn’t a real gun or not.”

W-8 was interviewed on August 16, 2022, by Special Agent T. Baca and LAPD Detective T. Brown. W-8 was another passenger in the van with W-5, W-6, W-7, W-9, and W-10. They were at a stop light while on their way to a Dodgers game when W-8 saw Mr. Maldonado out the window with a gun. W-8 saw him with the gun in the air, “moving it all around[.]” Suddenly, police arrived and W-8 saw Mr. Maldonado point the gun at the police. “[T]he next thing [he] heard [was] either two or three shots....” W-8 believed he and his family were “in danger[.]”

W-9 was interviewed on August 1, 2022, by Special Agent T. Baca and LAPD Detective T. Brown. W-9 was another passenger in the van with W-5, W-6, W-7, W-8, and W-10. W-9 heard W-7 say he saw a man with a gun in the street. Although at first W-9 did not see anyone, suddenly Mr. Maldonado appeared on the right side of their van. W-9 saw Mr. Maldonado “reach[] into his back side and pull[] out a weapon” that “looked like a -- an automatic handgun.” W-9 saw Mr. Maldonado “walking down the sidewalk towards us. Sometimes he had the handgun in his hand. One time [he] saw him put it back and then he had his hands free. And then he pulled it back out, reached back in, and pulled it back out again.” W-8 said, a “scary thing -- weird thing -- I noticed that the barrel of [the gun] was silver as he was passing us.” W-9 noticed Mr. Maldonado “had it [the gun] ready to go” and, at one point, was pointing the gun directly at them. W-9 feared for the lives of everyone else in the car. W-9 saw police arrive, and heard gunshots, but did not see who fired the shots. He assumed the officers fired because afterward he saw Mr. Maldonado on the ground.

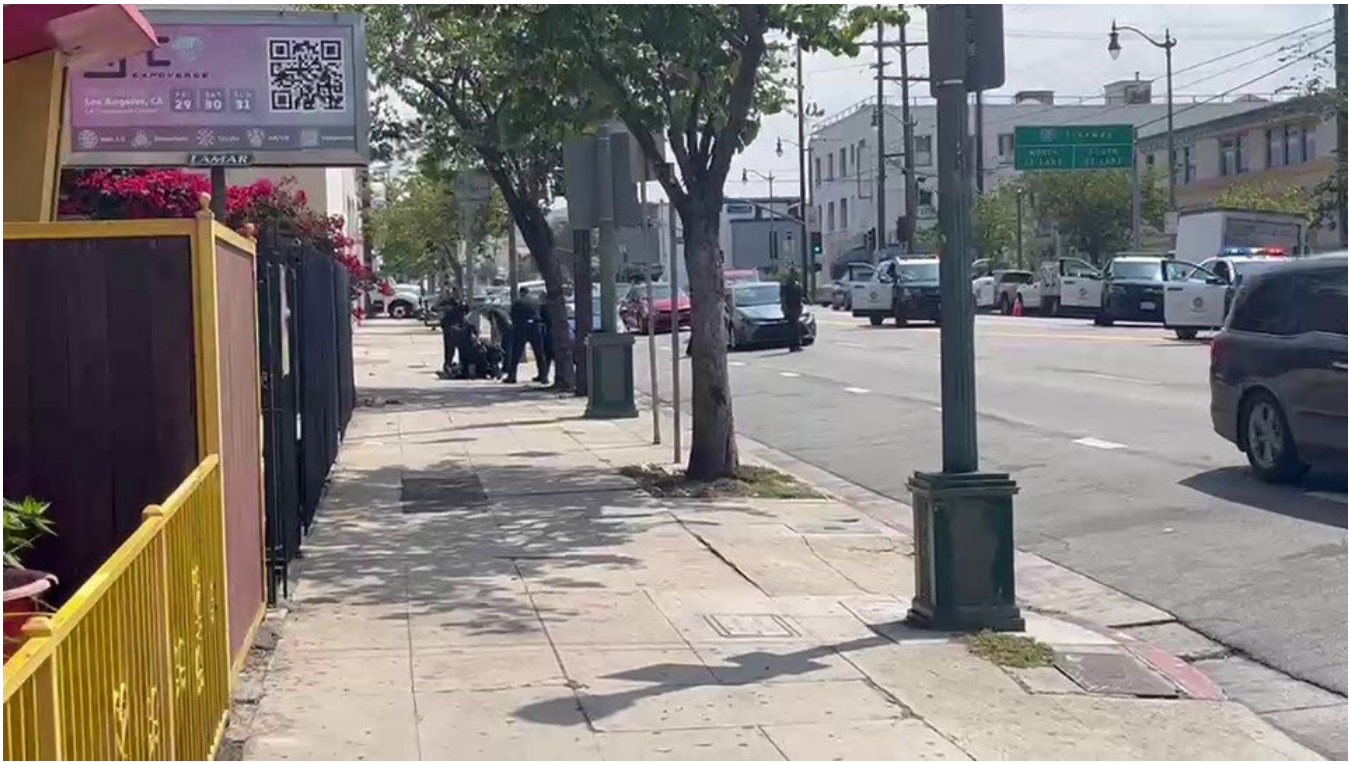
W-10 was interviewed on August 1, 2022, by Special Agent D. Ibarra and LAPD Detective J. Diego. W-10 was the last passenger in the van with W-5, W-6, W-7, W-8, and W-9. She heard her brother say that he had seen a man with a gun in the street, but did not see him herself until he got closer to their car. Eventually she saw Mr. Maldonado holding a gun in his hand, moving it around. She told police that the gun was a solid color, “a darker color,” and did not look like a toy. She did not know where he was pointing because she got down and was trying to hide. All she saw beyond that was people taking video of the incident. She eventually heard three gunshots.

W-11 was interviewed on August 16, 2022, by Special Agent T. Baca and LAPD Detective T. Brown. W-11 was driving with his wife, W-12, to the Dodgers game at the time of the incident. W-11 initially saw Mr. Maldonado “walk up the street,” and at first believed he was “[m]inding his own business.” W-11 saw two police cars driving towards Mr. Maldonado and saw the doors to the police cars open. He saw police officers take cover behind the doors of the police cars and then saw Mr. Maldonado turn towards the officers with something in his hands that “looked like a weapon.” Then the officers “opened fire” at Mr. Maldonado. Although W-11 was not at first sure that the object in Mr. Maldonado’s hand was a gun, he later saw it “when it was on the ground” and saw Mr. Maldonado “lunge[] for it.” At that point he was able to discern that “it was a gun.” W-11 explained that prior to the shooting, Mr. Maldonado gave W-12 “kind of like a sarcastic look. Like he – it was a weird – from what my wife described to me it was – it was a weird look. A weird, weird look, like he was smiling.”

W-12 was interviewed on August 18, 2022, by Special Agent A. Hernandez and LAPD Detective J. Diego. W-12 was a passenger in the car with W-11. She saw a police car pull up and saw officers take cover behind their doors with their guns drawn. She believed they were in an “active shooter” situation and wanted to leave, but her husband, the driver, was not able to maneuver the car to escape. W-12 saw Mr. Maldonado with “a very peculiar, sort of grinning smile on his face.” W-12 saw police officers moving toward Mr. Maldonado and, believing “there might be an altercation,” she “got down.” She then heard gunshots and when she lifted her head up to look, she saw that Mr. Maldonado was on the ground. W-12 thought Mr. Maldonado might have been holding a black plastic bag but did not see him holding anything else.

W-13 was interviewed on August 18, 2022, by Special Agent T. Baca and LAPD Detective T. Brown. W-13 was driving to work and saw what he believed was another vehicle behind stopped by police, possibly related to the nearby car accident. He realized that other cars around him began to make U-turns and then saw more police arrive. A car blocked his view, but he saw that police “were after this one guy on the sidewalk. And then I didn’t see he had anything. Or I don’t know, I didn’t see anything. There was a car blocking me.” W-13 clarified that Mr. Maldonado was walking in his direction, but he was not able to see whether he had anything in his hands. W-13 told police that the person “was just running from them [police]. And I just heard a couple gunshots.”

W-14 was interviewed on August 1, 2022, by Special Agent M. Wyatt and LAPD Detectives L. Avina and H. Amy. W-14 was in line at a nearby restaurant and noticed there had been a car accident and saw a police officer taking a report. After waiting at the restaurant for about five minutes, Mr. Maldonado approached W-14 and said, “Hey, you got a buck?” W-14 told him, “No, bro, I got no cash. Kick rocks,” and Mr. Maldonado replied, “All right.” Mr. Maldonado walked away and approached another person, from whom he solicited a cigarette, and then continued walking. As W-14 waited at the restaurant, he continued to watch Mr. Maldonado and saw him walking “towards where the cops [were] at.” He saw Mr. Maldonado “pull out something,” and thought he was “going to get shot because I didn’t want to give him any cash.” He said the gun “looked like a Glock. It was all black, square.” W-14 saw Mr. Maldonado aim the gun, “straight at the officers doing the report” “and he’s all click, click, click, and I was like, ‘Oh, this dude is going to get shot.’ ... He probably was pulling that little plastic gun or cap gun, like, I don’t know, 10 times or something.” He heard Mr. Maldonado “laughing like ... ha, ha, ha,” and W-14 realized the gun was plastic. However, initially, he “thought it was a real gun[.]” W-14 heard “the loudspeaker from the cop was, like, ‘Hey, put your hands up over your head,’ you know, ‘get down,’ or – and he was – the guy wasn’t listening.” He saw Mr. Maldonado “still had his, like, his plastic gun in his hand,” and he heard police fire shots. W-14 then began filming the aftermath of the incident. W-14 reported that another customer of the restaurant told him that Mr. Maldonado had actually caused the earlier car accident “because he was weaving in and out of traffic earlier ... [and] that guy had pulled out a gun earlier on somebody else.”



A still from W-14's video of the aftermath of the incident.

W-15 was interviewed on July 27, 2022, at 2:53 PM, by LAPD Detectives J. Cruz and J. Diego. W-15 was at the same restaurant as W-14 and was ordering food. As he went to pick up his order, Mr. Maldonado "was coming towards" him and "took out his weapon[.]" W-15 did not think it was real because "it wasn't firing or anything." Mr. Maldonado passed W-14 and pointed it at the police car and was "going over there [to the car]. That's when we got scared, and we went inside the restaurant." Mr. Maldonado "saw the patrol car pass[] by, [and] he pointed" the gun at the officers. W-15 saw Mr. Maldonado pulling the trigger, but nothing happened. W-15 heard gunshots but by then was inside the restaurant but did not see the shooting itself.

W-16 was interviewed on July 27, 2022, at 1:13 PM, by LAPD Detectives T. Brown and H. Amy. W-16 was working on a Verizon telephone pole near the incident. He had seen Mr. Maldonado a week or two prior when he was working at the same location. On that day, W-16 gave him water. When he saw Mr. Maldonado again on the date of incident, Mr. Maldonado asked for water, which W-16's partner gave to him. About four hours later, Mr. Maldonado came back and asked for water again, but this time they did not give him water and it appeared that Mr. Maldonado was using "a crack pipe." Mr. Maldonado walked away and from a distance of 20 or 30 feet, W-16 saw Mr. Maldonado lift up his shirt and pull out a gun. A woman who had been walking by also saw this and said, "Pistola," so W-16 told her to wait with him until Mr. Maldonado had rounded the corner. Once he did, W-16's partner called police. Neither W-16 nor his partner saw the shooting.

W-17 was interviewed on July 27, 2022, at 12:52 PM, by LAPD Detectives J. Diego and J. Cruz. W-17 was in his apartment and heard helicopters, cars, and "two people yell[,] 'Drop the gun. Get on the ground.'" He looked outside and saw two police officers with their guns drawn pointed at Mr. Maldonado yelling commands. W-17 saw "a homeless guy walk by with a dog telling the other officers ..., 'Oh, that's just a BB gun, dude. Just relax.'" He heard the officer reply, "'We can't tell the difference this far. He needs to

drop it then.” W-17 told police that Mr. Maldonado did not respond to the officers’ commands to drop the gun or get on the ground. W-17’s view of the incident was partially obstructed, but he saw Mr. Maldonado “reach back ... he turned back like he was going to draw,” and then he heard gunshots. W-17 was not able to see the object Mr. Maldonado was reaching for. W-17 clarified that he did see Mr. Maldonado with “something in his hand” after reaching back.

W-18 was interviewed on July 27, 2022, at 1:51 PM, by LAPD Detectives J. Cruz and J. Diego. W-18 was at work at business located at the scene of the shooting and saw, through his window, a police officer behind the door of an SUV draw his gun. He saw Mr. Maldonado “walk with the gun towards the middle of our driveway. He had his gun out, and then was obviously shot.” W-18 saw Mr. Maldonado go “to the middle of the driveway, [and he] was pointing the gun at the officer[.]” W-18 heard multiple gunshots and saw Mr. Maldonado go down to the ground. W-18 told police there was video surveillance at this location.

W-19 was interviewed on August 15, 2022, by Special Agent T. Baca and LAPD Detective T. Brown. W-19 was driving to the Dodgers game with her son and goddaughter at the time of the shooting. She saw Mr. Maldonado “wave what looked like a gun.” Mr. Maldonado was walking in the direction of her car and she “got scared[.]” She told the children “to look down” so they would not see anything bad happen. She was looking at the children when telling them not to look, so she did not see the shooting and does not remember seeing police with their guns drawn. She could hear the officers yelling but was not sure what they said.

W-20 was interviewed on August 1, 2022, by LAPD Detectives T. Brown and D. Palacio. W-20 was working driving the Metro bus at the time of the incident. She saw police with their guns drawn and saw Mr. Maldonado “holding a gun, pointing it directly at the cops....” He was “pointing, walking towards the cop pointing the gun straight out. He wasn’t waving it around, [but was] pointing it straight out....” Mr. Maldonado walked back to the curb and put the gun in his waistband. W-20 continued to watch and saw Mr. Maldonado pull out the gun again, point it at the police, and then “walk[] again, pointing the gun at the cop, and the guy did this three times. ... The officer was so refrained [sic] from shooting him the first time.” The third time Mr. Maldonado pulled and pointed the gun, W-20 heard gunfire and saw him “go down.” W-20 said that Mr. Maldonado “was taunting back and forth, back and forth with his ... gun, pointing the gun directly at the cop. ... [A]bout the third time, that’s when they ... shot him.” Mr. Maldonado’s gun was black and looked “like maybe a Glock[.]”

CaPSIT also located and spoke with Mr. Maldonado’s next of kin. On October 6, 2022, Special Agent T. Baca spoke with W-21, who is Mr. Maldonado’s brother. He told police that Mr. Maldonado came to the United States from Guatemala and worked in construction but was not steadily employed. He said he was quiet and tried to do “things right. He didn’t have any vices....” W-21 said Mr. Maldonado did not have problems with police in Guatemala and “had a very good record.” In 2020, W-21 lost contact with Mr. Maldonado who would not tell him where he lived. He had told him “he wanted to be alone and he didn’t want anyone to bother him....” W-21 became worried about him “and then [Mr. Maldonado] went to a rehabilitation center” because he had begun to use drugs. The last time W-21 spoke with Mr. Maldonado was when he heard from him at the rehabilitation center. W-21 said that Mr. Maldonado was a good person who went to church.

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. Moya* (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 Mr. Maldonado's death. 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 Gallardo and Vasquez did not act in lawful defense of themselves 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 Gallardo and Vasquez actually and reasonably believed that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to the officers or others. Therefore, the evidence is insufficient to support criminal charges.

Officers Gallardo and Vasquez responded to the scene that day because of civilian reports there was a man waving a gun around. Those civilians did not indicate it was a replica and clearly believed the gun

to be real. When the officers arrived, they quickly identified Mr. Maldonado as the person in question, saw that he appeared to be holding a firearm, and repeatedly told him to drop the gun. In spite of being in full uniform, armed, and having arrived in a marked police car with lights, Mr. Maldonado ignored their orders. Instead, he continued waving the gun around until, eventually, he pointed it at the officers, at which time they fired their own guns, killing him.

Although neither Officer Gallardo nor Officer Vasquez gave statements, given the other available evidence it is nevertheless possible to infer information about their subjective belief at the time. Most of the civilian witnesses to the incident believed Mr. Maldonado had a real and functional gun, which supports a conclusion that the officers, too, believed the gun to be an operable firearm. W-4 saw a black gun, medium in size. W-5, W-6, W-7, W-8, W-9, and W-10 were all in a passenger van when Mr. Maldonado waved the gun around and pointed it at their van. All of them believed the gun was real and that they were in danger. W-7 was explicit that there “was no orange tip to indicate it wasn’t a real gun[.]” W-9 said that “the barrel of [the gun] was silver” and was afraid for the lives of everyone in the car with him. W-11, in another car, saw Mr. Maldonado with something in his hands that looked like a weapon, which he later realized was a gun. His wife, W-12, was afraid and took cover by ducking, as did other witnesses.

W-14 initially thought Mr. Maldonado’s gun was real and functional and believed that he was going to be shot because he had refused to give Mr. Maldonado money. He reported that the gun “looked like a Glock” and “was all black[.]” Only when he saw Mr. Maldonado pulling the trigger without consequence did he realize the gun was not an operable firearm.

The investigation showed that shortly before the shooting Officers Gallardo and Vasquez were told by one individual that the gun was not an operable firearm. However, under these circumstances, a reasonable officer would rely on what they were seeing and would treat the threat as real. An officer’s use of force must be evaluated based upon the information available to him at the time, not information later learned with the benefit of hindsight. Therefore, although the statement to Officers Gallardo and Vasquez was ultimately correct, and Mr. Maldonado did not have an operable firearm, a reasonable person, whether civilian or police officer, could have believed that Mr. Maldonado presented an apparent danger and discounted the uncorroborated statement of a passerby.

Officers Gallardo and Vasquez gave Mr. Maldonado repeated commands, audible on BWC, to drop the gun. He ignored all of them. This is seen and heard on the BWC and is corroborated by W-14 and W-17. As reflected in the video of the incident and in the witness interviews, Mr. Maldonado pointed his gun both at officers and at civilians, including at the passenger van holding several innocent civilians. During the incident, multiple civilians believed their lives were in danger. Nevertheless, Officers Gallardo and Vasquez exercised restraint upon their arrival at the scene. They gave Mr. Maldonado orders to drop the gun and time to do so. However, when Mr. Maldonado pointed his gun at them, they fired their own guns.

Thus, the totality of the evidence shows that Officers Gallardo and Vasquez held the subjective belief that deadly force was necessary to defend themselves and others 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 a criminal prosecution of Officer Gallardo or Officer Vasquez. As such, no further action will be taken in this case.



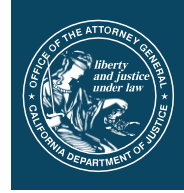
C A L I F O R N I A

DEPARTMENT OF JUSTICE

**Policy and Practice Recommendations for the
Los Angeles Police Department Related to the
Officer-Involved Shooting of Marcos Maldonado
on July 27, 2022**

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

February 2025



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, this shooting of Marcos Maldonado occurred at 11:04 a.m. on July 27, 2022, near a busy intersection of Avenue 19 and North Broadway, with substantial pedestrian and vehicle traffic. At 10:59 a.m., Los Angeles Police Department (LAPD) Officer Kearney requested backup for “a citizen reporting a 415 man with a gun at Avenue 19 and North Broadway.” An LAPD air unit and four patrol units, with eight officers, responded to the call. A supervisor also responded to the call but arrived after the shooting. Officers Gallardo and Vazquez arrived at the scene at 11:02 a.m., several minutes after the backup call and shortly after the air unit. The three other units arrived approximately one minute after Officers Gallardo and Vazquez and approximately 30 seconds before the shooting. During the approximately 90 seconds that Officers Gallardo and Vazquez were on the scene prior to the shooting, they yelled at Mr. Maldonado multiple times to “drop the/that gun” and “get on the ground.” Mr. Maldonado did not comply and, as he was walking away, pointed what appeared to be a handgun in the direction of Officers Gallardo and Vazquez. At that point Officer Gallardo fired one round, striking Mr. Maldonado in the chest, and causing him to fall to the ground. Immediately after, Officer Vazquez fired two rounds, which hit a fence behind Mr. Maldonado’s location. After the shooting, investigation determined that the object possessed by Mr. Maldonado was an unloaded Sig Sauer style replica airsoft gun.

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 LAPD to review and implement three recommendations:

RECOMMENDATION ONE: COMMUNICATION

According to LAPD policy, “[m]aintaining open lines of communication between officers” is “critically important when managing a tense or potentially dangerous encounter. Communication between officers can improve decision-making under tense circumstances and increase the effectiveness of coordinated actions.” (LAPD Use of Force – Tactics Directive No. 16 (Tactical De-Escalation Techniques), dated October 2016 [hereinafter *Tactical De-Escalation Techniques*].)

LAPD officers communicated during this incident by reporting information to dispatch and via radio calls. Certain information did not get communicated to and between responding officers, in several different ways, as follows. Prior to the arrival of other officers, two pedestrians approached Officer Kearney to report that Mr. Maldonado was in possession of an object that looked like a gun, but also expressed a belief that Mr. Maldonado's weapon may not be authentic, stating, "I don't know if it's a toy gun or what" and "I don't know if it's real or not." One witness, a local shop owner, also informed Officer Kearney that he knew Mr. Maldonado from the neighborhood and that he had mental health issues. Despite receiving this information, Officer Kearney did not broadcast this additional information to dispatch or tell it to the responding officers. After Officers Gallardo and Vazquez arrived, a pedestrian who interacted with Mr. Maldonado on the northwest corner walked across the intersection to tell the officers that the gun was a "BB gun." Officers Gallardo and Vazquez each responded, "We don't know that." Officer Kearney asked the pedestrian how he knew that, and the pedestrian responded, "It's a BB gun. He showed me." Thereafter, Officer Kearney broadcast by radio: "I have a citizen reporting that the suspect showed him it's a BB gun." Although Officer Kearney broadcast this information on the radio, he was using the Traffic Division frequency and not the frequency the responding Hollenbeck Division officers were using. Neither dispatch nor the air unit repeated the information on the Hollenbeck frequency despite having done so with other information broadcast by Officer Kearney. Finally, Officers Quintero and Zamora arrived on the scene approximately 30 seconds before the shooting. Upon seeing Mr. Maldonado, Officer Quintero stated to his partner, "Hey I don't think it's real, partner," but did not communicate that assessment to Officers Gallardo and Vazquez or the other responding officers, either by radio or by shouting it over to them.

LAPD Policy directs what information should be included in an initial broadcast of a crime description and a supplemental broadcast of crime description. (LAPD 2024 Manual, Volume 4, Sections 120.41, 120.42.) Officer Kearney followed the policy by reporting, in the first instance, the type of crime/incident, street location, weapon, and, in a follow-up broadcast, a detailed description of the subject. The policy does not direct officers to report additional contextual information to responding officers, such as witnesses reporting intoxication, mental illness, or the possibility that the object possessed by Mr. Maldonado was not a real firearm. Various LAPD policies, including the de-escalation policy, recognize that this information is important for officers to consider when assessing a situation and taking appropriate action, in particular where force may be used. (See, e.g., LAPD Training Bulletin, Vol. XLVI, Iss. 3 (Weapons Other than Firearms), dated October 2017; Tactical De-Escalation Techniques.)

PPS recommends that the LAPD amend their policies and training regarding communication of significant contextual information impacting responding officers' use of force decision-making as articulated in their other policies to include, for example: (1) in the case of weapons, the nature of the report that brought the police into the situation, e.g., a person under the influence or with mental health in possession of a weapon; (2) the nonexistence of threats or a crime in progress, if the case; (3) facts relevant for assessing the subject's ability to comprehend the situation due to environmental, physical, cognitive, or other conditions, e.g., substance abuse, mental health issues, and/or that the person is a juvenile; and (4) any information that would mitigate the danger presented by the subject, e.g., that a firearm may not be real.

RECOMMENDATION TWO: SCENE CONTROL

A significant concern in this incident was the presence of bystanders, both on foot and in vehicles, close to Mr. Maldonado and between Mr. Maldonado and the LAPD officers who arrived at the scene. The presence of these bystanders limited officers' options and created additional dangers. A significant example appears on body worn camera footage, which shows that a minivan started to drive between Mr. Maldonado and Officer Vazquez at approximately the same time that Officer Vazquez discharged his firearm, putting the occupants of the vehicle in danger.

An air unit, four patrol units, and a supervisor responded to Officer Kearney's request for backup on his report of a citizen observing a man with a gun. Although Officer Kearney quickly located Mr. Maldonado, broadcast the location, and kept him under observation, neither he nor the responding officers engaged in any planning during the three-minute period when responding officers were en route on how to control the scene or contain Mr. Maldonado. When on scene, neither Officer Kearney, the air unit, nor other responding officers took any action to clear the area around Mr. Maldonado or block traffic to the location. Importantly, the purpose of the air unit, among other functions, is to give the officers a tactical advantage and assist in coordinating the on-the-ground response. Although the law enforcement response to reports of Mr. Maldonado proceeded rapidly and the shooting occurred quickly after Officers Gallardo and Vazquez arrived at the scene, greater control in this incident, with benefits for officer and bystander safety, may have been achieved if officers had created a plan for containment prior to arrival or upon arrival and used some of the responding units to clear bystander pedestrians and vehicles from the scene immediately.

PPS recommends that the LAPD evaluate their policies and training regarding perimeter control, including the function and deployment of air support in relation to perimeter control, to determine whether they were carried out in this incident, and whether amendments to the policies and training are warranted to improve control of an incident such as this one through the blocking and/or clearing of traffic.

RECOMMENDATION THREE: LAPD USE OF FORCE POLICY UPDATES

Government Code section 7286, enacted by Senate Bill 230 (2019-2020 Reg. Sess.), sets minimum standards for use of force policies maintained by law enforcement agencies in California. During the course of reviewing LAPD's use of force policies relevant to this incident, PPS identified and now recommends updates for two provisions. The recommended updates relate to the requirements of Government Code section 7286, separate and apart from the particular facts of the shooting of Mr. Maldonado.

First, under Government Code section 7286, law enforcement agency policies must direct officers "to immediately report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based on the totality of the information actually known to the officer." (Gov. Code, § 7286, subd. (b)(3).) The current LAPD use of force policy uses very similar language, but also includes a reference to Penal Code section 835a, which sets the legal standard for the use of *deadly* force by peace officers. The policy states:

Requirement to Report Potential Excessive Force. An officer who is present and observes another officer using force that the present and observing officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer [as delineated in Penal Code Section 835(a)], shall immediately report such force to a superior officer.

(LAPD Manual, Volume 1, Section 556.10.) The duty under Government Code section 7286, subdivision (b)(3) to report potential excessive force applies to all types of force and is not limited to the use of deadly force. The policy's reference to Penal Code section 835a suggests that the duty to report only applies to uses of deadly force. PPS recommends that the LAPD remove the additional, non-statutory language, from its policy to avoid confusion.

Second, Government Code section 7286 requires law enforcement agencies to issue “[c]lear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.” (Gov. Code, § 7286, subd. (b)(5).)

The LAPD Manual includes three variations of the LAPD's policy on drawing or exhibiting firearms, which appear in two different locations in the manual. (LAPD Manual, Volume 1, Sections 556.10 & 556.80.) The repetitive text, with variations, undermines the clarity of the guideline. Additionally, none of the variations refer to Penal Code section 835a, governing the use of deadly force.

To avoid confusion, PPS recommends that the LAPD replace the three variations of its policy on drawing or exhibiting firearms with a single uniform policy that is clear, specific, and references Penal Code section 835a.