



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 Christopher Lee Mercurio on January 11, 2023

Los Angeles County AB 1506

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March 2025

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# INVESTIGATION OF OFFICER INVOLVED SHOOTING

## BACKGROUND – ASSEMBLY BILL 1506

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

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

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

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

## PRIVACY STATEMENT

This report includes redactions of the names and other identifying information of witnesses and 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 indexed as follows:

- Witness 1 (“W-1”), an off-shift security guard at Black N’ Blue Bar and Grill in Valencia.
- Witness 2 (“W-2”), the security manager at the Black N’ Blue Bar and Grill in Valencia.
- Witness 3 (“W-3”), a patron of the Valencia Town Center who (along with her companion W-4) briefly interacted with Mr. Mercurio.
- Witness 4 (“W-4”), a patron of the Valencia Town Center who (along with his companion W-3) briefly interacted with Mr. Mercurio.
- Witness 5 (“W-5”), an employee and assistant bar manager of the Black N’ Blue Bar and Grill in Valencia who briefly interacted with Mr. Mercurio.

## INTRODUCTION

At approximately 10:58 PM, on Wednesday, January 11, 2023, Los Angeles County Sheriff Department (LASD) Deputy Lorena Gonzalez went to the Macy’s department store in the Valencia Town Center, in Valencia, in response to a trespassing call. At the Macy’s, Deputy Gonzalez contacted Christopher Lee Mercurio. Mr. Mercurio refused to leave and struck Deputy Gonzalez in the head. Mr. Mercurio continued to advance towards Deputy Gonzalez and ignored commands to step back. Shortly thereafter, Deputy Gonzalez fired two shots at Mr. Mercurio and fatally wounded him.

DOJ investigated and reviewed the Officer Involved Shooting (OIS) pursuant to Government Code section 12525.3 (enacted by Assembly Bill 1506 (2019-2020 Reg. Sess.)). This report is the final step in DOJ’s review of the fatal OIS of the Mr. Mercurio. The scope of this report is limited to determining whether criminal charges should be brought against the involved officer, and offering possible policy and practice recommendations as required by Government Code section 12525.3, subdivision (b)(2)(B)(iii). The review does not encompass or comment on any potential administrative or civil actions. Based on the criminal investigation, review of evidence, and evaluation of the case, we have determined that there is insufficient evidence to support the filing of criminal charges against Deputy Gonzalez.

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

## SUMMARY OF INCIDENT

At approximately 8:15 PM on Wednesday, January 11, 2023, W-1 was at the Black N' Blue Bar and Grill located at 24300 Town Center Drive, Valencia, California. W-1 was having drinks with his roommate when a middle-aged male later identified as Christopher Lee Mercurio entered the bar between 10:35 PM and 10:40 PM. W-1 stated that Mr. Mercurio "could have been homeless, but I didn't want to judge." After a while, W-1 observed that Mr. Mercurio was "getting a little bit aggressive, physically and/or verbally closely with the assistant bar manager." W-1 later confirmed with the assistant bar manager via text message that Mr. Mercurio was threatening and "trying to fight him or some sort." However, W-1 was told by the assistant bar manager, W-5, not to intervene and to "wait until [we] get backup."

At approximately 9:47 PM, W-1 contacted LASD Santa Clarita Valley 911 dispatch and spoke with Deputy Jennifer Peterson regarding Mr. Mercurio, who he advised to be an aggressive homeless individual located at the Black N' Blue Bar and Grill.

At approximately 10:10 PM, W-2, the security manager at the Black N' Blue Bar and Grill, contacted Allied Universal Security Dispatch personnel via phone. W-2 advised that an "irate transient" had entered the restaurant, was harassing the staff and patrons, and was constantly asking for liquor. The manager advised the Allied Universal Security Dispatch personnel that the "transient left their space and was last seen heading towards Macy's department store" in the Valencia Town Center.

Shortly thereafter, Allied Universal security guard Kenneth Aguilar found Mr. Mercurio sleeping in front of the ground level entrance to the Macy's. Mr. Aguilar advised Mr. Mercurio that he was on private property and not allowed to sleep there. Mr. Mercurio "became irate once I informed him" that he had to leave and told Mr. Aguilar that "if I have to leave this spot I'll put you in a chokehold[,] so I'm not moving." Mr. Aguilar told Mr. Mercurio that if he continued to sleep there LASD would be called.

About 30 minutes later, Mr. Aguilar saw that Mr. Mercurio was still sleeping in the same spot. Mr. Aguilar contacted LASD dispatch to advise them of the interaction. Mr. Aguilar reported a "transient male who was basically harassing these two stores trying to ask for liquor and all that stuff...we caught him sleeping in front of Macy's and we were trying to inform him that it was private property and he couldn't sleep here, but he just didn't want to move, and that he told security basically that if he had to move he had to put one of us in a chokehold."

At 10:44 PM, a Computer-Aided Dispatch (CAD) notified Los Angeles County Sheriff's Deputies that a White male, 50 years old, wearing grey shirt and black pants was refusing to leave the front of Macy's department store in the Valencia Town Center. The suspect was reported to have no weapons and getting aggressive when confronted. Also, at 10:44 PM, LASD Deputies Lorena Gonzalez and Dakota Whitaker were dispatched to respond.

Deputy Gonzalez was working in a single person patrol unit and arrived at the Macy's at approximately 10:57 PM. She contacted Mr. Mercurio in front of the Macy's. Mr. Mercurio was wearing an "Army" jacket and had both hands in his front pockets.

Deputy Gonzalez initiated the conversation and tried to explain her purpose in asking Mr. Mercurio to move. However, Mr. Mercurio interrupted Deputy Gonzalez and stated "yeah I'm not going to move at all. I will actually kill every fucker that comes here." Deputy Gonzalez attempted to defuse the situation

stating “we don’t want that,” to which Mr. Mercurio replied “I don’t care. That’s where I’m at.” Mr. Mercurio later threatened “to destroy your human being” in speaking with Deputy Gonzalez.

After a short verbal interaction lasting about a minute-and-a-half, Mr. Mercurio took his first steps toward Deputy Gonzalez, with both hands in his pockets, at approximately 10:58:23 PM. Deputy Gonzalez instructed Mr. Mercurio to “step back,” to which Mr. Mercurio replied, “I’m going to fuck your ass up, bitch.”

At approximately 10:58:30 PM, Deputy Gonzalez extended her hand to push Mr. Mercurio back. Mr. Mercurio immediately responded and struck the left side of Deputy Gonzalez’s head multiple times. Deputy Gonzalez repeatedly backed away from Mr. Mercurio with the goal of creating a safe distance between the two of them. These attempts were unsuccessful as Mr. Mercurio steadily continued to approach Deputy Gonzalez despite her efforts to maintain between seven and twelve feet of distance from Mr. Mercurio. After refusing to obey several orders to “stop,” Deputy Gonzalez drew her weapon and pointed it at him, at approximately 10:58:38 PM.



Still image taken from Deputy Gonzalez’s body worn camera on January 11, 2023

Mr. Mercurio walked towards Deputy Gonzalez, with his arms at his side, despite her repeated verbal commands to get back. Deputy Gonzalez stated that she would shoot Mr. Mercurio approximately six separate times if he came any closer as she continued to step back and away from Mr. Mercurio as he continued his approach towards her.

At approximately 10:58:51 PM, Mr. Mercurio exclaimed “shoot” as he stood a few feet from her with his arms at his side. Deputy Gonzalez immediately fired one shot at Mr. Mercurio’s chest. Mr. Mercurio paused momentarily and then continued advancing towards Deputy Gonzalez before she fired a second shot at Mr. Mercurio at approximately 10:58:56 PM.

After the second shot, Mr. Mercurio walked back towards the entrance of the Macy's and eventually lay down on the ground. Assisting deputies arrived on scene and rendered aid to Mr. Mercurio.

At approximately 11:00 PM, Los Angeles County Fire Department (LACFD) paramedics were dispatched to the OIS scene, and they arrived at the scene at approximately 11:10 PM. At approximately 11:01 PM, additional Emergency Medical Technicians (EMTs) from American Medical Response were dispatched to the OIS scene. They arrived at the scene at approximately 11:04 PM. Collectively, the paramedics and EMTs took over life saving measures for Mr. Mercurio. LACFD paramedics also treated Deputy Gonzalez for her head injuries.

At approximately 11:18 PM, Mr. Mercurio was transported to Henry Mayo Hospital located at 23845 McBean Parkway, Valencia. After failing to respond to medical treatment, Mr. Mercurio was pronounced deceased on January 12, 2023, at 12:15 AM.

## **INVESTIGATION**

### **Overview**

On January 12, 2023, at approximately 4:00 AM, DOJ's Division of Law Enforcement ("DLE") California Police Shooting Investigation Team ("CaPSIT") received notification of the OIS. The incident was determined to be a qualifying event under AB 1506.

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

The DOJ team observed the locations where key items of evidence were collected, while paying particular attention to the area where the shooting had taken place. The California Bureau of Forensic Services (BFS) arrived on scene to collect evidence and document findings.

After walking the incident scene and reviewing evidence, CaPSIT and LASD personnel conducted a joint briefing to provide an overview of the OIS incident so that investigators had the same information before further steps were taken. After the briefing, CaPSIT special agents were assigned investigative tasks. The DOJ team reviewed BWC footage and surrounding surveillance video footage that captured the OIS incident.

DOJ's investigation into the death of Mr. Mercurio was comprehensive, thorough, objective, and independent. In total, two LASD law enforcement officers, two Los Angeles County firefighters, and five civilian witnesses were interviewed as part of this OIS investigation, and one incident scene was processed for evidence. This report represents hundreds of hours of investigation conducted by DOJ, BFS, and LASD.

## Evidence Reviewed

DOJ received and reviewed extensive investigation materials regarding this incident, including: numerous reports from investigating officers; the Coroner's report; surveillance footage from buildings surrounding the OIS location; interviews of Deputy Gonzalez and witnesses; BWC footage from Deputy Gonzalez and officers responding to the OIS scene; police radio channel recordings; crime scene photos; and autopsy report and photos.

## Incident Scene Description

All of the events took place in the Valenica Town Center, which is located in the neighborhood of Valencia, in the City of Santa Clarita. The OIS took place at the Macy's department store, with the specific address of 26450 McBean Parkway, Santa Clarita, California. Upon their arrival, DOJ personnel observed two fired cartridge casings on the roadway in front of the lower entrance doors to the Macy's. Deputy Gonzalez' patrol unit was parked along the curb near the entrance.

The Macy's store's glass storefront faced north with north facing glass entrance doors. The department store was closed, and the entrance doors were locked. The immediate area outside of the entrance doors was comprised of a large concrete paved walkway. North of the department store was a large two-story parking structure. Directly above the scene was an elevated concrete paved walkway that connected the upper level of the parking structure to the department store's second story entrance doors.



Aerial Photograph of the OIS Scene Depicting the Location of Evidence Collected.

At the time of the walkthrough, layers of clothing, with apparent blood, were observed in front of the store entrance, and a single projectile was observed lying on top of the clothing within the pooled blood. The clothing had been cut and removed by emergency medical personnel as part of medical intervention and was still wet. Medical debris, bags containing food and drink items, a sleeping bag, and a backpack containing miscellaneous personal effects were also observed.



## Incident Scene Evidence Recovery

On January 12, 2023, at approximately 05:10 AM, California Bureau of Forensic Services (BFS), Senior Criminalist G. Williams and Criminalist A. Pena, arrived and subsequently entered the OIS scene. The BFS criminalists processed the entire scene.

BFS criminalists gathered two nine-millimeter Luger fired cartridge cases and a projectile from the OIS scene, along with bloody clothing from Mr. Mercurio that was removed by the paramedics.

At the time of the OIS, Deputy Gonzalez was armed with a Smith and Wesson M&P, nine-millimeter semiautomatic pistol. When her firearm was collected, there was one round in the chamber and 15 rounds in the magazine, which had a capacity of 17 rounds. If the firearm had been loaded with a round in the chamber and a fully loaded magazine, then two rounds were missing. Deputy Gonzalez also possessed two additional magazines on her duty belt.

## Body-Worn Camera (BWC) and Other Recordings

At the time of the OIS, the Los Angeles County Sheriff's Department-Santa Clarita Valley station patrol units were not equipped with a Digital In-Car Video System (DICVS). Thus, no video was recovered.

CaPSIT Special Agents, along with LASD Homicide Investigators, identified the BWC of Deputy Gonzalez and Deputy Whitaker, her backup officer, as being related to this incident. Deputy Gonzalez's BWC was activated at the time of the incident and recorded the response to the radio call, Mr. Mercurio's actions, Deputy Gonzalez's actions and the OIS.

Deputy Dakota Whitaker's BWC was activated, but only recorded the incident after the OIS, including the provision of first aid to Mr. Mercurio at the OIS scene. The BWC of the deputies and supervisors who subsequently responded to the OIS did not capture the shooting.

Non-department videos were obtained from various witnesses by Special Agents during this investigation. Specifically, special agents obtained closed circuit TV footage from the Valencia Town Center Mall security cameras including from the Cheesecake Factory, Black N Blue Bar, and Slater's 50/50.



Still image taken from Slater's 5050 Security Video Footage on January 11, 2023 showing Officer Gonzalez interacting with Mr. Mercurio



Still image taken from Valencia Town Center's Security Video Footage on January 11, 2023 showing Officer Gonzalez interacting with Mr. Mercurio

## Communications

Investigators obtained and reviewed copies of dispatch calls, 911 calls, radio communications, CAD logs/records, and message notifications related to the incident. The CAD printouts contain the following timeline of the events:

**10:44 PM** CAD Log: Incident reported at the Macy's Department Store located at 24201 Valencia Blvd.<sup>[1]</sup> Suspect identified as a white male, 50 years old, wearing grey shirt and black pants refusing to leave the front of the location. The suspect was reported to have no weapons and getting aggressive when confronted.

**10:44 PM** CAD Log: Deputy Gonzalez and Whitaker dispatched to respond.

## Interviews of Involved Officers

Police officers, like all individuals, have the right to remain silent and decline to answer questions in the face of official questioning. (*Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 714; see generally *Miranda v. Arizona* (1966) 384 U.S. 436.) Deputies Lorena Gonzalez, Dakota Whitaker, and Jonathan Hensley provided voluntary statements in this case.

The following statements are summaries of their interviews, which describe the incident from the point of view of the individual officers. 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>1</sup> 24201 is the general address for the Valencia Town Center, rather than the specific mailing address for the Macy's located at the Center.

### ***Deputy Lorena Gonzalez***

On February 7, 2023, Special Agents D. Ibarra and Tony Baca interviewed Deputy Gonzalez at the DOJ Regional Office in Commerce. Also present for the interview was Steven Alvarado, attorney for Deputy Gonzalez.

Deputy Gonzalez was hired by the LASD on November 7, 2011. Deputy Gonzalez was assigned to the Santa Clarita Valley Sheriff's Station at the time of the OIS.

Deputy Gonzalez said that Deputy Whitaker with the Saugus unit had received a disturbance business call. The call indicated that there was a White adult male creating a disturbance at the business, that he was intoxicated, and that he was refusing to leave the location.

As Deputy Gonzalez was driving to the Black N' Blue Bar and Grill in Valencia to join Deputy Whitaker, she received a call for service stating that there was a possible trespassing call at the Macy's. Deputy Gonzalez drove around the parking lot structure and around the businesses, eventually passing near the storefront at Macy's on the lower level. She saw a person, later identified to be Christopher Lee Mercurio, lying down on the ground.

Deputy Gonzalez parked her patrol vehicle and exited toward the back of it. As she did this, she momentarily lost sight of Mr. Mercurio. Deputy Gonzalez then saw Mr. Mercurio standing up. As they started speaking, Mr. Mercurio got relatively close and, consequently, she took a step back "because I had also remembered that in the call -- and the call had stated that he had been aggressive with security. That's what the -- our -- at least our informant had stated, and that's what the call stated, so for me, that was just a reminder that, okay, he had been aggressive with them, and that was fine."

Deputy Gonzalez informed Mr. Mercurio that he needed to leave, to which he responded that he would not move. Mr. Mercurio grew more agitated the longer that Deputy Gonzalez spoke with him. Mr. Mercurio eventually stated that he was going to "kill ever fucker that comes here." Deputy Gonzalez stated that she believed Mr. Mercurio's threat applied to her as well.

Deputy Gonzalez continued to speak with Mr. Mercurio, and he grew more agitated before stepping towards her. Deputy Gonzalez raised her hand and told him to step back. Mr. Mercurio replied, "I'm going to fuck you up, bitch." According to Deputy Gonzalez, Mr. Mercurio hit her in the upper left side of the head. She believed that he punched her. She immediately asked for help over the radio.

Deputy Gonzalez stated that she was in fear for her safety. She noted that Mr. Mercurio was over six feet tall and was "easily around 300 pounds." Deputy Gonzalez remarked that "when he hit me that first time, not only has he threatened me, but now that threat[has] become so real that now he's actually carried it out." Deputy Gonzalez added that Mr. Mercurio had "every intention to just do what he said, and that he was going to kill me. That he's going to fuck me up. He has every intention, now, to cause me great bodily harm."

Mr. Mercurio hit Deputy Gonzalez a second time on the left side of the head "closer to the back of my head." She described his second punch as causing "searing pain" and rated it a ten out of ten on the pain scale. Deputy Gonzalez remarked that "I've been in assaults before. I've been in fights before with men, with inmates before in my history. I have been in fights before. So I know what it is to be hit with a fist. I know what that's like, and this is nothing like I've ever felt in my life, ever."

Deputy Gonzalez believed that Mr. Mercurio was “going to carry out what he said. He was going to kill me. He was going to fuck me up.” Deputy Gonzalez explained that she feared she was going to die, and that she would not survive Mr. Mercurio’s subsequent attack(s). She noted that “[a]fter he hit me, everything went black. It was just for a second or two, but everything went black at that moment.” After regaining her vision, Deputy Gonzalez initially lost sight of Mr. Mercurio.

Although Deputy Gonzalez attempted to create distance from Mr. Mercurio as he continued his approach towards her, Deputy Gonzalez described her belief that she was “going to get trapped back there. There's no exit that way...I know I'm not going to be able to get away.”

During the interview, Deputy Gonzalez was asked extensively about the alternative use of force options available to her during the altercation. Deputy Gonzalez claimed that she “thought of every option...And that's when I unholster[ed] my gun...I know I had other options. I know I had a pepper spray. I know I had a TASER. And I know how I react to pepper spray. I don't do well in that -- when the chemical comes out. And the last thing I need is for -- for me to lose my sight at that point. For me to not be able to -- just be able -- as it is, I can barely move. I can barely walk. And the last thing I need is to give myself a bigger disadvantage at this point.”

Deputy Gonzalez also considered the option of using her Taser, which she declined based on her observation that “it wouldn't have been effective either because when we initially -- when I make that initial contact, I notice he's -- not only did he have a big, bulky jacket on, he had layers of clothing underneath. I remember seeing there was different colors, there were different layers he had on underneath that jacket. I remember seeing that, and at this point, I don't know if he's got more than just those layers and what I saw. So I know if I try to tase him, it's not going to be effective between that jacket, between the layers, between where we're standing.”

As the altercation continued, Deputy Gonzalez turned her body and walked backwards in the direction of the parking lot. She gave Mr. Mercurio multiple commands to stop, but he failed to comply. Despite multiple commands, Mr. Mercurio continued advancing toward Deputy Gonzalez. Deputy Gonzalez remarked that “I tried everything I could at this point to just give him -- like, for him to stop but he doesn't. He continues. He's advancing. I feel him like he's going to close that gap any -- any instant.” Deputy Gonzalez added that “I know if he -- we have to go hands-on again, if he -- if he hits me just one more time, I don't -- I knew I didn't have it in me. I knew he hit me that was it. I wasn't going to survive. I knew that.”

At the moment of the first shot fired during the OIS, Deputy Gonzalez explained that “knowing all of that, taking all of that in consideration, the totality of everything that led to that, that's when I shoot him. I shoot him the first time. And it's -- uh -- it's after that first shot, even though we were in such close proximity, I had no idea that if I had even made contact. That shot had even struck him. Because as soon as I know I fired, he continues. He doesn't stop. He doesn't hesitate. He continues to come forward at me.”

After discharging her first shot, Deputy Gonzalez assessed the situation. She noted that “he's still moving. His arms and his hands go up in that same exact motion from the first ti [sic]-- from the time where he said he was going to fuck me up, and he hits me I the head [sic]. His hands go up in that same exact manner. And because I had no idea if he -- I had shot him, and I knew he was in -- he was going to be able to close that gap again because we still so close [sic], he's still moving. He's not stopping. He

said he's going to fuck me up. He's going to kill me.” In explaining the rationale for the second shot fired at Mr. Mercurio, Deputy Gonzalez explained that “[k]nowing all of that, taking everything in consideration of what just happened, like, I shoot a second time. And when I shoot that second time, he stops. He does stop.”

After being shot a second time, Mr. Mercurio turned around and finally walked away from Deputy Gonzalez. She continued to “hold him at gunpoint, because at this point, he's still a threat. Like, I don't know what he's doing. I don't know if he has a weapon. I don't know if he's going for -- I don't know if he's going to come -- turn right back around. I don't know what he's doing. So I just continue to hold him at gunpoint.” Mr. Mercurio returned to the exterior door area where his property was located. After Mr. Mercurio collapsed, Deputy Gonzalez called for assistance, and Deputy Whitaker arrived on scene. Deputy Gonzalez noted that she and Deputy Whitaker rendered aid until other personnel arrived and took over.

### ***Deputy Dakota Whitaker***

On January 17, 2023, Special Agents A. Hernandez and LASD Detective Scott Matlock interviewed Deputy Whitaker at the LASD Santa Clarita Valley Station.

Deputy Whitaker was assigned to the Newhall area, south of Saugus and east of Canyon Country, at the time of the OIS. According to Deputy Whitaker, he was assigned to the trespassing call, but Deputy Gonzalez arrived first on scene. Deputy Whitaker heard the emergency call put out by Deputy Gonzalez but was already looking for her prior to her emergency call.

When asked what he heard over the radio, Deputy Whitaker stated “I heard the patch open, heard her voice. I heard shots fired, a little confused that -- as far as what the actual circumstances was. And then SCC [Sheriff Communication Center] reiterated, she said 998, that's when I kind of got a clear understanding of what was happening, but I didn't hear the full traffic. It was a lot a static.”<sup>2</sup>

Deputy Whitaker was the first to arrive on scene to assist Deputy Gonzalez after the OIS. As he arrived, Deputy Whitaker observed Deputy Gonzalez standing on the sidewalk, “detaining at gunpoint.” He saw what he believed to be the male suspect lying on the ground on his side.

When asked about distance between Mr. Mercurio and Deputy Gonzalez, he estimated there was “between seven to twelve feet” between them. Deputy Whitaker recalled asking Deputy Gonzalez if the suspect had a gun or a knife. According to Whitaker, she stated “no” to both questions. Deputy Whitaker, then recalled asking Deputy Gonzalez if she shot the suspect. According to Deputy Whitaker, “She said, ‘shot towards’ -- uh -- verbatim, I don't remember exactly what she said. But it was -- I got the indication that she had shot him in the torso.”

After learning that Mr. Mercurio had been shot, Deputy Whitaker started to administer medical aid. Deputy Whitaker described moving Mr. Mercurio’s clothing “looking for blood, any kind of holes. I didn't see anything, pulled up his entire shirt and everything. Found the gunshot wound on his upper left chest.” Deputy Whitaker administered first aid, until he was relieved by the LACFD personnel.

According to Deputy Whitaker, Mr. Mercurio made no statements while in his presence.

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<sup>2</sup> 998 is code for a police officer needing assistance.

During his interview, Deputy Whitaker was asked to describe Deputy Gonzalez' demeanor upon his arrival. According to Deputy Whitaker, "...I feel like she was -- I want to say she was in sho -- is -- I was kind of -- it took her a second. It seemed like she was there but then wasn't there. It was a little bit confusing for me." When asked to describe her appearance in more detail, Deputy Whitaker stated she appeared, "She could of [sic] been shock and scared."

### ***Deputy Jonathan Hensley***

On January 12, 2023, Special Agents A. Hernandez and LASD Detective Scott Matlock interviewed Deputy Jonathan Hensley at the LASD Santa Clarita Valley Station.

Deputy Hensley responded to the OIS scene. Upon his arrival, Deputy Hensley observed Deputy Whitaker rendering medical aid to Mr. Mercurio. According to Deputy Hensley, Mr. Mercurio made no statement while in his presence.

## **Interviews of Civilian Witnesses**

Numerous civilian witnesses were interviewed by DOJ, LASD conducted the initial canvass for witnesses at the location of the OIS. Over several subsequent days, CaPSIT special agents conducted multiple canvasses around the mall in order to locate additional potential witnesses to the incident. Several witnesses were identified and interviewed.

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.

### ***Witness 1 (W-1), an off-shift security guard at Black N' Blue Bar***

W-1 was interviewed by CaPSIT agents at the Valencia Town Center on February 9, 2023. W-1 worked at the Black N' Blue Bar and Grill in Valencia. On the night of the OIS, W-1 was not working and he went out with a roommate to have some dinner and a few drinks at Black N' Blue. W-1 noticed Mr. Mercurio walk into the bar and observed that he "had duffel bags and backpacks over his back. He had an Army long sleeve windbreaker jacket." Shortly thereafter, W-1 noticed that Mr. Mercurio was "getting a little bit aggressive, physically, and or verbally closely [sic] with the assistant bar manager." W-1 eventually helped remove Mr. Mercurio from the bar. About 15 or 20 minutes later, W-1 heard "gunshots. I believe I heard one or two." Importantly, W-1 observed that Mr. Mercurio has "a black knife on his holster, right hand side. I believe it was a black...velvet look to it – um – with maybe a steel handle – like black and steel handle."

### ***Witness 2 (W-2), the security manager at the Black N' Blue Bar and Grill***

W-2 was interviewed by CaPSIT agents at the Black N' Blue Bar and Grill in Valencia on January 25, 2023. On the night of the OIS, W-2 was off duty at roughly 9:30 PM when he received a text from the on-duty floor manager who needed assistance escorting Mr. Mercurio out of the bar. Once he arrived, W-2 approached the manager and learned that Mr. Mercurio needed to be escorted out because he was "harassing the customers saying he wanted to fight some of the customers [and] claimed to have a knife on him."

### ***Witness 3 (W-3), a patron of the Valencia Town Center***

W-3 was interviewed by CaPSIT agents at the Valencia Town Center on January 19, 2023. On the night of the OIS, W-3 and W-4 had brief contact with Mr. Mercurio. W-3 said that Mr. Mercurio “asked me if I had money and I had told him I didn't have any cash on me, and he kind of like mocked me and said of course you don't have cash on you.” W-3 walked away without any additional interaction with Mr. Mercurio, although he noted that “he seemed like he kind of wanted to argue or something about the fact that I didn't have money.” W-3 described Mr. Mercurio as “a little bit aggressive. He just seemed like he wanted to start a problem.”

### ***Witness 4 (W-4), a patron of the Valencia Town Center***

W-4 was interviewed by CaPSIT agents at the Valencia Town Center on January 19, 2023. On the night of the OIS, W-4 and W-3 had brief contact with Mr. Mercurio. According to W-4, he was walking towards the parking lot when he came across Mr. Mercurio, who was “talking to this couple and they're kind of walking away from him fast like, you know, don't want to be rude or something.” W-4 described how Mr. Mercurio asked for money and how W-3 explained they didn't have any money to give. According to W-4, “as we're walking, we're getting further away from him and he's like he yells at us like well, have fun having no money or something. Or like have a good night with no money or something.”

### ***Witness 5 (W-5), assistant bar manager of the Black N' Blue Bar and Grill***

W-5 was interviewed by CaPSIT agents at the Black N' Blue Bar and Grill in Valencia on February 10, 2023. On the night of the OIS, W-5 was working at the restaurant and briefly interacted with Mr. Mercurio. According to W-5, Mr. Mercurio “showed up and at first it seemed like he was horsing around, playing around because he was with one of the regulars that's here every karaoke night, and he told me that it was his -- uh -- nephew.” That person bought Mr. Mercurio a Coors Light. W-5 noted that he served Mr. Mercurio the Coors Light, but he didn't even finish it and seemed sober. W-5 described Mr. Mercurio as “stone cold sober.”

However, W-5 stated that Mr. Mercurio “started being aggressive around the bar, and then I -- I went to talk to the guy to calm his uncle down and he said, I don't even know the guy.” According to W-5, the bar patron responded that “I bought him a beer[,] and get him away from me because he's being, you know, he's being aggressive towards him, too.” W-5 immediately contacted the restaurant manager and the security team. After they walked him out, Mr. Mercurio roamed around and started being “very aggressive” towards other patrons outside. W-5 opined that Mr. Mercurio “was just looking for a fight...He told me he had a blade on him.”

## **Autopsy**

Christopher Lee Mercurio was born on March 1, 1972. At the time of the OIS incident, he was five feet and nine inches tall and weighed 200 pounds.<sup>3</sup>

On January 21, 2023, Dr. Lawrence Nguyen completed the autopsy for Mr. Mercurio with the assistance of Forensic Coroner Technician II Paul Lopez. Based upon the examination of Mr. Mercurio's body, Dr. Nguyen identified the cause of death as two gunshot wounds to the chest and the manner of

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<sup>3</sup> Deputy Gonzalez was five feet tall and weighed approximately 155 pounds.

death was homicide. Both of the gunshot wounds entered Mr. Mercurio's left chest, traveled from front-to-back of his body through his left lung and ribs, and ultimately exited his left back.

The coroner's toxicology test revealed the presence of alcohol in Mr. Mercurio's blood.

## **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.)

“An assault with the fists does not justify the person being assaulted in using a deadly weapon in self-defense unless that person believes and a reasonable person in the same or similar circumstances would believe that the assault is likely to inflict great bodily injury upon . . . [her].” (CAJLIC No. 5.31; see *People v. Rush* (1960) 180 Cal.App.2d 885, 889-890 [“probable danger of less degree than great bodily injury” is insufficient to justify the exercise of self-defense].) Further, a person’s physical infirmities are a proper consideration in deciding the reasonableness of his claim of self-defense. (*People v. Horn* (2021) 63 Cal.App.5th 672, 675.)

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 lead to the death of Mr. Mercurio. This analysis is based on all of the evidence obtained by DOJ in this matter, including voluntary statements from the officers involved in the shooting, witness statements, forensic evidence, coroner's report, autopsy photographs, BWC footage, drone photos, police reports, and helicopter video footage.

Because a prosecuting agency would need to affirmatively prove beyond a reasonable doubt that Deputy Gonzalez did not act in lawful defense of himself or others, this is the primary issue in determining whether criminal charges should be filed. A detailed analysis of the evidence pertaining to the OIS shows that Deputy Gonzalez 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.

### Subjective Element of Self-Defense

Deputy Gonzalez's interview revealed that she feared Mr. Mercurio's ability to cause substantial and irreparable harm if he were successful in mounting a second physical attack against her. In her interview, Deputy Gonzalez described how she felt at the height of her encounter with Mr. Mercurio:

"He was going to carry out what he said. He was going to kill me. He was going to fuck me up. And I felt this pain. And not only that pain led to this -- it led to this fear. I got so scared at this point because when he hit me that second time, all I could think was that I was going -- I wasn't going to survive. That I was going to die. After he hit me, everything went black. It was just for a second or two, but everything went black at that moment. And when I came to -- and I came back, when I got my vision back because everything, like I said, had just disappeared on me, initially, all I see when I open -- when it seemed like I opened my eyes again, I could see again, all I see is light, and I see now, like, I no longer see him."

In viewing her BWC, it is apparent that Deputy Gonzalez is retreating backwards from Mr. Mercurio as he continues to advance towards her. The difference in size and height between Mr. Mercurio and Deputy Gonzalez, coupled with her commands that Mr. Mercurio stop advancing towards her, support that she held a belief that he posed an imminent risk to her safety. This is particularly true in light of the injury that Mr. Mercurio had already inflicted on Deputy Gonzalez. In sum, the evidence demonstrates Deputy Gonzalez actually believed that Mr. Mercurio posed an imminent threat of death or great bodily injury towards herself.

### Objective Element of Self-Defense

The evidence shows that Deputy Gonzalez objectively and reasonably believed, based on the totality of the circumstances, that the threat of death or great bodily injury was imminent given that Mr. Mercurio appeared to have the present ability, opportunity, and intent to cause death or great bodily injury to her.

Prior to the OIS, Deputy Gonzalez was aware that Mr. Mercurio acted in an aggressive and harassing manner towards patrons of the Valencia Town Center properties. When she arrived on scene, Deputy Gonzalez initiated the conversation and tried to explain her purpose in asking Mr. Mercurio to move from the exterior door to the Macy's. However, Mr. Mercurio interrupted Deputy Gonzalez and stated "yeah I'm not going to move at all. I will actually kill every fucker that comes here." Deputy Gonzalez

attempted to defuse the situation stating “we don’t want that,” to which Mr. Mercurio replied “I don’t care. That’s where I’m at.” Despite repeated attempts to deescalate the confrontation verbally, Mr. Mercurio continued to engage with her in an aggressive manner.

After a short verbal interaction lasting about a minute-and-a-half, Mr. Mercurio took his first steps toward Deputy Gonzalez, with both hands in his pockets. Deputy Gonzalez instructed Mr. Mercurio to immediately “step back,” to which Mr. Mercurio replied “I’m going to fuck your ass up, bitch.”

At approximately 10:58:30 PM, Deputy Gonzalez extended her hand to push Mr. Mercurio back. Mr. Mercurio immediately responded with multiple strikes to the left side of Deputy Gonzalez’s head. These blows caused Deputy Gonzalez to experience excruciating pain and a temporary “black out.”

Deputy Gonzalez was able to create some distance from Mr. Mercurio and drew her weapon pointing it at him. Mr. Mercurio proceeded to continue to walk towards Deputy Gonzalez, with his arms at his side, despite her having given verbal commands to “step back” approximately four times in total. Deputy Gonzalez repeatedly stated that she would shoot Mr. Mercurio if he came any closer as she continued to step back and away from Mr. Mercurio as he continued his approach towards her.

At approximately 10:58:51 PM, Mr. Mercurio exclaimed “shoot” as he stood a few feet from her with his arms at his side. Deputy Gonzalez immediately fired one shot at Mr. Mercurio’s chest. Mr. Mercurio paused momentarily and then continued advancing towards Deputy Gonzalez before she shot a second time at Mr. Mercurio at approximately 10:58:56 PM.

While Mr. Mercurio did not appear to be holding or brandishing a weapon at the time of the OIS, the use of deadly force in response was objectively reasonable. Mr. Mercurio’s initial attack on Deputy Gonzalez caused her significant pain and put her in a weakened state. When coupled with the significant difference in height and size, Mr. Mercurio’s threats, his aggressive demeanor, and his repeated refusal to comply with lawful commands made by Deputy Gonzalez created a reasonable impression that Mr. Mercurio had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to Deputy Gonzalez.

Deputy Gonzalez fired her weapon at Mr. Mercurio based on her belief that she needed to stop Mr. Mercurio from potentially killing or inflicting great bodily injury to herself. Given the totality of the circumstances, Deputy Gonzalez’s use of deadly force to defend against what she believed to be an imminent threat of death from Mr. Mercurio was reasonable.

## **CONCLUSION**

Based on the investigation and review of evidence, along with the applicable statutes, legal principles, the subsequent analysis, and totality of the circumstances, there is insufficient evidence to support a criminal prosecution of Deputy Gonzalez. 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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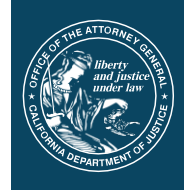
# DEPARTMENT OF JUSTICE

## **Policy and Practice Recommendations for the Los Angeles County Sheriff's Department Related to the Officer-Involved Shooting of Christopher Mercurio on January 11, 2023**

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

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March 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, on January 11, 2023, at approximately 10:44 p.m., Los Angeles County Sheriff’s Department (LASD) Deputy Lorena Gonzalez, responded to a call regarding a trespass at Macy’s department store in Valencia. The call described the subject as “aggressive when confronted.” While responding to the call, at 10:57 p.m., Deputy Gonzalez contacted Christopher Mercurio in front of Macy’s. During the conversation, Mr. Mercurio became confrontational and punched Deputy Gonzalez. Deputy Gonzalez issued commands directing Mr. Mercurio to move away from her, but he advanced toward her instead. At 10:58 p.m., Deputy Gonzalez then fired her service weapon twice at Mr. Mercurio. Mr. Mercurio sustained two, lethal gunshot wounds to his chest.

On January 21, 2021, preceding this critical incident, the California Attorney General’s Office launched an investigation into allegations that LASD has engaged in a pattern or practice of unconstitutional policing pursuant to Government Code section 11180. The investigation is ongoing. The recommendations that PPS identifies in this report are separate and apart from the pattern or practice investigation and will not serve to limit or otherwise impact the pending investigation process.

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 LASD to review and implement three recommendations:

### RECOMMENDATION ONE: DE-ESCALATION POLICY AND TRAINING

LASD’s De-Escalation policy provides that “[w]henever reasonably safe and feasible to do so, Department members shall use de-escalation and crisis stabilization techniques, which can prevent the need to use force or reduce the amount of force that is required.” (LASD Manual of Policy and Procedures (MPP) No. 3-10/009.00.) LASD policy also requires deputies to “consider de-escalation and crisis stabilization techniques to be part of tactical planning” as “de-escalation is a core principle of sound tactical operations.” (*Ibid.*) The goal of this policy “is to decrease the intensity of the situation by

persuading the subject to voluntarily comply, allow the Department member to use additional options other than force, or to mitigate the need to use a greater amount of force to safely resolve the situation.” (*Ibid.*) The policy further requires deputies to “avoid tactics and approaches that unnecessarily escalate situations, which may increase the likelihood of a need to use force or a greater degree of force.” (*Ibid.*)

LASD’s De-Escalation Policy provides the minimal adherence to Government Code section 7286, subdivision (b)(1), which requires law enforcement agencies to maintain a policy that provides a minimum standard on the use of force. While legally sufficient, it nonetheless lacks proficient guidance on tactics or techniques which would aid deputies in understanding how to apply that standard, which undermines officer safety. For example, the policy should discuss engaging in tactical planning with other officers wherever feasible, assessing and re-assessing the situation and relevant risks, using time, distance, cover, and tactical repositioning to slow down and decrease the need for confrontation, calling for backup, and gathering information about the subject and incident.

For example, the LASD Field Operations Directive provides policies on managing encounters with people with a mental health condition and identifies some de-escalation techniques. (LASD Field Operations, Calls For Service Involving Alleged Mentally Ill Persons, No. 16-003.) The Field Operatives Directive identifies techniques like, “slow down the pace,” “start with a reasonable and safe distance,” and “consider disengagement.” (*Ibid.*) However, these tactics are not mentioned in LASD’s De-Escalation Policy. LASD’s failure to include adequate de-escalation tactics in its De-Escalation Policy is reflected in the insufficient tactics used in this incident. If deployed effectively, such tactics and techniques could have had a significant impact on this incident.

LASD dispatch reported a trespass occurring in front of Macy’s and described the individual, in part, as “aggressive when confronted.” Dispatch assigned Deputy Gonzalez to respond and assigned Deputy Dakota Whitaker to assist Deputy Gonzalez. Deputies Gonzalez and Whitaker were arriving to the location in their separate units at the time of this call because Deputy Whitaker was assigned an earlier call regarding an intoxicated man who was creating a disturbance and refusing to leave a business at the same shopping mall.

Deputies Gonzalez and Whitaker parked their units at the location of the business disturbance call and discussed the two calls and what to do. The Deputies concluded that the two calls probably involved the same person and decided that Deputy Gonzalez would go to the Macy’s to investigate the trespass call, while Deputy Whitaker would investigate the business disturbance call. According to her interview, Deputy Gonzalez did not formulate a plan on how to approach and manage the encounter with Mr. Mercurio. The only pre-shooting plan was to have Deputy Gonzalez initially investigate the trespass alone, without backup.

Deputy Gonzalez’s body worn camera (BWC) was activated and verifies that seconds after contacting Mr. Mercurio, Deputy Gonzalez attempted to tell Mr. Mercurio that Mall Security called regarding a trespass. Before Deputy Gonzalez finished her sentence, Mr. Mercurio said, “Yeah, I’m not going to move at all. I will actually kill every fucker that comes here.” Seconds later Mr. Mercurio reiterates that he is not moving and tells Deputy Gonzalez, “You either protect and defend or I’m going to fucking destroy your fucking human being.” Deputy Gonzalez remains standing inches from Mr. Mercurio and says, why is he “coming at [her] like that.” The conversation escalates and Mr. Mercurio advances towards Deputy Gonzalez. Deputy Gonzalez attempted to command him to step back and used her

hand to push Mr. Mercurio back. The BWC footage confirms that Mr. Mercurio punched Deputy Gonzalez, and she shot him twice in the chest.

Throughout the encounter, Deputy Gonzalez did not utilize widely recognized de-escalation tactics, and as a result she was placed in a vulnerable position that fostered an opportunity for circumstances to escalate. First, Deputy Gonzalez should have considered requesting backup when Mr. Mercurio began to display confrontational behavior. Deputy Gonzalez stated that when she regularly approaches transient people, they usually wait until they are approached by her, and they do not generally confront her. Deputy Gonzalez noticed that Mr. Mercurio walked up to her, instead of waiting where he had set up to sleep that night. Even with this display of confrontational behavior, Deputy Gonzalez proceeded to act alone, instead of requesting assistance from the nearby Deputy Whitaker.

Second, Deputy Gonzalez should have considered creating additional space between her and Mr. Mercurio, a man much larger than herself, particularly when he began to display aggressive behavior. When Mr. Mercurio approached Deputy Gonzalez, his hands were in his pockets, and he stood within inches of her. Mr. Mercurio stood at a height of 5 feet 8 inches and weighed approximately 200 pounds, Deputy Gonzalez stood a mere 5 feet tall and weighed approximately 155 pounds. Mr. Mercurio maintained this position throughout the interaction with Deputy Gonzalez up until she pushed him back with her hand and he struck Deputy Gonzalez. A safer practice in this situation, particularly given the size differential and the lack of a cover officer, would have been to create additional distance from Mr. Mercurio.

Third, Deputy Gonzalez should have considered performing a warrants check on Mr. Mercurio via her radio to determine whether he had any outstanding warrants, had any violent criminal history, had any documented mental health conditions, or if he otherwise posed a safety risk. When Deputy Gonzalez contacted Mr. Mercurio, she asked for his name and date of birth, but did nothing with this information. LASD instructs its deputies that performing a warrant check “can provide a deputy with safety precautions by determining if the detained person is wanted for a different crime, has a recorded propensity for violence or may have a mental disorder.” (LASD Field Operations, Legal Detention: Refusal to Provide Identification, No. 14-22.)<sup>1</sup>

Deputy Gonzalez did not utilize the basic de-escalation tactics of time, distance, and cover, including tactical repositioning or a tactical retreat to the safety of her nearby unit, to perform a warrant check, create space between her and Mr. Mercurio, and/or allow Deputy Whitaker to arrive and assist.<sup>2</sup>

PPS recommends that LASD expand its de-escalation policy to promote officer safety so that it includes specific guidelines, definitions, and examples of potential de-escalation techniques, including a variety of tactics and strategies covering an array of circumstances.

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<sup>1</sup> POST trains officers, when reasonable under the circumstances, to verify a person’s identity and conduct a warrant check during a stop or detention. (Learning Domain 21: Patrol Techniques, Version 5.0, Chapter 2, 2-32, 2-38.)

<sup>2</sup> LAPD trains its officers on tactical retreat skills. (LAPD Practical De-escalation & Tactical Conduct Course Outline, dated October 7, 2022.)



PPS also recommends that LASD provide its deputies with improved training on de-escalation tactics, techniques, skills, strategies, and approaches for safely and effectively addressing situations without use of force whenever possible. These trainings should focus on tactical decision-making skills and addressing situations in ways that may minimize the need to use force and/or the amount or severity of force to be used when feasible.

## **RECOMMENDATION TWO: POLICY AND TRAINING REGARDING IDENTIFYING AND RESPONDING TO INDIVIDUALS WITH MENTAL HEALTH CONDITIONS**

LASD has several policies that mention contacts with people with mental health conditions. The Field Directive and the Use of Force policy both require deputies to identify or consider whether the subject may have a mental health condition in order to respond appropriately. However, there is no guidance provided in either policy or directive outlining how or what the deputies should do when faced with a mental health situation. For example, LASD’s Field Operations Directive titled, “Calls for Service Involving Alleged Mentally Ill Persons,” indicates that it was implemented “to establish policy and procedures for responding and handling calls for service involving persons who *may* be mentally ill, while minimizing use of force incidents.” (LASD Field Directive 16-003.) (Emphasis added.) LASD’s Use of Force Policy provides that factors used to determine whether a use of force is objectively reasonable include “[t]he mental capacity or mental health of the subject” and “[w]hether it *should have been apparent* to the Department member that the subject had a mental illness, developmental disability, or cognitive disability.” (LASD MPP No. 3-10/020.00.) (Emphasis added.)

LASD’s Mentally Ill Persons Policy states that the Crisis Negotiation Team (CNT) and/or the Mental Evaluation Team (MET) may assist field deputies when a “[s]uspect is a danger to himself/others;” is emotionally disturbed; and/or exhibits bizarre and/or violent behavior. (LASD MPP No. 4-16/010.00.)

LASD’s Field Operations Directive “Calls for Service Involving Alleged Mentally Ill Persons” identifies various procedures that “shall” be implemented when department personnel are handling a call for service involving a person who may be mentally ill, including repeatedly *directing personnel to contact MET for assistance*. The first three procedures listed are “Call a MET team,” “Slow down the pace – take the time you need to de-escalate the situation,” and “Start with a reasonable and safe distance.” According to LASD, MET should be able to assist deputies in this kind of situation because it “co-responds in real time to effectively influence the call’s outcome as it unfolds. This proactive approach allows MET deputies to utilize their mental health training and crisis intervention skills immediately, potentially reducing the risk of escalation and improving the overall safety and well-being of the individuals involved.” (LASD MET Expansion Fact Sheet, April 2023.<sup>3</sup>) Despite this, LASD does not provide sufficient guidance as to when deputies should contact MET, and what criteria must be satisfied before MET can be contacted. Given LASD’s MET services are available *round-the-clock*, it is advisable for deputies to take advantage of the services where feasible.

LASD’s policies and practices should ensure that deputies take appropriate, corresponding action, which may include calling MET, slowing down the pace of the interaction, maintaining a reasonable

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<sup>3</sup> <https://file.lacounty.gov/SDSInter/bos/supdocs/FactSheet.pdf>

and safe distance, and a number of the other tactics identified in the Field Directive on this issue. Providing clear identifiers and direction for obtaining assistance with individuals who may have mental health conditions can help deputies effectively manage an interaction without miscommunication or using significant force.

Deputy Gonzalez, in her voluntary statement, said that she did not believe that Mr. Mercurio had a mental health condition. According to the BWC footage, Mr. Mercurio made several bizarre comments and exhibited aggression while interacting with Deputy Gonzalez. He said to Deputy Gonzalez, “I am security for the whole country, do you want Iran and China to bust your nut?” that he would “kill every fucker that comes here” if he was not allowed to sleep there, and that he was “going to destroy your fucking [Deputy Gonzalez’s] human being” if she asked him to move.

Deputy Gonzalez confirmed in her interview that she had been trained on contacting people who have a mental health condition and that there is an option to call MET for assistance. Deputy Gonzalez stated she did not call MET, or take any actions based on the possibility that Mr. Mercurio had a mental health condition because she did not see “any signs” that he may have had mental health issues, and she did not believe Mr. Mercurio had a mental health condition. Deputy Gonzalez later stated that she does not know the LASD policies on interacting with people with mental conditions verbatim, but she followed these policies when interacting with Mr. Mercurio. Deputy Gonzalez’s conflicting statements suggest that she was unsure about how to identify symptoms of a potential mental health condition, as well as when and how to take additional actions and/or how to access MET assistance in such an encounter.

PPS recommends that LASD policies provide deputies with effective guidance and training regarding how to identify people with a mental health condition by considering a number of factors, including: (1) self-reporting, (2) information provided by witnesses, (3) the agency’s and justice system’s previous knowledge of the individual, or (4) an officer’s direct observations.

PPS also recommends that LASD provide deputies with effective training on how to interact with people who have mental health conditions, and procedures to follow during these encounters. Deputies should know when and how to contact MET and any other resources available. Strengthening and maintaining deputies’ training in this area will instill these core skills in a deputy’s practice, which will support safer interactions for all involved.

## **RECOMMENDATION THREE: TRAINING REGARDING CONDUCT FOLLOWING AN OFFICER-INVOLVED SHOOTING**

LASD policy requires deputies to “refrain from discussing the incident until the arrival of the first supervisor.” (LASD MPP No. 3-10/300.00.) Once a supervisor arrives, “involved personnel should briefly inform the supervisor of the circumstances surrounding the incident and what action has been taken.” (*Ibid.*) “The involved deputies shall then be immediately transported by a supervisor, if possible, or if not, by uninvolved deputies, to the station, unit of assignment or other suitable location.” (*Ibid.*) The policy further emphasizes, “[p]ersonnel, either involved in, or a witness to, the event, shall not discuss the circumstances of the incident among themselves or with uninvolved persons prior to being interviewed by assigned Departmental investigators.” (LASD MPP Nos. 3-10/300.00, 3-10/310.00.)

Moreover, “[s]upervisors, both at the scene and at the Station, shall ensure that no one questions or interviews involved personnel ...” (LASD MPP No. 3-10/420.00.)

Deputy Gonzalez provided her account of what happened in the critical incident to two other deputies at the scene immediately after the shooting. The three deputies had their BWCs turned off during this discussion, but the audio and video of this conversation was clearly captured on the BWC of a nearby officer. Even if a supervisor was present amongst the deputies, Deputy Gonzalez was providing a detailed debrief. At least one deputy asked Deputy Gonzalez questions about the incident, and Deputy Gonzalez provided answers to those questions. Discussing the incident with deputies is strictly prohibited by LASD policies.

PPS recommends that LASD provide refresher training on deputy requirements and responsibilities after an officer-involved shooting. PPS further recommends that deputies fully understand that they are not to discuss the matter with any member or person other than a supervisor in the very limited manner proscribed by LASD policy, or other authorized personnel like the Homicide Bureau Investigator, or the Division of Law Enforcement.

Further, LASD’s Deputy Involved Shooting policy requires:

[e]xcept under exigent circumstances, a deputy-involved shooting scene shall be kept intact and protected until the conclusion of Homicide Bureau's investigation and/or the IAB [Internal Affairs Bureau] Force/Shooting Response Team review. Expended brass, cartridges, magazines, etc., shall be left undisturbed. Fired weapons should be holstered or secured, consistent with standard evidence retrieval and preservation methods. (LASD MPP No. 3-10/300.)

LASD’s Evidence Handling policy provides that “[a]ll articles of possible evidentiary value shall be carefully handled and booked as evidence in PRELIMS without unnecessary delay . . . Emphasis on the proper care of evidence cannot be over stressed. The best evidence is useless if improperly handled.” (LASD MPP No. 5-04/010.00.) LASD’s Preservation of Evidence policy requires that “[c]aution should be used to prevent disturbing or damaging areas [of physical evidence] not readily visible which might contain evidence such as fingerprints, shoeprints, stains, fibers, etc. Deputy personnel shall protect, safeguard, and isolate any physical evidence to prevent contamination or alteration.” (LASD MPP No. 5-04/010.10.)

Preserving any and all evidence in an officer-involved shooting is critical to preserving the integrity of the investigation. LASD allowed Deputy Gonzalez to return to her personal residence without surrendering her uniform or being processed by DOJ or LASD. In doing so, the uniform was corrupted, such that DNA testing could not be performed by DOJ. This is particularly important in situations like this where the subject came into contact with the deputy’s uniform before an officer-involved shooting, making the uniform a potentially key piece of evidence. Compromising evidence in this manner can be detrimental to future investigations and can give the needless appearance of impropriety. PPS recommends that LASD provide refresher training on the importance of preserving evidence, and place greater emphasis on preserving evidence in the future.