



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 Rafael Mendoza and Michael MacFhionghain on May 19, 2022**

San Francisco County AB 1506

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March 2026

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# INVESTIGATION OF OFFICER INVOLVED SHOOTING

## BACKGROUND—AB 1506

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

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

- “W-1” – 911 Caller

## INTRODUCTION

On May 19, 2022, officers from the San Francisco Police Department (SFPD) responded to a report of an assault involving two men under a freeway overpass. Officers arrived at the scene and encountered Michael MacFhionghain pinning Rafael Mendoza on the ground and holding a knife over him. Officers negotiated with Mr. MacFhionghain for several minutes and used non-lethal methods to attempt to de-escalate the confrontation and cause Mr. MacFhionghain to drop the knife. However, when Mr. MacFhionghain forcibly moved the knife down at Mr. Mendoza, Officers Aidan O’Driscoll, Trent Collins, Daniel Rosaia, and Joshua Dequis discharged their firearms at Mr. MacFhionghain, who was fatally wounded. Additionally, one round fired by Officer Collins struck and killed Mr. Mendoza, who was unarmed at the time of the shooting.

The Department of Justice (DOJ) investigated and reviewed this officer-involved shooting pursuant to Government Code section 12525.3 (enacted by Assembly Bill 1506). This report is the final step in the DOJ’s review of the fatal shooting of Mr. Mendoza and Mr. MacFhionghain. The scope of this report is limited to determining whether criminal charges should be brought against the involved officers and does not encompass or comment on any potential administrative or civil actions. It does, however, include policy and practice recommendations, as required by Government Code section 12525.3, subdivision (b)(2)(B)(iii).

Upon thorough examination and as discussed in detail below, we conclude that no criminal charges will be filed, because the evidence is insufficient to prove that Officers O’Driscoll, Collins, Rosaia, or Dequis committed a crime.

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

## SUMMARY OF INCIDENT

### Initial 911 Call

On May 19, 2022 at 7:48 PM, W-1 was driving westbound on Mariposa Street as it runs under the 280 freeway. While stopped for a red light at the intersection of Mariposa and Owens streets, a male walked in front of W-1's vehicle carrying a large bat or baton-looking object in each hand. W-1 described the male as having dark skin, a bald head, wrinkly leather skin, and wearing a blue colored hooded sweatshirt. The man was later identified as Rafael Mendoza.

W-1 then saw Mr. Mendoza walk to the side of the street and begin striking an unhoused person's tent with what she believed to be a "large bat"-type object he was holding. W-1 did not hear any yelling because her vehicle's windows were rolled up, but she told dispatch that Mr. Mendoza's "face" appeared "very angry." W-1 recorded part of the assault on her cell phone. However, due to the positioning of the vehicle and the location of the subjects, only silhouettes and shadows can be seen on a nearby chain link fence. Just before W-1 began to drive away, the video shows a person coming out of the tent. W-1 believed there was someone in the tent but did not know for sure. The following photograph, taken from W-1's cellphone video, shows the silhouette of Mr. Mendoza striking a person who had been resting under a tarp.



Figure 1. Still frame image from 911 caller's cellphone video, depicting Mr. Mendoza striking another person.

As the video continues, another silhouette emerges from the encampment, presumably Michael MacFhionghain. At that point, the traffic light turned green and W-1 called 911 and left the scene. Dispatch communicated the above information to officers before they arrived on scene. The final dispatch before officers arrived on-scene was at 7:54 PM, which was the following entry: "THE SUSP

WAS USING THE 2 STICKS TO BEAT ON THE ENCAMPMENT THAT RP THINKS A PERSON IS INSIDE BEING HIT BY THE STICKS.”

### The Incident Scene

SFPD officers arrived on scene at approximately 7:55 PM and observed that Mr. MacFhionghain had pinned Mr. Mendoza to the ground. Officers stood facing both men, within a few feet of them, and immediately gave commands for Mr. MacFhionghain to “drop the knife.” Mr. MacFhionghain was on top of Mr. Mendoza, whose back was on the ground, and Mr. MacFhionghain was holding a knife in his right hand above Mr. Mendoza’s head. At the same time, Mr. Mendoza held onto Mr. MacFhionghain’s forearm to keep from being stabbed. The two men continued to struggle in this position as Mr. MacFhionghain tried to push his arm down against Mr. Mendoza’s grasp. Footage from Officer Mikael Pusung’s Body Worn Camera<sup>1</sup> (BWC) shows the position of the two men.



Figure 2. Still frame from Officer Pusung’s BWC showing Mr. MacFhionghain (yellow shirt) holding a knife and Mr. Mendoza (blue sweatshirt) grasping Mr. MacFhionghain’s forearm.

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<sup>1</sup> The time stamp on the body worn camera does not reflect the actual time of day on which this incident occurred.

Officer O’Driscoll arrived on scene with Officer Carle at about 8:02 PM. Officer O’Driscoll stood within a few feet of Mr. Mendoza and Mr. MacFhionghain, and had an unobstructed view of the two men. Officer Driscoll immediately issued multiple orders for Mr. MacFhionghain to “drop the knife” and told both men that he wanted to “work this out.” Mr. MacFhionghain refused, yelling that Mr. Mendoza attacked him and he wanted Mr. Mendoza to “admit it.”

As Officer O’Driscoll continued to give commands to Mr. MacFhionghain, Mr. Mendoza repeatedly yelled “shoot him” and “I can’t breathe.” Mr. Mendoza continued to hold Mr. MacFhionghain’s forearm up to keep the knife away from his face.

While Officer O’Driscoll communicated with Mr. MacFhionghain, multiple SFPD officers arrived at the scene and formed a circle-like perimeter around Mr. Mendoza and Mr. MacFhionghain. Between 7:55 PM and about 8:10 PM, approximately twenty officers responded to the incident, including hostage negotiators, crisis response officers, and tactical officers.

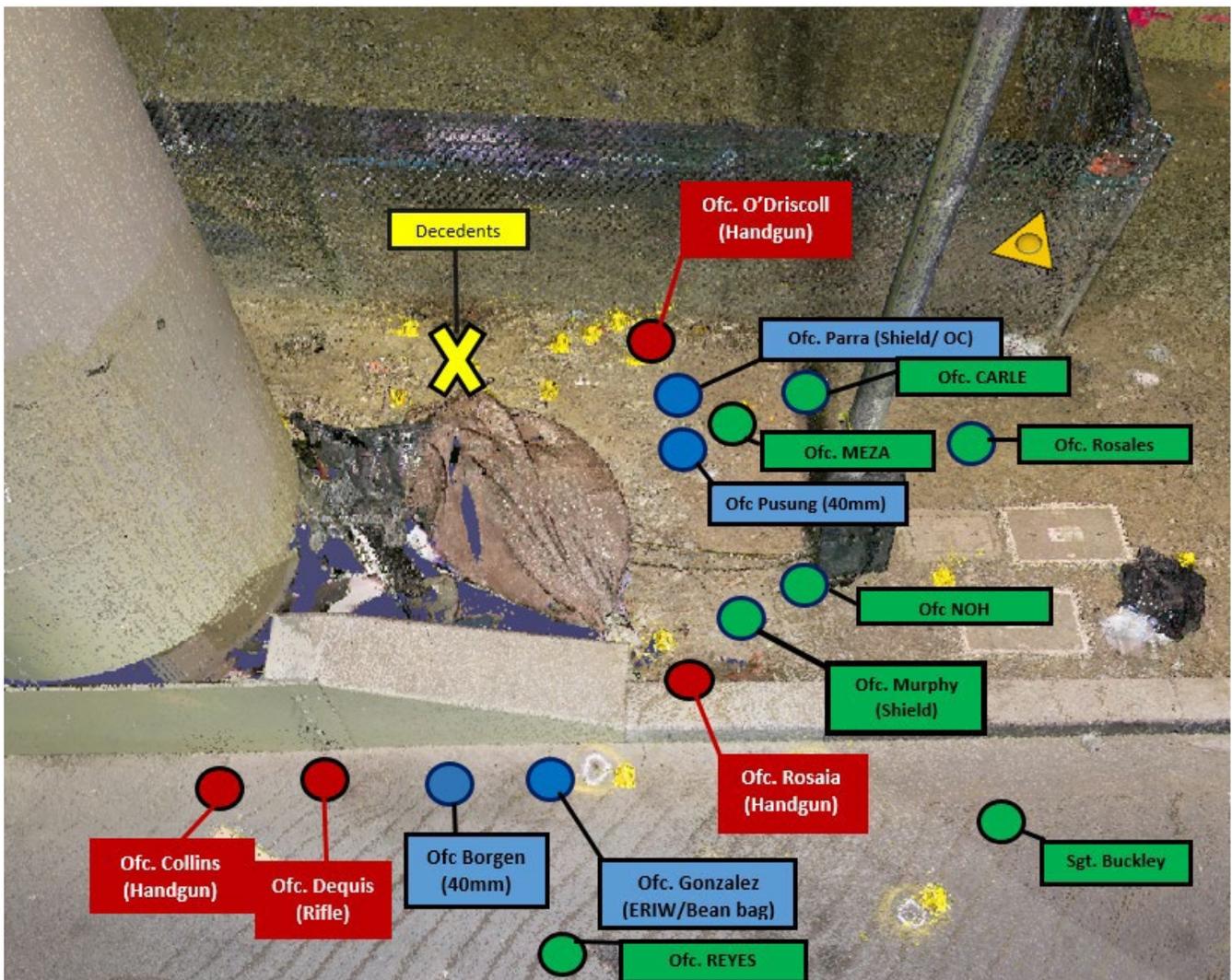


Figure 3. Aerial view of the scene using SFPD’s 3D scan shows the approximate position of each officer based on Body Worn Camera footage. Officers with lethal weapons are red; those with non-lethal weapons are blue; witnessing officers are green.

For over eight minutes, officers issued a total of approximately 100 verbal orders for Mr. MacFhionghain to drop the knife, but Mr. MacFhionghain did not reposition or comply. One officer gave orders in Spanish, ordering “suelta el cuchillo,” or “drop the knife” multiple times, which also had no effect on Mr. MacFhionghain. Mr. Mendoza continued to yell “I can’t breathe” as he held onto Mr. MacFhionghain’s arm, and progressively appeared to struggle to maintain that position.

At one point, Officer O’Driscoll yelled out that he saw “two knives” and that Mr. Mendoza had a knife too. Officer O’Driscoll then clarified that the “guy in the yellow has two knives,” referring to Mr. MacFhionghain. Officer O’Driscoll also announced to other officers that Mr. Mendoza’s hand was bleeding from holding the knife blade.

At about 8:07 PM Officer Pusung deployed a 40-millimeter foam impact round which made contact with Mr. MacFhionghain but had no visible effect, as Mr. MacFhionghain did not drop the knife or budge.

At about 8:09 PM, as officers continued to order Mr. MacFhionghain to drop the knife, Officer Pusung deployed two more 40-millimeter foam impact rounds, which also had no effect. In immediate succession, Officer Arnold Borgen deployed a 40-millimeter round at Mr. MacFhionghain as well, which Officer Borgen said in his interview “still had no effect.” Mr. MacFhionghain continued to try and push the knife down towards Mr. Mendoza.

Immediately thereafter, Officer Parra deployed one burst of Oleoresin Capsicum (OC) spray at Mr. MacFhionghain from an estimated distance of about two feet. Mr. MacFhionghain still did not comply with the commands to drop his knife.

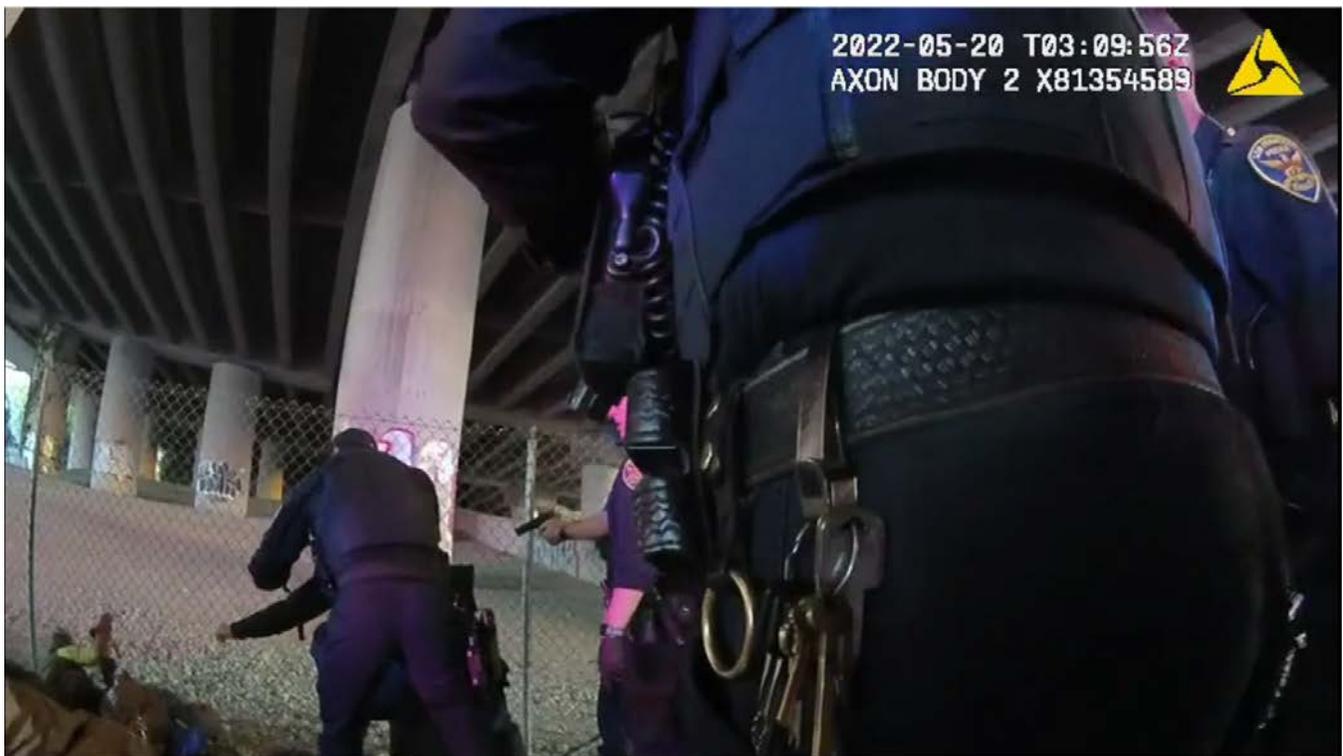


Figure 4. Still frame from Officer Gonzalez’s body camera shows Officer Parra as he deployed OC spray.

At about 8:10 PM, Officer Gonzalez deployed two rounds of his bean bag shotgun at Mr. MacFhionghain. Again, Mr. MacFhionghain did not drop the knife.

### The Shooting

At about 8 minutes and 40 seconds into Officer O’Driscoll’s bodycam video footage, Officer O’Driscoll’s voice increased in volume as he yelled “drop the knife, drop it, drop it!” Mr. MacFhionghain made a downward motion with the knife, bringing it closer to Mr. Mendoza.

Figures 5, 6, and 7 depict the position of Mr. MacFhionghain and Mr. Mendoza seconds before the lethal shots were fired, as seen from Officer Gonzalez’s body camera.



Figure 5. Still frame from Officer Gonzalez’s body camera showing Officer O’Driscoll aiming his handgun and Mr. MacFhionghain’s hand (lower left-hand corner) holding a knife.



Figure 6. Still and zoomed frame from Officer Gonzalez’s body camera.



Figure 7. Still frame (magnified) from Officer Gonzalez’s body camera as MacFhionghain brought knife down on Mendoza.

Just before shots were fired, Officer Gonzalez explained in his interview that he observed Mr. MacFhionghain “readjust his body” “on top” of Mr. Mendoza. Mr. MacFhionghain “took more of ... an aggressive ... stance, like higher stance and pushed down, starting pushing down towards the Hispanic male [Mr. Mendoza] with the knife.” Officer Gonzalez believed that Mr. MacFhionghain was trying to “stab [Mr. Mendoza] with the knife.”

At about 8:10 PM, simultaneous with Officer O’Driscoll’s last command, Officers O’Driscoll, Collins, Rosaia, and Dequis fired rounds in Mr. MacFhionghain’s direction while he was on top of Mr. Mendoza.<sup>2</sup> All officers fired in rapid succession in a span of four to five seconds, after which no further shots were fired. As a result of the gunfire, both Mr. Mendoza and Mr. MacFhionghain were struck and killed. Mr. MacFhionghain was fatally wounded by nine bullets. Mr. Mendoza was fatally wounded by one bullet, which was later determined to have been fired by Officer Collins.

Following the shooting, officers separated Mr. MacFhionghain and Mr. Mendoza and medical aid was rendered to each. Mr. MacFhionghain was pronounced deceased on-scene by San Francisco Fire Department paramedics at 8:20 PM. Mr. Mendoza was transported to San Francisco General Hospital where he was pronounced deceased at 8:38 PM. San Francisco’s Office of the Chief Medical Examiner then took custody of both bodies.

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<sup>2</sup> Apart from the officers who used less-lethal force, other officers present during the incident did not discharge their weapons.

## Body Worn Camera Video from the Shooting Officers

The shooting officers did not provide statements or reports concerning the OIS; however, video recordings from their body worn cameras were obtained and reviewed. When viewing images from the BWCs, it should be noted that the cameras were worn on the middle area of the officers' chests and were partially or even completely obstructed when officers raised their firearms in front of them. It is, therefore, difficult to precisely know what each of the officers saw, particularly at eye-level, when they discharged their weapons.

### *Officer O'Driscoll*

As Officer O'Driscoll gave his last "drop the knife" command, his BWC shows him firing three rounds, pausing, then firing one final round. Multiple gunshots fired in rapid succession by surrounding officers are also heard on the BWC. All of Officer O'Driscoll's shots are fired in the direction of Mr. MacFhionghain when he is on top of Mr. Mendoza. The following photograph is taken from Officer O'Driscoll's BWC at the time he fired his first round.



Figure 8. Still frame from Officer O'Driscoll's body camera of MacFhionghain's arm with the knife, being held by Mendoza.

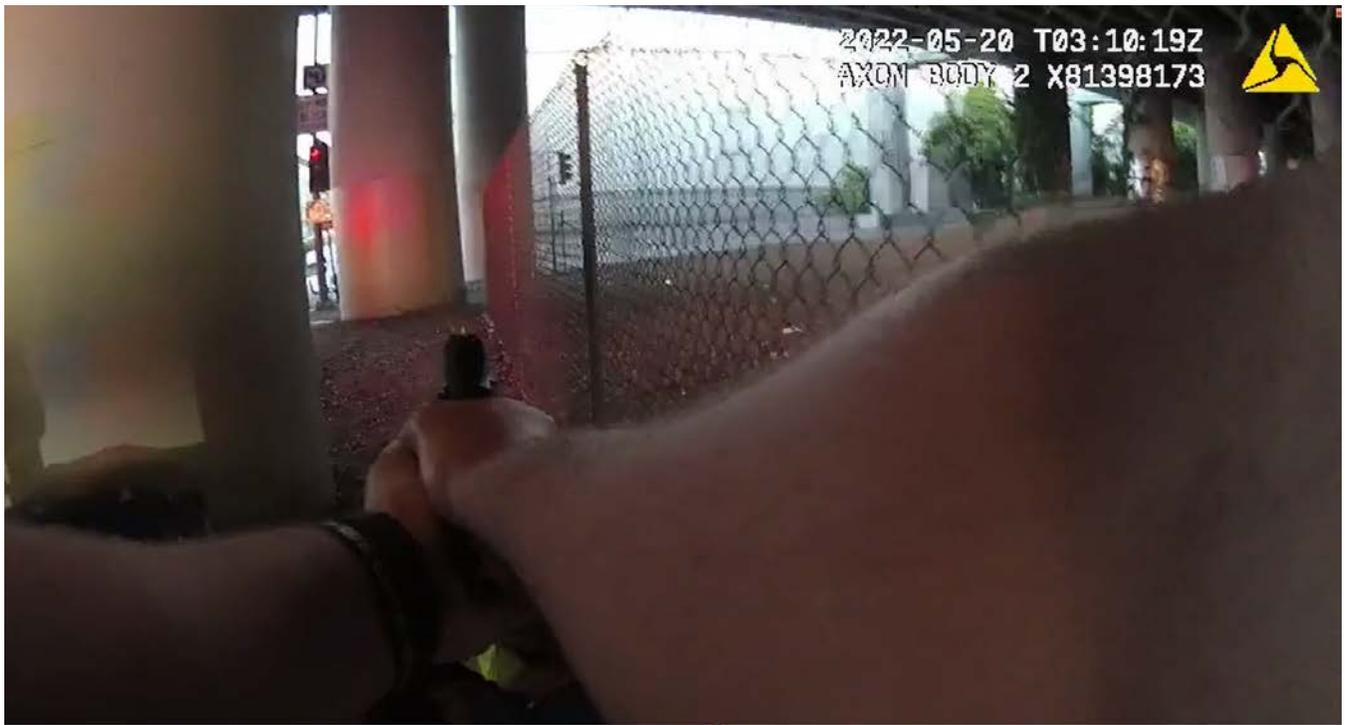


Figure 9. Still frame from Officer O’Driscoll’s body camera as he fired his first shot.

### ***Officer Dequis***

Officer Dequis deployed a rifle during the incident. His BWC does not indicate how many rounds he fired due to the overwhelming sound of surrounding gunfire. Officer Dequis’ perspective at the time his first round was fired is reflected in Figure 10.



Figure 10. Still frame from Officer Dequis’ body camera as he fired his first shot.

**Officer Rosaia**

Officer Rosaia’s body camera footage shows a clearer perspective of the positions of Mr. MacFhionghain and Mr. Mendoza. In Figures 11 and 12, Mr. Mendoza is seen holding Mr. MacFhionghain’s wrist up and away from his body before shots are fired. From the moment the first officers arrived on-scene until the first shots were fired, about eight minutes elapsed. During the entire eight minutes, Mr. Mendoza held Mr. MacFhionghain’s wrist up in this position for the duration of the incident.



Figure 11. Still frame from Officer Rosaia’s body camera of Mendoza holding MacFhionghain’s wrist up.



Figure 12. Still frame from Officer Rosaia’s body camera of Mr. Mendoza holding Mr. MacFhionghain’s wrist up.

At about 8:08 PM, Officer Rosaia can be heard saying “there’s too many guns ... there’s too many,” apparently referencing the number of armed officers present. Officer Rosaia then asks specific officers to take certain positions. In Figure 13, about two seconds before any shots were fired, Mr. MacFhionghain is seen fully on top of Mr. Mendoza.



Figure 13. Still frame from Officer Rosaia’s body camera of MacFhionghain completely on top of Mendoza.

As soon as Mr. MacFhionghain gets on top of Mr. Mendoza, the officers repeatedly yell, “Sir! Drop the knife!” Officer Rosaia can be seen lifting his arms up and aiming his firearm. Just as the final “drop the knife” commands are given, about three gunshots are heard from other officers, after which Officer Rosaia appears to fire two rounds.



Figure 14. Still frame of Officer Rosaia’s body camera when he fired his first shot.

The following image, Figure 15, depicts the position of the assailant, Mr. MacFhionghain, immediately after shots were fired.



Figure 15: Still frame of Officer Rosaia’s body camera of MacFhionghain falling off of Mendoza after shots are fired.

### ***Officer Collins***

Officer Collins’ BWC shows him initially holding a less lethal shotgun at the scene and walking back and forth behind the perimeter formed by officers around Mr. MacFhionghain and Mr. Mendoza. At 5 minutes 17 seconds into the BWC footage, Officer Collins steps back from the perimeter and walks toward a nearby patrol vehicle. He then puts on gloves and tells other officers that he is “going hands on” and continues to shout “drop the knife.” Officer Collins is seen standing behind the perimeter when other officers suddenly raise their voices and begin urgently yelling “drop the knife!”

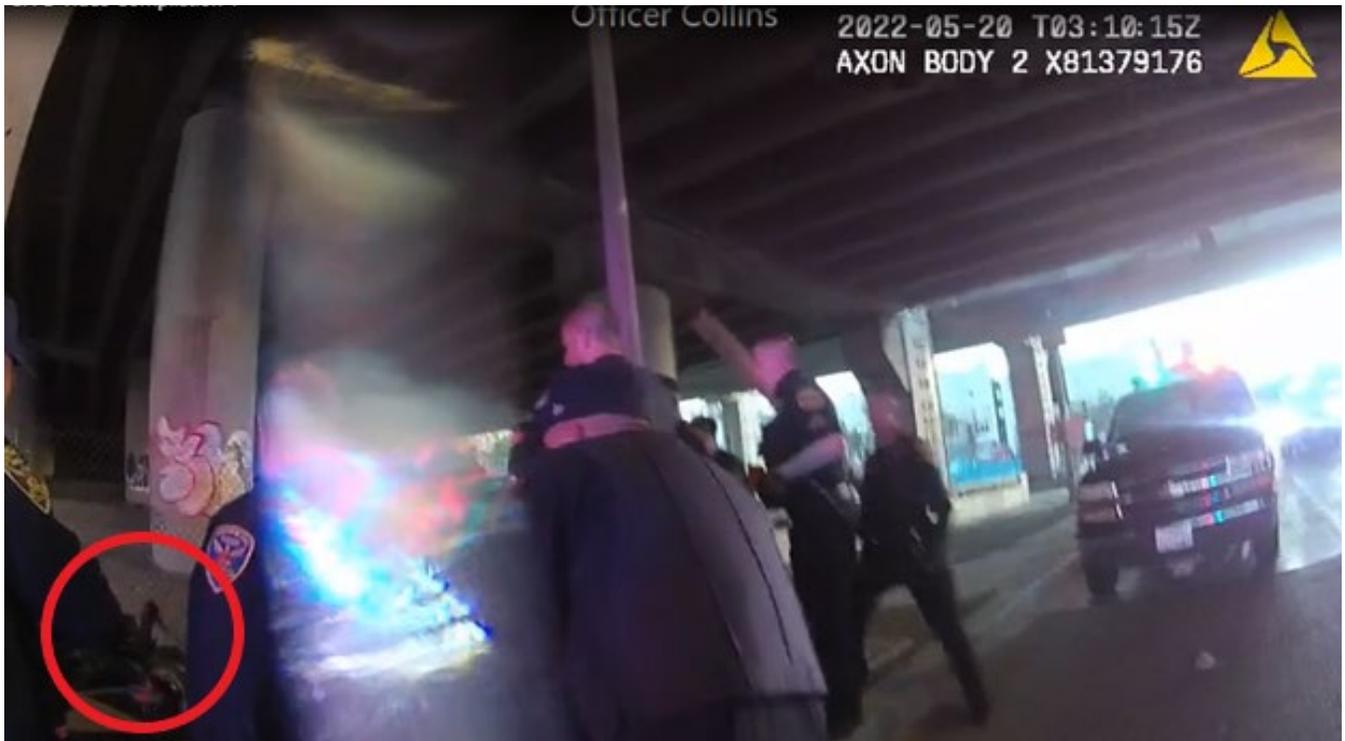


Figure 16: Still frame from Officer Collins' BWC showing Mr. MacFhionghain holding a knife above Mr. Mendoza.



Figure 17: Still frame from Officer Collins' BWC appearing to show Mr. MacFhionghain moving the knife down toward Mr. Mendoza.

Within seconds of the final “drop the knife” command, officers began to fire shots and Officer Collins moved immediately to the left of the officer in front of him at 6 minutes 50 seconds into the BWC footage.

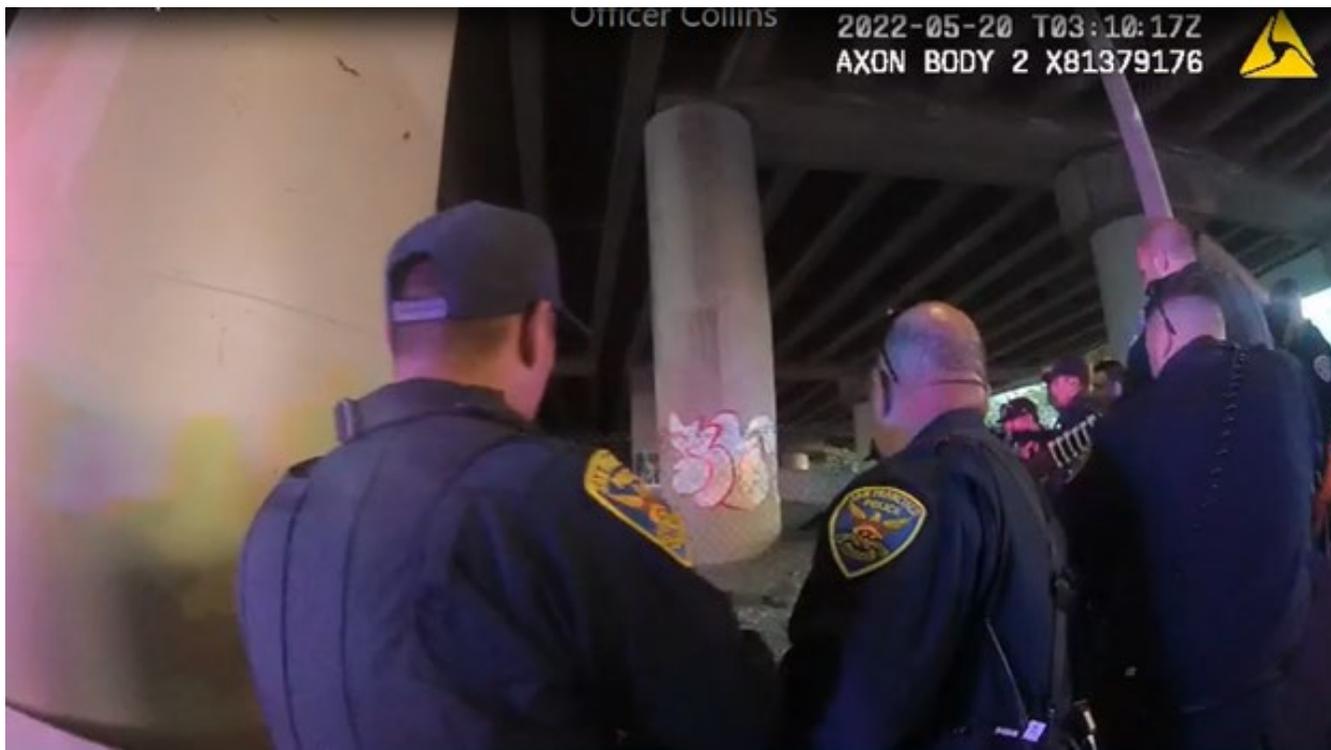


Figure 18: Still frame showing Officer Collins’ position behind other officers.



Figure 19: Still frame of Officer Collins moving to his left.



Figure 20: Still frame showing Officer Collins' position between a pillar and another officer just before he fired his first shot.

After two gunshots are heard, Officer Collins quickly raises, aims, and discharges his firearm. Gunfire can be seen emanating from the firearm, and the BWC appears to capture six shots being fired in rapid succession. Officer Collins' perspective at the time his first round was fired is shown below.



Figure 21: Still frame from Officer Collins' body camera at the time he fired his first shot. Mr. MacFhionghain is shown in the lower left corner on top of Mr. Mendoza.

An officer standing to the right of Officer Collins then holds up his hand, appearing to signal “stop,” and other officers are heard yelling “that’s it.” Simultaneously, Officer Collins puts his weapon down and fires no further shots (Figure 22).



Figure 22: Officer Collins’ body camera image shows that he stops shooting just as an officer holds up his hand.

## INVESTIGATION

### Overview

DOJ’s Division of Law Enforcement, California Police Shooting Investigation Team (CaPSIT) was notified of this incident involving officers of the San Francisco Police Department on May 20, 2022, the day following the OIS, at about 12:35 PM. At that time, evidence had been gathered by SFPD, the incident scene and involved officers had been processed, and autopsies had been conducted. Following notification to DOJ, CaPSIT agents met with SFPD, reviewed all available evidence, and determined the OIS to be a qualifying incident within the meaning of Government Code section 12525.3.

Over the course of the ensuing investigation, DOJ thoroughly reviewed extensive investigative materials, including the 911 call, cellphone video, radio dispatches, CAD logs, law enforcement reports, law enforcement body camera video and audio recordings, autopsy reports of Mr. MacFhionghain and Mr. Mendoza, and ballistics reports.

## Incident Scene Description

The incident was located in the 900 block of Mariposa Street, which runs east and west underneath the 280 freeway between Pennsylvania Avenue and Owens Street. The incident occurred at the south curblineline of Mariposa Street on an unpaved, raised dirt area, with a chain link fence running east to west (see Figure 23).

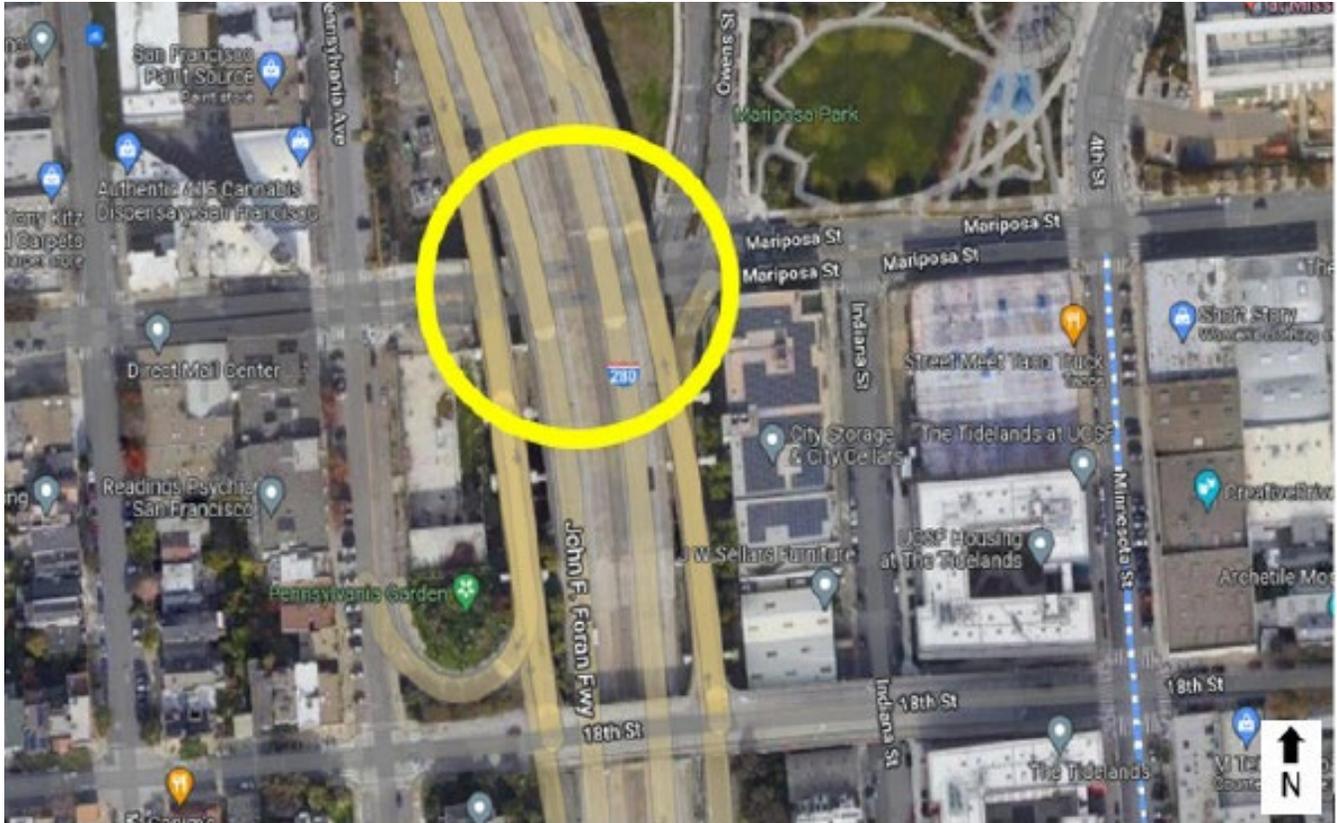


Figure 23: Google map depicting the overpass, under which the shooting occurred.

## Incident Scene Evidence Recovery

The SFPD Crime Scene Investigation Unit (CSI) processed the incident scene immediately following the OIS. SFPD CSI photographed the location, conducted digital scanning and video recording of the scene, and collected physical evidence. The recovered evidence was booked and stored by SFPD CSI, and included:

- Eleven (11) spent cartridge casings.
- Three (3) 40-millimeter less lethal impact rounds.
- Four (4) 40-millimeter less lethal spent cartridge rounds.
- Two (2) Super Sock less lethal “bean bag” spent cartridge rounds.
- One (1) Super Sock less lethal “beanbag” round.
- Three (3) fixed blade knives.

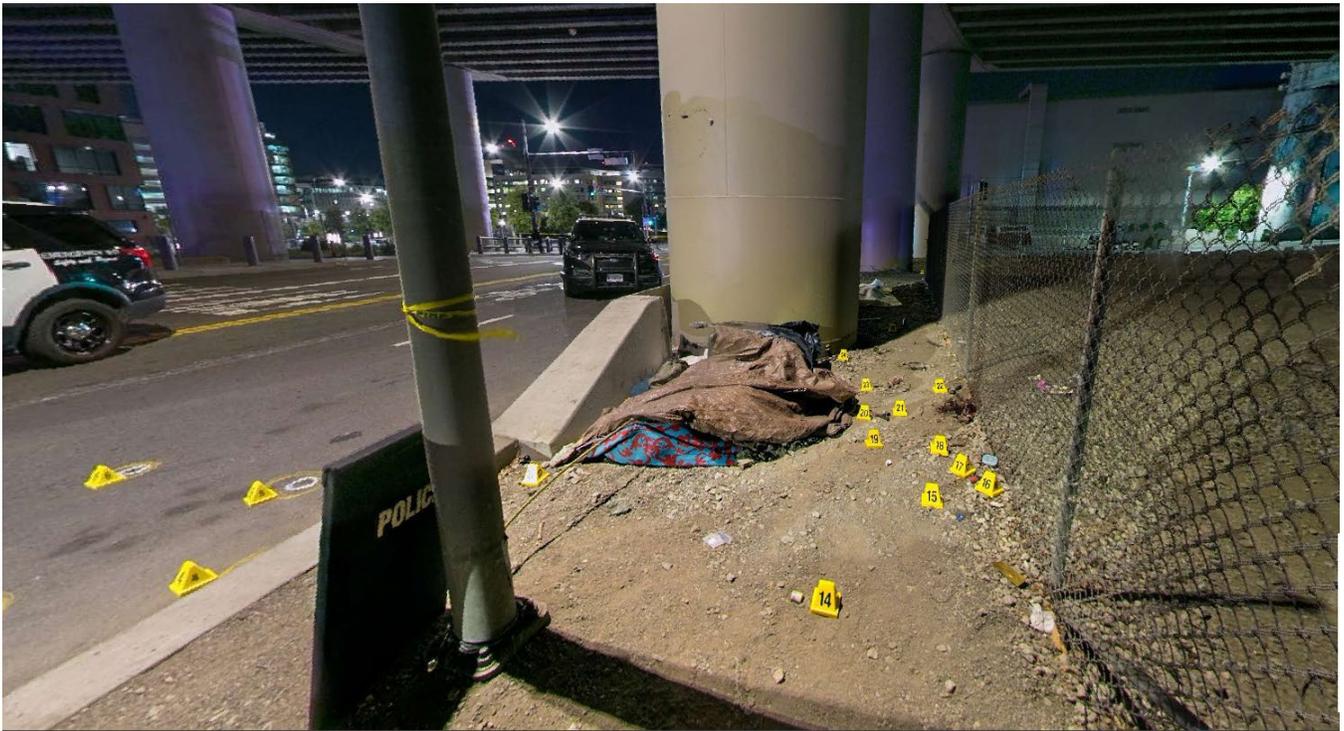


Figure 24: Photo from the SFPD CSI unit depicting the scene during evidence collection.



Figure 25: Evidence photo of bloody knife recovered from the scene.



Figure 26: Evidence photo of serrated knife recovered from the scene.



Figure 27: Evidence photo of bloody knife recovered from the scene.



Figure 28: Evidence photo of hammer recovered from the scene



Figures 29: Evidence photo of bloody metal object recovered from scene, enlarged to show blood.

On May 25, 2022, SFPD Sergeant Aaron Foltz, notified DOJ that SFPD CSI discovered possible discrepancies in the number of spent cartridge casings and the round counts of the shooting officers. Personnel from SFPD CSI, Sgt. Foltz, and DOJ Special Agent V. Rotberg returned to the scene and located two (2) additional spent cartridge casings, one (1) fired bullet, and a less lethal, “Super sock” projectile. The additional items were collected and impounded by SFPD CSI.

## Officer Processing

At the time of the incident, Officers O’Driscoll, Collins, and Rosaia each carried a Sig Sauer model P226 semiautomatic handgun with 40-caliber ammunition. When fully loaded, the handgun has a 13-round capacity with 12 rounds in the magazine plus one round in the chamber. Officer Dequis utilized a department-issued Colt, M4, tactical rifle, loaded with .223-caliber ammunition. The rifle holds 30 rounds in the magazine and, unlike a handgun, does not typically have a round loaded in the chamber.

On May 19, 2023, SFPD Crime Scene Investigators processed the shooting officers and conducted round counts, the results of which were as follows:

- Officer O’Driscoll’s handgun had 8 unfired bullets in the magazine and 1 unfired bullet in the chamber. Therefore, Officer O’Driscoll could have fired no more than 4 bullets.
- Officer Collins’ handgun had 6 unfired bullets in the magazine and 1 unfired bullet in the chamber. Therefore, Officer Collins could have fired no more than 6 bullets.

- Officer Rosaia’s handgun had 9 unfired bullets in the magazine and 1 unfired bullet in the chamber. Therefore, Officer Rosaia could have fired no more than 3 bullets.
- Officer Dequis’ rifle had 28 unfired bullets in the rifle magazine and 1 unfired bullet in the chamber. Therefore, Officer Dequis likely fired one bullet.

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

The body worn camera video of each officer present during the OIS was obtained and reviewed. Other recordings reviewed include radio transmissions and recordings of the 911 calls.

## **Autopsy**

On May 20, 2022, medical examiners from the Office of the Chief Medical Examiner (OCME) performed autopsies of Mr. MacFhionghain at 8:46 AM and Mr. Mendoza at 9:00 AM. The OCME collected and processed evidence, including recovered bullets, from the autopsies and then contacted the investigative agency to transfer custody of the evidence.

The medical examiner’s report lists the cause of Mr. Mendoza’s death as “gunshot wound of torso,” and the manner of death as “homicide.” The medical examiner found that Mr. Mendoza died as the result of hemorrhaging from a single .40-caliber gunshot wound to his right abdomen. The direction of the gunshot wound is described as “front to back, right to left, and upward.” Only one bullet (evidence item 361000) was found in Mr. Mendoza’s left chest. As a result, the medical examiner opined that the bullet hit Mr. Mendoza directly and did not pass through Mr. MacFhionghain. The opinion is supported by Mr. MacFhionghain’s autopsy report (described below) that does not indicate any full exit wounds. The autopsy of Mr. Mendoza also noted that he had 23 defensive knife wounds.

The autopsy of Mr. MacFhionghain determined the cause of his death to be multiple gunshot wounds. The autopsy identified nine gunshot wounds to the back, flank, chest, and buttock areas. All nine bullets were recovered during the autopsy. Eight bullets did not exit the body. One bullet, recovered in the left lower chest, caused a “partial exit wound.” The autopsy also found multiple cuts on Mr. MacFhionghain’s hands and left forearm; abrasions on his left neck, right upper back, left shoulder, right knee and ankle, and hands; and a subarachnoid hemorrhage to the left brain.

## **Ballistics Analysis**

Mr. Mendoza’s death was caused by a .40-caliber bullet. Therefore, Officer Dequis, who fired a .223-caliber rifle during the OIS, was eliminated as the shooter of the lethal bullet, leaving Officer Rosaia, Officer O’Driscoll, or Officer Collins as the potential shooter.

Ballistics analysis was conducted by BFS using an Evofinder. An Evofinder uses 3D models to identify potential matches between bullets, cartridge cases, and the weapons those bullets could have been discharged from. Using the Evofinder, when BFS examined the test-fired bullets from the guns belonging to Officer Rosaia, Officer O’Driscoll, and Officer Collins, they observed a unique marking on the bullet from only Officer Collins’ gun that matched the markings on the bullet that killed Mr. Mendoza.

According to BFS, “Test fired bullets and expended cartridge cases from Sig Sauer P226 pistol, serial number U712048 (Item 005),” confirm that the bullet recovered from Mr. Mendoza’s body (Item 361000) was fired by Officer Collins’ pistol (Item 005). Using the Evofinder system, BFS determined that

the “correspondence in the land impressions<sup>3</sup> [for bullet 361000] could not be attributed to other pistols” that were tested.

## INTERVIEWS OF POLICE OFFICERS

The shooting officers involved in this incident did not provide voluntary statements.<sup>4</sup> 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.

Officers who used less-lethal force (Officers Borgen, Pusung, Gonzalez, and Parra) later agreed to be interviewed. The following are summaries of their interviews, which describe the incident from each officer’s individual point of view. Please note that the interviews contain facts that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

### **Officer A. Borgen**

Officer Borgen was interviewed on January 30, 2023, at 2:35 PM, by DOJ Special Agents Brian Meeker and Eric Coates, in the presence of his attorney Christopher Shea and Deputy Attorney General Aseil Mohmoud. Prior to the interview, a townhall was held in which various body worn camera videos were played. Officer Borgen stated that he watched the townhall and saw the video.

Officer Borgen had been an officer with SFPD since 2001, on a “specialist team” since 2006, and a sniper since 2008. He served in the U.S. Marine Corps for 20 years before becoming an officer.

Officer Borgen is a Patrol Specialist who is issued the 40-millimeter Extended Range Impact Weapon (ERIW).<sup>5</sup> The SFPD refers to the less lethal round fired by the ERIW as a “sock” which is a beanbag-like projectile with small pellets inside.

SFPD Patrol Specialists are patrol officers who volunteer and are selected by the SFPD Specialist Administration Staff. Candidates must successfully complete multiple rounds of testing before they are selected to attend 100 hours of Specialist training. The Specialists are trained on additional weapons, less lethal weapons, and tactical operations.

On the date of the incident, Officer Borgen arrived on scene at approximately 8:06 PM. Sergeant Buckley was in charge of the scene.

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<sup>3</sup> When a gun is manufactured, the inside of the barrel may be etched or “rifled,” so that bullets fired from the gun spin for increased accuracy. This creates unique “lands” (raised ridges) and “grooves” inside the barrel that cause corresponding markings on bullets fired from the gun.

<sup>4</sup> None of the officers who used lethal or less lethal force submitted written reports on the use of force.

<sup>5</sup> The ERIW has a bright orange colored shoulder stock and forearm to designate the weapon as a less lethal device.

In his interview, Officer Borgen stated that he was equipped with a 40-millimeter ERIW, commonly referred to as 40-millimeter, which fires a single impact, less lethal foam projectile. Officer Borgen stated that he witnessed Officer Pusung deploy at least one 40-millimeter less lethal round “to the guy’s [Mr. MacFhionghain] chest. And he had -- he didn’t move. He didn’t do anything.” At that point, Officer Borgen deployed one 40-millimeter round at 8:09 PM, which still had no effect on Mr. MacFhionghain. Officer Borgen stated that even though the round “hit” Mr. MacFhionghain, “he didn’t move. He didn’t drop the knife. He didn’t even move his arm.” At that point, according to Officer Borgen, “other officers ... they’re starting to go ahead and say, hey, you know, to do something else ... but ... there wasn’t much to do ... [because] if you’re taking 40-millimeters ... eight feet away from you, it should be enough energy, enough pain for you to go ahead and say, all right, I’m dropping the ... knife.” Because he did not drop the knife, officers decided to use pepper spray thereafter, which also did not cause Mr. MacFhionghain to drop the knife.

### ***Officer P. Gonzalez***

Officer Gonzalez was interviewed DOJ Special Agents Eric Coates and Vadim Rotberg on April 5, 2023 at 3:04 PM,<sup>6</sup> in the presence of his attorney Christopher Shea and Deputy Attorney General Aseil Mohmoud. Officer Gonzalez has been a police officer with SFPD since 2020 and worked as a state correctional officer prior to that.

When Officer Gonzalez arrived at the incident scene, he immediately picked up his ERIW and saw Mr. MacFhionghain holding a knife “above his head towards ... another individual who is Hispanic.” He described the weapon as a “larger knife,” “like a butcher’s knife ....”

As Officer Gonzalez assessed the scene, he could hear an officer speaking to Mr. MacFhionghain to “build a rapport” with him, so Officer Gonzalez “stood by with [his] less lethal and kind of just let him do what he was doing because it looked like he was trying to de-escalate the situation.” Officer Gonzalez said that as “time passed” more officers arrived, a “specialist” deployed multiple less lethal rounds, followed by pepper spray. Officer Gonzalez said the pepper spray “also didn’t work. It just kind of irritated him.”

At that point, Officer Gonzalez saw Mr. MacFhionghain “kind of re-adjust his body, kind of got on top -- to where like -- kind of on top of the Hispanic male [Mr. Mendoza]. And then ... I believed he was trying to like stab him with the knife, and I used a less lethal rounds ... at his level. It’s called Zone 2, which is below the waist ... and while I shot the second one, I heard gunfire. And then I think I just recall telling everybody to back up,” after which the shooting stopped and officers rendered aid.

According to Officer Gonzalez, de-escalation efforts stopped and officers resorted to lethal force when “the White male took more of ... an aggressive ... stance, like higher stance and pushed down, starting pushing down towards the Hispanic male with the knife.”

### ***Officer M. Parra***

Officer M. Parra was interviewed by DOJ Special Agents Eric Coates and Brian Meeker on January 30, 2023, at 1:09 PM, in the presence of his attorney Christopher Shea and Deputy Attorney General Aseil Mohmoud. Officer Parra had been an officer with SFPD since 2017.

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<sup>6</sup> Officer Gonzalez was not interviewed on January 30, 2023, because he was sick.

Officer Parra arrived on scene with Officers Rosaia and Reyes, and saw that Officer O’Driscoll had his gun drawn. He saw Mr. MacFhionghain “had a knife” and “the other person [Mr. Mendoza] appeared to be in distress below that person with the knife.” Officer Parra said that he “provided shield cover”<sup>7</sup> to Officer O’Driscoll while Officer O’Driscoll asked Mr. MacFhionghain “to drop the knife ... to which there was no response.” Officer Parra said that “Officer O’Driscoll repeated it multiple times. Other officers asked ... the gentleman, repeated it multiple times to which there was no answer and just a blank stare from the ... individual,” referring to Mr. MacFhionghain.

Officer Parra recalled that the “specialist” officers on scene deployed the 40-millimeter “foam batons” “three or four times” to get Mr. MacFhionghain to drop the knife, with “no effect.” It was only after those attempts were “unsuccessful” that Officer Parra deployed OC spray, at 8:09 PM, deployed one burst of OC spray, or what is commonly known as Pepper Spray, “directly at [Mr. MacFhionghain’s] eyes and in his face area.” Officer Parra noted that the OC had “minor effect” and that Mr. MacFhionghain only “blinked his eyes” in response.

After the OC spray was used, Officer Parra said the shooting occurred because “after taking the OC spray to the face – [Mr. MacFhionghain] then decided to get further on top of the individual and start in a downward motion towards ... the other individual,” and clarified that Mr. MacFhionghain, “the male with the knife then start[ed] using the knife on the other male.” Officer Parra made it clear that from what he saw, Mr. Mendoza, “the victim” was “trying to defend himself from the suspect [Mr. MacFhionghain], that is trying to stab him with the knife.” Officer Parra stated that it was only after Mr. MacFhionghain “moved his right arm downward vigorously towards the victim ... [that] the officer-involved shooting occurred.”

While Officer Parra had a lethal firearm on his person, he did not use it because “I saw multiple firearms and I didn’t think that I needed more firearms.”

Officer Parra believed that, at the point that lethal force was used, “the bean bag ... [t]he foam baton ... [and] OC” had all been rendered “ineffective.” Officer Parra felt that “in the blink of an eye, that person would stab that person.”

### ***Officer M. Pusung***

Officer M. Pusung was interviewed by DOJ Special Agents Brian Meeker and Eric Coates on January 30, 2023, at 3:42 PM, in the presence of his attorney Christopher Shea and Deputy Attorney General Aseil Mohmoud.

Officer Pusung had been employed as an officer with SFPD since 2015, was on the Specialist Team at the time of the incident and had 40 hours of “CIT training” in de-escalation.

Officer Pusung arrived on scene at approximately 8:06 PM with the ERIW. Like Officer Borgen, Officer Pusung is also a Patrol Specialist, equipped with an ERIW at the scene, which fires a single, less lethal round.

In his interview, Officer Pusung stated that, upon arriving on scene, he “observed that one male with a yellow shirt was holding a knife ... over another subject’s head ... attempting to ... use this knife to stab

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<sup>7</sup> BWC footage shows Officer Parra holding a black mobile ballistic shield.

the other person [Mr. Mendoza] in his head area.” Officer Pusung gave “numerous” commands for Mr. MacFhionghain to “drop the knife” but he did not comply. Mr. MacFhionghain repeatedly failed to comply with multiple officers’ orders to drop the knife in his hand. Because Officer Pusung believed that Mr. MacFhionghain “posed an imminent threat to another person’s life,” he “deployed ... one round” at Mr. MacFhionghain.

When asked why he did not keep deploying the OC spray, Officer Pusung said he “believed it was ineffective. In fact, he looked at me and just gave me this look like, hey. This -- that’s not working.”

Officer Pusung described what happened after the OC spray as follows: “I recall the subject [Mr. MacFhionghain] looking at me in my eyes as if he had no clue what just occurred. And he was solely focused on ... pushing that knife onto a subject’s head. After giving numerous more commands and giving this subject plenty of time to drop the weapon ... an officer deployed an OC spray ... and then at which point, the subject with the yellow shirt [Mr. MacFhionghain] rose his upper body in an attempt to use it ... as leverage to forcefully ... stab the other person in the head. And at that point, I delivered another round to the subject with the yellow shirt. And shortly after that, an officer involved shooting occurred.”

## **INTERVIEW OF CIVILIAN WITNESS**

W-1 was interviewed by DOJ Special Agents Coates and Rotberg on June 24, 2022. W-1’s statements during the interview were consistent with the recording of her 911 call to dispatch. All the pertinent information from W-1’s interview is related above in the Summary of Incident section of this report.

## **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 / Defense of Others**

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 or defense of others, the prosecution must prove beyond a reasonable doubt that the homicide was not committed in self-defense or defense of others. (*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.)

## **Transferred Intent**

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

individual] had accomplished what he [or she] set out to do.”<sup>8</sup> (*Scott, supra*, 14 Cal.4th at p. 546; *Bland, supra*, 28 Cal.4th at pp. 323-324.)

The doctrine of transferred intent, however, applies equally to self-defense and defense of others. Where an individual uses deadly force in lawful self-defense or defense of others, the individual’s lack of criminal intent for homicide of the intended target transfers to the killing of the bystander. In such an event, where the individual intends to “injure or kill the person who poses the threat” and “inadvertently kills an innocent bystander,” the individual’s actions “insulate [him or her] from criminal responsibility.” (*People v. Curtis* (1994) 30 Cal.App.4th 1337, 1357 [“[U]nder the doctrine of transferred intent, self-defense may also apply where the defendant intends to injure or kill the person who poses the threat, but inadvertently kills an innocent bystander instead”]; *People v. Mathews* (1979) 91 Cal.App.3d 1018, 1024 [“[W]e conclude that the doctrine of self-defense is available to insulate one from criminal responsibility where his act, justifiably in self-defense, inadvertently results in the injury of an innocent bystander”].) Thus, “one’s criminal intent follows the corresponding criminal act to its unintended consequences ... the reasoning applies equally to carry the lack of criminal intent to the unintended consequences and thus preclude criminal responsibility.” (*Mathews, supra*, 91 Cal.App.3d at p. 1023.)

## 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.

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<sup>8</sup> Depending on whether the intended target is killed in addition to the bystander, the shooter can be liable for two criminal homicides if both are killed (*People v. Souza* (2012) 54 Cal.4th 90, 120 [“[A] person maliciously intending to kill is guilty of the murder of all persons actually killed”], citing *Bland, supra*, 28 Cal.4th at pp. 323-324), or liable for an attempted murder of the intended target (if not killed) and criminal homicide of the bystander (if killed) (*Scott, supra*, 14 Cal.4th at p. 551 [“In their attempt to kill the intended victim, defendants committed crimes against two persons”]). But if the bystander is not killed, the shooter cannot be liable for attempted murder of the bystander under the theory of transferred intent. (*People v. Falaniko* (2016) 1 Cal.App.5th 1234, 1243.)

## LEGAL ANALYSIS

DOJ has completed an independent investigation and review of the facts and circumstances that led to the deaths of Mr. Mendoza and Mr. MacFhionghain. This analysis is based on all of the evidence obtained by DOJ in this matter, including police reports, witness statements from the less-lethal officers, forensic evidence, autopsy, and body-worn camera video.

Because a prosecuting agency would need to prove beyond a reasonable doubt that Officer O’Driscoll, Officer Dequis, Officer Rosaia, or Officer Collins did not act in lawful defense of others, this is the primary issue in determining whether criminal charges should be filed. A detailed analysis of the evidence shows that a prosecuting agency could not establish that any of the four officers was objectively unreasonable in determining that lethal force was necessary to protect others, or that they did not actually hold this view. Therefore, the evidence is insufficient to support criminal charges. Additionally, based on legal principles for transferred intent, a criminal prosecution for the shooting of Mr. Mendoza is unsupported by the evidence.

In this case, Mr. Mendoza was first observed by a witness attacking Mr. MacFhionghain with a bat-like object. By the time officers arrived on scene, both men were on the ground and Mr. MacFhionghain had become the aggressor, pinning Mr. Mendoza down and holding a knife above his head. Officers observed Mr. Mendoza defending himself by holding onto Mr. MacFhionghain’s forearm to prevent the knife from striking him. A tense stalemate ensued for over eight minutes, during which time Officer O’Driscoll and other officers ordered and attempted to convince Mr. MacFhionghain to drop his knife. Mr. MacFhionghain refused, saying that he wanted Mr. Mendoza to admit he had attacked him. At the same time, Mr. Mendoza repeatedly said that he could not breathe and pleaded with officers to shoot.

When officers were unable to persuade Mr. MacFhionghain to drop the knife, they repeatedly deployed less lethal force, including four 40-millimeter foam rounds, one burst of OC pepper spray, and two bean bag projectiles, all of which were unsuccessful. It was only when Mr. MacFhionghain finally overpowered Mr. Mendoza that officers used lethal force. Officer Gonzalez told investigators that Mr. MacFhionghain took a more “aggressive ... higher stance” and “started pushing down” toward Mr. Mendoza with the knife. Officer Pusung stated that Mr. MacFhionghain “rose his upper body in an attempt to use it ... as leverage to forcefully ... stab” Mr. Mendoza in the head. According to Officer Parra, the officer involved shooting occurred when Mr. MacFhionghain “moved his right arm downward vigorously towards the victim.”

Based on their interviews and reports, non-shooting officers believed that Mr. MacFhionghain’s actions changed and became life-threatening when he aggressively moved to stab Mr. Mendoza. While we do not have reports or statements from the officers who used lethal force, they were similarly positioned to non-shooting officers and likely shared the same subjective understanding. This includes Officer Collins whose actions are not inconsistent with a belief that Mr. MacFhionghain posed an imminent deadly threat to Mr. Mendoza. Officer Collins was standing behind other officers when voices became louder and more tense. Video from his body worn camera shows that Officer Collins could have briefly observed the heightened threat posed by Mr. MacFhionghain as he stepped to his left, found an opening, and fired multiple rounds in the direction of Mr. MacFhionghain.

The evidence also does not establish that the shooting officers were objectively unreasonable in using deadly force against Mr. MacFhionghain. In addition to officers’ statements, video from body worn

cameras shows that Officer O’Driscoll and others continuously attempted to negotiate with Mr. MacFhionghain to stop his attack and ordered him to drop the knife he held above Mr. Mendoza’s head. Officers also formed a perimeter and deployed a range of non-lethal options to address the dangerous incident.

Several officers who deployed firearms initially refrained from firing, even as Mr. Mendoza continued to push on Mr. MacFhionghain’s forearm and said he could not breathe. Shots were only fired when Mr. MacFhionghain moved on top of Mr. Mendoza and more forcefully pushed down with his knife. Officer Parra stated, “I felt that ... in the blink of an eye” Mr. MacFhionghain “would stab” Mr. Mendoza. At that moment, Mr. MacFhionghain exhibited the present ability, opportunity, and apparent intent to stab Mr. Mendoza. Given the urgency of the situation, and the fact that four officers discharged their firearms to stop Mr. MacFhionghain’s deadly attack, it is likely that any reasonable officer facing the same circumstances would have responded with lethal force.

When officers fired at Mr. MacFhionghain, one of the bullets tragically struck and killed Mr. Mendoza, who was unarmed and the intended victim of Mr. MacFhionghain. Ballistic analysis determined that the bullet recovered from Mr. Mendoza’s body was fired from Officer Collins’ .40-caliber Sig Sauer handgun. As previously noted, the evidence indicates that Officer Collins fired his weapon intending to stop Mr. MacFhionghain’s deadly attack, and that the bullet that fatally struck Mr. Mendoza was inadvertent.

Nor does Officer Collins’ likely belief that Mr. MacFhionghain posed an imminent threat appear to be unreasonable. Just before he fired his weapon, Officer Collins was standing behind two other officers. His BWC shows a small gap between the other officers, in which Mr. MacFhionghain is briefly visible and appears to move his knife downward. When Officer Collins quickly moves to his left and raises his weapon to fire, his BWC appears to show Mr. MacFhionghain on top of Mr. Mendoza. Officer Collins then fires six shots in rapid succession. He stops when other officers stop firing, and when an officer to his left holds up his hand. While Officer Collins may have had less time than other officers to assess the imminent threat posed by Mr. MacFhionghain, he could have reasonably determined that the use of deadly force was necessary to defend Mr. Mendoza. As a result, under California law, Officer Collins’ intended use of force against Mr. MacFhionghain transfers to the inadvertent shooting of Mr. Mendoza and does not support criminal charges.

Thus, the totality of the evidence shows that the shooting officers likely held the subjective belief that deadly force was necessary to defend Mr. Mendoza from imminent deadly force, and that such belief was not objectively unreasonable. A prosecution, therefore, could not prove beyond a reasonable doubt that the officers’ use of force was unlawful.

## **CONCLUSION**

Based on the investigation and review of evidence, along with the applicable statutes, and the law, there is insufficient evidence to support a criminal prosecution of Officer Aidan O’Driscoll, Officer Joshua Dequis, Officer Daniel Rosaia, or Officer Trent Collins. 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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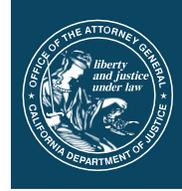
# DEPARTMENT OF JUSTICE

## **Policy and Practice Recommendations for the San Francisco Police Department Related to the Officer-Involved Shooting of Rafael Mendoza and Michael MacFhionghain on May 19, 2022**

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

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March 2026



## 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 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. The Police Practices Section 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. The Police Practices Section’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 May 19, 2022, San Francisco Police Department (San Francisco PD) Officers responded to a report of an assault involving two men under a freeway overpass. The reporting party stated that she saw a man, later identified as Rafael Mendoza, walk to the side of the street and begin striking another unhoused person’s tent with what she believed to be a large bat or baton looking object. When San Francisco PD Officers arrived on scene, the second subject, later identified as Michael MacFhionghain, was holding a fixed-blade knife positioned over Mr. Mendoza’s face and chest. Mr. Mendoza held Mr. MacFhionghain’s forearm in an effort to keep the knife away from his face. Officers then deployed less lethal force options, including 40 mm impact rounds, a bean-bag shotgun, and pepper spray in a further effort to separate the two men and have Mr. MacFhionghain drop the knife.<sup>1</sup> Mr. MacFhionghain continued to hold the knife over Mr. Mendoza. When Mr. MacFhionghain moved into a position directly over Mr. Mendoza and raised the knife directly above Mr. Mendoza’s face, Officers O’Driscoll, Rosaia, Collins, and Dequis fired their service weapons at Mr. MacFhionghain, striking and killing both subjects.

The autopsy showed that Mr. MacFhionghain sustained nine gunshot wounds to the chest, back, flank and buttocks, and Mr. Mendoza sustained one gunshot wound in the chest.

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<sup>1</sup> The San Francisco Police Department does not currently equip its officers with TASERs, which is beyond the scope of this report.

The Police Practices Section evaluated all the facts and available evidence, and pursuant to its obligations under Government Code section 12525.3, subdivision (b)(2)(B)(iii), the Police Practices Section advises San Francisco PD to review and implement the following recommendation: <sup>2</sup>

## **RECOMMENDATION ONE: COMMUNICATION WITH SUBJECTS**

San Francisco PD's Use of Force Policy was revised effective December 8, 2022, to include a revised section titled "Considerations Governing All Uses of Force." The policy notes the goal of minimizing overwhelming or conflicting information when communicating with subjects, and advises that "one officer should be responsible at any given time for reasonable attempts to establish rapport and engage in strategic communication with the subject."

Sergeant Buckley appropriately instructed the officers on scene that only one officer should be giving commands to Mr. MacFhionghain and Mr. Mendoza. However, numerous officers continued to give commands throughout the course of the exchange. On several occasions, multiple officers can be heard shouting at Mr. MacFhionghain simultaneously to "Drop the knife!" and "Stop moving!"

The Police Practices Section commends San Francisco PD on its efforts to bring its Use of Force Policy in line with best practices. However, in this instance, many of the officers on scene did not comply with the policies outlined above. The Police Practices Section recommends that San Francisco PD provide additional training regarding the importance of identifying a single officer on scene to communicate with the subject(s) and provide orders. Consistent with San Francisco PD's policies, this is important to minimize overwhelming or conflicting communication.

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<sup>2</sup> A Memorandum of Understanding between DOJ, the City and County of San Francisco, and the San Francisco Police Department concluded on January 6, 2025. However, this recommendation was not part of that Memorandum of Understanding.