



C A L I F O R N I A

---

# DEPARTMENT OF JUSTICE

## Report on the Investigation into the Death of Elizandro Vargas on August 31, 2023

Imperial County AB 1506

---

March 2026

# TABLE OF CONTENTS

<b>BACKGROUND—AB 1506 .....</b>	<b>1</b>
<b>PRIVACY STATEMENT.....</b>	<b>2</b>
<b>INTRODUCTION.....</b>	<b>2</b>
<b>SUMMARY OF INCIDENT .....</b>	<b>3</b>
<b>INVESTIGATION .....</b>	<b>9</b>
Overview.....	9
Incident Scene Description.....	10
Incident Scene Evidence Recovery .....	11
Officer Processing.....	12
Office Firearm Details.....	12
In-Car Camera (ICC), Body-Worn Camera (BWC), and Other Recordings.....	12
Coroner’s Investigation .....	13
<b>INTERVIEWS OF OFFICERS .....</b>	<b>13</b>
<b>INTERVIEWS OF CIVILIAN WITNESSES .....</b>	<b>23</b>
<b>APPLICABLE LEGAL STANDARDS .....</b>	<b>24</b>
<b>LEGAL ANALYSIS.....</b>	<b>27</b>
<b>CONCLUSION .....</b>	<b>29</b>



# 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 indexed as follows:

- Witness 1 (W-1), Reporting Party
- Witness 2 (W-2), Civilian Bystander

## INTRODUCTION

On August 31, 2023, in El Centro, California, W-1 called the police to report the theft of alcoholic beverages from the Chevron gas station in the City of El Centro. Several El Centro Police Officers, including Officer Adrian Hiraes, responded to the call. A witness identified Elizandro Vargas as the person who had stolen the beverage from the nearby Chevron gas station. The officers contacted Mr. Vargas on a sidewalk and ordered him to stop. Mr. Vargas was holding a brick. He ignored officers' commands to "stop" and "drop the brick." Mr. Vargas threw the brick at Officer Hiraes and was fatally shot by Officer Hiraes.

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 Mr. Vargas and is limited solely to determining whether criminal charges should be brought against the involved officer. The review does not encompass or comment on any potential administrative or civil actions. It does, however, include policy and practice recommendations, as required by Government Code section 12525.3, subdivision (b)(2)(B)(iii).

***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<sup>1</sup>

On August 31, 2023, at approximately 6:11 AM, El Centro Police Department (“ECPD”) dispatch received a 911 call from W-1 regarding a petty theft at the Chevron gas station located at 1850 South Imperial Avenue in El Centro, California. The 911 caller stated that a Hispanic male adult, later identified as Elizandro Vargas, took two alcoholic beverages from the station without paying for them. Dispatch immediately relayed the following information to responding officers, “HMA LSW BLK SHIRT AND JEAN SHORTS NEG SHOES TOOK ALCOHOL AND LEFT LOC ON FOOT.”



Still image of Mr. Vargas taken from security camera at Chevron gas station located at 1850 South Imperial Avenue in El Centro, California.

---

1 This report generally includes information about facts and circumstances leading up to the OIS, even if some of the facts were unknown to the officers, in order to explain and give context to the entire incident.



Still image of Mr. Vargas taken from security camera outside the Chevron gas station located at 1850 South Imperial Avenue in El Centro, California.

W-1 followed Mr. Vargas in her car as he walked westbound on Ocotillo Drive and remained on the telephone with ECPD dispatch until officers arrived at her location. She was approximately ten feet behind Mr. Vargas as she followed. Near the intersection of Ocotillo Drive and Waterman Avenue, W-1 observed Mr. Vargas pick up a brick from the front yard of a nearby house. According to W-1, Mr. Vargas turned around and threatened her with the brick. W-1 put her car in reverse and backed away from Mr. Vargas because she feared that Mr. Vargas was going to throw the brick at her car. W-1 subsequently called 911 a second time to tell dispatch that Mr. Vargas was becoming aggressive and threatened her with a rock.

ECPD Officers Daniel Valencia and Victor Ruiz each responded to the call at approximately 6:18 AM and located Mr. Vargas walking westbound on Ocotillo Drive just west of the intersection at Ocotillo Drive and South Waterman Avenue, approximately 0.3 miles west of the Chevron gas station. Officers Valencia and Ruiz activated their patrol vehicles' emergency lights and Officer Valencia directed Mr. Vargas to "stop" over his patrol vehicle's Public Address ("PA") system. At approximately 6:18:37 AM, Officer Valencia advised dispatch that Mr. Vargas had a brick in his hand, and at 6:18:50 AM he requested additional backup.

Officer Valencia got out of his patrol vehicle and followed Mr. Vargas on foot westbound on the north side of Ocotillo Drive. Officer Ruiz followed behind Officer Valencia and Mr. Vargas in his patrol vehicle. Officer Valencia can be heard on his body worn camera ("BWC") issuing several commands to Mr. Vargas to "stop" and "drop the brick." Officer Valencia's firearm was unholstered as he followed Mr. Vargas. Officer Valencia's BWC captured the interaction. Mr. Vargas told Officer Valencia, "you aint gonna shoot me," and "whatcha pulled it out for if you aint gonna use it." Officer Valencia replied, "the only reason I have it out is because you have a freaking brick in your hand." Mr. Vargas responded, "well shoot your shit then." Mr. Vargas ignored Officer Valencia's commands and at 6:21:20 AM, he crossed to the south side of Ocotillo Drive and continued walking westbound.

While Officer Valencia followed Mr. Vargas on foot, Officer Ruiz spoke with W-1. She said that she wanted Mr. Vargas to be prosecuted. She told Officer Ruiz that Mr. Vargas entered the gas station, stole two alcoholic beverages, and threatened her with a brick. Officer Ruiz relayed over the radio that W-1 was desirous of prosecution, but he did not report that Mr. Vargas had threatened W-1 with a brick.



Still image of Mr. Vargas walking westbound on the north side of Ocotillo Drive taken from Officer Valencia's BWC.



Still image of Mr. Vargas crossing from the north side to the south side of Ocotillo Drive (taken from Officer Valencia's BWC).

At 6:21:37 AM, ECPD Sergeant Anthony Hernandez stated, “Keep in mind, it is a 488.”<sup>2</sup> Officer Ruiz pulled up alongside Officer Valencia at 6:21:44 AM, and asked Officer Ruiz to repeat what Sergeant Hernandez had just said. Officer Ruiz repeated Sergeant Hernandez’ message that this was just a petty theft. Officers Ruiz and Valencia stopped following Mr. Vargas and discussed various options to contact and identify Mr. Vargas.

At 6:22:16 AM, Officer Valencia advised dispatch that Mr. Vargas was near the intersection of Ocotillo Drive and 19th Street. Officers Adrian Hiraes and Subah Eid arrived at that intersection in separate vehicles at 6:22:29 AM. Officer Hiraes parked his patrol vehicle approximately 37 feet away from Mr. Vargas. Officer Eid remained in his patrol vehicle to the east of Officer Hiraes and used his patrol vehicle’s PA system to order Mr. Vargas to “put down the brick” three times.



Still image of Mr. Vargas walking westbound on the south side of Ocotillo Drive (taken from Officer Hiraes’ BWC).

At 6:22:33 AM, Officer Hiraes got out of his patrol vehicle, briefly used his right hand to draw his Taser, and ordered Mr. Vargas to “get on the ground.” Officer Hiraes immediately re-holstered his Taser and drew his firearm with his left hand. Officer Hiraes was positioned behind the open, driver-side door of his patrol vehicle. At 6:22:35 AM, Officer Hiraes could be heard on his BWC directing Mr. Vargas to “get on the ground now or you’re going to get Tased, get on the ground or you’re going to get Tased.” Mr. Vargas ignored Officer Hiraes’ commands and walked past him to the southwest corner of the intersection of Ocotillo Drive and 19th Street.

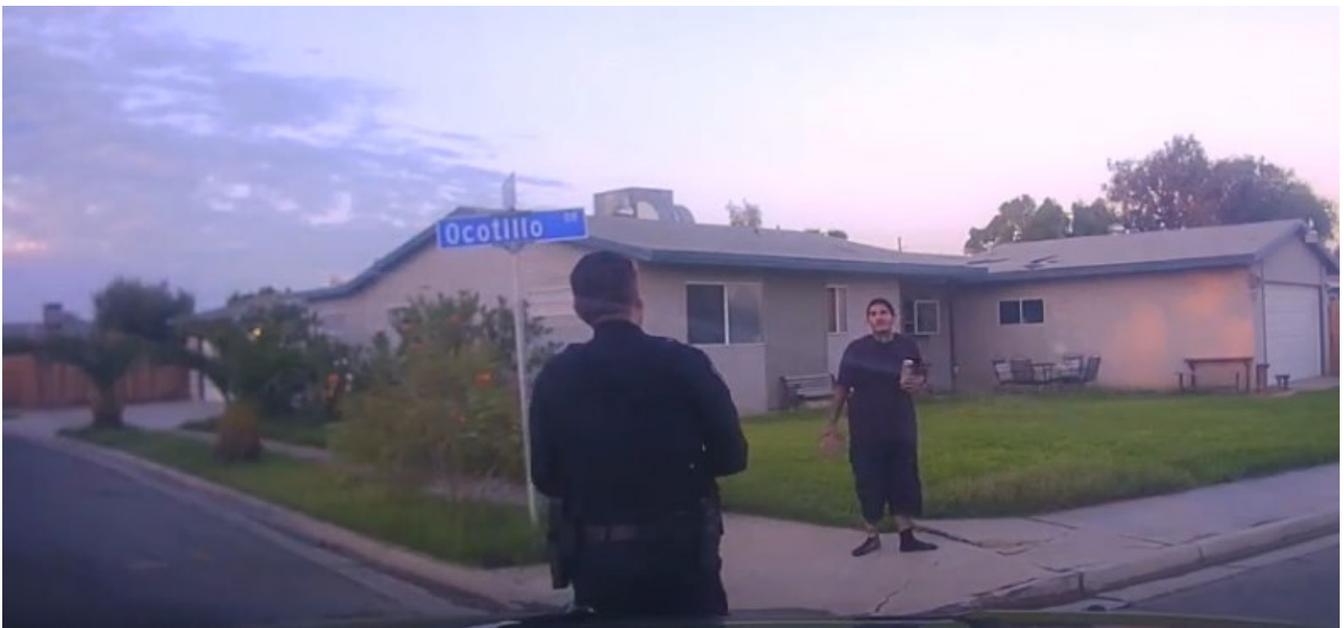
---

2 California Penal Code section 488 is the statute defining petty theft.



Still image taken from Officer Hiraes' BWC of Mr. Vargas in the intersection of Ocotillo Drive and 19th Street.

Officer Hiraes moved from inside the driver-side door frame of his patrol vehicle to the front of his patrol vehicle, approximately 16 feet away from Mr. Vargas. Officer Hiraes again ordered Mr. Vargas to “get on the ground now, you better stop. Get on the ground now, drop it, drop the brick, do it now.” At 6:22:45 AM, Mr. Vargas stopped walking and turned to face Officer Hiraes. Mr. Vargas was then approximately 17.5 feet away from Officer Hiraes.



Still image taken from Officer Hiraes' In Car Camera (ICC) of Mr. Vargas in the south-west corner of Ocotillo Drive and 19th Street immediately before the OIS.



Still image taken from Officer Hiraes' BWC of Mr. Vargas in the south-west corner of Ocotillo Drive and 19th Street immediately before the OIS.

At 6:22:52 AM, Mr. Vargas raised the brick in his right hand, pulled his arm back and threw the brick overhand in the direction of Officer Hiraes. Officer Hiraes stepped to his left to avoid the brick and fired two rounds at Mr. Vargas from his handgun. Officer Hiraes' BWC shows that the first round was fired at 6:22:53 AM, immediately after the brick left Mr. Vargas' hand. The second round was fired at 6:22:54 AM. One round missed while the other struck Mr. Vargas in his upper left chest. It is not known which of the two rounds struck Mr. Vargas. The brick missed Officer Hiraes, hit his patrol car, and landed on the ground in front of the car.



Still image taken from Officer Eid's ICC of Mr. Vargas preparing to throw the brick.



Still image taken from Officer Hiraless' ICC immediately after Mr. Vargas threw the brick.

At approximately 6:23 AM, Officer Ruiz broadcast over the radio, "shots fired, shots fired." Officer Eid also broadcast, "roll medical, subject has wound to chest area, get ICSD [Imperial County Sheriff's Department] to this area."

Mr. Vargas remained on his feet after being struck by Officer Hiraless' round. During that time Officers Hiraless, Eid, Ruiz, and Valencia issued commands to Vargas to "get on the ground and let us get you some help!" Approximately one minute and twenty-two seconds after he was struck by Officer Hiraless' round, Mr. Vargas sat down on the southwest curb at the intersection of Ocotillo Drive and 19th Street. At 6:24:26 AM, Officers Valencia, Eid, and Ruiz placed handcuffs on Mr. Vargas and began rendering medical aid.

El Centro Fire Department and American Medical Response paramedics arrived on the scene at approximately 6:31 AM and took over rendering medical aid. At 6:43 AM, Mr. Vargas was transported by paramedics to El Centro Regional Medical Center where he was pronounced dead at 7:28 AM.

## **INVESTIGATION**

### **Overview**

After the OIS occurred, the ECPD Investigations Division was notified and promptly responded to the scene. At 7:30 AM, notification was made to DOJ's California Police Shooting Investigation Team (CaPSIT).

DOJ Special Agents, Special Agent Supervisors and the assigned Deputy Attorney General responded to the scene of the shooting at approximately 11:00 AM. DOJ criminalists from the Riverside Office of the Bureau of Forensic Services (BFS) also responded to document the scene and to collect and preserve evidence.

On the date of the shooting and in the weeks and months thereafter, the shooting scene was examined, evidence was collected, and the officers' firearms were examined. In Car Cameras (ICC)

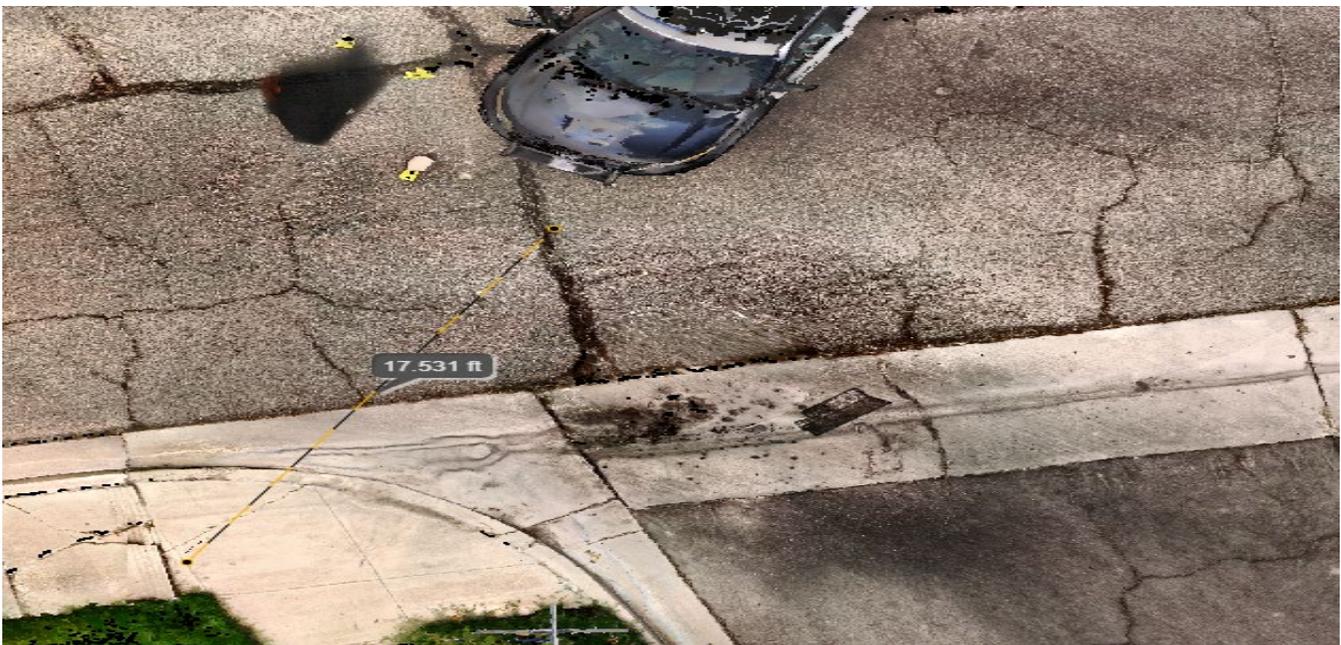
were obtained from the officers' patrol cars and Body Worn Cameras (BWC) from the officers' persons were reviewed by DOJ and ECPD personnel. Security videos from the Chevron gas station were obtained and reviewed, as was a cell phone video captured by a civilian witness.

### Incident Scene Description

The OIS occurred at the southwest corner of the intersection of Ocotillo Drive and 19th Street, in front of the residence located at 1911 Ocotillo Drive in El Centro, California. Ocotillo Drive is a four-lane road that travels east and west and 19th Street is a two-lane road that travels north and south with stop signs at the intersection with Ocotillo Drive. The OIS occurred during daylight hours.



Diagram of the path travelled by Mr. Vargas from the Chevron gas station to the location of the OIS.



Faro Scan image of the OIS scene from above showing the approximate distance between Officer Hiraes and Mr. Vargas at the time of the OIS.

## Incident Scene Evidence Recovery

The BFS was notified of the OIS, and criminalists responded to process the scene. They arrived at the location on August 31, 2023, at approximately 1:50 PM. The criminalists conducted an examination of the OIS scene for ballistic impacts, trajectories, and projectiles. In processing the scene, a total of nine items were documented, recovered, and booked as evidence including two fired cartridge casings, one round, a retaining wall block that measured 3.15 inches high, 5.51 inches wide, and 7.87 inches in length and weighed 8.36 pounds, and a 23.5 fluid ounce can of Mike's Harder Lemonade, Strawberry Pineapple flavor.



Photograph of the shell casings from Officer Hiraes' firearm and the brick that Mr. Vargas threw in the direction of Officer Hiraes. The brick is located where it stopped after hitting the vehicle.



Photograph of the brick that Mr. Vargas threw in the direction of Officer Hiraes.



Photograph of beverage container that Mr. Vargas was holding at the time of the OIS.

## **Officer Processing**

Officer Hiraes was processed at approximately 3:05 PM on August 31, 2023. Officer Hiraes was wearing a complete ECPD uniform. He carried a Taser on the right side of his duty belt.

## **Office Firearm Details**

Officer Hiraes carried a Sig Sauer model P320 nine-millimeter caliber handgun. The firearm had a had a 17-round capacity; when inspected, it had one round in in the chamber and 14 rounds in the magazine. Based on this examination and assuming the firearm was fully loaded prior to the OIS, it appears that Officer Hiraes fired two rounds.

## **911 Calls and Dispatch Recordings**

A copy of the ECPD Computer-Aided Dispatch system (“CAD”) printout was recovered and has been reviewed, as were recordings of the 911 call and dispatch recordings related to these events.

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

Officer Hiraes’ BWC was activated at the time of the OIS as were the BWCs of Officers Valencia and Ruiz. The BWCs recorded the response to the radio call, Mr. Vargas’ actions, and the OIS. Officer Eid left his BWC at the station when he responded to the call and did not record any of the unfolding events.

The OIS was also recorded on the ICC of Officer Eid’s and Officer Hiraes’ patrol cars. ICC recordings were saved on the patrol cars’ internal hard drives. The ICC systems constantly recorded videos (without audio), even when they were not activated.

Security cameras affixed to the Chevron gas station recorded Mr. Vargas with the beverages in his hands as he left the store without paying.

W-1 recorded, on her phone, her interaction with Mr. Vargas prior to the OIS. The video shows Mr. Vargas walking westbound on Ocotillo Drive but captures nothing of significance to the investigation.

## **Coroner's Investigation**

On September 9, 2023, National Autopsy Assay Group, LLC ("NAAG") Forensic Pathology Labs, Forensic Pathologist Dr. Sam Andrews, M.D. performed a post-mortem examination of Mr. Vargas. Mr. Vargas was a 31-year-old man, five feet nine inches tall and approximately 236 pounds. Dr. Andrews' examination revealed that Mr. Vargas sustained one gunshot wound. The round entered Mr. Vargas' upper left chest area, travelled in an upward trajectory, then exited Mr. Vargas' body through his upper left back area. Dr. Andrews did not find the round and believed that it traveled completely through Mr. Vargas' body. Dr. Andrews determined that the cause of death was a gunshot wound to Mr. Vargas' chest which caused significant injury to Mr. Vargas' vital organs.

A laboratory analysis of Mr. Vargas' blood showed the presence of Ethyl Alcohol, Methamphetamine, and Amphetamine.

## **INTERVIEWS OF OFFICERS**

The officers involved in this incident and who witnessed the incident provided voluntary statements. Police officers, like all individuals, have the right to remain silent and decline to answer questions in the face of official questioning. (*Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 714; see generally *Miranda v. Arizona* (1966) 384 U.S. 436.) All of the officers present at the OIS provided voluntary statements.

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

### ***Officer Victor Ruiz***

Officer Victor Ruiz provided a voluntary statement on September 5, 2023, at 10:49 AM. The interview was conducted by DOJ Special Agents Michael Beavers and Ugo Carlos. Steve Welch, Officer Ruiz' legal counsel, was also present.

Officer Ruiz was hired by ECPD as a Police Officer on May 3, 2022. He had no prior law enforcement experience.

On August 31, 2023, Officer Ruiz arrived at work and changed into his uniform. At approximately 5:55 AM, he was preparing his patrol vehicle for his shift when he received a call over the radio about a petty theft at a nearby gas station. Dispatch also advised that the reporting party was following the suspect on Ocotillo Drive

Officer Ruiz drove to Ocotillo Drive near the location of the petty theft and contacted W-1, the reporting party, who was driving a grey Kia. Officer Valencia also responded to the location. Officer Valencia relayed over the radio that he had located Mr. Vargas walking westbound on Ocotillo Drive. Officer Valencia got out of his patrol vehicle and began issuing commands to Mr. Vargas. Officer Ruiz

did not detail what commands Officer Valencia issued to Mr. Vargas but stated that Mr. Vargas did not comply.

Officer Ruiz remained in his patrol vehicle and pulled in front of Mr. Vargas to box him in. He heard Mr. Vargas tell Officer Valencia, "Go ahead and shoot me. You're not going to do anything about it." Afterwards, Mr. Vargas continued to walk westbound on Ocotillo Drive.

While Officer Valencia continued to follow Mr. Vargas on foot, Officer Ruiz spoke with W-1. She said that she wanted Mr. Vargas to be prosecuted. She told Officer Ruiz that Mr. Vargas entered the gas station, stole two beverages, and threatened her with a brick. Officer Ruiz relayed over the radio that W-1 was desirous of prosecution but did not report that Mr. Vargas had threatened W-1 with a brick.

Officer Ruiz returned to his patrol vehicle and caught up with Officer Valencia who was still following Mr. Vargas on foot westbound on Ocotillo Drive. According to Officer Ruiz, Mr. Vargas never threatened him or Officer Valencia. Officer Ruiz recalled hearing Sergeant Hernandez on the radio tell the responding officers to remember that they were responding to a petty theft. Officer Ruiz and Officer Valencia discussed the different options they had to contact Mr. Vargas. One idea was to identify Mr. Vargas on the spot and charge him later, but neither officer was familiar with Mr. Vargas (and they could not sure that they would be able to find him should charges later be filed).

At 6:18:50 AM, Officer Valencia called for backup. Officers Hiraes and Eid arrived and parked their patrol vehicles on the east side of the intersection of 19th Street and Ocotillo Drive, in front of Officers Ruiz and Valencia. Officer Ruiz did not specify how long after his arrival Officers Hiraes and Eid arrived. He stated that there was no radio communication between any of the officers prior to the arrival of Officers Hiraes and Eid. Officer Ruiz walked to Officers Hiraes' and Eid's parked patrol vehicles and positioned himself between their vehicles, approximately 20 to 25 feet away from Mr. Vargas and Officer Hiraes. As Officer Ruiz got out of his patrol vehicle, he unholstered his firearm and held it at low ready. He said his department's policy requires two responding officers be prepared to use lethal force and one less lethal. Officer Ruiz said he unholstered his firearm because he did not have "eyes on" Officer Eid and did not know what Mr. Vargas had in his hand. If Officer Hiraes' firearm malfunctioned or if Mr. Vargas had thrown the brick or charged Officer Hiraes, Officer Ruiz would have been able to provide cover and stop the threat if necessary.

Officer Ruiz considered using less lethal options such as his Taser or "OC spray" (pepper spray) but did not feel that those options were viable at the time because the rapidly evolving situation did not give him sufficient time to deploy less lethal force. He also believed he was too far away from Mr. Vargas to use a Taser and determined that OC spray would "just not work."

Officer Hiraes was already out of his patrol vehicle and issuing commands to Mr. Vargas to, "drop the brick" when Officer Ruiz unholstered his firearm. He did not hear Officer Eid issue any commands to Mr. Hiraes. Officer Ruiz said that Mr. Vargas turned to face Officer Hiraes and threw the brick in his direction at which point Officer Hiraes fired his weapon. Officer Ruiz only heard one shot fired. He realized that Officer Hiraes fired two shots after the OIS when he observed two casings on the ground.

After Mr. Vargas was shot, Officer Ruiz reholstered his firearm and put gloves on. Officer Ruiz and the other responding officers directed Mr. Vargas to get on the ground. Once Mr. Vargas got on the ground, Officers Valencia and Ruiz handcuffed him and rendered medical aid until paramedics arrived.

Officer Ruiz approximated that seven to ten minutes elapsed from his initial contact with Mr. Vargas to the OIS. Officer Ruiz stated that Mr. Vargas had enough time to comply with the responding officers but never gave any indication that we would do so. Officer Ruiz felt it was necessary to take Mr. Vargas into custody at that time because he was about to throw the brick. In Officer Ruiz's opinion, if Officer Hiraes had not shot Mr. Vargas, he would have been struck by the brick and Mr. Vargas would have rushed him. Officer Ruiz based this opinion on Mr. Vargas' body language and his failure to comply with the responding officers' commands.

### ***Officer Daniel Valencia***

Officer Daniel Valencia provided a voluntary statement on September 5, 2023, at 2:47 PM. The interview was conducted by DOJ Special Agents Michael Beavers and Chris Santiago. Steve Welch, Officer Valencia's legal counsel, was also present.

Officer Valencia was hired by ECPD in April 2022. Prior to his time at ECPD, Officer Valencia worked as a police officer for the Los Angeles Police Department (LAPD) for approximately four years.

On August 31, 2023, Officer Valencia was assigned to patrol. Officer Valencia arrived at work, changed into his uniform, and began preparing his patrol car for his shift when he and Officer Ruiz received a call to respond to a theft that just occurred. ECPD dispatch described the suspect as a male wearing a black shirt and advised that he had stolen from the Chevron gas station at the intersection of Imperial Avenue and Ocotillo Drive. As he drove towards the location of the theft, dispatch advised that the reporting party, W-1, was driving a grey Kia and was following the suspect (Mr. Vargas) on Ocotillo Drive.

Officer Valencia arrived near 19th Avenue and Ocotillo Drive and saw W-1 driving slowly with the hazard lights of her car on. Mr. Vargas was approximately 15 to 20 feet in front of her, walking westbound on Ocotillo Drive. Officer Valencia saw that Mr. Vargas had a tall beer can in his left hand and a "off-colored pink" brick in his right hand. Officer Valencia did not know exactly what was happening when he arrived. He stated he thought, "maybe – maybe this was – could this have been a robbery, and could he have used the brick to – to threaten the reporting party or the gas station personnel to take the beer?"

Officer Ruiz arrived at the location shortly after Officer Valencia and parked approximately 10 feet in front of Mr. Vargas. Officer Valencia told Officer Ruiz to be careful because Mr. Vargas had a brick in his hand. Officer Valencia turned on his patrol vehicle's overhead lights and used the PA system to command Mr. Vargas to "stop." Mr. Vargas did not comply with Officer Valencia's command, so Officer Valencia got out of his patrol vehicle, grabbed his baton, and walked towards Mr. Vargas.

Officer Valencia attempted several times to get Mr. Vargas' attention by ordering him to "stop" and to "drop the brick." According to Officer Valencia, Mr. Vargas looked back at him and responded, "No, no, fuck you – why the fuck you have it out if you're not going to shoot me," and continued walking away. Officer Valencia stated, "I kept on telling him to stop. You know, drop the brick. I could tell that he was immediately not compliant." Officer Valencia continued, "He knew who I was. He just refused to comply, and I kept on telling him, you know, stop making it worse than it already is." Once Officer Valencia knew that Mr. Vargas was non-compliant, he requested additional units because, "I knew this could potentially turn into something because of his non-compliance."

Officer Valencia continued to follow Mr. Vargas westbound on Ocotillo Drive on foot and asked dispatch to call W-1 “to see if they even wanted to press charges for the beer.” Officer Valencia saw nearby vehicle traffic as he followed Mr. Vargas but did not see any pedestrian traffic. As Officer Valencia waited for additional units to respond, he attempted to talk to Mr. Vargas. Officer Valencia stated that he told Mr. Vargas, “You know, ‘hey man, have a seat, sit down.’ I kept telling him that he wasn’t going to get away with it, but that he was only making it worse for himself.”

Officer Valencia was approximately eight to ten feet behind Mr. Vargas as he followed him westbound on Ocotillo Drive. After issuing “a few” commands to Mr. Vargas, Officer Valencia knew that Mr. Vargas was going to be non-compliant. Officer Valencia stated, “He had a – something that could cause me great bodily injury or death, right, the brick in his hand. So, I drew my firearm and actually, I had it at what’s called the low ready.” Officer Valencia stated that he never pointed his firearm at Mr. Vargas. Officer Valencia felt that less lethal was not feasible at this moment. He said, “I think at this point, being by myself, I think a response from me that would have escalated to even less lethal would get him to either start running or to simply charge at me. Because he could have easily just turned around and thrown the brick. So that’s why I was, you know, still trying to talk to him, but I kept my distance so I could wait for everyone else to show up.” Officer Valencia reholstered his firearm approximately 45 seconds after he initially contacted Mr. Vargas, once he created some distance between himself and Mr. Vargas.

At this point, Officer Ruiz was no longer on scene, leaving Officer Valencia alone with Mr. Vargas. Officer Valencia continued to follow Mr. Vargas and issued additional commands, but Mr. Vargas refused to comply.

Dispatch broadcast that W-1 no longer wanted to press charges for the stolen item. Officer Valencia asked his supervisor if he could stop pursuing Mr. Vargas. According to Officer Valencia, his supervisor ordered Officer Valencia to disengage.<sup>3</sup> In response to his supervisor’s order, Officer Valencia stated that he, “started letting the distance off,” between himself and Mr. Vargas. Officer Valencia intended to re-engage Mr. Vargas once additional units arrived.

Officer Valencia could not identify Mr. Vargas but hoped that Officer Ruiz or another responding officer could. Officer Ruiz returned to Officer Valencia’s location. Both officers were talking when Officer Valencia observed, “Officer Eid and Officer Hiraes fly by us going westbound to where [Mr. Vargas was]– and I let them know, he’s on 19th and Ocotillo at this point.” Officer Valencia observed Mr. Vargas walking towards Southwest High School. Due to the time of day, he feared parents and students would soon begin showing up for school. Officer Valencia believed that at this point Mr. Vargas posed a public safety risk.

Officer Valencia observed Officers Eid and Hiraes contact Mr. Vargas as Mr. Vargas continued walking westbound on Ocotillo Drive. Officer Valencia, who was 50 to 60 yards away, then saw Mr. Vargas stop. Mr. Vargas stood on the southeast curb and faced Officers Eid and Hiraes. Officer Valencia heard Officers Eid and Hiraes give Mr. Vargas multiple commands to “drop the brick.” Officer Valencia could not see Mr. Vargas because of the distance between them and because Officers Hiraes’ and Eid’s

---

<sup>3</sup> Officer Valencia’s account of the radio traffic regarding W-1 no longer desiring prosecution and being told to disengage appears to be mistaken. None of those statements are reflected in the recordings of radio traffic, nor did any other officer report hearing such statements.

patrol vehicles were in the way.<sup>4</sup> Officer Valencia stated that he, “clearly heard him [Officer Hiraes] giving him [Mr. Vargas] commands,” and heard Officer Eid issuing commands over his patrol vehicle’s PA system.

Officer Valencia walked over to where Officers Eid and Hiraes were confronting Mr. Vargas. Officer Valencia estimated that Officer Hiraes was approximately eight to 10 feet away from Mr. Vargas and that Officer Eid was approximately 12 feet away from Mr. Vargas. Officer Valencia stated, “I see – I’m not sure which hand he threw it with, but I see the brick fall to the ground and then I – I also heard the initial shot being fired. I wasn’t sure if it was a shot, but – and then I heard the second one go off and that’s when I knew, yeah, that they shot at him.” Officer Valencia said that the first shot and the brick falling happened almost simultaneously. He heard the first shot just before he observed the brick fall. He stated that the second shot occurred within one second of the first shot.

After the shooting, Officer Valencia ran over to Mr. Vargas. He saw that Mr. Vargas was shot in the chest and that blood was pooling on Mr. Vargas’ shirt. Officer Valencia noticed Mr. Vargas still had the beer in his hand. It took some time for the officers to contact Mr. Vargas after the shooting because he was noncompliant, and they did not know if he was armed with any additional weapons. Mr. Vargas finally sat on the curb at which point the officers rushed towards him and placed him into custody. Once Mr. Vargas was handcuffed, Officer Valencia and the other officers began rendering medical aid until paramedics arrived and took over.

Mr. Vargas’ proximity to the school played a significant role in Officer Valencia’s assessment of the situation. Officer Valencia observed students with backpacks near the high school approximately five minutes after the OIS. The OIS occurred approximately one block away from the high school. According to Officer Valencia, “Well, it’s – it’s a huge – even though we did have at the minimum, a theft, right, we still have to take into consideration the public safety issue. There’s a guy that’s clearly been drinking because I saw him, you know, drinking the beer. It could turn into a safety incident with the school because he’s walking towards that direction, refusing to comply with us. He wasn’t wearing any shoes. I’m not sure if he had any health issues or anything like that, but he is clearly under the influence and walking with the brick in his hand and looking to cause a safety issue for these students that are coming in.”

According to Officer Valencia, the responding officers were unable to coordinate a tactical plan because Officer Valencia was originally following Mr. Vargas by himself. Officer Valencia also stated the officers did not have time as Mr. Vargas walked away from them and they were not able to surround him. Officer Valencia clarified, “He wasn’t contained or anything like that to where we could formulate a plan. Like hey – let’s get a beanbag shotgun out, let’s do this or let’s continue to try to talk him down or let’s get a canine to respond or anything like that.” Officer Valencia said that Mr. Vargas had, “more than enough time for him to comply. I was very repetitive. I walked with him more than – more half a block, you know, trying to get him to comply. Other officers they tried to get him to comply as well.”

Officer Valencia believed that Mr. Vargas needed to be detained at that moment because if he was not detained, he could put others at risk. He felt that Mr. Vargas posed a threat of serious bodily injury or death because he had the brick in his hand. Officer Valencia described the throwing of the brick as an

---

<sup>4</sup> This is inconsistent with his earlier statement that he observed Mr. Vargas stop and face Officers Hiraes and Eid. However, Officer Valencia was able to see Officer Hiraes.

immediate threat and believed that if Officer Hiraes did not shoot, Mr. Vargas would not have complied. According to Officer Valencia, “He was uncompliant with me, and he still didn’t comply with them. Would he have kept on walking? I’m not sure because when Officer Hiraes contacted him, he did turn around to face him. Could he have kept on walking? I’m not sure.” Officer Valencia considered less lethal options during his contact with Mr. Vargas. He stated, “Yes. I considered the beanbag. However, [the beanbag] was in my unit way back. But one of the biggest things that I like to do is verbally de-escalate. So, I try to use that as much as I can, and also, again, the show of police presence. Usually when they know they’re outnumbered and they know they’re not going anywhere, they tend to for the most part to give up.”

### ***Officer Subah Eid***

Officer Subah Eid provided a voluntary statement on October 3, 2023. DOJ Special Agents Michael Beavers and Ugo Carlos conducted the interview. Steve Welch, Officer Eid’s legal counsel, was also present.

Officer Eid was hired by ECPD approximately four years before the OIS. Prior to his time at ECPD, Officer Eid was a reserve officer for the Imperial County Sheriff’s Department for approximately six months. Officer Eid attended de-escalation training approximately one and a half years prior to the OIS.

On August 31, 2023, Officer Eid was assigned to patrol. Officer Eid arrived at work, prepared his patrol vehicle for his shift, and attended roll call. Prior to roll call, Officers Valencia and Ruiz had responded to a call at the Chevron gas station located at 1300 South Imperial Avenue. Officer Eid did not hear the entire call and did not think anything of it. Officer Eid later stated that the call was for a petty theft.

While Officer Eid was at roll call, he heard Officer Valencia relay over the radio that the suspect had something in his hand. Officer Eid did not hear what the suspect had in his hand but after the call, he, Sergeant Hernandez, and Officer Hiraes ran out of roll call and responded to South Imperial Avenue where the suspect and Officers Valencia and Ruiz were located. He believed that the item in Mr. Vargas’ hand was dangerous because, “Um – we’re cops, so I – I assumed maybe a knife or gun or something dangerous.” Officer Eid left the recorder normally attached to his BWC at the station when he responded to the call; therefore, his BWC did not record any of the unfolding events.

Officer Eid drove to the location where the suspect and officers were as quickly and safely as possible. He said, “while we were going there I don’t recall hearing anything on the radio.” He later stated that he recalled that as he drove to the location he heard Officer Valencia saying over the radio that Mr. Vargas was, “not complying and walking away.” Officer Eid located Officers Valencia and Ruiz and the suspect near the 1900 block of Ocotillo Drive. Officer Eid followed Officer Hiraes as they approached Officers Valencia and Ruiz. He activated his patrol car’s lights and siren.

Officer Eid saw a brick in Mr. Vargas’ right hand and a can of beer in his left hand. He said, “I was telling the subject on the PA to drop the brick multiple times – maybe two or three times. Overall, Officer Eid believes that he directed Mr. Vargas to drop the brick at least six times. “I told him to ‘drop the brick’. ‘Drop the brick’ – he didn’t comply, continued to walk westbound and then turned around and faced us.” Officer Eid believed that Mr. Vargas understood his and Officer Hiraes’ commands because, “he directed his attention to the person speaking.”

Officer Hiraes parked his patrol vehicle at the intersection of 19th Street and Ocotillo Drive facing southwest. Officer Eid parked his vehicle to the east of Officer Hiraes facing west. Officer Hiraes got

out of his patrol vehicle and unholstered his firearm. Officer Eid also got out of his patrol vehicle and immediately unholstered his firearm. He did not take cover when he exited his patrol vehicle because of the distance between him and Mr. Vargas and because, "Well, the suspect didn't have a gun. If he had a gun, I would've used that. I did just feel like I didn't need to stand behind my door." Officer Eid stated, "I noticed Officer Hiraes had his firearm out, and I remember Officer Hiraes telling the subject multiple times to 'drop the brick, drop the brick'. And then, I also advised him to 'drop the brick.'" According to Officer Eid, at this point, "he [Mr. Vargas] looked at me, kind of took, like, one step towards me, and then Officer Hiraes also told him to 'drop the brick' one more time." Officer Eid did not see any vehicular or pedestrian traffic at the location. Officer Eid believed that Mr. Vargas was given enough time to comply with his and Officer Hiraes' commands.

According to Officer Eid, Mr. Vargas never gave any indication that he was willing to comply. He said, "He just – I mean, wouldn't even speak to us, wouldn't listen just – I couldn't get him to do anything. He just – he was walking towards me, and then Officer Hiraes told him one more time to 'drop the brick,' and then he [Mr. Vargas] focused his attention on him [Officer Hiraes]. We – we couldn't get him to comply." Officer Eid recalled that approximately seven to ten seconds after Officer Hiraes issued his last command, "the subject turned toward Officer Hiraes, like, clench his arm back, as – like, he's going to throw the brick. As he clenches his arm back I only heard one shot." Officer Eid stated, "When the subject got shot, I was going to shoot, but then I realized he was already bleeding through the chest." Officer Eid believed that once Mr. Vargas was shot, the threat was neutralized and there was no need for him to pull the trigger on his firearm.

Officer Eid believed that he was approximately ten feet away from Mr. Vargas and that Officer Hiraes was approximately six feet away from Mr. Vargas at the time of the OIS. He believed that the brick could have hit Officer Hiraes because, "It was pretty close to where he was standing."

Officer Eid believed that approximately two minutes passed from the time of his arrival to the time the OIS occurred. After Mr. Vargas was shot, Officer Ruiz radioed, "shots fired," and Officer Eid requested medical assistance and requested that the Imperial County Sheriff's Department respond and create a perimeter. Officer Eid ordered Mr. Vargas to get on the ground so they could help him, but Mr. Vargas did not listen. Officers Eid and Valencia successfully placed Mr. Vargas in handcuffs and Officers Valencia, Hiraes and Ruiz began to render medical aid until the paramedics arrived. Once the paramedics took over the rendering of medical aid, Officers Eid and Valencia taped off the scene. Officer Eid did not know there had been two shots fired until afterward when he saw two shell casings on the ground.

Officer Eid believed that contacting Mr. Vargas at that moment was necessary because, "Well, he was walking around town with a deadly weapon. Usually that – that's enough for us. Well, I mean, a suspect – a subject walking around with a weapon is enough for you to want to stop them to prevent [them] from hurting anybody else, but I was there to cover Officer Hiraes. I fully went up to that subject to cover Officer Hiraes because I am now his cover officer." Officer Eid said that the responding officers did not formulate a tactical plan while in route to the location. He also stated that he did not consider re-deployment or a tactical retreat after he contacted Mr. Vargas because he was Officer Hiraes' cover officer.

He also believed that if Officer Hiraes did not shoot Mr. Vargas, "Maybe he would've picked up the brick again, tried to hit him, or – I don't know what would have happened, honestly. He would – he was trying to hurt my partner, so maybe he would've either went towards me or towards him without

the brick – if he wasn't shot when he had it. But I don't know. He wasn't complying, so I wouldn't think he would've listened anyway. Well, right there, we have a 148<sup>[5]</sup> a, so we would've probably tried to take him down and arrest him."

Officer Eid had access to several less-lethal options including a less-lethal shotgun, a Taser, and OC spray but never considered less-lethal force because, "I believed the suspect had a deadly weapon, so we have to have our weapons if someone has a weapon that causes grave bodily injury or death to either of us." Specifically, he was unable to use the less-lethal shotgun because, "it was a split-second decision, so I just got out of my unit and covered my partner." He didn't use his OC spray because, "I just didn't feel comfortable using that when the subject had a deadly weapon on his person." Officer Eid didn't use his Taser, "Because his clothing wouldn't have – well, according to my previous experiences, clothing would have prevented an acceptable Taser. And I believe if we tried to Taser him – if I was going to Tase him, I'm pretty sure he would've threw the brick at me – probably."

### ***Officer Adrian Hiraes***

Officer Adrian Hiraes provided a voluntary statement on October 3, 2023, at 10:29 AM. The interview was by DOJ Special Agents Michael Beavers and Chris Santiago. Steve Welch, Officer Hiraes' legal counsel, was also present.

Officer Hiraes was hired by ECPD as a Police Officer on March 22, 2007. Prior to that, he served as a ECPD reserve officer from 2004 to 2007. Officer Hiraes stated he last attended a tactical training in either 2015 or 2016.

On August 31, 2023, Officer Hiraes was assigned to patrol. He was at ECPD station attending a roll call meeting when Officers Valencia and Ruiz responded to a theft call at the Chevron gas station located at 1850 South Imperial Avenue in El Centro. As Officer Hiraes was speaking with Officer Eid and Sergeant Hernandez at roll call, he heard a radio call that the theft suspect was armed with a brick. While Officers Valencia and Ruiz did not request back up, Sergeant Hernandez, Officer Hiraes, and Officer Eid rushed to their patrol vehicles to respond to the call. Officer Hiraes did not know whether the brick was used in the commission of the theft or if the suspect (later identified as Mr. Vargas) assaulted anyone with the brick.

While in route, Officer Hiraes heard multiple radio communications. Officer Hiraes recalled that dispatch relayed over the radio that the reporting party was desirous of prosecution for the theft and advised that Mr. Vargas was walking westbound on Ocotillo Drive. Sergeant Hernandez also relayed over the radio, "Remember guys, it's only a 488." This statement bothered Officer Hiraes. He stated in his interview, "It's only a 488, but to what extent? And I was thinking – it's a 488, but what if something else happens. What if he fights with us? It's not going to be a 488 anymore. And sure enough, at that point it was a 488, but when things escalated and they turned into a 245, a 417<sup>[6]</sup> with a deadly weapon, it was a whole different ballpark."

Officer Hiraes approached Ocotillo Drive and observed two patrol vehicles parked approximately two blocks and one block away from Mr. Vargas, respectively. He did not know whether any of the

---

5 California Penal Code section 148 is the Penal Code section for resisting arrest.

6 California Penal Code section 245 is the Penal Code section for Assault with a Deadly Weapon. California Penal Code section 417 is the Penal Code section for Brandishing a Firearm or Deadly Weapon.

responding officers engaged with Mr. Vargas prior to his arrival and he did not observe anyone else near the location. Officer Hiraes drove past both patrol vehicles and observed Mr. Vargas walking westbound on the south side of Ocotillo Drive with a can in his left hand and a brick in his right hand. Officer Hiraes believed that the can in Mr. Vargas' left hand was the item he stole from the Chevron gas station. Officer Hiraes approached Mr. Vargas in his patrol vehicle as Mr. Vargas crossed 19th Street toward the south side of 1900 block of Ocotillo Drive.

Officer Hiraes positioned his vehicle in a southwestern direction at the intersection of 19th Street and Ocotillo Drive. He stated, "I exited my vehicle, and I see the brick in his hand and the container. And I thought I'm going to block him right now." Officer Hiraes stated he felt comfortable approaching Mr. Vargas at this point because Officer Eid was behind him. Officer Hiraes got out of his patrol vehicle, unholstered his Taser with his right hand, and moved near the front driver-side wheel-well of his patrol vehicle with the Taser pointed at Mr. Vargas' chest area. Officer Hiraes believed he fully drew his Taser. Officer Hiraes stated, "I unholstered my Taser and told him, 'If you don't drop the brick, you're going to get Tased.'" Officer Hiraes stated he drew his Taser because, "He [Vargas] had a weapon in his hand. I couldn't come out with my hands empty, so the tactic I used was a Taser." Officer Hiraes indicated that he always has had a positive reaction with the Taser deployment and stated, "It works almost all of the time." Officer Hiraes said he drew his Taser to "bluff" Mr. Vargas to get him to surrender.

The display of the Taser did not work, and Mr. Vargas continued walking southbound on Ocotillo Drive, away from Officer Hiraes. Mr. Vargas did not threaten Officer Hiraes or communicate with him but gave no indication that he would comply with Officer Hiraes' commands. At this point Officer Hiraes stated he thought to himself, "What – what the heck am I doing? I have a less lethal – a less lethal weapon in my hand. I've used it numerous times in the past and it – it doesn't always work. And if it doesn't work, then I have a Tas – I have a non-lethal weapon in my hand that I've already deployed, and I don't have, I have no other weapon in my hand." Officer Hiraes continued, "And this person has a brick in his hand, and he can cause some serious injury right there."

Officer Hiraes said this thought process happened quickly, within one or two seconds, so he transitioned from his Taser to his firearm. Officer Hiraes did not recall whether he had any additional less-lethal weapons in his patrol vehicle. Officer Hiraes held his firearm at the low ready with both hands and directed Mr. Vargas to "put the brick down" several times. Officer Hiraes stated Mr. Vargas stopped, looked at him, "smirked," and threw the brick at him. Officer Hiraes reiterated that the incident happened very quickly and that he never saw the brick coming at him. All that Officer Hiraes saw was Mr. Vargas initiate a throwing motion. Officer Hiraes did not see that the brick was thrown until he returned to the station and reviewed his BWC. In response to Mr. Vargas throwing the brick, Officer Hiraes moved one to two steps to the left and fired two rounds at Mr. Vargas. Officer Hiraes stated he knew that Mr. Vargas was struck by the gun fire because, "He kind of just stood there and looked confused."

Officer Hiraes stated he shot at Mr. Vargas to stop what he perceived as a threat and to save his life. Officer Hiraes believed that if he had not moved, he would have been struck by the brick and suffered great bodily injury or death. He perceived both shots as one fluid engagement and not as two separate incidents. Officer Hiraes stated, "My intent was for him to drop it, maybe run off. That was my intent for him to just – for it to fall from his hand." Officer Hiraes stated he was scared, "I'm going to end up dead or with some – I don't know, like a serious injury in a coma or be out. Just something – just the worst you know?" He stated he stopped shooting because, "I was now able to get a clear picture of

him [Mr. Vargas]" and that the only thing left in his hand was the beverage container. Once the brick was no longer in Mr. Vargas' hand, Officer Hiraes no longer perceived a threat.

After the shooting, Officer Hiraes observed Mr. Vargas take a drink of the beverage in his left hand and then wobble to the left and right. Officer Hiraes continued to aim his firearm at Mr. Vargas and waited for responding officers to "glove up" and assist in rendering medical aid. However, there was a delay because none of the officers had gloves on them. Approximately five to ten seconds later, one of the responding officers went "hands on" with Mr. Vargas and sat him down. Officer Hiraes did not remember who assisted Mr. Vargas at that time. Officer Hiraes told Mr. Vargas, "I'm going to help you" and "You're going to be okay."

Someone handed Officer Hiraes gauze and Officer Hiraes immediately put pressure on Mr. Vargas' chest. The paramedics were called. He continued to apply pressure to Mr. Vargas' wounds until paramedics arrived and took over rendering medical aid.

Sergeant Hernandez escorted Officer Hiraes away from the scene to Sergeant Hernandez' patrol unit. Sergeant Hernandez told Officer Hiraes to deactivate his body-worn camera. Officer Hiraes deactivated his body-worn camera and sat in the front passenger seat while Sergeant Hernandez made several phone calls. Officer Hiraes sat in the patrol vehicle for 20 to 25 minutes before he was transported back to the El Centro Police Station.

Prior to this call out, Officer Hiraes had worked with the other responding officers on several occasions. On previous calls, Officer Hiraes would discuss tactical plans with the other responding officers prior to engaging with a suspect. Officer Hiraes had also confronted uncooperative suspects with the other responding officers on previous occasions.

Officer Hiraes did not believe he had time to deescalate because of how quickly the events unfolded. He stated, "From him just kind of looking at me, staring at me – I thought he would just stay there, and we would use different tactics. But after that happened within, like, what appeared to me a couple of seconds that's when he immediately – launched the brick at me so that I didn't have enough time to de-escalate besides the 'drop the weapon, drop the brick.'" Officer Hiraes told investigators that he initially produced his Taser because, "Like I said – I've been a police officer for about 17 years. When they [suspects] see a Taser, they immediately give up. And I thought this was – would be the case."

Officer Hiraes told investigators that his plan was to contact Mr. Vargas and unholster his Taser. Once he did this, Officer Hiraes expected Mr. Vargas to surrender. He stated, "So, my plan was, as I mentioned, we're going to contact this person. As soon as he sees us unholster our Tasers, he's going to surrender. We're going to take him into custody, give him his ticket, and he's going to walk away – and that's it. You know, it's very simple." Officer Hiraes did not communicate this plan to any of the other responding officers and was unaware whether any of the other responding officers had contacted Mr. Vargas prior to Officer Hiraes having arrived on scene.

Officer Hiraes did not use his Taser. He stated he did not use it because, "It's not 100% reliable. Sometimes you could miss. Sometimes I've seen people pull it out, and it would only anger them [the suspect] more. And like I said, I would have had a useless Taser at that point if it would not have worked, and he would've been armed with a brick. And I believe that could've given the opportunity

that he sees me empty-handed and maybe even rushes me and attacks me, or yeah. There's nothing for me to defend myself against him."

Officer Hiraes believed deadly force was necessary because, "He had the intent, the ability, and he had the means to do it [to assault Officer Hiraes]." Officer Hiraes believed that he had no other options at that time but to shoot. He stated, "He had a deadly weapon and the proximity." He clarified, "We weren't too far apart. I think it was about, to my recollection, about 15 feet. I know that the same thing with pepper spray. Sometimes it works, sometimes it doesn't. So, I never even considered it because he had a deadly weapon in his hand."

Officer Hiraes believed that he could have taken cover near his patrol vehicle but chose not to. He stated, "If I would've used – gotten behind the door –again, the proximity was close. I would've been – if he would've came at me or rushed at me, I would've been stuck between my unit and the door unless I ran back." Officer Hiraes positioned himself in front of his patrol vehicle. He explained, "Honestly, to just apprehend him [Mr. Vargas]." He also stated that he could not retreat because, "I know that if I ran backwards, I'm going to pos – there's a – a big possibility that I'm going to trip and fall on my back on my – on my back, or if I face away from him to run, he can just kind of watch me and quickly throw it." Officer Hiraes admitted, "I think I underestimated him. I never thought he was going to, you know, do what he did."

## **INTERVIEWS OF CIVILIAN WITNESSES**

Numerous civilian witnesses were interviewed by DOJ and El Centro Police Department investigators. 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.

### ***Statement of Witness 1 [W-1]***

W-1 was interviewed by ECPD Detective Miguel Garrido on August 31, 2023, at 1:40 PM at the Chevron Gas Station located at 1850 South Imperial Avenue in El Centro, California. W-1 arrived for work at the Chevron gas station on August 31, 2023, at approximately 6:00 AM and saw the on-duty cashier outside the business. The cashier seemed to be looking for someone. She asked the on-duty cashier what happened, and he told her that Mr. Vargas stole two Four Loko malt beverages from the store. The on-duty cashier directed W-1 to follow Mr. Vargas. W-1 followed Mr. Vargas in her car as he walked westbound on Ocotillo Drive. W-1 called 911 to report the theft. She was approximately ten feet behind Mr. Vargas.

Another Chevron gas station customer pulled up next to W-1 while she waited for law enforcement to arrive. According to W-1, the customer asked Mr. Vargas to return the stolen items. In response, Mr. Vargas opened one of the beverage containers and drank from it. W-1 stated that Mr. Vargas struggled to stand up by himself and appeared to be drunk or on drugs.

Near the intersection of Ocotillo Drive and Waterman Avenue, W-1 observed Mr. Vargas pick up a brick from the front yard of a nearby house. W-1 stated that Mr. Vargas turned around and threatened W-1 with the brick. W-1 put her car in reverse and backed away from Mr. Vargas because she feared that Mr. Vargas was going to throw the brick at her car. She called 911 again to tell dispatch that Mr. Vargas had threatened her with the brick. Eventually, law enforcement arrived and directed Mr. Vargas to

stop and drop the brick twice but he did not comply. W-1 did not observe the OIS. W-1 recorded her interaction with Mr. Vargas on her cellular phone's camera.

### **Statement of Witness 2 [W-2]**

W-2 was interviewed in front of his home by DOJ Special Agents Alan Oratovsky and Alvin Hernandez on August 31, 2023, at 12:55 PM. W-2 had seen the OIS and the events leading up to it from his residence. W-2 stated that he went to the nearby 7-Eleven every morning to drink coffee with his buddies. He departed 7-Eleven at approximately 6:20 AM and, on his way home, observed law enforcement near the intersection of Waterman Avenue and Ocotillo Drive. W-2 pulled his truck over and observed Mr. Vargas walking down Ocotillo Drive with an officer following him. The officer was approximately 25 to 30 feet behind Mr. Vargas. According to W-2, the officer stopped following Mr. Vargas for a few seconds and Mr. Vargas crossed from the north side of Ocotillo Drive to the south side.

W-2 backed up into his driveway, got out of his truck, and saw four officers surrounding Mr. Vargas. The officers ordered Mr. Vargas to, "get on the ground" at least two times. A few seconds later, Mr. Vargas threw an object (later identified as a brick) towards the officers and W-2 heard two gunshots. W-2 did not know what Mr. Vargas threw at the officers. Mr. Vargas remained on his feet, and the officers ordered him multiple times to get down. Eventually Mr. Vargas "went to the ground" and the officers provided medical aid until the paramedics arrived and took him away.

## **APPLICABLE LEGAL STANDARDS**

Homicide is the killing of one human being by another. (*People v. Beltran* (2013) 56 Cal.4th 935, 941.) There are two types of criminal homicide, murder and manslaughter.

### **Murder**

Murder is the unlawful killing of a human being with malice aforethought. (Pen. Code, § 187, subd. (a).) Murder is divided into first and second degrees. A willful, deliberate, and premeditated killing is murder of the first degree. (Pen. Code, § 189; *People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1332.)

Second degree murder is the unlawful killing of a human being with malice aforethought but without the additional elements of willfulness, premeditation, and deliberation that would support a conviction of first degree murder. (*People v. Knoller* (2007) 41 Cal.4th 139, 151.) The malice required for second degree murder may be express or implied. (Pen. Code, § 188; *Hernandez, supra*, 183 Cal.App.4th at p.1332.) Malice is express when there is an "intent to kill." (Pen. Code, § 188; *People v. Delgado* (2017) 2 Cal.5th 544, 571.) Malice is implied "when the killing results from an intentional act, the natural consequences of which are dangerous to life, which act was deliberately performed by a person who knows that his [or her] conduct endangers the life of another and who acts with conscious disregard for life." (*People v. Dellinger* (1989) 49 Cal.3d 1212, 1215.)

A homicide may also be reduced to second degree murder if premeditation and deliberation are negated by heat of passion arising from subjective provocation. If the provocation precludes a person from deliberating or premeditating, even if it would not cause an average person to experience deadly passion, the crime is second degree murder. (*People v. Padilla* (2002) 103 Cal.App.4th 675, 678.)

## Voluntary Manslaughter

Manslaughter is an unlawful killing without malice. (Pen. Code, § 192; *People v. Thomas* (2012) 53 Cal.4th 771, 813.) Several factors may preclude the formation of malice and reduce a killing that would otherwise be murder to voluntary manslaughter including: (1) heat of passion, and (2) imperfect self-defense. (*People v. Moye* (2009) 47 Cal.4th 537, 549.)

Imperfect self-defense is the killing of another human being under the actual but unreasonable belief that the killer was in imminent danger of death or great bodily injury and that the use of deadly force is necessary to defend against that danger. Such a killing is deemed to be without malice and thus cannot be murder. (*People v. Cruz* (2008) 44 Cal.4th 636, 664.) The doctrine of imperfect self-defense cannot be invoked, however, by a person whose own wrongful conduct (for example, a physical assault or commission of a felony) created the circumstances in which the adversary's attack is legally justified. (*People v. Booker* (2011) 51 Cal.4th 141, 182.)

## Self-Defense

A homicide is justified and lawful if committed in self-defense. Self-defense is a complete defense to a homicide offense, and, if found, the killing is not criminal. (*People v. Sotelo-Urena* (2016) 4 Cal. App.5th 732, 744.) When a person is charged with a homicide-related crime and claims self-defense, the prosecution must prove beyond a reasonable doubt that the homicide was not committed in self-defense. (*People v. Winkler* (2020) 56 Cal.App.5th 1102, 1167.)

Penal Code sections 196 *et. seq.* sets 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.)

## Deadly Weapon

California law defines a “deadly weapon” as “any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.” (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029.) An “inherently deadly or dangerous” weapon is a term of art describing objects that are deadly or dangerous in “the ordinary use for which they are designed,” that is, weapons that have no practical nondeadly purpose. (*People v. Stutelberg* (2018) 29 Cal.App.5th 314, 318–319.) In determining whether an object not inherently deadly or dangerous was used in the requisite manner, the trier of fact may look to the nature of the weapon, the manner of its use, and any other relevant fact. (*Id.* at p. 1029.) A beer bottle, when used as club or missile, constitutes a “deadly weapon” for purpose of establishing assault with a deadly weapon. (*People v. Cordero* (1949) 92 Cal.App.2d 196.) Courts have also held that a brick may be a deadly weapon. (*In re J.G.* (2010) 188 Cal.App.4th 1501, 1507; *People v. Walker* (1961) 198 Cal.App.2d 387, 389, 391.)

## 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

The DOJ has completed an independent investigation and review of the facts and circumstances that led to the death of Elizandro Vargas. This analysis is based on all the evidence gathered by DOJ in this matter, including witness interviews, law enforcement reports, analyses of firearms and ballistics, physical evidence, the autopsy and toxicology reports, BWC camera footage, photographs, and communication evidence.

Because a prosecuting agency would need to affirmatively prove beyond a reasonable doubt that Officer Hiraes 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 demonstrates that a prosecution could not establish that the officer was objectively unreasonable in determining that lethal force was necessary to protect himself or others, or that the officer did not actually hold this view. Therefore, the evidence is insufficient to support criminal charges.

### Subjective Belief

The evidence shows that Officer Hiraes actually believed in the need to defend against imminent peril or great bodily injury. He perceived the brick as a deadly weapon capable of causing serious injury and fired lethal rounds at Mr. Vargas because he believed Mr. Vargas was about to throw the brick at him. Officer Hiraes stated he was “scared” and believed he could “end up dead or... with some serious injury in a coma” if struck by the brick. His fear was based on Mr. Vargas’ non-compliance and his sudden act of throwing the brick.

Officer Hiraes initially drew his Taser, expecting Mr. Vargas to surrender, as he had experienced in prior encounters. His decision to transition to his firearm was prompted by Mr. Vargas’ continued non-compliance and the realization that the Taser might not be effective, reflecting a reasoned response to the escalating threat. Officer Hiraes stated his intent was to stop Mr. Vargas’ threatening action and protect himself. He fired two rounds in a single, fluid engagement, stopping immediately after the brick was thrown, indicating his belief that the threat was neutralized once the brick was no longer in Mr. Vargas’ hand.

The statements by Officer Hiraes demonstrate that he subjectively believed in the need to defend against an imminent threat of great bodily injury or death.

### **Objective Belief**

Moreover, Officer Hiraes could reasonably believe, based on the totality of the circumstances, that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to the officer(s) or others.

A reasonable officer in Officer Hiraes' position could have believed that Mr. Vargas had the present ability and opportunity to immediately cause death or serious bodily injury. Mr. Vargas was holding a brick measuring 3.15 inches high, 5.51 inches wide, and 7.87 inches in length, weighing 8.36 pounds. A brick, when thrown with force, can be a deadly weapon capable of causing great bodily injury or death. Officer Hiraes' BWC footage and statements from Officers Valencia, Ruiz, and Eid confirm that Mr. Vargas was visibly holding the brick in his right hand as he walked westbound on Ocotillo Drive and at the time of the OIS. The brick's size and weight made it capable of inflicting serious injury if thrown, particularly to the head or upper body.

At the time Mr. Vargas threw the brick, he was approximately 17.5 feet from Officer Hiraes, as confirmed by FARO scan imaging of the scene. This proximity provided Mr. Vargas with the opportunity to throw the brick with sufficient force and accuracy to strike Officer Hiraes. Officer Hiraes was positioned in front of his patrol vehicle, without effective cover. Officer Hiraes stated that taking cover behind the door would have trapped him if Mr. Vargas rushed him, and retreating posed a risk of tripping or losing sight of Mr. Vargas, further exposing him to danger.

Officers Valencia, Ruiz, and Eid were not within immediate reach to physically stop or disarm Mr. Vargas. Officer Valencia was 50-60 yards away, Officer Ruiz was 20-25 feet away, and Officer Eid was approximately 10 feet away, all too far to intervene physically before Mr. Vargas threw the brick. BWC footage and officer statements confirm that Mr. Vargas was not contained or surrounded, limiting the officers' ability to safely approach or disarm him without risking harm.

The OIS occurred near Southwest High School, and Officer Valencia noted the presence of students with backpacks approximately five minutes after the incident. Mr. Vargas' path of travel toward the school, combined with his non-compliance and possession of a deadly weapon, heightened the risk to public safety, as he could have targeted civilians if not apprehended.

A reasonable officer in Officer Hiraes' position could have reasonably believed that Mr. Vargas had the apparent intent to immediately cause death or serious bodily injury, based on his actions, non-compliance, and threatening behavior. Mr. Vargas repeatedly ignored clear and repeated commands from multiple officers to "stop" and "drop the brick." BWC footage from Officers Valencia and Hiraes, as well as ICC recordings from Officer Eid's patrol vehicle, document commands issued over several minutes, starting at approximately 6:18 AM when Officer Valencia first contacted Mr. Vargas. Officer Valencia issued commands using his patrol vehicle's PA system and on foot, while Officer Eid issued at least six commands to "drop the brick" using his PA system. Officer Hiraes issued multiple commands, including "get on the ground" and "drop the brick," starting at 6:22:33 AM. Mr. Vargas' refusal to comply, despite ample opportunity over approximately four minutes, shows that he was unwilling to de-escalate the situation.

Mr. Vargas' own actions escalated the situation. Mr. Vargas said to Officer Valencia, "“you aint gonna shoot me,” and “whatcha pulled it out for if you aint gonna use it.” When Officer Valencia responded, “the only reason I have it out is because you have a freaking brick in your hand,” Mr. Vargas replied, “well shoot your shit then.” These statements demonstrate Mr. Vargas' defiance and an awareness of the officers' presence. These statements, combined with his continued holding of the brick, suggested an intent to resist and potentially escalate to violence.

At 6:22:45 AM, Mr. Vargas stopped walking, turned to face Officer Hiraes, and, at 6:22:52 AM, threw the brick with his right hand directly toward Officer Hiraes. BWC footage from Officer Hiraes captures the throwing motion, and Officer Valencia stated that the brick's release and the first shot were nearly simultaneous. Officer Eid observed Mr. Vargas “clench his arm back” as if to throw the brick, and Witness W-2 confirmed seeing Mr. Vargas throw an object toward the officers, followed by two gunshots. This deliberate act of throwing a deadly weapon at Officer Hiraes, from 17.5 feet, demonstrated an apparent intent to cause serious bodily injury or death to the officer.

The interval between Mr. Vargas turning to face Officer Hiraes (6:22:45 AM) and throwing the brick (6:22:52 AM) was approximately seven seconds, leaving Officer Hiraes with minimal time to react. Officer Hiraes stated that the incident unfolded “very quickly,” and he fired two rounds in a single, fluid engagement at 6:22:53 AM and 6:22:54 AM, immediately after the brick left Mr. Vargas' hand. Given the brief time between the throwing of the brick and both shots, Officer Hiraes' decision to fire at Mr. Vargas likely was made immediately before or as the brick left Mr. Vargas' hand.

The evidence also shows that Officer Hiraes and the other officers considered less-lethal options but determined they were not viable given the circumstances. Officer Hiraes initially drew his Taser, expecting Mr. Vargas to surrender based on prior experiences. However, Mr. Vargas' continued non-compliance and the proximity (17.5 feet) led Officer Hiraes to transition to his firearm, as he believed a Taser might be ineffective or provoke a more aggressive response. Moreover, Officer Hiraes issued repeated verbal commands over several minutes, attempting to de-escalate the situation. These efforts were unsuccessful, as Mr. Vargas remained defiant and non-compliant.

A reasonable officer in the same situation as Officer Hiraes could have reasonably believed that Mr. Vargas had the apparent intent to immediately cause death or serious bodily injury to officer in the moment immediately preceding the OIS.

Thus, the totality of the evidence shows that Officer Hiraes held the subjective belief that deadly force was necessary to defend himself from imminent deadly force, and that such belief was not objectively unreasonable. A prosecution, therefore, could not prove beyond a reasonable doubt that the officer's use of force was unlawful.

## **CONCLUSION**

The evidence does not show, beyond a reasonable doubt, that Officer Hiraes acted without the intent to defend himself and others from what he reasonably believed to be an imminent threat of death or serious bodily injury. Therefore, there is insufficient evidence to support a criminal prosecution, and no further action will be taken in this matter.



C A L I F O R N I A

---

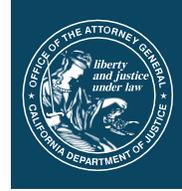
# DEPARTMENT OF JUSTICE

**Policy and Practice Recommendations for  
the El Centro Police Department Related to the  
Officer-Involved Shooting of Elizandro Vargas on  
August 31, 2023**

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

---

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 (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.

On August 31, 2023, at approximately 6:18 a.m., El Centro Police Department (El Centro PD) officers responded to a call regarding a petty theft at a gas station located at 1850 South Imperial Avenue, in El Centro. The subject was described as a Hispanic male who allegedly stole two alcoholic beverages and left on foot. El Centro PD Officers Daniel Valencia and Victor Ruiz located the subject, later identified as Elizandro Vargas, approximately 0.3 miles west of the gas station. Officer Valencia commanded Mr. Vargas to “stop” using the patrol vehicle’s public announcement (PA) system, but Mr. Vargas continued to walk westbound on Ocotillo Drive, holding a brick in his right hand. Officer Valencia broadcasted through his radio, “be careful, he has a brick in his hand,” and requested additional units.

At 6:18 a.m., Officer Valencia exited the patrol vehicle, attempted to talk to Mr. Vargas, and gave multiple commands to “stop” and “drop the brick.” Meanwhile, Officer Ruiz drove slowly alongside Officer Valencia. Mr. Vargas did not comply and walked away with a brick in his hand. Officer Valencia continued to follow Mr. Vargas on foot and continued to talk to Mr. Vargas from a distance. Eventually, Mr. Vargas crossed the street, and Officers Valencia and Ruiz decided not to chase after him and allowed more distance while waiting for additional officers.

Approximately four minutes later, at 6:22:29 a.m., Officers Subah Eid and Adrian Hiraes arrived in separate patrol vehicles and drove past the other two officers who were approximately 150 to 180 feet away from Mr. Vargas. They did not attempt to coordinate with Officers Valencia and Ruiz. Instead, Officer Hiraes parked his vehicle approximately 17 feet away from Mr. Vargas. Officer Eid commanded Mr. Vargas to drop the brick using his PA system. Mr. Vargas did not comply.

Officer Hiraes exited his patrol vehicle and commanded: “Get on the ground now or you’re going to get Tased!” Officer Hiraes initially placed his hand on his TASER but then pulled out his handgun. He moved to the front of his patrol vehicle, closer to Mr. Vargas and without cover, and gave multiple commands. About ten seconds later, Mr. Vargas stopped walking and turned towards Officer Hiraes. Mr. Vargas threw the brick at Officer Hiraes. Officer Hiraes stepped towards his left to avoid the brick,

and he fired two rounds from his handgun. One round struck Mr. Vargas in his upper left chest. The brick narrowly missed Officer Hiraes.

Approximately twenty seconds after exiting his patrol vehicle at 6:22:33 a.m., Officer Hiraes shot Mr. Vargas at 6:22:53 a.m. Officers began rendering medical aid at 6:24:26 a.m., after Mr. Vargas sat on the curb. He was transported to the hospital at 6:45 a.m. and pronounced dead at approximately 7:28 a.m.

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), and advises El Centro PD to review and implement the following two recommendations:

## **RECOMMENDATION ONE: TRAINING ON PRE-ENGAGEMENT RESPONSE AND OPERATIONAL SAFETY TACTICS**

Officers Ruiz and Valencia’s initial approach and interaction with Mr. Vargas demonstrated appropriate verbal de-escalation tactics by maintaining a safe distance while trying to gain voluntary compliance without rushing into a physical confrontation. Officers Valencia and Ruiz also appropriately discussed a tactical approach and continued to assess the situation for their own safety. However, when Officers Eid and Hiraes arrived, they did not coordinate with the two other officers before engaging Mr. Vargas.

Upon exiting his patrol vehicle after placing his hand on his TASER, Officer Hiraes quickly switched to pulling his gun and advanced to the front of his patrol vehicle. Officer Hiraes said to Mr. Vargas, “Get on the ground now or you’re going to get Tased!” In response, Mr. Vargas turned towards Officer Hiraes and threw the brick at him. Because Officer Hiraes exposed himself without cover, when Mr. Vargas reached back to throw the brick, Officer Hiraes responded by shooting Mr. Vargas. By closing the distance and positioning himself directly in front of Mr. Vargas, Officer Hiraes diminished his available options, and therefore, did not have time to use distance and cover to further assess the situation, de-escalate, or have alternatives to lethal force.

Four minutes after the first unit verbally engaged with Mr. Vargas, Officers Eid and Hiraes drove past the first unit without communication or coordination, and within 20 seconds of exiting the vehicle, Officer Hiraes shot Mr. Vargas. “Slowing down the response is not only a question of providing a greater likelihood of safety for the subject of the call; it is a matter of officer safety as well. It is better for everyone at the scene if police can de-escalate the incident and *avoid ever reaching a point* where the use of lethal force is necessary.” (Police Executive Research Forum, *Integrating Communications, Assessment, and Tactics: A Training Guide for Defusing Critical Incidents* (Oct. 2016), p. 49) (Original emphasis).

California law requires officers to utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible. (Gov. Code, § 7286, subd. (b)(1).) El Centro PD’s use of force policy in effect at the time of the incident, as well as current policy, further dictates that officers should, “[a]s time and circumstances reasonably permit, ... [f]ormulat[e] a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.” (300.3.6 Alternative Tactics – De-Escalation.) There was no imminent threat of harm based on the description of Mr. Vargas holding a brick and walking away. Given the circumstances, the later responding officers had time to assess the situation and formulate a tactical plan instead of immediately engaging Mr. Vargas. El

Centro PD should ensure it utilizes scenario-based training on pre-engagement tactics, which includes scene assessment and pre-planning with officers on scene.

Moreover, California Penal Code section 13519.10 mandates use of force policies and training guidelines include de-escalation techniques and other alternatives to force, “including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence...” Additionally, agencies are encouraged to provide periodic updates on “use of force scenario training, including simulations of low-frequency, high-frequency, high-risk situations and calls for service, shoot-or-don’t shoot situations, and real-time force option decision-making.” (Pen. Code, § 13519.9, subd. (b)(1); Gov. Code, § 7286, subd. (b)(1).) Time is an essential element of de-escalation as it allows officers the opportunity to communicate with the subject, discuss tactical plans, and, if necessary, disengage. When officers follow their training by maintaining distance and cover, it can reduce the intensity of the situation, minimize the need to use force, including deadly force, and improve safety outcomes for subjects and officers.

El Centro PD should conduct further scenario-based training on pre-engagement response and operational safety tactics, including but not limited to, ensuring less-lethal options are readily available and coordinating among responding officers, when feasible, who will be assigned with less-lethal and lethal weapons. Officers should slow down the response, using time, distance, and cover, to ensure the officers are, when feasible, utilizing alternative tactics to overcome resistance and minimize the need for force as required by law.

## **RECOMMENDATION TWO: AMEND USE OF FORCE POLICY TO INCLUDE THE MANDATORY DUTY TO ENGAGE IN DE-ESCALATION WHEN FEASIBLE**

California law requires that each law enforcement agency utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible and include this in its use of force policy. (Gov. Code, § 7286, subd. (b)(1).)

Currently El Centro PD’s Use of Force policy No. 300.3.6 (Alternative Tactics – De-Escalation) states in relevant part:

...when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.

El Centro PD should amend its use of force policy to (1) make clear de-escalation is required when feasible and (2) include “a requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.” (Gov. Code, § 7286, subd. (b)(2).) The use of force

policy and guidelines should further include a non-exhaustive list of specific de-escalation tactics and techniques that an officer can employ, including examples such as verbal persuasion, warnings and advisements, the use of other resources, such as crisis intervention teams, and avoiding language or behavior that would tend to escalate the stress or tension in the environment.

The Police Practices Section recommends that El Centro PD amend its current use of force policy to ensure it makes it clear that de-escalation is mandatory when feasible, and that the level of force is proportional to the seriousness of the suspected offense. The agency should further review its other training bulletins, procedures, and training related to crisis intervention to ensure that each is consistent with existing law.