



C A L I F O R N I A

DEPARTMENT OF JUSTICE

**Report on the Investigation into the
Death of John Romero on December 8, 2022**

San Diego AB 1506

April 2026

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INVESTIGATION OF OFFICER INVOLVED SHOOTING

BACKGROUND—AB 1506

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

AB 1506, signed into law on September 30, 2020 and effective July 1, 2021, provides the California Department of Justice (DOJ) with an important tool to directly help build and maintain trust between law enforcement and the communities they serve by creating a mandate for an independent, statewide prosecutor to investigate and review officer-involved shootings of unarmed civilians across California. DOJ investigates and reviews, for potential criminal liability, all such incidents covered under AB 1506, as enacted in California Government Code section 12525.3. Where criminal charges are not appropriate, DOJ is required to prepare and make public a written report, like this one, communicating:

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

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

PRIVACY STATEMENT

This report includes redactions of the names and other identifying information of witnesses and any family members of the decedent. The public interest in such information is limited, as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

For reasons related to privacy, as well as readability of this report, the witnesses will be indexed as follows:

- Witness 1 (W-1), 911 Caller
- Witness 2 (W-2), Neighbor 1
- Witness 3 (W-3), Neighbor 2
- Witness 4 (W-4), Neighbor 3
- Witness 5 (W-5), Neighbor 4
- Witness 6 (W-6), Neighbor 5
- Witness 7 (W-7), Neighbor 6
- Witness 8 (W-8), Neighbor 7

INTRODUCTION

On December 8, 2022, San Diego Police Department (SDPD) Officers Gregory Bergman, Michael Thornton, and Jonathan Estrada shot John Ray Romero while responding to a call for service for male subject pointing a firearm to his own head. DOJ assumed jurisdiction and investigated this shooting on December 8, 2022. Mr. Romero died from the injuries he sustained during the shooting. Subsequent investigation determined the apparent firearm in Mr. Romero's possession was an airsoft gun.

DOJ investigated and reviewed the OIS pursuant to Government Code section 12525.3 (enacted by AB 1506). This report is the final step in DOJ's review of the fatal OIS of Mr. Romero. The scope of this report is limited to determining whether criminal charges should be brought against the involved officers and offering possible policy and practice recommendations as required by Government Code section 12525.3, subdivision (b)(2). The review does not encompass or comment on any potential administrative or civil actions. Based on the criminal investigation, review of evidence, and evaluation of the case, we have determined that there is insufficient evidence to support the filing of criminal charges against Officers Bergman, Thornton, or Estrada.

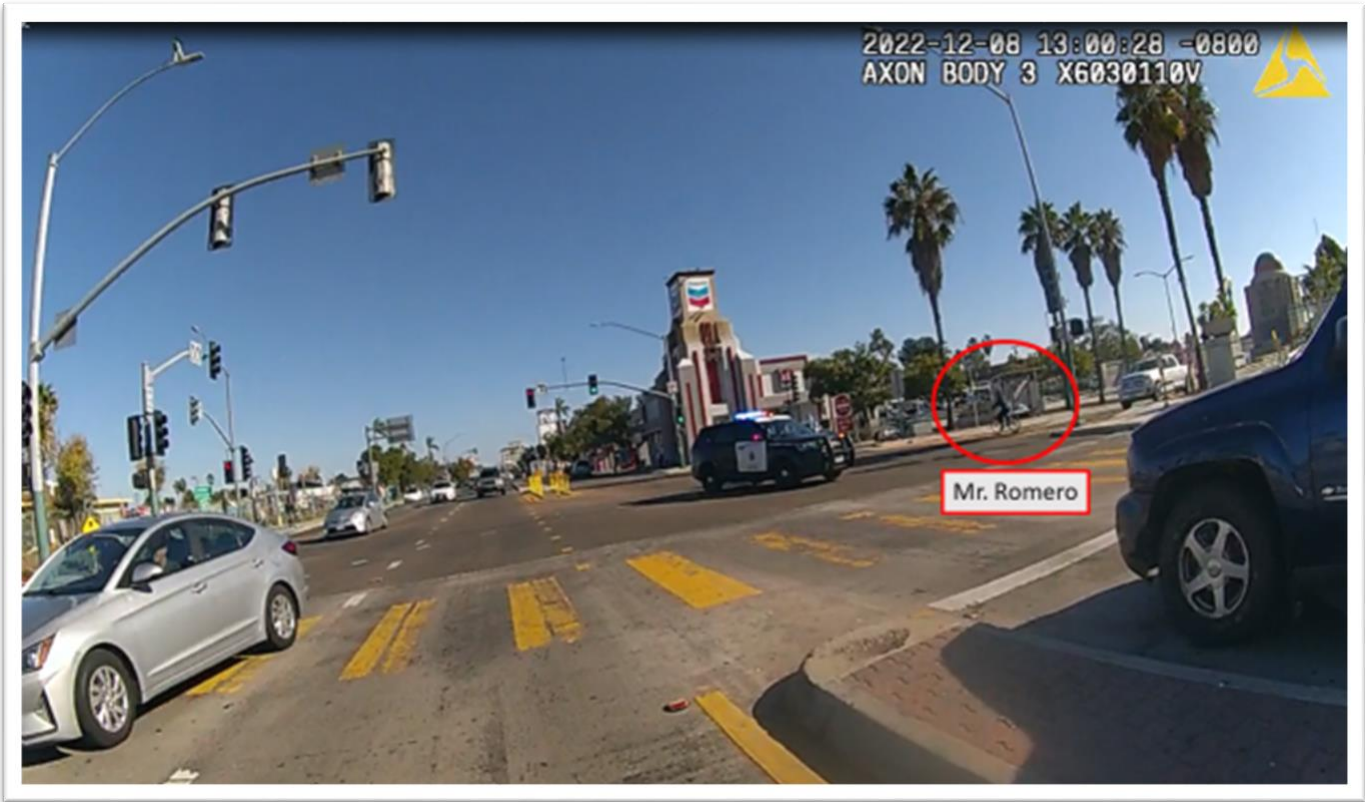
SUMMARY OF INCIDENT

On December 8, 2022, at approximately 12:55 PM, SDPD communications received a 911 call from W-1 stating that Mr. Romero was pointing a handgun at his head at 4211 Central Avenue in San Diego. W-1 stated that Mr. Romero was heading toward University Avenue on a bicycle.

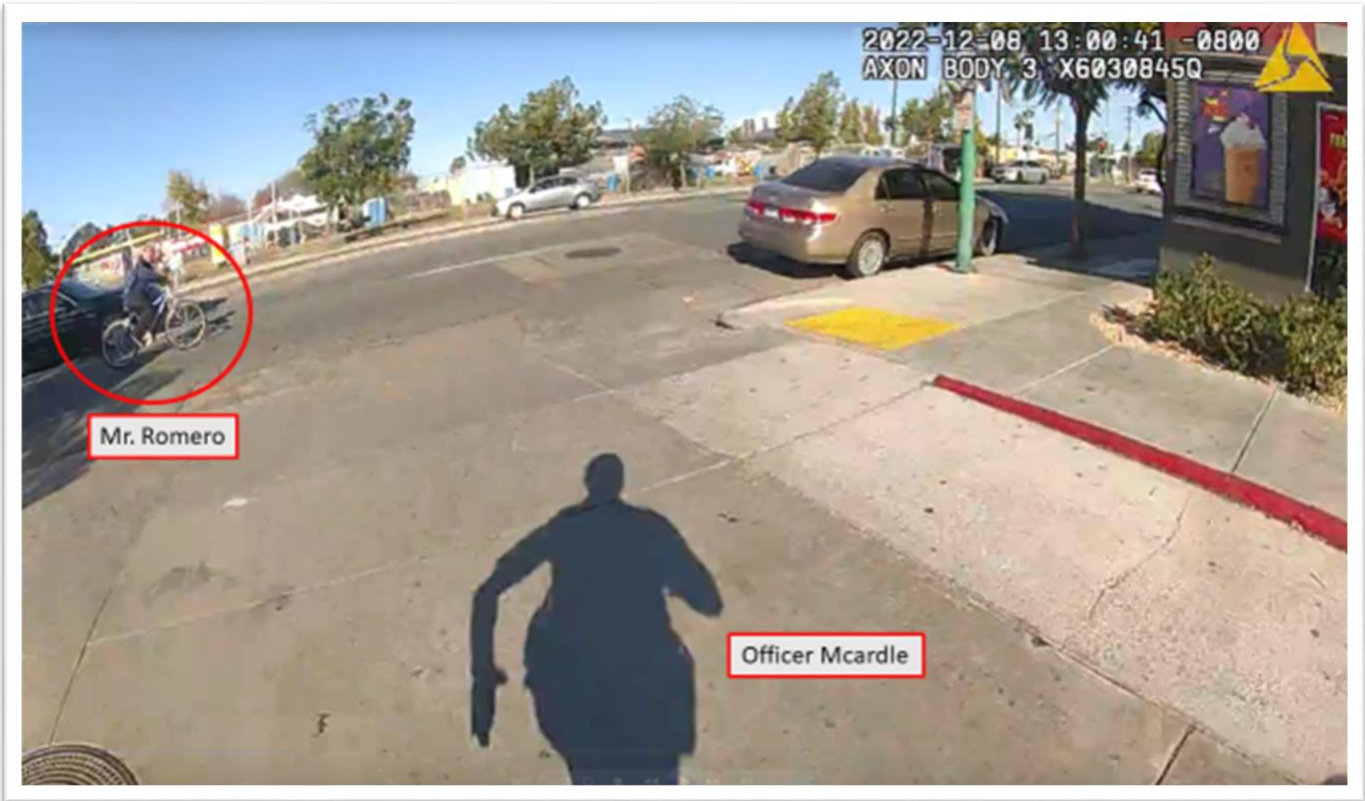
SDPD officers arrived on scene and located Mr. Romero riding his bicycle westbound on University Avenue toward 39th Street. Officers Thornton, Bergman, and Thim observed Mr. Romero change direction and head eastbound on his bicycle, riding on University Avenue. At approximately 1:00 PM, Officers Ell and Mcardle stopped their vehicle east of Mr. Romero and got out of their patrol vehicle in order to detain Mr. Romero. They were unable to catch up to Mr. Romero on foot. Officers Ell and Mcardle followed Mr. Romero toward the 4000 block of 42nd Street. The officers did not see a firearm in Mr. Romero's hands at that time.



Overview of Mr. Romero's path to the OIS location



Footage from Officer Bergman's BWC – Mr. Romero going eastbound on University Avenue



Footage from Officer Mcardle's BWC – Officer Mcardle pursuing Mr. Romero on foot

At approximately 1:01 PM, Mr. Romero rode to an apartment complex located at 4042 42nd Street and got off his bicycle. He then took out what appeared to be a firearm and pointed it at his head. SDPD officers Thornton and Engel gave Mr. Romero multiple commands to drop to 'drop the gun' and to put his hands up. Mr. Romero did not comply. Mr. Romero backed away on foot from officers and made his way toward the alley behind the apartment complex.



Footage from Officer Thornton's BWC – Mr. Romero holding an apparent firearm to his head (Officer Chris Engel is on the left in the green shirt; Officer Fil Tapia is on the right wearing a black shirt)



Footage from Officer Thornton's BWC – enlarged photo of Mr. Romero holding what appeared to be an apparent firearm to his head

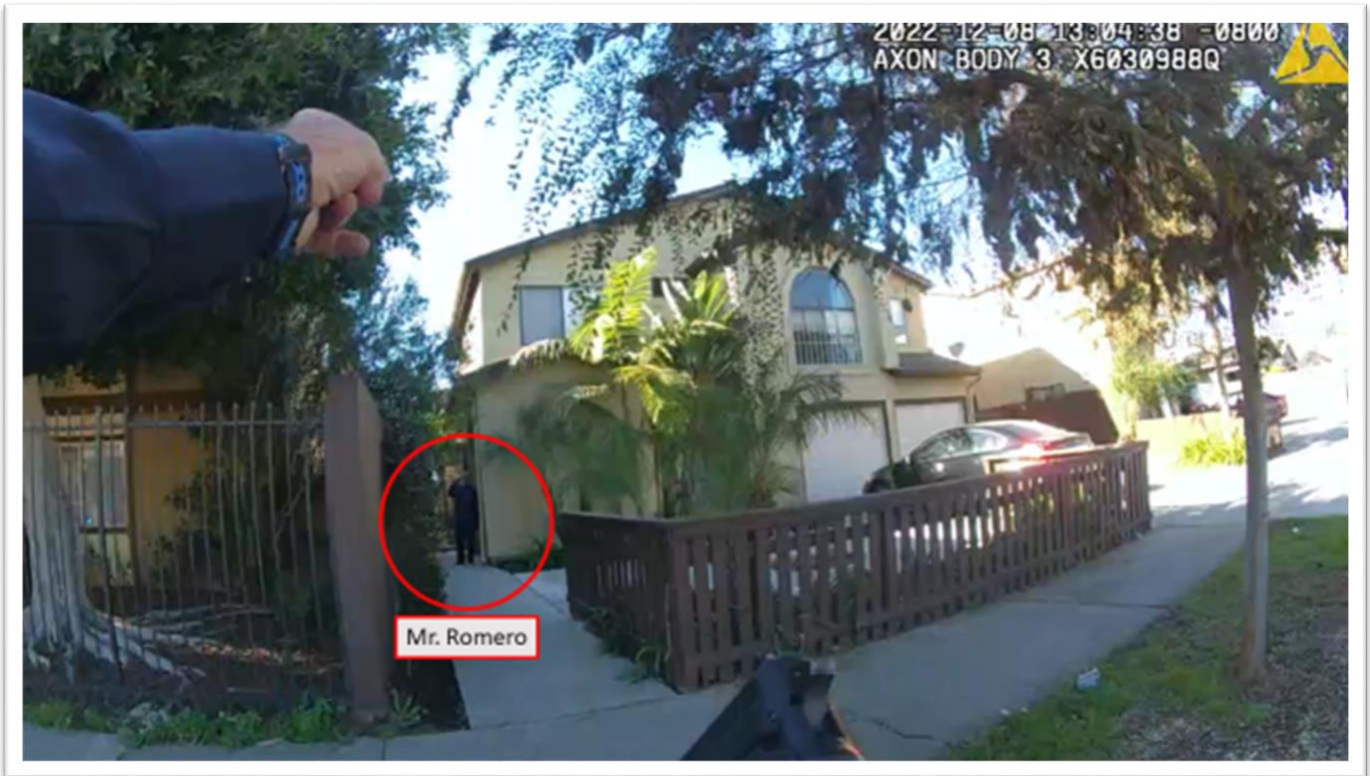
Once in the alley, Mr. Romero turned and walked northbound. At approximately 1:02 PM, SDPD Officers Ell and Mcardle contacted Mr. Romero in the alley. Officer Ell gave Mr. Romero commands to drop the handgun. Mr. Romero replied, "I don't care!" Mr. Romero then got on his knees with his hands in the air, stating, "Shoot me!" Officer Ell responded, "I don't want to shoot you, bro, please." Officer Mcardle stated, "Nobody wants to do that, buddy." Mr. Romero continued to shout, "Shoot me!" Mr. Romero then stood up and walked westbound to the rear of the apartment building located at 4070 42nd Street. The officers lost sight of him momentarily.



Enhanced Footage from Ofc. Ell's BWC – Enlarged photo of Mr. Romero on his knees at the time when he stated, "Shoot me!"

Mr. Romero reappeared in front of 4070 42nd Street and pointed an apparent firearm toward his head. He started to walk in the direction of the main driveway at 4070 42nd Street. Officer Janzen was the first to spot Mr. Romero, on the side of 4070 42nd Street, holding the apparent firearm to his head. Officer Janzen gave Mr. Romero multiple commands to "drop the handgun," but Mr. Romero stated "no" and to "kill him." Mr. Romero then started walking slowly towards the right side of a parked car in the driveway.

Once Mr. Romero reached the right side of the parked car, he continued to yell at SDPD officers to kill him. At that point, Officers Thornton, Thim, Estrada, Tena, Mattis, Romero, Janzen, Bergman, and Fryer took cover behind vehicles parked in the street; they had their handguns drawn. SDPD officers continued to give Mr. Romero commands to drop his handgun. They also told Mr. Romero that they wanted to know who he was so that they could get him help. Mr. Romero refused any help and refused to drop his apparent firearm.



Footage from Officer Janzen's BWC – Mr. Romero holding an apparent firearm to his head on the side of the apartment building located at 4070 42nd Street



Footage from W-2's video – Mr. Romero holding an apparent firearm to his head while Officer Romero points the bean bag shotgun at Mr. Romero

SDPD officers continued to tell Mr. Romero that they wanted to help him, but Mr. Romero kept stating, “Kill me, kill me, shoot me, shoot, shoot, shoot, shoot, shoot, shoot me, shoot me!” Mr. Romero walked further down the driveway toward the sidewalk with the apparent firearm still pointed at his head. SDPD officers continued to command Mr. Romero to put down his handgun and continued to tell Mr. Romero that they wanted to help him. Mr. Romero kept walking closer to the SDPD officers and refused to obey the SDPD officers’ commands to drop his handgun. Mr. Romero continued to yell “kill me” at the officers for approximately two minutes.



Footage from W-6’s video – Mr. Romero with apparent firearm to his head

At approximately 1:08:03 PM, Officer Romero fired the first of three bean bag rounds at Mr. Romero. After the second bean bag round, Mr. Romero ran behind the car parked in the driveway.

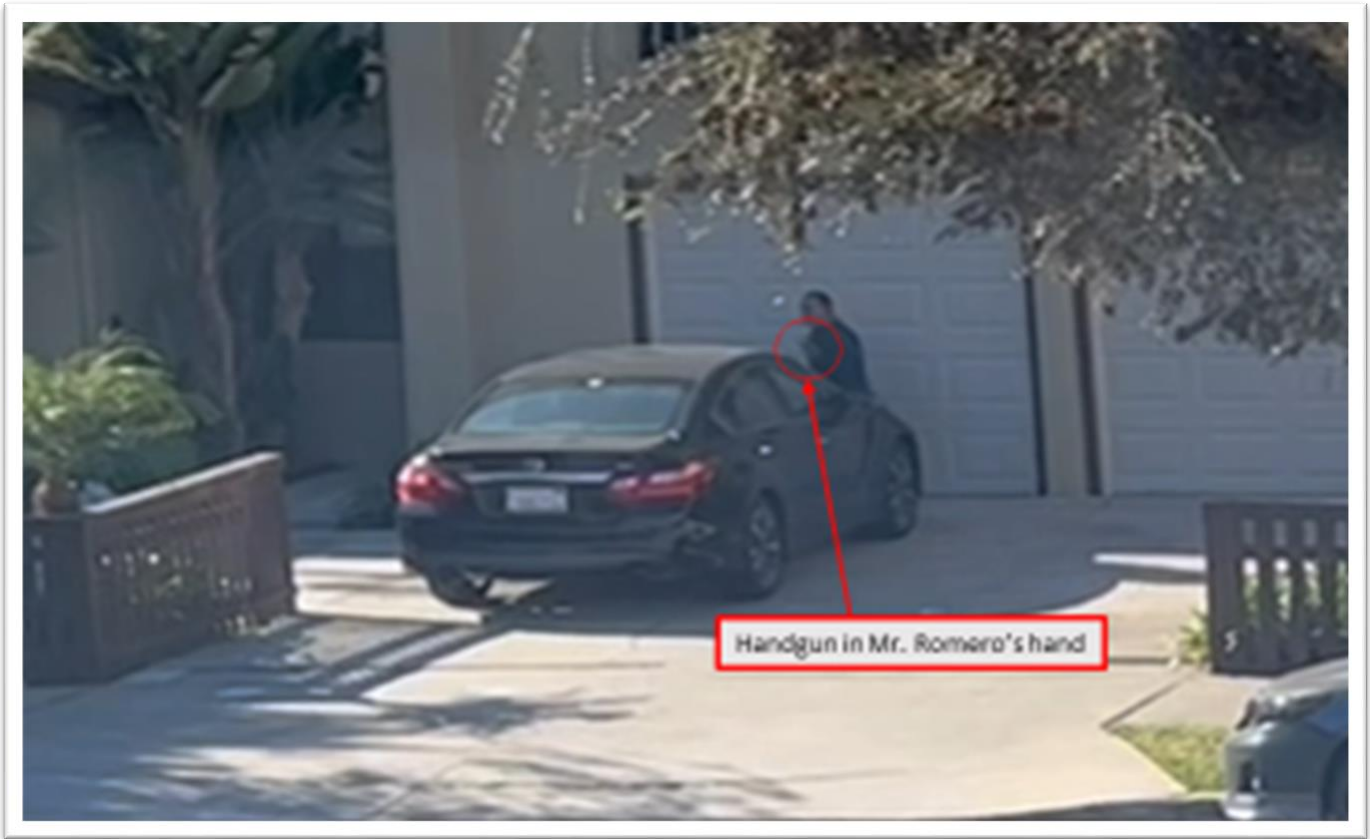


Footage from Officer Janzen's BWC – 1st bean bag round being fired by Officer Romero

Mr. Romero was crouched over while running to take cover behind the parked car. His apparent firearm was in his left hand. Once he was between the parked car and the garage, Mr. Romero started to raise his apparent firearm from his waistline.



Image from W-6's video – Mr. Romero raising his apparent firearm from his waistline



Enlarged image from W-6's video – Mr. Romero raising his apparent firearm from his waistline

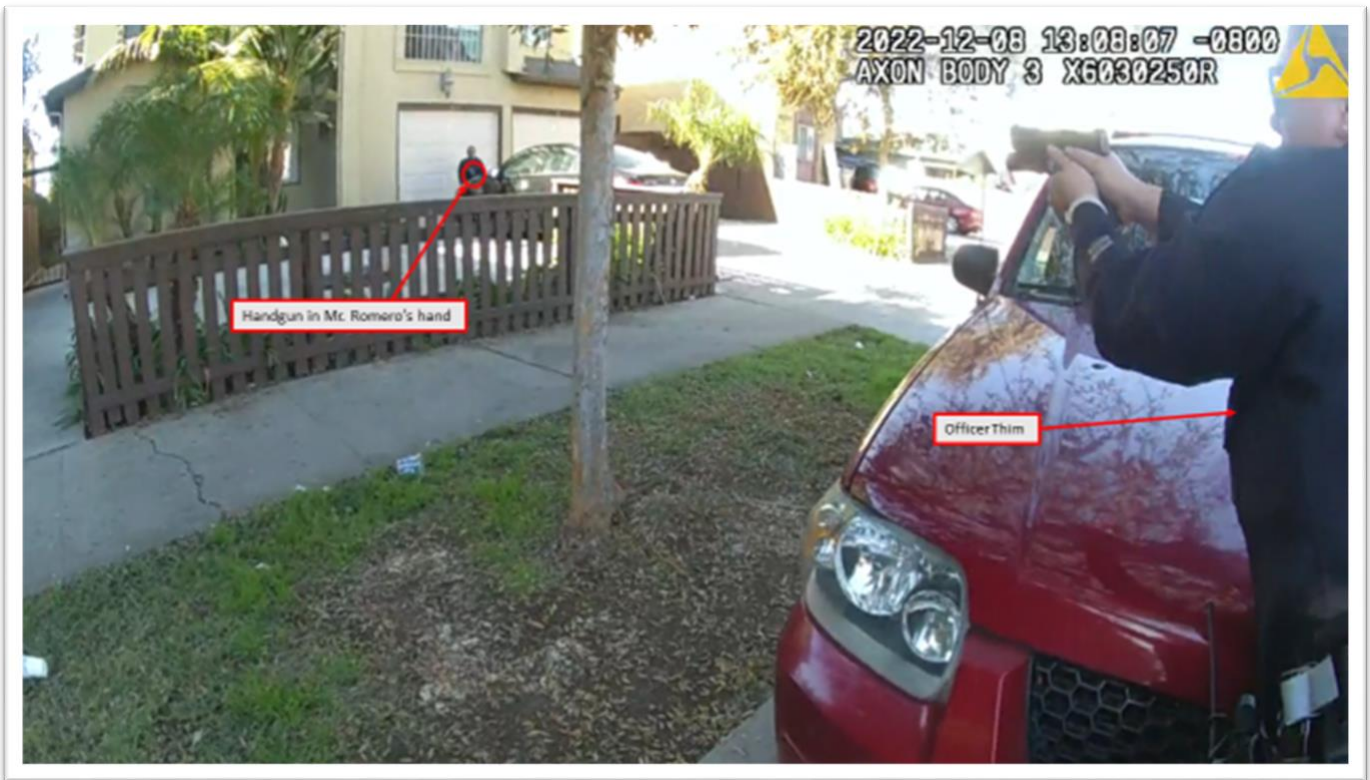


Image from Officer Thornton's BWC – Mr. Romero presenting his handgun

At approximately 1:08:08 PM, Mr. Romero raised his apparent firearm , and Officers Bergman, Estrada, and Thornton fired at Mr. Romero. Officers Bergman and Thornton fired with handguns while Officer Estrada fired at Mr. Romero with a rifle. As the first volley of rounds was fired by the SDPD officers, Mr. Romero crouched down behind the parked car.

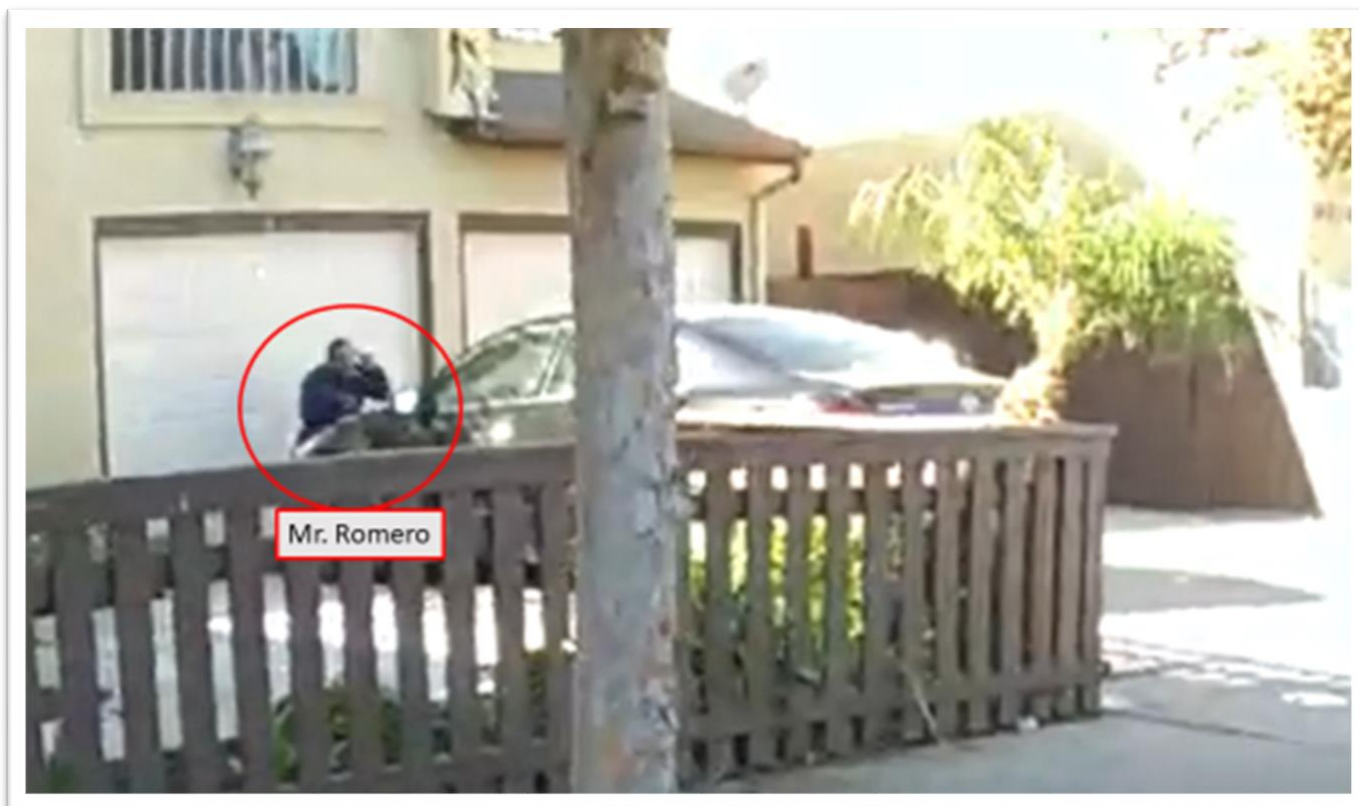


Image from Officer Thornton’s BWC – Mr. Romero crouching down during the first volley of rounds fired by SDPD officers

At approximately 1:08:12 PM, after crouching down behind the vehicle, Mr. Romero lifted his head and peered over the hood of the car in the driveway while raising his apparent firearm. As Mr. Romero lifted his head, SDPD Officers Thornton, Estrada, and Bergman fired a second volley of shots.

After the second volley, Mr. Romero fell to the ground between the garage and the parked car. SDPD officers confirmed that Mr. Romero was not moving. The officers moved up the driveway, to the left side of the parked car. When they reached Mr. Romero, the officers handcuffed him. They did not render medical aid because Mr. Romera had a visible gunshot wound to his forehead. The officers found an apparent firearm on the ground next to Mr. Romero’s right hand. When the gun was examined more closely, it was found to be an airsoft gun. The airsoft gun did not have any markings indicating that it was not a real handgun.

Mr. Romero was struck twice by gunshots, once in his head and once on his right arm. At approximately 1:15 PM, San Diego Firefighter Paramedics Chad Webber, Jonathan Harris, Matthew Toma, and Erik Kinnamon arrived on scene. Firefighter Paramedic Kinnamon pronounced Mr. Romero dead.

An SDPD Psychological Emergency Response Team (PERT) was present but did not leave the SDPD vehicles because the scene was not safe due to Mr. Romero holding the apparent firearm throughout the course of the incident.

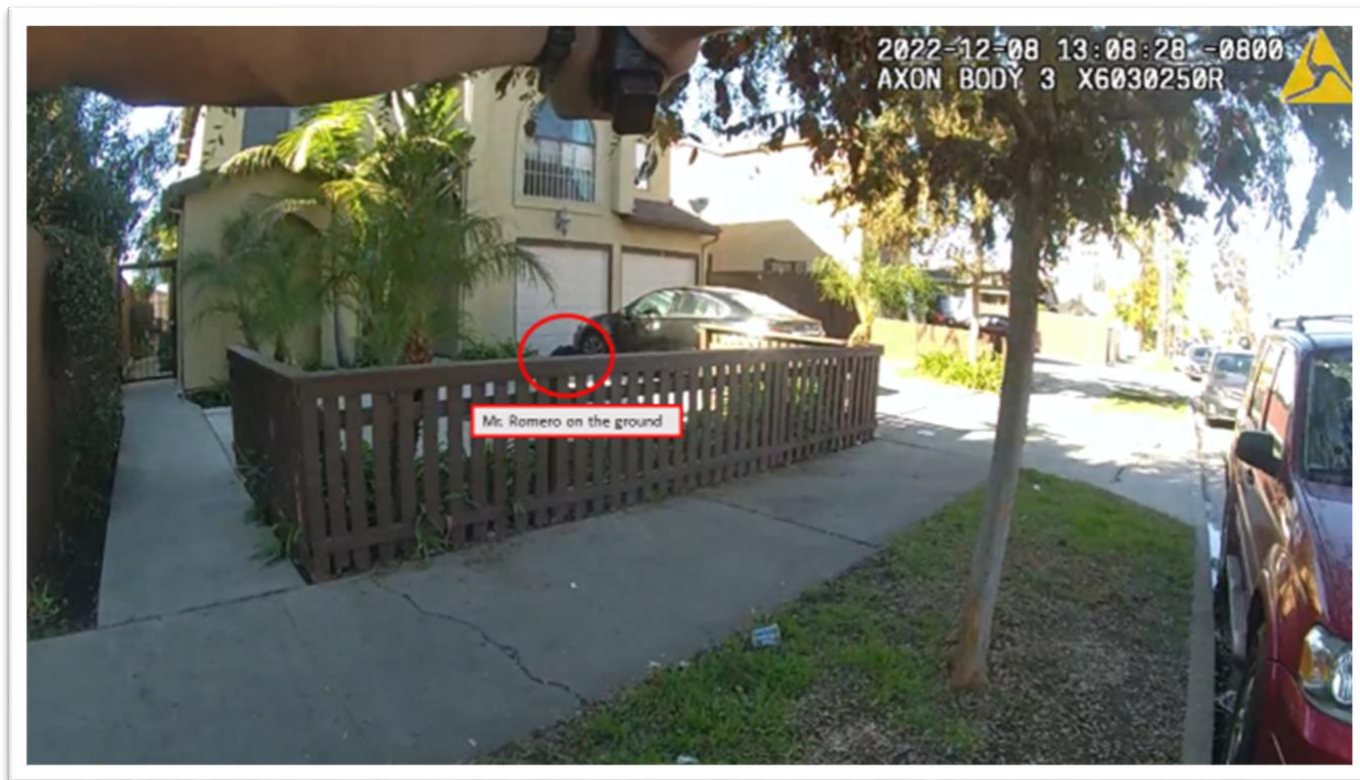


Image from Officer Thornton's BWC – Mr. Romero on the ground between the parked vehicle and garage door.

INVESTIGATION

Evidence Reviewed

Following Mr. Romero's death, DOJ received and reviewed extensive investigation materials related to this OIS, including SDPD's complete investigation files. DOJ reviewed 30 witness interviews (eight witness officers, two involved officers, and 20 civilians); photographs of the crime scene and other evidence; video recordings (59 files from body-worn cameras); civilian cell phone footage (footage from three witnesses); communications evidence (one 911 call, printouts from the computer aided dispatch system and corresponding radio calls); physical evidence (including shell casings, fired bullet projectiles, and items obtained from the scene); and an autopsy report.

DOJ Response

On December 8, 2022, after the OIS occurred, San Diego County Sheriff's Department (SDCSD) detectives were notified of the OIS and responded to the scene. Thereafter, DOJ's California Police Shooting Investigation Team (CaPSIT) was also notified, and DOJ special agents (SA) and special agent supervisors responded to the scene. SDPD personnel walked the DOJ team through the shooting scene and showed them the location of the OIS. DOJ then conducted an independent and thorough investigation of the facts and circumstances relating to this OIS.

Crime Scene Description

W-1 first saw Mr. Romero at 4211 Central Avenue in San Diego. The OIS occurred in the front driveway of an apartment complex located at 4070 42nd Street in the City of San Diego.



Map of initial 911 call and OIS location

Evidence Recovery

SDCSD detectives and crime lab technicians from SDCSD began processing the scene on December 8, 2022. The crime lab technicians recovered Mr. Romero's airsoft gun from the concrete courtyard. Fifteen discharged nine-millimeter cartridge casings were recovered, as were 14 fired bullets, four discharged .223 cartridge casings, three 12-gauge shotgun shells, and three bean bag rounds. Mr. Romero's blue bicycle was recovered from the alleyway where he had discarded it during the pursuit. Photographs were taken of the damage to the car Mr. Romero crouched behind (W-2's black Nissan Altima) and to the garage door behind the Nissan Altima.



Mr. Romero's airsoft gun without orange tip

Video Recordings

In total, SDPD provided 59 video files from body-worn cameras. DOJ reviewed the videos. SDCSD investigators also searched for surveillance cameras affixed to nearby homes or businesses; while several surveillance cameras were located, none captured the OIS incident. SDCSD also canvassed the area for eyewitnesses and cell phone camera recordings of the OIS. SDCSD investigators were able to obtain cell phone recordings of the OIS from W-2 and W-6.

Body-Worn Cameras

Of the 59 video files from body-worn cameras provided to DOJ, nine captured the OIS incident. All involved officers, including Officers Bergman, Estrada, and Thornton, had their body-worn cameras activated during their drive to the scene, at the OIS, and after the OIS. Other responding officers who arrived at the scene after the shooting also wore and activated their body-worn cameras.

Witness Cell Phone Videos

W-2 and W-6 recorded cell phone video of the OIS. W-2 was in an apartment on the 2nd floor when the OIS occurred. W-2 recorded from the 2nd floor window of the building where the OIS occurred, facing the street, and was able to capture the initial stand-off between SDPD Officers and Mr. Romero. Once the shooting commenced, W-2 took cover and was not able to record the entire OIS due to the angle of

the cell phone. W-6 was across the street from the OIS location, and as was able to record the entire OIS. The cell phone recordings are consistent with the description of the OIS set forth above.

Communications Evidence

DOJ obtained and reviewed copies of dispatch calls, 911 calls, radio communications, Computer Aided Dispatch (CAD) logs/records, and message notifications related to the incident. SDPD Detective Cody Turner obtained copies of the radio transmissions and printouts of the CAD system for calls related to the OIS incident on December 8, 2022. The CAD printouts are consistent with the officers' radio transmissions.

Medical Attention

Firefighter Paramedics Chad Webber, Jonathan Harris, Matthew Toma, and Erik Kinnamon responded to the OIS. When they arrived on scene, they noticed that Mr. Romero was unresponsive, pulseless, and not breathing. Mr. Romero was pronounced dead by firefighter paramedics at 1:15 PM.

Autopsy

Dr. Peter Conner, M.D., a Forensic Pathology Fellow employed by the San Diego County Medical Examiner's Office, conducted the autopsy of Mr. Romero on December 10, 2022, at approximately 9:53 AM. Dr. Conner determined the cause of death to be gunshot wounds to the head and right arm. No projectiles were recovered from Mr. Romero's body during the autopsy.

Toxicology report showed positive findings for ephedrine, phenylpropanolamine, amphetamine, and methamphetamine.

INTERVIEWS OF INVOLVED POLICE OFFICERS

Officers Bergman, Estrada, and Thornton discharged their firearms at Mr. Romero. Officer Romero discharged his less lethal bean bag firearm. These four officers are considered involved officers for purposes of this report. Officer Estrada declined to provide any statement. Officers Janzen, Mattis, Thim, Tena, and Fryer did not discharge their firearms against Mr. Romero and are considered witness officers.

Police officers, like all individuals, have the right to remain silent and decline to answer questions in the face of official questioning. (*Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 714; see generally *Miranda v. Arizona* (1966) 384 U.S. 436.) Public employees, including police officers, may be compelled by an employer to answer questions for administrative purposes, but the use of such statements in criminal proceedings against the employee is prohibited. (*Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 827-828, citing *Lefkowitz v. Turley* (1973) 414 U.S. 70, 77-79, *Garrity v. State of New Jersey* (1967) 385 U.S. 493, 500.) No compelled statements were made by Officer Estrada.

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.

Officer James Romero

On December 29, 2022, DOJ investigators Sam Richardson, Paul Zurawski, Michael Wyatt, and Alvin Hernandez interviewed Officer Romero. Officer Romero gave a voluntary statement with his attorney present.

Officer Romero stated that as he was heading back from Central Jail, he heard a radio call stating there was a man, later identified as Mr. Romero, holding a firearm to his head. Officer Romero was given Mr. Romero's location and decided to drive to that address. Shortly thereafter, he heard another SDPD officer broadcast that Mr. Romero had a firearm. When he arrived at 42nd street, he knew that other officers had lethal force "covered," so he decided to ready the bean bag shotgun. After he retrieved the bean bag shotgun, he joined the other officers.

When he arrived at the location where other officers were staged, he heard Officer Janzen say that Mr. Romero was right next to them. Officer Romero loaded four bean bag rounds into his shotgun. He was southeast of Mr. Romero and moved to get a better view. Officer Romero saw Mr. Romero with a firearm to his head and heard other officers yelling for Mr. Romero to put his firearm down. Officers asked Mr. Romero for his name and told Mr. Romero that they did not want to shoot him. The officers were trying to build rapport with Mr. Romero to get him to put his firearm down, detain him, and get him evaluated. Officer Romero was also yelling for Mr. Romero to put down his firearm, and asked Mr. Romero for his name. Mr. Romero did not comply and kept saying, "Shoot me, shoot me!"

Mr. Romero did not put down his firearm and switched the firearm from his right to left hand. Once that occurred, Officer Romero heard Sergeant Tena tell the officers that they were going to use the bean bag shotgun. Officer Romero fired the first bean bag, which hit Mr. Romero in the stomach area. He then fired a second bean bag but could not say where it hit Mr. Romero. Officer Romero shot the third bean bag but missed Mr. Romero.

Officer Romero used the bean bag because Mr. Romero had a firearm to his own head. He thought that Mr. Romero would point that firearm at the officers. He was concerned that Mr. Romero might kill himself, residents in the area, and children at the nearby school. He wanted to de-escalate the situation because he did not want Mr. Romero to shoot himself or other police officers. He was afraid for himself, the people around him, and for Mr. Romero.

After Officer Romero fired the third bean bag, he saw Mr. Romero still holding the firearm in his hand. Mr. Romero ran behind the parked vehicle, where Officer Romero lost sight of him. Officer Romero stepped back, and that is when he heard gunfire.

Officer Michael Thornton

On December 29, 2022, DOJ investigators Alan Oratovsky, Paul Zurawski, Alvin Hernandez, and Michael Wyatt, and Samuel Richardson interviewed Officer Thornton. Officer Thornton gave a voluntary statement with his attorney present.

Officer Thornton heard a radio call concerning a man riding a bicycle who was holding a firearm to his head. He turned southbound on Marlborough Avenue and was able to pull up to about a block and a half from the call location. He and Officer Bergman arrived around the same time. Officer Bergman was able to see Mr. Romero, but because Officer Thornton was in his vehicle, behind Officer Bergman's vehicle, he was not able to see Mr. Romero. Officer Thornton followed Officer Bergman southbound on Central Avenue towards Mr. Romero. As they traveled southbound, they came to Teralta Park, where the road came to a dead end. Mr. Romero cut through the park on his bicycle, so Officers Thornton, Bergman, and Thim drove their police vehicles through the park to contact Mr. Romero.

Once across the park, Officer Bergman lost sight of Mr. Romero. This caused Officer Thornton and the other officers to drive around without a direction for about 10 to 15 seconds. Officer Thornton then heard over the radio that an officer had seen Mr. Romero at the 15 freeway overpass and University Avenue. Officer Thornton saw Mr. Romero on the overpass. Mr. Romero continued to ride his bicycle in circles on the overpass. Officer Thornton did not see a gun in Mr. Romero's hand. Officer Thornton then parked his vehicle and tried to detain Mr. Romero on foot, but he was unsuccessful. Officer Thornton got back in his vehicle and continued to follow Mr. Romero. He followed Mr. Romero as he went eastbound on University towards Marlborough Avenue.

When Officer Thornton arrived on 42nd Street, he saw two detectives get out of their vehicles and start to approach Mr. Romero. Believing that Mr. Romero might have been armed with a handgun, Officer Thornton drew his handgun and approached the detectives who had confronted Mr. Romero. Officer Thornton saw Mr. Romero holding a handgun to his head and yelling, "Kill me, kill me, kill me!" Officer Thornton did not know whether Mr. Romero was under the influence of a controlled substance or mentally ill. He gave Mr. Romero multiple commands to drop his firearm. Mr. Romero did not comply and backed up towards the west alley. At that point, Officer Thornton lost sight of Mr. Romero.

Once he lost visual of Mr. Romero, Officer Thornton moved half a block north to cover that area. He heard a radio broadcast that other officers had contact with Mr. Romero, that he was not complying with their commands, and that he had a firearm in his hand. Officer Thornton saw Mr. Romero peek through another alley and told him to drop his firearm. Mr. Romero did not comply. Officer Thornton heard officers in the alley making verbal commands to Mr. Romero. Officer Thornton took cover behind a vehicle on the road. As he was doing that, Officer Thornton heard Officer Jansen yell that he was with Mr. Romero. Officer Thornton moved towards Officer Jansen. He saw Mr. Romero standing in the driveway of a townhouse. Officer Jansen gave multiple commands for Mr. Romero to drop his gun; in response, Mr. Romero yelled, "Kill me!"

Officer Thornton knew that Mr. Romero wanted to commit suicide or have officers assist him with that. At that point, Officer Thornton stated that he tried to have a conversation with him and told Mr. Romero that he wanted to get him resources; he was attempting to de-escalate the situation and build rapport with Mr. Romero, but it did not work.

Mr. Romero then moved forward past the bumper of the parked vehicle in the driveway, at which point Sergeant Tena gave the command to use bean bag rounds on Mr. Romero. Officer Thornton believed that officers were too far away from Mr. Romero to use their Tasers or pepper spray. Officer Romero fired three bean bag rounds at Mr. Romero, but Mr. Romero did not drop his firearm. Mr. Romero ran behind a parked vehicle in the driveway between Mr. Romero and SDPD officers.

Officer Thornton told the other officers that they "need to draw a line in the sand" to establish when to use less lethal or lethal force on Mr. Romero because in the surrounding area, there were residential complexes and a school. It was a busy part of the day, so the officers could not release Mr. Romero from the driveway while he was still armed with a handgun.

Officer Thornton then saw Mr. Romero stand up from behind the parked car and swing his left arm upwards as if to present a firearm. Officer Thornton thought Mr. Romero was going to kill him, other officers, or bystanders. At that point, Officer Thornton fired two rounds at Mr. Romero. Mr. Romero ducked down and then got back up. Officer Thornton fired two more rounds at Mr. Romero because he

thought Mr. Romero was coming back up to finish what he started. Officer Thornton indicated he perceived Mr. Romero's actions as life-threatening behavior toward him, his partner, or someone else. Once Officer Thornton perceived the threat was gone, he stopped firing.

Officer Thornton stated that he did not know whether he had hit Mr. Romero, so he moved to his left to get a better look. He saw Mr. Romero lying on the ground with the handgun out of his hand. Officer Thornton told the other officers to cease fire, that the firearm was out of Mr. Romero's hands, and that he was going to hold his position.

Sergeant Tena formed a contact team that consisted of himself, Officers Thornton, Bergman, Jansen, and Mattis. The officers moved closer to Mr. Romero, kicked the firearm away from him, and saw that there was a gunshot wound to Mr. Romero's head. Mr. Romero appeared to be dead.

Officer Thornton had fired his handgun because Mr. Romero had a gun, was acting erratic, not following commands, bean bag rounds were fired at Mr. Romero to no avail, Mr. Romero was not letting go of his firearm, Mr. Romero ran behind the parked vehicle, presented his firearm again, and that Officer Thornton feared that Mr. Romero was going to kill him or one of his partners. Officer Thornton added that he was extremely fearful in that situation.

Officer Gregory Bergman

On December 8, 2022, SDCSD Detectives Alexander Arvanitis and Brent Spencer interviewed Officer Bergman with his attorney present. Officer Bergman's statement was voluntary.

Officer Bergman was working on a report when he heard a radio call in which a female caller reported that she saw a man riding on a bicycle while holding a handgun to his head. The caller described the man as Hispanic, wearing a blue sweater and dark pants, and riding southbound in the 4200 block of Central Avenue. Upon hearing the radio call, Officer Bergman stated that he left his location and went to the call location because it was only a couple of blocks from his location. Officer Bergman headed southbound on Central Avenue to intercept Mr. Romero. As he arrived at the southern end of the cul-de-sac on the 4100 block of Central Avenue, Officer Bergman saw Mr. Romero on his bicycle riding westbound across Teralta Park. Officer Bergman did not see a handgun in Mr. Romero's possession at that time. Officer Bergman drove across the park to get in contact with Mr. Romero, but lost sight of him. Officer Bergman heard over the radio that Mr. Romero was spotted at the bridge over the 15-freeway on University Avenue. Officer Bergman drove to that location and saw Mr. Romero riding his bicycle erratically, weaving in and out of traffic. Officer Bergman could not see a handgun in Mr. Romero's hands.

Officer Bergman saw Mr. Romero riding rapidly eastbound and decided to try to cut him off. Officer Bergman thought Mr. Romero was a hazard and a danger to civilians due to his behavior. Officer Bergman heard over his radio that Mr. Romero had a firearm to his head while on his bike. Officer Bergman stated that once he heard that, he believed, based on Mr. Romero's behavior, that he might shoot at officers, civilians, or induce a shooting.

Officer Bergman heard over the radio that Mr. Romero was headed north up an alley, so he placed himself at Orange Avenue at the north end of 42nd Street. Officer Bergman then heard over his radio that there was a "hot stop" in progress, which meant that other police officers had their firearms pointed at Mr. Romero, were giving him commands to drop his gun, and were trying to take him into custody. Once Officer Bergman heard the radio traffic, he got back into his patrol vehicle and headed

to their location. As he drove south on 42nd Street, Officer Bergman saw other officers with their firearms drawn. He heard on the radio that Mr. Romero was running eastbound through an alley.

Officer Bergman positioned himself at 4076 42nd Street, faced westbound with his firearm drawn, and waited for Mr. Romero. Because Mr. Romero had refused to comply with officers' commands to drop his gun, Officer Bergman feared that Mr. Romero would "pop out ... just start shooting at me, kill me, or another officer." Officer Bergman heard another officer say that Mr. Romero was one property south of where he was, and then, 10 to 15 seconds later, he heard another officer state that Mr. Romero was at his location.

Officer Bergman saw Mr. Romero "pop out" from behind the property holding a silver firearm to his head with his right hand. Because he was out in the open, Officer Bergman took cover behind a red SUV and started yelling, "Drop the gun! Drop the gun!" Officer Bergman stated that other officers yelled to drop the firearm and that officers did not want to shoot him. Officer Bergman heard other officers ask Mr. Romero how they could help him. When the officers were giving Mr. Romero commands, Mr. Romero yelled, "Shoot me, shoot me!"

Mr. Romero walked from behind a parked car, still holding the firearm and yelling, "Shoot me, shoot me!" Officer Bergman continued to command Mr. Romero to drop his firearm, but Mr. Romero kept walking towards the end of the car. Officer Bergman said out loud, "I'm going to have to shoot this guy. I've got to shoot this guy. This is getting way too dangerous. This is way too dangerous. He could at any moment put his arm out and get a lucky shot. He could shoot us like this is – this can go bad really, really quickly. Like this is way too dangerous. I need to shoot it – I need to shoot him. I've got to – I'm going to shoot him." There was another officer behind Officer Bergman telling him to relax. Officer Bergman said, "No, I need to shoot this guy, like I – because if I fail to act and I don't shoot him, he's going to bring the gun forward and possibly shoot me, shoot another officer, shoot an innocent bystander." Another officer kept telling Officer Bergman to relax. He heard someone say that they were getting the bean bag to use on Mr. Romero. Officer Bergman intended to shoot Mr. Romero before he pointed his handgun at him or another officer, if the officers did not hit Mr. Romero with a bean bag.

Officer Bergman heard another officer say that they have a "line in the sand," so if Mr. Romero stepped past the edge of the car, the officers were going to shoot him. Officer Bergman saw that Mr. Romero was just standing at the line and still holding a firearm to his head. He heard an SDPD sergeant say that the officers were going to impact Mr. Romero with bean bags. Three or four bean bag rounds were fired at Mr. Romero. Officer Bergman saw Mr. Romero getting hit with the bean bags. Mr. Romero fell to the ground with the handgun in his hand. Mr. Romero then got up, moved forward with his handgun raised in a "ready" position for shooting, and moved to the back of the car. Mr. Romero placed himself between the vehicle parked in the driveway and the garage. Officer Bergman heard what he thought was a gunshot or loud bang as Mr. Romero got behind the car and immediately thought that Mr. Romero was shooting at the officers. Officer Bergman thought Mr. Romero was going to kill him or other officers at the scene, so he started shooting.

Officer Bergman fired a couple of rounds and had a jam in his handgun. Once he fixed the issue, Officer Bergman still had Mr. Romero in his sights, so he fired a couple more rounds. When he lost sight of Mr. Romero, he stopped firing. Officer Bergman heard another officer yell, "Cease fire, he's on the ground, doesn't have a gun in his hand." At that point, Officer Bergman believed that Mr. Romero was no longer a threat, but kept his handgun pointed at Mr. Romero while officers developed a plan to move

forward to get Mr. Romero's handgun to make the area safe for everyone. Officer Bergman saw blood coming from Mr. Romero's forehead, and he believed that Mr. Romero had been shot in the head. Officer Bergman and Officers Mattis, Fryer, and Jansen approached Mr. Romero to seize his handgun, take Mr. Romero into custody, and start rendering aid if possible. At that time, Officer Bergman did not know whether Mr. Romero was dead.

Officer Bergman felt that he was within the "danger zone," about 15 feet from Mr. Romero. At this distance, Mr. Romero could have pointed the handgun at him and easily shot him within half a second. Officer Bergman felt that if he had not fired his handgun, he, other officers, or civilians would have been seriously injured or killed. Officer Bergman believed that the officers could not let Mr. Romero walk away because he had a firearm and was in public. Mr. Romero was not in an isolated area where he could not hurt anyone. Officer Bergman believed that there was no way the officers could set a perimeter, get other units, negotiate, and try to further de-escalate the situation.

Officer Jonathan Estrada

Officer Estrada did not provide a statement to investigators.

INTERVIEWS OF CIVILIAN WITNESSES

SDCSD detectives and SDPD officers interviewed 20 civilian witnesses. DOJ reviewed all of the interviews and determined eight were relevant to this OIS report. The following are summaries of their interviews, which describe the incident from the point of view of each witness. The interviews contain facts relayed by the witnesses that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

W-1

On December 8, 2022, at approximately 12:55 PM, W-1 made a 911 call stating that she saw a male pointing a black handgun at his own head near 4211 Central Avenue. She further described the man as Hispanic, in his 30's, average build and short in stature. She said he was wearing a blue sweater was heading toward University Avenue on a bicycle.

W-2

On December 8, 2022, SDCSD Detectives Eric Garcia and Juliet Dias interviewed W-2. W-2 recorded the shooting from her apartment. W-2 provided the cell phone video footage of the shooting to detectives. W-2 owned the car in the driveway where Mr. Romero was shot. W-2 saw Mr. Romero holding a firearm to his head and heard officers telling him not to shoot himself.

W-3

On December 8, 2022, SDCSD Detectives Ruben Lopez and Richard Gale interviewed W-3, who said that between 12:30 PM and 1:00 PM, she was working on her front fence, which faces 42nd Street. W-3 heard police sirens and began recording using her cellphone. W-3 heard police officers say, "Put your hands in the air! Drop your weapon!" W-3 heard a lot of shouting from police officers but did not hear anything from Mr. Romero. W-3 estimated that she heard four to 10 shots fired. W-3 saw officers run in with rifles. W-3 indicated that she had cell phone footage of shots being fired and also showed Mr. Romero with a gun to his head. W-3 provided five cell phone video files to the detectives.

W-4

On December 8, 2022, SDPD Officers Saul Guzman and Cameron Hollander interviewed W-4. W-4 said that he was standing in front of a vehicle on 42nd Street when he saw Mr. Romero, who had a black Glock-style firearm pointed at his head and a cigarette in his mouth. W-4 heard officers tell Mr. Romero about 3-4 times to put down his firearm. Mr. Romero was yelling back at the officers. W-4 saw the officers fire four or five bean bags, hitting Mr. Romero. After that, W-4 heard one shot followed by multiple shots.

W-5

On December 8, 2022, SBSD Officer Saul Guzman and DOJ SAs Oratovsky and Carlos interviewed W-5. W-5 said that before the OIS, she walked outside and saw Mr. Romero, who said, "I'm gonna do it!" one or two times. W-5 further heard officers tell Mr. Romero to put his firearm down four or five times. W-5 saw Mr. Romero point a black firearm at his head, and then W-5 heard five shots.

W-6

On December 8, 2022, DOJ SAs Jon Genens and Alvin Hernandez interviewed W-6. W-6 said that he was in his dining room. When he looked out of the window, he saw Mr. Romero holding a firearm to his head and heard an officer yelling, "It's okay. Put the gun down, put the gun down. I'm here to help you." W-6 saw many officers; some had AR-style rifles. W-6 heard Mr. Romero say, "I'm going to die here whether you guys kill me or not. I'm going ... either I'm going to kill myself or you guys are going to kill me. Fucking shoot me, shoot me already, just do it, just do it." W-6 saw an officer shoot Mr. Romero with two or three bean bags which struck Mr. Romero in the stomach. Mr. Romero hid behind the car in the driveway, still holding the firearm to his head as he hid behind the car. W-6 saw Mr. Romero peek his head up and then back down. When Mr. Romero started to lift the firearm back to his head, W-6 saw officers fire their first volley of rounds. W-6 saw Mr. Romero peek back up; officers then fired their second volley at Mr. Romero. W-6 did not see Mr. Romero get struck behind the car because of his own vantage point. W-6 heard several rounds fired in each volley, and two or three seconds passed between volleys. W-6 recorded the incident on his cell phone and turned over the recording to DOJ investigators.

W-7

On December 13, 2022, DOJ SAs Jon Genens and Michael Beavers interviewed W-7. She said that she saw Mr. Romero come through her apartment complex and saw Mr. Romero point a firearm at his own head. W-7 heard Mr. Romero say, "Hey, I'm going to get a cigarette." W-7 saw Mr. Romero get the cigarette. Officers told Mr. Romero to put down his weapon approximately 10 times. Mr. Romero told officers that he wanted to die. W-7 stated that officers hit Mr. Romero with "non-lethal" force. Mr. Romero then ran behind the car. W-7 yelled at the police officers that Mr. Romero was not a threat. W-7 did not see Mr. Romero point the firearm at anyone.

W-8

On December 8, 2022, SDPD Officer Isai Sanchez interviewed W-8. W-8 said that he looked through a crack in a fence at his apartment and was able to see officers contact Mr. Romero. W-8 heard Mr. Romero yell, "I want to be killed, I should just be dead!" W-8 saw what appeared to be a firearm in Mr. Romero's hand. W-8 saw Mr. Romero walk back and forth and raise the firearm a few times. W-8 heard officers yell, "Put the gun down! We are here to help! We do not want this to happen!" about 100 times. W-8 heard officers come up with a plan and heard, "If he takes another step, we are going to shoot him with the bean bag." W-8 saw Mr. Romero move back and forth then heard two bean bag rounds being shot. W-8 heard 20 to 30 shots after the bean bag shots. W-8 did not see anything further.

APPLICABLE LEGAL STANDARDS

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

Murder

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

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

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

Voluntary Manslaughter

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

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

Self-Defense

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

Penal Code sections 196 et. seq. set forth the law of self-defense in homicide cases. Penal Code section 196 provides that a homicide committed by a peace officer is justified when the use of force complies with Penal Code section 835a. (Cf. Pen. Code, § 197 [listing circumstances where homicide committed by “any person” is justifiable, which includes self-defense or the defense of others].)

Under Penal Code section 835a, an officer may use deadly force only when the officer “reasonably believes, based on the totality of the circumstances, that such force is necessary”: (1) “to defend against an imminent threat of death or serious bodily injury to the officer or to another person”; or (2) to apprehend a fleeing person who has committed a felony “that threatened or resulted in death or serious bodily injury,” and the officer “reasonably believes that the person will cause death or serious bodily injury” if not immediately apprehended. (Pen. Code, § 835a, subd. (c)(1); see Pen. Code, § 835a, subd. (a)(2) [peace officers may lawfully use deadly force “only when necessary, in defense of human life”]; see *People v. Randle* (2005) 35 Cal.4th 987, 994 [self-defense arises when a person actually and reasonably believes in the necessity of defending against imminent danger of death or great bodily injury], overruled on other grounds by *People v. Chun* (2009) 45 Cal.4th 1172.)

To determine whether deadly force is necessary, “officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” (Pen. Code, § 835a, subd. (a)(2); *People v. Hardin* (2000) 85 Cal.App.4th 625, 629-630 [“only that force which is necessary to repel an attack may be used in self-defense; force which exceeds the necessity is not justified” and “deadly force or force likely to cause great bodily injury may be used only to repel an attack which is in itself deadly or likely to cause great bodily injury”].)

A threat of death or serious bodily injury is “imminent” when, based on the “totality of the circumstances,” a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or to another person. (Pen. Code, § 835a, subd. (e)(2); see *People v. Lopez* (2011) 199 Cal.App.4th 1297, 1305-1306 [imminent peril is “immediate and present” and “must be instantly dealt with”; it is not prospective or even in the near future].)

“Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force. (Pen. Code, § 835a, subd. (e)(3).) De-escalation methods, tactics, the availability of less than lethal force, and department policies may be used when evaluating the conduct of the officer. However, when an officer’s use of force is evaluated, it must be considered “from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” (Pen. Code, § 835a, subd. (a)(4); accord, *Graham v. Connor* (1989) 490 U.S. 386, 396-397 [“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight”]; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082-1083 [to determine whether use of force is objectively reasonable for self-defense, trier of fact must consider all the circumstances that were known or appeared to the officer as well as consideration for what a reasonable person in a similar situation with similar knowledge would have believed]; *People v. Bates* (2019) 35 Cal.App.5th 1, 9-10 [knowledge of another person’s prior threatening or violent conduct or reputation for dangerousness may provide evidence to support a reasonable belief in imminent harm].)

Self-defense also has a subjective component. (*Humphrey, supra*, 13 Cal.4th at p. 1082.) The subjective element of self-defense requires that a person actually believes in the need to defend against imminent peril or great bodily injury. (*People v. Viramontes* (2001) 93 Cal.App.4th 1256, 1262.)

Burden of Proof

A prosecutor bears the burden of proving a criminal defendant's guilt beyond a reasonable doubt. (Pen. Code, § 1096.) Where an investigation is complete and all of the evidence is available for review, prosecutors should file charges only if they believe there is sufficient admissible evidence to prove the charges beyond a reasonable doubt at trial. (See, e.g., Nat. Dist. Attys. Assn., National Prosecution Standards (3d ed. 2009) Part IV, § 2 pp. 52-53; United States Department of Justice Manual § 9-27.220; Melilli, Prosecutorial Discretion in an Adversary System (1992) B.Y.U. L.Rev. 669, 684-685 [surveying ethical standards used in the exercise of charging discretion by prosecutors]; accord, *People v. Catlin* (2001) 26 Cal.4th 81, 109 ["A prosecutor abides by elementary standards of fair play and decency by refusing to seek indictments until he or she is completely satisfied the defendant should be prosecuted and the office of the prosecutor will be able to promptly establish guilt beyond a reasonable doubt," quotation and internal quotation marks omitted]; *People v. Spicer* (2015) 235 Cal.App.4th 1359, 1374 [explaining that a prosecutor may have probable cause to charge a crime but reasonably decline to do so if they believe there is a lack of sufficient evidence to prove the charge beyond a reasonable doubt at trial]; cf. Rules Prof. Conduct, Rule 3.8(a) [prosecutor should not initiate or continue prosecution of charge that is not supported by probable cause].)

Further, the prosecution has the burden of proving beyond a reasonable doubt that a killing is not justified. It is not a criminal defendant's burden to prove that the force was necessary or reasonable. (*People v. Banks* (1976) 67 Cal.App.3d 379, 383-384.) Thus, in an officer-involved shooting, the prosecution must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others.

LEGAL ANALYSIS

DOJ has completed an independent investigation and review of the facts and circumstances that led to Mr. Romero's death. This analysis is based on all of the evidence obtained by DOJ in this matter, including police reports, witness statements, forensic evidence, Medical Examiner's report, BWC footage, communication evidence, and civilian cell phone footage from the incident location.

Because a prosecuting agency would need to affirmatively prove beyond a reasonable doubt that Officers Estrada, Bergman, and Thornton did not act in lawful defense of themselves or others, this is the primary issue in determining whether criminal charges should be filed. A detailed analysis of the evidence pertaining to the OIS shows that Officers Estrada, Bergman, and Thornton actually and reasonably believed that deadly force was necessary to defend against an imminent threat of death or serious bodily injury to the officers or others. Therefore, the evidence is insufficient to support criminal charges.

Subjective Belief

Officer Bergman, Thornton, and Estrada

Several factors show that Officers Bergman and Thornton actually believed in the need to defend themselves, other officers, and bystanders against imminent death or serious bodily injury. Officers

Bergman and Thornton were informed that Mr. Romero was armed with a firearm. From the beginning, the dispatcher informed the SDPD officers, including Officers Thornton and Bergman, that a man was riding a bicycle in traffic with a firearm pointed at his own head. Officer Thornton followed Mr. Romero to a residential area where he saw Mr. Romero and heard him yelling, "Kill me, kill me, kill me!" Officer Thornton believed Mr. Romero had a real handgun. He was especially concerned that Mr. Romero was in an area close to a school and residences, and it was a time of day when many people were present. Officer Romero believed that Mr. Romero posed a threat to the officers and to nearby civilians.

Officer Bergman's and Thornton's BWC footage shows that they gave multiple commands to Mr. Romero to drop his firearm. During his encounter with Mr. Romero, Officer Bergman said, "This is getting way too dangerous. This is way too dangerous. He [Mr. Romero] could at any moment put his arm out and get a lucky shot. He could shoot us like this is – this can go bad really, really quick. Like this is way too dangerous ... because if I fail to act and I don't shoot him, he's going to bring the gun forward and possibly shoot me, shoot another officer, shoot an innocent bystander." While Officer Bergman was giving his commands, Mr. Romero was yelling, "Shoot me, shoot me!"

Once Mr. Romero was shot with bean bag rounds, he ran between the garage door and the parked car in the driveway. Officer Bergman heard what he thought was a gunshot or loud bang as Mr. Romero got behind the parked car. Officer Bergman thought that Mr. Romero was shooting at the officers and believed he was returning fire. Officer Thornton said that when Mr. Romero was behind the parked car, he saw Mr. Romero stand up and start to present the firearm. Officer Thornton thought Mr. Romero was going to kill him, other officers, or bystanders. With that thought in mind, Officer Thornton fired two rounds at Mr. Romero. Mr. Romero ducked down behind the parked car, then got back up. Officer Thornton fired two more rounds, thinking that Mr. Romero was standing up "to finish what he started." Officer Thornton stopped firing once he saw that Mr. Romero no longer posed a threat.

Officer Estrada did not give a post-incident statement regarding the shooting. It can be inferred from his actions that he held a subjective belief that he needed to defend himself and other officers against imminent threat of great bodily injury or death. The civilian witnesses and other SDPD officers believed Mr. Romero had a real and functional firearm, which supports the conclusion that Officer Estrada, too, believed the firearm to be an operable firearm.

The evidence stated above shows that Officers Bergman, Thornton, and Estrada subjectively believed in the need to defend against an imminent threat of great bodily injury or death.

The factual statements by Officers Thornton and Bergman are largely consistent, and no available evidence undermines their credibility. These statements demonstrate that the officers used deadly force because they actually believed that Mr. Romero was going to fire at officers or harm the public.

In addition, the officers' observations were corroborated by BWC videos, which show Mr. Romero holding what appears to be a firearm in his hand. Although the object held by Mr. Romero was not a real firearm, it so closely resembled one that the difference could not be discerned from a distance. The officers' belief that the firearm was authentic was corroborated by other officers and multiple witnesses who similarly reported that Mr. Romero was armed with a handgun. The officers' statements, combined with the other evidence, show that the officers' assertions - that they actually believed the use of deadly force was necessary to prevent serious physical harm or death - were credible.

Objective Reasonableness

Moreover, it was not unreasonable for the shooting officers to 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 officers or others.

A reasonable officer in the same situation as the involved officers could have believed that Mr. Romero was armed and had the present ability to immediately cause death or serious bodily injury. Based on Officer Bergman's and Thornton's interviews and actions as shown on the BWC videos, both officers believed there was an imminent threat of death or serious bodily injury to themselves, other SDPD officers, and nearby civilians. Officers Bergman's and Thornton's fear of imminent serious bodily injury or death to themselves and others at the scene was objectively reasonable.

The BWC videos and officer statements show that the officers reasonably believed Mr. Romero had the present ability to inflict serious bodily injury or death upon himself, SDPD officers, or bystanders. Officer Bergman and Thornton observed Mr. Romero with the firearm in close proximity to their position. Mr. Romero continued to yell, "Shoot me! Shoot me!" Mr. Romero did not listen to any of the commands that were given to him by SDPD officers. When Mr. Romero was hit with the beanbag rounds, Mr. Romero continued to hold his apparent firearm in his hand and moved to a place of cover and concealment behind the parked car in the driveway. Mr. Romero then peered over the hood of the parked vehicle twice, presenting the firearm.

The actions of the other officers at the scene also support the conclusion that the actions of Officers Thornton, Bergman, and Estrada were objectively reasonable. All pursuing SDPD officers drew their firearms when they followed Mr. Romero, based on the information that he was riding his bicycle while pointing a firearm at his head. Other officers did not fire at Mr. Romero because they did not have a clear shot at him.

A reasonable officer in the same situation as Officers Thornton, Bergman, and Estrada could have reasonably believed that Mr. Romero had the apparent intent to immediately cause death or serious bodily injury to officers or civilians in the moment before the OIS.

Thus, the totality of the evidence shows that Officers Thornton, Bergman, and Estrada held the subjective belief that deadly force was necessary to defend themselves, other officers, and the public from imminent deadly force, and that such belief was not objectively unreasonable. A prosecution, therefore, could not prove beyond a reasonable doubt that the officers' use of force was unlawful.

CONCLUSION

Based upon the review of all the evidence obtained by the Department of Justice, the applicable statutes, legal principles, and totality of the circumstances, there is insufficient evidence to support a criminal prosecution of Officers Estrada, Bergman, or Thornton. Therefore, no further action will be taken in this case.



C A L I F O R N I A

DEPARTMENT OF JUSTICE

**Policy and Practice Recommendations for
the San Diego Police Department Related to the
Officer-Involved Shooting of John Ray Romero on
December 8, 2022**

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

April 2026



POLICY AND PRACTICE RECOMMENDATIONS

The Attorney General is required to include “[r]ecommendations to modify the policies and practices of the law enforcement agency, as applicable” as a component of this report. (Gov. Code, § 12525.3 subd. (b)(2)(B)(iii).) Therefore, the Department of Justice (DOJ) through its Police Practices Section conducts a review of the information obtained through the criminal investigation, which may include a review of policies concerning body-worn camera footage, interview recordings, video recordings, witness statements and other records, as well as the publicly available policies of the agency employing the officers who are subject to the criminal investigation. Police Practices Section uses the review process to identify applicable recommendations, including any recommendations to modify policies and practices that may reduce the likelihood that officers use deadly force, as well as recommendations to address any other deficiency or concern related to the officers’ conduct or the agency’s response. The Police Practices Section’s goal is that these recommendations will assist the agency and the officers involved in the incident in understanding, from an independent perspective, improvements that may be made to address what was observed through this incident.

On December 8, 2022, at approximately 12:55 p.m., San Diego Police Department (San Diego PD) communications received a 911 call regarding a Hispanic male, riding a bicycle and pointing a handgun at his head near the 4200 block of Central Avenue in San Diego. Multiple San Diego PD officers responded to the call and later identified the individual as Mr. John Romero. Officers Thornton, Bergman, and Thim initially observed Mr. Romero riding a bicycle in circles and making donuts on the street before heading eastbound on University Avenue.

At approximately 1:00 p.m., Officers Ell and Mcardle saw Mr. Romero on University Avenue and 41st Street and exited their patrol vehicle to contact Mr. Romero. They were unable to catch up to Mr. Romero on foot and quickly returned to their patrol vehicle to update dispatch. Another officer broadcasted to dispatch that Mr. Romero was in an alley, but did not specify the nearest cross streets which created brief confusion among the responding officers. A minute later, Officers Engel and Thornton saw Mr. Romero next to an apartment complex, located at 4042 42nd Street where he got off his bicycle. Mr. Romero pointed what appeared to be a handgun at his head. The handgun was later identified as an airsoft handgun. Officers Ell and Mcardle caught up with Mr. Romero and told him to drop the gun. Mr. Romero backed away on foot from the officers and made his way toward the alley behind an apartment complex. The officers lost sight of Mr. Romero momentarily but spotted him in the alley behind 4070 42nd Street. While in the alley, Mr. Romero pointed the airsoft handgun at his head and repeatedly told the officers to “Just shoot me! Shoot me! Shoot me!” The officers repeatedly commanded Mr. Romero to drop the gun. Mr. Romero walked northbound, and officers lost sight of him momentarily.

Then Mr. Romero reappeared in front of an apartment complex located at 4070 42nd Street and pointed the apparent gun at his head. Officer Janzen was the first to spot Mr. Romero on the side of the building with the apparent handgun pointed at his head. Officer Janzen told Mr. Romero multiple times to “drop the handgun.” Mr. Romero did not drop the handgun and continued to yell at officers positioned around the driveway to shoot him for about two minutes as he positioned himself next to a parked car on a driveway. At that point, Officers Thornton, Thim, Estrada, Mattis, Romero, Janzen, Bergman, Fryer, and Sergeant Tena repositioned and took cover behind parked vehicles in the street. Multiple officers yelled at Mr. Romero to drop his handgun. At one point, Mr. Romero stood in the driveway while pointing the handgun at his head and smoking a cigarette.

As Mr. Romero walked toward the officers, Sergeant Tena authorized the use of a bean bag launcher by Officer Romero, and the events thereafter transpired within five seconds. At approximately 1:08:03 p.m., Officer Romero announced “bean bag” prior to launching the first of three bean bag rounds at Mr. Romero. After the second bean bag round, Mr. Romero ran behind the car parked in the driveway. Mr. Romero was crouched over while running to take cover behind the parked car. His apparent handgun was still in his left hand. Once he was in between the parked car and the garage door, Mr. Romero came back up and started to raise his handgun in an upward direction. At approximately 1:08:08 p.m., Officers Bergman, Thornton and Estrada fired their duty weapons striking Mr. Romero who fell to the ground.

The autopsy determined the cause of death was gunshot wound to the head and right arm. After the shooting, Mr. Romero was found to be in possession of an airsoft handgun. All three shooting officers had their body worn cameras activated. Officers Bergman and Thornton gave interviews and Officer Estrada did not give an interview.

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), advises San Diego PD to review and implement the following three recommendations:

RECOMMENDATION ONE: TRAINING TO IMPROVE COMMAND AND COMMUNICATION IN RESPONSE TO SUICIDAL PERSONS

The Police Practices Section recommends additional training to improve command and communication for scenarios where multiple units respond to calls about suicidal persons with deadly weapons.

San Diego PD’s de-escalation policy states that the “process of incident management and de-escalation includes, but is not limited to, the following: (1) Utilizing pre-engagement techniques; (2) Assessing the overall scene; (3) Establishing effective lines of communication; (4) Using appropriate levels of reasonable force, based on the totality of the circumstances; and (5) Intervening whenever force being used appears unreasonable.” (San Diego PD Policy No. 1.55, June 25, 2020.)

While following Mr. Romero through a residential neighborhood, Officers Mcardle, Ell, Van Dyk and Lopez effectively communicated with each other and Mr. Romero. These officers used the patrol vehicle as cover while commanding Mr. Romero to drop the gun in a calm tone. In response to Mr. Romero’s repeated statements of “Just shoot me!” the officers took turns calmly telling Mr. Romero, “No, I do not want to shoot you bro,” “We do not want to shoot you, please,” and “Nobody wants to do that buddy.” Sergeant Perkins took command and control of this team of officers while continuously

updating dispatch and broadcasting that Mr. Romero was making “1145” or suicide threats. After Mr. Romero left the alley on foot and went to the front of the building, Officer Ell said to his team, “Listen, we have no reason to advance on him anymore. We’re not chasing him anymore. We got him contained.” This team of officers demonstrated effective communication and de-escalation tactics.

Similarly, once Mr. Romero ran to the front of 4070 42nd Street, Sergeant Tena, Officers Janzen, Thornton, and Estrada’s field contact with Mr. Romero demonstrated restraint and attempts to defuse the situation. However, during the initial three and a half minutes of the incident, multiple officers were simultaneously giving different verbal commands to Mr. Romero while pointing their guns at him, which was chaotic and confusing. Despite Mr. Romero’s refusal to drop the gun, Officer Estrada continued to engage with Mr. Romero in a calm and conversational tone, “Drop the gun! What is your name sir, let us help you! Let us help you. Just drop it so we can talk. What’s your name, let us talk to you so we can get to know you and know what’s going on. You don’t need to do this today.” In response, Mr. Romero said, “This is what I’m going to do, have you guys kill me.”

Meanwhile, Officer Thornton shouted at Mr. Romero, “We’re here to help you. Just drop the gun sir please. Sir, just drop the gun, we are here to help you. Don’t do this! Don’t do this! Just put the gun down and we’ll get the resources you need.” Shortly thereafter, Officer Thornton shouted the tactical plan to the other officers on scene to use less lethal, “Can we bean bag this guy? Hey, if he passes that car, he’s being shot. Line in the sand is the car, he’s getting bean bagged! Everyone 10-4 on that?” Officer Thornton explained in his interview that the reference to the “line in the sand,” was if Mr. Romero moved beyond the parked car in the driveway, then the designated officer, Officer Romero, should use a less lethal bean bag launcher. Mr. Romero heard Officer Thornton shouting to everyone about the “line in the sand,” and in response, moved closer towards the officers and said, “That’s all I got to do?!” referring to his desire to be shot.

As Mr. Romero moved closer towards the officers while pointing a gun to his head, Officer Bergman was heard saying on his body worn camera: “This is way too dangerous! I’m not going to get a lucky shot! I’m gonna fucking dump him!” Officer Janzen repeatedly told Officer Bergman to relax about 18 times. Sergeant Tena also told Officer Bergman to relax. Officer Bergman said in his interview, “And then had the officer behind me like, saying ‘No, you need to relax, relax, relax.’ And I’m like, ‘No, we need to shoot him. I need to shoot him right now.’” Officer Bergman said in his interview, “I need to shoot him, but then I have this other person tell me in my ear for whatever reason, like, ‘Oh, relax,’ like, ‘Don’t shoot him.’ And I don’t know if it’s because he was trained differently, doesn’t think the same way, hasn’t experienced that or whatever before.”

When Sergeant Tena said that they were getting the bean bag launcher if Mr. Romero got close enough, Officer Bergman said, “Fucking impact him or we’re gonna fucking dump him!” Officer Bergman’s body worn camera reflected his heightened emotions, agitation with the crisis and tactical plan, and refusal to heed instructions from his fellow officers, including his sergeant. Approximately three seconds after the first bean bag round was fired off, Officer Bergman discharged his duty weapon, along with Officer Estrada and Officer Thornton. The other two officers stopped firing when instructed to “Stop! Stop!” and Officer Bergman continued to fire a few more rounds two seconds later. Officer Bergman said in his interview that his firearm jammed after the initial volley and after he fixed the issue, “And then I do just a tap, tap rack, and then I still kind - - I still see him, and I fire off a couple more rounds, and then I start yelling - - hearing people yelling ‘Cease fire, he’s on the ground, doesn’t have the gun in his hand.’ So at that point, he’s no longer a threat.” During Officer Bergman’s

interview by San Diego County Sheriff, he was not asked whether he reassessed and believed that Mr. Romero posed an imminent threat when he fired a couple more rounds. Officer Bergman fired a total of 12 rounds.

During the three and a half minutes of engagement with Mr. Romero before shots were fired, there were too many competing voices, and unfortunately, the desired outcome of keeping Mr. Romero contained was not achieved. At various times, multiple officers were shouting commands at Mr. Romero at the same time and there was no clear line of communication. Sergeant Tena had created several tactical options to slow down the incident for the officers staged in front of the residential complex, including repositioning for cover, air unit, canine unit, and authorizing launching the less lethal bean bag. After Officer Bergman was told to relax multiple times by Officer Janzen and Sergeant Tena, it may have been appropriate to remove Officer Bergman from the scene to avoid unnecessary distraction and tension.

Additionally, based on the available information, it appears that the officers may have been attempting to create a safety zone for officers by drawing a “line in the sand,” but this tactic may have had an adverse impact in gaining control of the scene and hastened their plans to approach Mr. Romero.¹

The Police Practices Section recommends communication training when multiple units respond to calls about suicidal persons that only one officer should be responsible for communicating and establishing rapport with the suicidal persons. Directing communication to a single point of contact with a suicidal person is a best practice and even more important when a person is armed with a deadly weapon. The training should be focused on tactical decision-making and clear communication to minimize the need to use force when feasible. Additionally, San Diego PD should consider offering their Wellness Unit and additional resources to assist sworn officers, such as Officer Bergman, with stress management during and following a critical incident.

RECOMMENDATION TWO: SCENARIO-BASED TRAINING ON RESPONDING TO ARMED PERSONS EXPERIENCING A MENTAL HEALTH CRISIS

San Diego PD has several guidelines that discuss procedures after an officer has identified someone experiencing a mental health crisis. However, the agency does not have guidance or training on a policy or directive outlining what responding officers should do when faced with persons experiencing a mental health crisis with a deadly weapon.

San Diego PD has a Psychiatric Emergency Response Team (PERT), which provides emergency assessment and referral for individuals in behavioral health crisis who come to the attention of law enforcement through phone calls from community members or in-field law enforcement request for emergency assistance. Officers who have completed a minimum of one day or 8-hour training course in

¹ “Instead of drawing a line, officers should be taught to *maintain a position of advantage* and a safety one.” (Police Executive Research Forum, Integrating Communications, Assessment, Training, Training Guide for Defusing Critical Incidents, October 2016, p. 49.) (Original emphasis.) Notably, San Diego PD’s de-escalation policy states in relevant part, “Officers can move to a position that is tactically advantageous or allows greater distance in order to de-escalate a situation or deploy a greater variety of force options, including lesser force or no force at all.” (Policy 1.55 at p. 4, June 25, 2020).

either PERT or Crisis Response Training approved by the Commission on Peace Officer Standards and Training (POST) will have a skill code to identify them on the daily patrol schedule and the Computer Aided Dispatch log. Officers who have completed the 24-hour PERT training are authorized to ride with PERT clinicians. PERT clinicians are state licensed mental health clinicians who have the legal authority to place subjects on a Welfare and Institutions Code section 5150 hold. PERT clinicians are employees of the Community Research Foundation contracted by the County of San Diego, not San Diego PD.

San Diego PD has Mental Health Procedures which provide guidelines for handling persons experiencing mental health emergencies and acquaint officers with “Safety Issues Related to PERT Field Contacts.” The policy provides in relevant part that PERT units should be aware of the possibility of unpredictable behavior by individuals experiencing a mental health crisis and PERT officers shall make the initial client contact. According to San Diego PD’s Mental Health Procedures, PERT officers shall make the initial contact and PERT clinicians will remain a safe distance from the scene. (Neighborhood Policing Nos. 6.20 & 6.28 – Patrol (2019).)

Officer Estrada was the designated PERT officer who responded with a PERT clinician to this call. Officer Estrada parked his patrol vehicle a few blocks away when he and other officers were initially trying to locate Mr. Romero. Officer Estrada eventually made contact with Mr. Romero in front of the driveway for the residential complex and communicated clearly with Mr. Romero. The PERT clinician remained in the parked patrol vehicle a few blocks away from the scene consistent with San Diego’s Patrol Procedure 6.28 on PERT “Safety Issues Related to PERT Field Contacts.” Once the officer determines the contact is safe and contained, the officer will allow the clinician to approach the individual for evaluation. Throughout the incident, Mr. Romero was not contained and continued to point the apparent firearm at his head while pacing near the driveway of the residential complex. Given the volatility of the scene, it was unsafe for a PERT clinician to enter or be near the scene.

The Police Practices Section recommends that San Diego PD develop scenario-based training for mental health scenarios such as this one, where multiple units respond to an attempted suicide call with an apparent deadly weapon. Law enforcement is at a disadvantage when dealing with a suicidal individual, especially when armed with an apparent handgun, because the individual can be highly emotional, unpredictable and in an irrational state, making communication and reasoning with the individual very difficult, and making safe deployment of the PERT clinician challenging. As a result, the agency should consider additional deployment tactics that would allow for the services of the PERT clinician to be utilized in such a scenario, such as deploying an armored vehicle and/or using a bullhorn to allow the PERT clinician to facilitate communication, and slowing the pace of the interaction when facing suicidal individuals who are armed in the field.

RECOMMENDATION THREE: AMEND USE OF FORCE AND DE-ESCALATION POLICIES TO COMPLY WITH CURRENT STATE LAW

Effective January 1, 2021, pursuant to Senate Bill 230, each law enforcement agency is required to maintain a policy that requires officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible. Additionally, the policy shall include training and guidelines regarding vulnerable populations, including, but not limited to, people with physical, mental, and developmental disabilities. (Gov. Code, § 7286, subs. (b)(1) & (b)(16).)

San Diego PD's De-Escalation Policy No. 1.55 (June 25, 2020) does not require that deputies use de-escalation techniques when feasible or mention any required training and guidelines regarding vulnerable populations as mandated by Government Code section 7286, subdivisions (b)(1) and (b)(16). While there is a provision in San Diego PD's policy related to de-escalation, that provision only suggests that de-escalation could be employed under certain circumstances, as opposed to the state law that *affirmatively requires* de-escalation when feasible.

Additionally, Policy No. 1.55 does not require that deputies use crisis intervention tactics and other alternatives to force when feasible as mandated by Government Code section 7286, subdivision (b)(1). There is a provision in San Diego PD's policy that suggests crisis intervention could be employed under certain circumstances, but state law requires crisis intervention when feasible.

San Diego PD's Use of Force Policy No. 1.04 (July 8, 2020) does not require "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).) San Diego PD should amend its use of force policy to make clear that de-escalation is required when feasible, and 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 San Diego PD amend its current use of force and de-escalation policies to ensure that the policies are consistent with state law. (Gov. Code, § 7286, subs. (b)(1)-(20).) The agency should further review its other training bulletins, procedures, and training related to crisis intervention to ensure that each is consistent with state law.