CALIFORNIA

DEPARTMENT OF JUSTICE

Report on the Investigation into the Death of Elmer Osiel Lopez Castaneda on April 13, 2023

Alameda County AB 1506

July 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. 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 witness will be indexed as follows:

- Witness 1 (W-1), passenger in suspect vehicle at the time of the shooting.

INTRODUCTION

At approximately 4:45 PM on April 13, 2023, an officer involved shooting (OIS) occurred in the City of Newark, located in Alameda County, California. The shooting officers were identified as Detectives Anthony Piol, Jesse Hartman, Trevor Damewood, and Thomas Degenstein from the Southern Alameda County Major Crimes Task Force (SACMCTF), which is comprised of members from both the Fremont Police Department (FPD) and Newark Police Department (NPD). This shooting resulted in the death of Elmer Osiel Lopez Castaneda.

The shooting occurred in the parking lot of the Chase Suite Hotel. The detectives tracked a stolen vehicle to that location and observed Mr. Castaneda and W-1 approach and enter the stolen vehicle. Eight detectives, wearing load-bearing vests with police markings on the front and back of the vests, approached the vehicle with emergency lights activated. Detectives issued commands for the two suspects to put their hands up and surrender. After exiting the vehicle with his hands up, Mr. Castaneda reached for an apparent firearm that was located in his waistband. As a result, Detectives Piol, Hartman, Damewood, and Degenstein fatally shot Mr. Castaneda. The gun was recovered near Mr. Castaneda's body and was later determined to be an airsoft pistol.

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

Upon thorough examination, and as discussed in detail below, we conclude that no criminal charges will be filed because the evidence is insufficient to prove that Detectives Piol, Hartman, Degenstein, and Damewood committed a crime.

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

SUMMARY OF INCIDENT

"FLOCK" Alert

The City of Newark operates a Flock Automated License Plate Recognition (ALPR) system. ALPR cameras on traffic lights and telephone poles capture images of cars and identify the car's license plate. The system alerts a law enforcement agency when a license plate of interest is identified. On February 13, 2023, in Newark, a 2002 silver Mercedes, with California license plate 4ZAA387, was stolen during an armed carjacking. The Mercedes' license plate was subsequently entered into the ALPR system.

On April 13, 2023, at approximately 3:20 PM, the ALPR system observed the Mercedes in the area of westbound Mowry Ave, west of interstate 880, within the City of Newark and alerted the NPD dispatch. In turn, dispatch alerted officers.

At about 3:53 PM, NPD Lieutenant Sandoval announced on his radio that he spotted the Mercedes—unoccupied and backed into a parking stall at the Chase Suite Hotel. Sergeant Arroyo, in turn, reported the sighting to SACMCTF and SACMCTF took over the investigation. SACMCTF Sergeant Farmer assigned unmarked patrol cars to respond to the Mercedes' location.

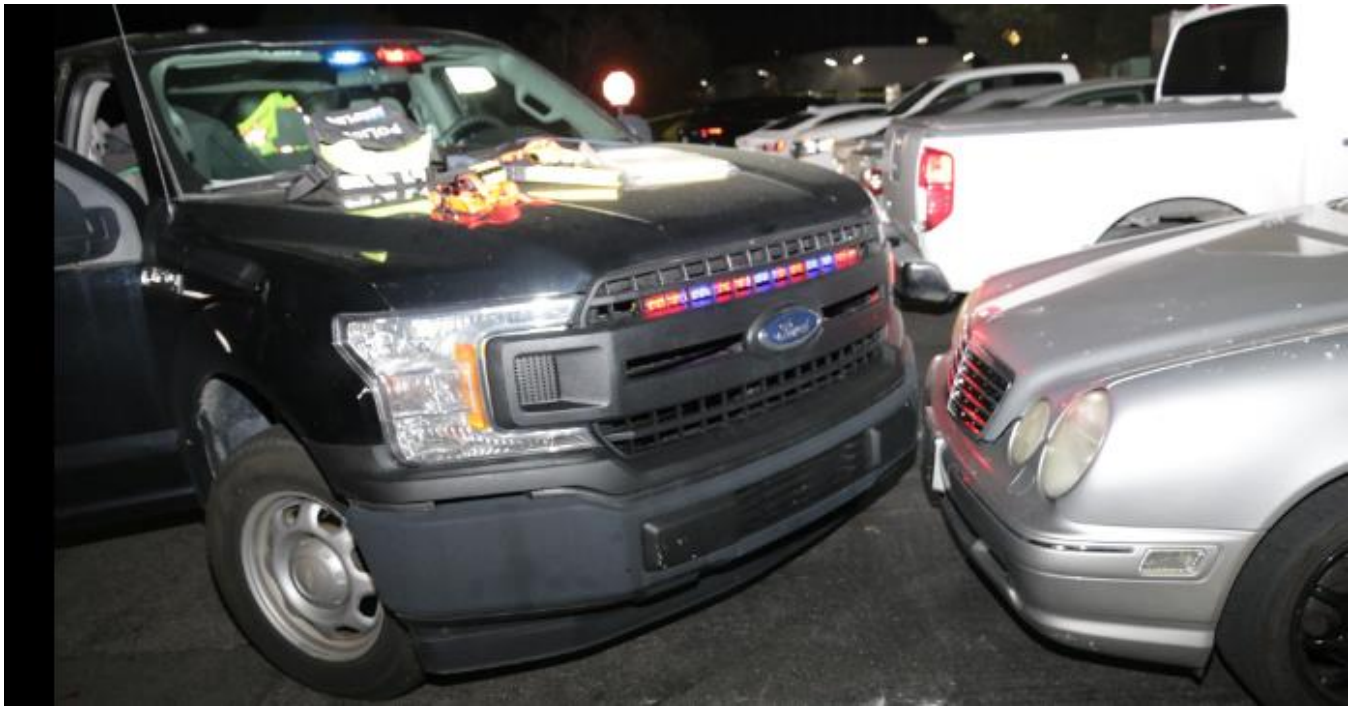
At the Incident Scene

SACMCTF officers arrived at the Chase Suite Hotel parking lot at 39150 Cedar Boulevard in Newark. Detective Damewood verified that the Mercedes was in fact the one reported stolen during a carjacking in the FLOCK alert and that it was backed into a parking stall at that location. Upon that verification, all officers on scene (including Detectives Piol, Hartman, Degenstein, and Damewood) were in unmarked police vehicles, including a Ford F-150 pickup truck with a team of detectives in it, positioned at different locations throughout the parking lot. They surveilled the area and waited to apprehend anyone who returned to the car.

At about 4:45 PM, Sergeant Farmer saw Mr. Castaneda and W-1 approach the Mercedes from the north. Both were looking around and into vehicles as they walked in the direction of where Sergeant Farmer was stationed in his vehicle.

Mr. Castaneda opened the Mercedes' driver's door and sat in the driver's seat and W-1 sat in the front passenger seat. Sergeant Farmer relayed the description and confirmed that they were in the stolen Mercedes. When Sergeant Farmer saw the Mercedes' doors close, he advised SACMCTF's Ford F-150 to move in to block the Mercedes.

Unmarked SACMCTF vehicles with their emergency lights activated blocked the parking lot's exits and immediately surrounded the Mercedes. The Ford F-150, driven by Detective Hartman, pulled up to the bumper of the Mercedes, blocking its only exit from its parking stall. (Figures 1, 2).



SACMCTF Black Ford F-150 truck blocking the Mercedes.

The Mercedes and the Ford F-150 truck bumper-to-bumper (from the body camera of Det. Piol).

Detective Heidebrecht was one of the officers inside the Ford F-150 truck. When he exited the truck, he was positioned facing the front windshield of the stolen Mercedes with a direct, unobstructed view of Mr. Castaneda and had his firearm drawn in the direction of the windshield where Mr. Castaneda was seated. When Detective Degenstein exited the same truck, he was positioned himself to the right of Detective Heidebrecht, facing the driver's-side window with a similar vantage point to Detective Heidebrecht. Detectives Hartman, Damewood, Piol and Sergeant K. Romley were positioned facing the passenger side of the Mercedes.

As soon as the Ford F-150 blocked the Mercedes, the detectives exited the truck, took their above-described positions, and immediately ordered Mr. Castaneda and W-1 to put their hands up. Multiple detectives simultaneously gave verbal commands to Mr. Castaneda and W-1 to put their hands up, to not move, and other commands some of which are not intelligible in the recordings from the detectives' body-worn cameras. Both Mr. Castaneda and W-1, who were seated in the Mercedes, complied with these commands. (Figure 3.)

Still frame from Detective Heidebrecht's body-worn camera depicting Mr. Castaneda with his hands up.

After the detectives gave their first series of commands, Detective Piol announced, "Everybody hold," to the team of detectives positioned around the truck and directed that only Detective Heidebrecht issue verbal commands. Detective Piol stated, "Nobody else talk," and instructed Detective Heidebrecht to order Mr. Castaneda to get out of the Mercedes first.

Six seconds after Detective Piol gave his instruction, Detective Heidebrecht called out to Mr. Castaneda, "Driver, step out of the vehicle with your hands in the air." Simultaneously, another unmarked police vehicle, a Dodge Durango driven by Sergeant Miguel Sanchez, pulled up to the right of Detective Heidebrecht, and also faced the stolen Mercedes.

Just as Detective Heidebrecht instructed Mr. Castaneda to exit the Mercedes, he asked an unidentified officer near him, "You got lethal?" That officer responded, "I got lethal." One second later, Detective Heidebrecht put away his gun and picked up a less-lethal shotgun, which he had earlier placed within his reach on the hood of the Ford F-150.

Detective Heidebrecht then aimed the shotgun in Mr. Castaneda's direction and repeated, "Driver, step out of the vehicle with your hands in the air." Immediately following this second command, Mr. Castaneda slowly got out of the driver's seat with his hands on his head and, once out of the car, he faced the detectives. Detective Heidebrecht was directly in front of Mr. Castaneda with the closest view and access to him. All detectives' views of the lower half of Mr. Castaneda's body were partially blocked by the open driver's door of the Mercedes. Mr. Castaneda kept his hands on his head.

At 1 minute 27 seconds[1] on Detective Heidebrecht's body-worn camera, Detective Heidebrecht instructed Mr. Castaneda, "Keep your hands up, walk towards me." Mr. Castaneda immediately pushed the driver's door closed with his elbow, creating an unobstructed view of Mr. Castaneda. Mr. Castaneda kept his hands on his head and walked towards Detective Heidebrecht.

The Shooting

Approximately five seconds after giving the instruction, Detective Heidebrecht ordered Mr. Castaneda to "turn around, turn around." Just as Mr. Castaneda began to turn to his left, Detective Heidebrecht yelled, "Gun, gun." Mr. Castaneda paused when he heard Detective Heidebrecht yell and then continued to turn until he stood with his back to the detective. His hands remained on his head. Immediately after yelling "Gun, gun," Detective Heidebrecht yelled "Drop down to the ground now!" Mr. Castaneda then brought his left hand down to his left hip area directly to where the black handle of an apparent firearm was visible in his waistband.

Directly after Detective Heidebrecht yelled "Gun, gun. Drop down to the ground now!" officer(s) to the left of Detective Heidebrecht can be heard on various body-worn cameras yelling "Nope," "Drop down," and "Hey" in a staccato and overlapping pace.[2] Detective Damewood's body-worn camera shows Mr. Castaneda pull an apparent firearm out of his waistband and when he brought his hand back up, the apparent firearm fell on the hood of the car and then to the ground. (Figure 4.)

Before Mr. Castaneda's hand reached the back of his head, at least one officer fired a lethal round at Mr. Castaneda. Then, less than one second later, several detectives fired multiple lethal rounds at Mr. Castaneda in rapid succession. Detectives Romley, Sanchez, and Heidebrecht fired less-lethal rounds at Mr. Castaneda. Detectives Degenstein, Hartman, Piol, and Damewood fired lethal rounds. A review of Detective Damewood's body-worn camera shows that the apparent firearm fell onto the front hood of the Mercedes as soon as the bullets were discharged.

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[1] The recording from Detective Heidebrecht's body-worn camera does not contain timestamps and is instead the amount of time elapsed on the recording itself. Consequently, the summary section will utilize approximate time elapsed rather than time of day for description of the events.

[2] Because of the officers' proximity and their body-worn cameras' proximity to each other, it is difficult to attribute these exclamations definitively to a particular officer or if they were even said by the same officer. It is likely they were exclaimed by Detective Damewood and/or Detective Piol.

Still frame from the body-worn camera of Detective Damewood; circled in red is Mr. Castaneda's apparent firearm.

About two seconds after the shots stopped, Mr. Castaneda was observed on the ground with his arms spread out. An apparent firearm lay on the ground within inches of Mr. Castaneda's left shoulder.[3]

Once Mr. Castaneda was on the ground, officers shouted, "Hands up! Hands!" While on the ground, Mr. Castaneda put his hands up. For multiple seconds after, Mr. Castaneda moved his arms but he did not make any other major movements. The detectives on the passenger side of the Mercedes detained W-1 and removed him from the scene.

The arrest team was directed to wait while a shield was called in to secure the apparent firearm adjacent to Mr. Castaneda.

Post-Shooting Response

After Mr. Castaneda was shot and fell to the ground, but before officers brought out the shield, Sergeant Sanchez fired a 40-millimeter less-lethal round at Mr. Castaneda, which struck him in the chest. Sgt Romley also fired two pepperball rounds at the same time. Seconds later Sergeant Sanchez instructed Mr. Castaneda, "Do not move or you're going to get popped again." Mr. Castaneda placed his hands on his torso area and he did not move them again. Sergeant Sanchez did not fire any other rounds.

About 1 minute 45 seconds after the shooting, Sergeants Sanchez and Romley formed a shield team and approached Mr. Castaneda. Sergeant Romley kicked the apparent firearm away from Mr. Castaneda's reach. Mr. Castaneda was rolled onto his stomach, his hands were cuffed behind his back, and he was searched for weapons. Then detectives administered first aid until medical personnel arrived. When

[3] This apparent firearm was later determined to be an airsoft gun, not a firearm.

emergency medical technicians arrived, they continued life-saving measures on Mr. Castaneda. They pronounced Mr. Castaneda deceased at 4:59 PM and he was not transported to a hospital.

W-1 was taken into custody and was transported to a nearby hospital for treatment of a minor injury. When W-1 was discharged from the hospital, he provided a voluntary statement to NPD detectives and was released without charges.

INVESTIGATION

Overview

On April 13, 2023, at about 5:30 PM, the DOJ Division of Law Enforcement (DLE) California Police Shooting Investigation Team (CaPSIT) was notified of an OIS in Newark, Alameda County involving officers from the Fremont and Newark Police Departments. The incident was determined to be a qualifying event within the meaning of Government Code section 12525.3. CaPSIT agents promptly responded to the incident scene to initiate a criminal investigation on behalf of DOJ. When CaPSIT agents arrived, the incident location had remained secured by Fremont and Newark police officers to preserve evidence.

The DOJ Bureau of Forensic Services (BFS) also responded to the scene to monitor the processing of the incident scene and the collection of evidence. CaPSIT agents walked the incident scene, reviewed the location of evidence, received a briefing on the incident from the Newark Police Department, and were assigned investigative tasks.

Over the course of several months, DOJ conducted an extensive investigation and reviewed comprehensive materials regarding the incident such as physical evidence, dispatch recordings and logs, body-worn camera recordings from involved and witnessing officers, interviews of officers and a witness, BFS reports, the autopsy report, a forensic laboratory report, and each police department's use of force policies among other evidence.

Incident Scene Description

The OIS occurred in a parking lot of the Chase Suite Hotel at 39150 Cedar Boulevard in Newark. The nearest cross street is Mowry Avenue to the north. The area is primarily commercial. There is a McDonald's to the north and a vacant building and multi-story commercial building to the east of the parking lot. The Newpark Mall, a large indoor shopping center, is directly north-east of the Chase Suite Hotel.

The Chase Suite Hotel consists of nine separate two-story buildings. Each building has eight apartment-style units that include a common area and kitchen. Each unit has exterior facing windows and an exterior facing front door.

The parking area for hotel residents consists of a privately maintained roadway, which weaves in between the nine separate buildings. There is parking on both sides of the roadway, allowing residents to park in marked parking stalls. The shooting occurred in the roadway between Buildings 4, 5, 8, and 9. (Figure 5).

Aerial drone image of the hotel parking lot; circled in red is the scene of the shooting.

Incident Scene Evidence Recovery

On April 14, 2023, at approximately 12:10 AM, BFS criminalists conducted a crime scene investigation. One BFS Senior Criminalist was primarily responsible for the scene processing and documenting her work on the investigation. Two Senior Criminalists from the Central Valley Laboratory as well as two Senior Criminalists from the BFS Sacramento Laboratory responded to the scene to assist.

The Mercedes was backed into a parking stall on the south side of the roadway, facing north. The Mercedes had multiple bullet holes to the driver-side front windshield and side view mirror. The driver's door window was shattered and impact points from a pepper ball launcher were apparent on the Mercedes' driver door and left front fender.

SACMCTF's black Ford F-150 pickup truck was parked facing south. Its front bumper nearly touched the front bumper of the Mercedes. The truck was equipped with a working solid forward-facing red light and red and blue lights along with additional lights on the grill. All of the police vehicles' lights on scene were illuminated and the Ford F-150 truck's engine was running upon DOJ's arrival on scene. Both passenger-side doors and the driver-side rear passenger door were ajar; the driver's door was closed. A pepper ball launcher and a trauma bag were on the hood of the Ford F-150.

On the asphalt, within a foot of the right front tire of the Ford F-150, lay a black pistol on its left side. The muzzle of the gun was pointed towards the front bumper of the Ford F-150. The right side of the pistol is imprinted with the words “Air Model Firearms” and the muzzle appeared altered. The muzzle appeared to be a different color compared to the barrel, as if paint had been removed. The hammer of the gun was in the cocked position. (Figure 6.) The weapon was identified as an airsoft gun not capable of discharging lethal ammunition.

Apparent firearm that Mr. Castaneda had in his waistband.

DOJ criminalists located a spent nine-millimeter casing in a police Dodge Durango’s cowl vent. Two additional spent nine-millimeter casings were located inside the Durango’s passenger compartment. The Durango was parked in the ninth stall (counting from east to west) on the north side of the aisle in between the hotel buildings, to the right of the Mercedes at the time of the shooting.

Officer Processing

Detectives Piol, Hartman, and Degenstein were processed at the Fremont Police Department by CSI Paul Richards. Detective Damewood was processed at the Newark Police Department by CSI Cory Swadener.

Video Recordings and Communications Evidence

The eight SACMCTF officers who participated in the takedown were each equipped with a body-worn camera. Multiple body-worn camera recordings captured audio and video of the shooting from the moment of the officers’ arrival at the hotel parking lot until medical aid was rendered to Mr. Castaneda. All recordings from those cameras were provided to DOJ and reviewed by CaPSIT.

DOJ obtained and reviewed copies of dispatch and radio communications, Computer Aided Dispatch (CAD) logs and message notifications related to the incident. The CAD printouts are consistent with the radio transmissions.

Coroner's Investigation

The autopsy of Mr. Castaneda was conducted by Dr. Katherine Raven of the Coroner's Bureau at the Alameda County Sheriff's Office on April 18th, 2023. Mr. Castaneda was a 19-year-old Hispanic male, five foot seven inches tall, and weighing 145 pounds.

The autopsy revealed Mr. Castaneda suffered eight gunshot entrance wounds in his "posterior torso" and "lateral left chest." Four bullets were recovered from Mr. Castaneda. Dr. Raven also identified what she believed were two exit wounds, two defects in the left side of his neck and right axilla (possible bullet fragments), a gunshot wound to his left hand, and internal injuries to his organs. The Dr. noted that "due to intersecting bullets paths" and "[d]ue to multiple dissecting wound paths, all extending from the left side of the body, it is not possible to delineate specific wound paths and accurately align which bullet was from which of these entrance wounds."

Dr. Raven concluded Mr. Castaneda's manner of death is homicide caused by multiple gunshot wounds.

A toxicology test revealed the presence of 11-hydroxy-THC, a psychoactive THC metabolite, and Delta-9 THC, the principal psychoactive ingredient of marijuana/hashish.

Forensic Analysis

Each detective's firearm was seized. A round count and ballistics analysis were conducted on each firearm.

According to the round count conducted, a total of 19 rounds were fired: six rounds were fired by Detective Piol, three rounds were fired by Detective Hartman, six rounds were fired by Detective Degenstein, and four rounds were fired by Detective Damewood.

INTERVIEWS OF INVOLVED OFFICERS

Police officers, like all individuals, have the right to remain silent and decline to answer questions in the face of official questioning. (*Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704, 714 [individuals have right to remain silent and decline to answer questions in the face of official questioning]; see generally *Miranda v. Arizona* (1966) 384 U.S. 436, 467.)

All officers were interviewed by DOJ special agents at the Newark Police Station. All officers were present with their attorney Jonathan Murphy.

The following are summaries of the officer interviews that describe the incident from the perspective of the individual officer. Please note the interviews contain information provided by the officers that may or may not be accurate or consistent with the facts of this incident as they are presently understood.

Interviews of Shooting Officers

Officer 1 - Detective Piol (Fremont PD)

Detective Piol was interviewed on April 20, 2023, at approximately 10:10 AM, by DOJ Special Agents T. Lewis and B. Meeker.

At the time of the shooting, Detective Piol had been in law enforcement for just over 11 years. He worked for the Sacramento County Sheriff's Office for nine months and the rest of his career was with Fremont Police Department. Other than working as a patrol officer, he had worked as a motor officer, in the street crimes unit, in a SWAT assignment, and as a general assignment detective. Detective Piol had also been a firearms, emergency vehicle operation, and defensive tactics instructor. Detective Piol had previously served in the Marine Corps from 2006 through 2010.

Detective Piol was with Detective Hartman when Sergeant Sanchez called and asked for assistance with the surveillance and potential arrest. While en route to the location, Sergeant Sanchez provided details on the Mercedes' carjacking and the suspected carjacker's description. Detective Piol arrived at the Newpark Mall area and was assigned by Sergeant Farmer to ride in Detective Hartman's Ford F-150. Detective Hartman was the driver, Detective Heidebrecht was in the rear passenger seat, and Detective Piol was in the rear driver-side passenger seat.

Detective Piol observed two Hispanic males walk out from a breezeway at the Chase Hotel Suites and towards the Mercedes. When the command to move in was made, Detective Hartman drove the Ford F-150 up against the Mercedes and blocked it from leaving the parking stall it was in.

Detective Piol got out of the Ford F-150 and stood behind Detective Hartman's open driver's door. Detective Piol drew his firearm and yelled, "Police, hands up!" Both Mr. Castaneda and W-1 complied and put their hands up. Detective Piol heard multiple officers shouting directions to Mr. Castaneda. To avoid confusion and enable Mr. Castaneda to comply with the directions given, Detective Piol shouted to all of the officers to stop talking and directed only Detective Heidebrecht to give commands to Mr. Castaneda because he wanted them to focus primarily on apprehending Mr. Castaneda.

Detective Piol heard Detective Heidebrecht give directions to Mr. Castaneda, and as Mr. Castaneda got out of the Mercedes, he had his hands up. Detective Piol heard Detective Heidebrecht say, "Gun." Detective Piol knew that to mean that Mr. Castaneda had a gun, but initially Detective Piol could not see the gun. Then he saw what he believed was a gun in Mr. Castaneda's waistband. Detective Piol heard officers giving directions to Mr. Castaneda not to reach for the gun. Next, Detective Piol saw Mr. Castaneda "drop his right hand and immediately go towards the gun."

Detective Piol "could clearly see [Mr. Castaneda] go for the gun." He believed that Mr. Castaneda was "going for the gun" and that the only reason to do so was in order "to hurt" the officers. "Fearing for [other officers'] lives and [his own] life, [Detective Piol] fire[d]." Detective Piol fired two or three shots at Mr. Castaneda and Mr. Castaneda fell to the ground out of the detective's view.

Detective Piol then worked with Detective Hartman to safely get W-1 out of the Mercedes. Finally, Detective Piol was instructed to sit in Detective O'Neal's vehicle, after which Detective Piol was taken to the police station.

Officer 2 - Detective Hartman (Fremont PD)

Detective Hartman was interviewed at 11:53 AM on April 20, 2023, at the Fremont Police Department by DOJ Special Agents Meeker and A. Samano.

At the time of the shooting, Detective Hartman had been in law enforcement for 11 years with the Fremont Police Department. Other than serving as a patrol officer, he had served as a field training officer, in the Street Crimes Unit, and as a general assignment detective.

Detective Hartman was at the police station when Sergeant Sanchez advised him of an ALPR alert in the City of Newark for a carjacked Mercedes. Sergeant Sanchez asked Detective Hartman to assist with surveillance in an unmarked capacity.

Detective Hartman arrived at the hotel parking lot and met with Sergeant Farmer, who instructed Detective Hartman to get into SACMCTC's Ford F-150. Detective Hartman was the driver and was responsible for blocking in the Mercedes and activating his emergency lights and siren.

Detective Hartman recalled the plan as: if the suspects were observed standing in or around the Mercedes, the officers planned to confront them. If the suspects returned to the Mercedes and got into it quickly, then the officers planned to use the Ford F-150 to block the Mercedes to prevent it from fleeing.

While surveilling the Mercedes, Detective Hartman heard over the radio that the Mercedes was stolen "at knifepoint" and that the suspect was a Hispanic male in his twenties who was wearing a "black sweatshirt that said, 'cookies' on it."

Sergeant Farmer announced over the radio that two Hispanic males were walking towards the Mercedes. Detective Hartman watched W-1 open the passenger door and so Detective Hartman drove the Ford F-150 right up to the Mercedes. Both Mr. Castaneda and the passenger were inside of the Mercedes as it began to move forward slightly, so Detective Hartman pulled the Ford F-150 up to the Mercedes' front bumper to block its path. He activated his emergency lights and siren and got out of the truck.

Detective Hartman drew his handgun and yelled, "Police, hands up!" Both Mr. Castaneda and W-1 looked right at the Ford F-150 and its emergency lights when they put their hands up.

When Mr. Castaneda was directed to get out of the Mercedes, Detective Hartman heard Detective Heidebrecht, who was positioned on the passenger side of the Ford F-150 yell, "Gun, gun, gun!" Detective Hartman then "saw the handle of what looked like a black pistol wedged into [Mr. Castaneda's] … waistband on the … right side." He saw that Mr. Castaneda was facing away from the arrest team with his hands up to his eye-level.

At that point, Detective Hartman believed he heard someone say, "Hey, don't go for that gun." The speaker's voice got "elevated," and Detective Hartman perceived "concern" in the speaker's voice like he was "worried or afraid." Detective Hartman saw Mr. Castaneda's "hands quickly dip down towards his waistband." Suddenly, Mr. Castaneda began to turn "very fast" to his right—towards Detective Heidebrecht. Detective Hartman believed Mr. Castaneda was "going to turn and shoot" Detective Heidebrecht. He also feared that if Mr. Castaneda "shot at [other officers], he could then very quickly just turn and shoot at [Detective Hartman]" and others on the side of the Ford F-150.

Detective Hartman fired his handgun once or twice at Mr. Castaneda then immediately stopped when he saw Mr. Castaneda fall to the ground. He "didn't think [Mr. Castaneda] was a threat anymore" because the detective "heard a lot of other gunshots." At that point, Detective Hartman focused on making sure that the passenger was secured to prevent further escalation.

After moving the passenger away from the scene and ensuring that he did not have any weapons, Detective Hartman helped render aid to Mr. Castaneda until paramedics arrived.

Officer 3 - Detective Degenstein (Fremont PD)

Detective Degenstein was interviewed at 2:47 PM on April 20, 2023, by DOJ Special Agents Lewis and Meeker.

At the time of the shooting, Detective Degenstein had been in law enforcement for about five years and nine months, all with Fremont Police Department and had worked as a patrol officer and a member of the Major Crimes Task Force.

Detective Degenstein received a phone call from Detective Damewood telling him that the carjacked Mercedes was spotted in the City of Newark, and units were responding to search for it. Detective Degenstein also learned that the suspect used a knife in the course of stealing the Mercedes and was possibly involved in another carjacking during which a firearm was possibly involved.

When he learned that the Mercedes was located at the Chase Suite Hotel, Detective Degenstein drove there and saw the Mercedes backed into a parking stall. Detective Degenstein parked his pickup in a parking stall northwest of the Mercedes, and he could see the front of the Mercedes from that location. Detective Degenstein's role was to contain the west side of the perimeter in the event a suspect fled.

Detective Degenstein sat in his unmarked vehicle when he observed two Hispanic males walk from behind his vehicle, west to east on the sidewalk, looking around and at other vehicles. Detective Degenstein watched both males walk directly to the Mercedes where one got into the passenger seat and the other got into the driver's seat. Once they were inside of the Mercedes, Detective Degenstein could not see them because another parked vehicle blocked his view.

When Sergeant Farmer called out for the Ford F-150 to move in, Detective Degenstein moved his own pickup closer to where the Mercedes was located so that he could walk to the Ford F-150 and help apprehend Mr. Castaneda. Detective Degenstein parked in a stall south of the Mercedes, got out of his pickup, and walked to the passenger side of the Ford F-150. Detective Heidebrecht was to his left, between himself and the Ford F-150. Detective Piol and Detective Hartman were on the driver side of the Ford F-150 giving commands.

Detective Degenstein saw Detective Heidebrecht switch from his firearm to a less-lethal weapon. Detective Heidebrecht ordered Mr. Castaneda out of the Mercedes and directed him to shut the driver door and turn away from him. Mr. Castaneda complied with the commands and Detective Degenstein could see Mr. Castaneda's hands on top of his head.

When Detective Heidebrecht yelled, "Gun, gun, gun" multiple times, Detective Degenstein believed that he saw "both of [Mr. Castaneda's] hands then go down towards his waistband." Detective Degenstein saw that Mr. Castaneda had pulled out a black gun from his waistband area.

Detective Degenstein perceived that Mr. Castaneda raised the gun right before shots were fired.[4] Detective Degenstein "believed [Mr. Castaneda] was trying to shoot to kill [the detective's] partners or [the detective]." At that point, Detective Degenstein fired his gun at Mr. Castaneda approximately five times. Meanwhile, another officer to his right deployed a pepper ball launcher. The situation "went from complete compliance to a lethal threat within fractions of a second."

Officer 4 – Detective Damewood (Newark PD)

Detective Damewood was interviewed at 1:31 PM on April 20, 2023, by DOJ Special Agents Samano and Lewis.

At the time of the shooting, Detective Damewood had been in law enforcement for just over five years and had spent his entire career with the Newark Police Department. He had served on the SWAT team and as a member of the Major Crimes Task Force.

On the day of the shooting, Detective Damewood was notified by NPD Sergeant Arroyo that the stolen Mercedes was spotted in the City of Newark. Detective Damewood notified Sergeant Farmer and SACMCTF detectives drove to Newark to locate the Mercedes. Detective Damewood was aware that the carjacking suspect used a knife to steal the Mercedes and was believed to have attempted another carjacking one or two weeks later. Detective Damewood received a "grainy" surveillance photograph of the carjacking suspect—a Hispanic male, in his twenties, wearing a black "cookies" sweatshirt and dark pants. The detective shared that information with the other officers.

Detective Damewood was the first SACMCTF detective to arrive at the Chase Suite Hotel, so he walked through the hotel in an attempt to find the Mercedes and confirm that its license plate number matched that of the stolen Mercedes. Detective Damewood located the Mercedes and determined that it was the Mercedes that was stolen at knife point on February 14, 2023. He parked his vehicle east of the Mercedes and began surveilling it.

As additional units from SACMCTF and FPD began arriving at the Chase Suite Hotel, Detective Damewood was assigned to support the Ford F-150.

When the Ford F-150 "nosed" into the Mercedes, Detective Damewood drove closer to the Mercedes, parked to the left of the Ford F-150 and got out from his vehicle as others were giving verbal commands to the suspects. Detective Damewood had his lethal firearm out and aimed at W-1 as soon as he exited from his vehicle. Detective Damewood could see both suspects put their hands up, but his view was obstructed by a pickup truck parked next to the Mercedes, so he stepped onto the bumper of a vehicle and was able to see inside of the Mercedes.

Detective Damewood saw W-1 in the front passenger seat holding a vape pen in his right hand with both of his hands raised. With his lethal firearm aimed at W-1, Detective Damewood instructed W-1 to drop the vape pen. W-1 immediately did so while keeping his hands up.

As an officer was instructing Mr. Castaneda to get out of the Mercedes, Detective Damewood could hear others commanding Mr. Castaneda to keep his hands up. Detective Damewood was focused on

[4] At the time of the interview, Detective Degenstein could not remember which hand Mr. Castaneda used to pull the gun from his waistband.

W-1 when he heard someone say, “Gun, gun, gun.” Detective Damewood then shifted his focus to Mr. Castaneda and saw that he was turned facing away from Detective Damewood with his back to detectives. With his hands up, Mr. Castaneda’s shirt revealed the top of what Detective Damewood believed was a black semi-automatic handgun in Mr. Castaneda’s waistband. Suddenly, Mr. Castaneda “went straight” for the gun. When Mr. Castaneda used his right hand to reach down, Detective Damewood fired three rounds at Mr. Castaneda.

Detective Damewood believed Mr. Castaneda was intending to grab the gun, turn towards detectives, and either try to kill or seriously injure them. He felt that shooting Mr. Castaneda was his only option.

Immediately after the shooting, Detective Damewood requested medical assistance for Mr. Castaneda.

Interviews of Less-Lethal Officers

Officer 1 - Detective Heidebrecht (Fremont PD)

Detective Heidebrecht was interviewed on April 19, 2023, by DOJ Special Agents Samano and D. O’Neil-Tennant. At the time of the interview, Detective Heidebrecht had been an officer for about six and a half years. For two years, he worked with the San Francisco Police Department and for the next four and a half years he worked for FPD.

On the day of the shooting, Detective Heidebrecht learned of the license plate alert and that the Mercedes was stolen by a suspect armed with a knife. Detective Heidebrecht arrived at the hotel parking lot in the Ford F-150 unmarked pickup truck, which was driven by Detective Hartman. Detective Piol was also in the truck.

Detective Hartman parked the Ford F-150 east of the Mercedes. Each detective had a role. Detective Heidebrecht was assigned the 40-millimeter less-lethal launcher. From inside the parked Ford F-150, Detective Heidebrecht could see the front of the Mercedes, but his view of the entire Mercedes was obstructed by another car. Detective Heidebrecht monitored NPD’s radio channel and heard someone on the radio say that two Hispanic males were approaching the Mercedes. Sergeant Farmer then assigned Detective Heidebrecht to communicate with NPD Dispatch in the event that they made contact with a subject and anyone fled.

Detective Heidebrecht then heard on the radio that the two men were entering the Mercedes and its doors were open. Detective Hartman drove the Ford F-150 towards the Mercedes and parked “nose to nose” with the Mercedes, blocking it in. Detective Heidebrecht exited from the rear passenger-side door, placed the 40-millimeter less-lethal launcher on the passenger-side hood of the Ford truck and drew his department-issued firearm. He pointed the firearm at Mr. Castaneda and stated, “Hands up” as did other officers around him. When he saw Detective Degenstein—to his right—with his firearm raised, Detective Heidebrecht put away his firearm and picked up the less-lethal launcher again. He switched to the less-lethal launcher because others around him had their lethal weapons out already.

Detective Heidebrecht was about five to six feet from Mr. Castaneda as he gave instructions to Mr. Castaneda, including to put his hands up. Detective Heidebrecht felt that Mr. Castaneda was “compliant” with his commands. Mr. Castaneda opened the driver’s door, stepped out of the car and walked towards where the detectives were positioned. Detective Heidebrecht saw the handle of a black handgun in what he believed to be Mr. Castaneda’s front right pants pocket. The handle was positioned at a “45-degree angle,” the gun was possibly a 1911 model handgun, and there was

"weight" to the handgun because Detective Heidebrecht could see it was "pulling down" on Mr. Castaneda's pants. Detective Heidebrecht yelled "gun" and repeated it at least one more time because he wanted to make sure the other officers were aware.

Detective Heidebrecht immediately ordered Mr. Castaneda to get onto the ground, at which point he saw that Mr. Castaneda "dropped his left hand … towards … the side of his pants." When Mr. Castaneda did so, Detective Heidebrecht deployed one less-lethal 40-millimeter round at Mr. Castaneda's left leg. He did so because he was "scared" that Mr. Castaneda was "going to try and either kill" Detective Heidebrecht or his partners.

Detective Heidebrecht fired just one less-lethal round thinking, "Don't let him grab that gun." But just as he deployed the 40-millimeter round, Mr. Castaneda's "left hand was coming down." Detective Heidebrecht described that, when he saw Mr. Castaneda's left hand come down to where the gun was, he got "scared" that Mr. Castaneda was "going to try and either kill me or kill my partners."

Detective Heidebrecht believed that the less-lethal round struck Mr. Castaneda's buttocks area. Within a second or two of firing the 40-millimeter round, Detective Heidebrecht heard several rounds fired at Mr. Castaneda. He saw Mr. Castaneda fall to the ground and the handgun fell out of Mr. Castaneda's hand and landed right next to where Mr. Castaneda fell.

Officer 2 – Sergeant Romley (Fremont PD)

Sergeant Romley was interviewed on April 19, 2023, at 12:14 PM, by DOJ Special Agents Meeker and Rotberg.

Sergeant Romley had been in law enforcement for about 20 years at the time of the shooting. He was first a deputy with the Marin County Sheriff's Department for about two years, and the remainder of his career was spent with Fremont Police Department. He became a Sergeant in January 2015 and has been a firearms instructor, emergency vehicle instructor, field training officer, apprehension K-9 officer, served on the SWAT team as an officer and a sergeant, and supervised the Street Crimes Unit for three years. At the time of the shooting, Sergeant Romley was in his third year as the general assignment detective sergeant.

Prior to the shooting, Sergeant Romley received a call around 4:00 PM from FPD Sergeant Sanchez that FPD was using Detectives Piol and Hartman for surveillance on a carjacked Mercedes in the City of Newark. Sergeant Romley offered additional personnel for the surveillance operation and asked to be added to the communication thread.

Sergeant Romley drove to the area where the Mercedes was parked because he was told SACMCTF could use his help if he were available. Sergeant Romley advised over the radio that he was going to bring a less-lethal pepper ball launcher. Upon arrival, Sergeant Farmer directed Sergeant Romley to follow the Ford F-150 truck and provide less-lethal support and take a perimeter position. Sergeant Romley backed into a parking stall at the restaurant parking lot where he had a view of the Chase Suite Hotel but could not see the Mercedes.

While waiting in his vehicle, Sergeant Romley heard Sergeant Sanchez broadcast a "CSTI"[5] in which the sergeant described the carjacking and the stolen silver Mercedes with no front license plate. Sergeant Romley also read, in a written messaging platform with which the responding officers exchanged information, that the weapon used in the carjacking was a knife and he saw a photograph of the suspect. During his interview, Sergeant Romley could recall that the image of the suspect depicted a "skinnier build, Hispanic male … in a black sweatshirt and dark pants."

Sergeant Romley then saw two subjects walk in front of his vehicle, but he did not relay the information over the radio because they were not walking towards the Mercedes at first. Sergeant Romley initially thought they were "high" because they were "very animated in their movements." One of the subjects made "some strange gestures to a car" that was passing him. Then Sergeant Farmer said over the radio that the two subjects were getting into the Mercedes.

When Sergeant Romley heard Sergeant Farmer's "takedown" call, Sergeant Romley drove to the Mercedes. The Ford F-150 was already there and everyone inside of it was already outside of the truck. Sergeant Romley retrieved his less-lethal pepper ball launcher and went to the driver's side of the Ford F-150, where two other detectives were positioned as well. Sergeant Romley saw a driver and front passenger seated inside of the Mercedes with their hands up at shoulder level.

Sergeant Romley was focused on the passenger while Mr. Castaneda was directed to get out of the Mercedes. He glanced over at Mr. Castaneda as he moved out of the Mercedes. When Mr. Castaneda was completely outside of the Mercedes and had his hands up, Sergeant Romley heard someone say, "Gun." From his position, Sergeant Romley saw that Mr. Castaneda was not facing the detectives and had a "canted" or "bladed" stance away from them. Sergeant Romley saw Mr. Castaneda's gun from where he was standing.

Sergeant Romley saw Mr. Castaneda's right hand drop down, at which point the sergeant deployed three to five pepper ball rounds. Sergeant Romley believed that the pepper ball rounds struck Mr. Castaneda in the "upper shoulder area." Simultaneously, Sergeant Romley heard multiple gunshots from the detectives around him.

Sergeant Romley remarked, "[W]hat was so bizarre about this situation is that at the first point of contact, you had two compliant suspects" and "everything seem[ed] to be going as planned, people seem[ed] to be following commands, they seem[ed] to be doing what they're told." Sergeant Romley added, "And then, all of a sudden, out of nowhere, for absolutely no reason that [he] can comprehend, the suspect who was standing at the front fender goes from a hands up to dropping a hand down towards his waistband. After it's been identified that he has a gun."

After the shooting, Sergeant Romley did not see the gun until he ran around to the passenger side of the Ford F-150 and saw Mr. Castaneda on the ground. He saw that the gun had fallen near Mr. Castaneda's left shoulder. Sergeant Romley stepped on the gun and used his foot to drag it away from Mr. Castaneda. As he was dragging the gun away with his foot, he believed the gun was a "Beretta," that it was "metal" and had "weight" to it, all of which led him to believe it was a real firearm.

[5] A CSTI is a crime, suspect, threat, and incident location report.

Officer 3 - Sergeant M. Sanchez (Fremont PD)

Sergeant Sanchez was interviewed on April 13, 2023, at approximately 3:30 PM by DOJ Special Agents O'Neil-Tennant and Samano.

At the time of the shooting, Sergeant Sanchez had been in law enforcement for 17 years, all of which were with Fremont PD. He had served as a general detective and a field training officer, and had been on the street crimes unit, on the crimes against persons unit, and supervised the hostage negotiation team. He had been on the hostage negotiation team for about 12 years at the time of the shooting.

Sergeant Sanchez received a phone call from Sergeant Farmer regarding a vehicle alert from a license plate reader in the City of Newark. Sergeant Sanchez was informed the vehicle was involved in a carjacking approximately one month prior. At approximately 4:00 PM, Sergeant Farmer told Sergeant Sanchez that the stolen Mercedes was located at the Chase Suite Hotel and asked Sergeant Sanchez and his team to assist.

Sergeant Sanchez arrived at the Chase Suite Hotel parking lot at about 4:10-4:15 PM. Sergeant Farmer organized an operational plan and asked Sergeant Sanchez to set up a communication thread to share the plan. Sergeant Sanchez included all of the detectives who were involved in the surveillance on the thread. The thread included a picture of the Mercedes, which was taken earlier in the day by a traffic camera. Sergeant Sanchez used a Google Map image to pinpoint where the Mercedes was positioned in the parking lot and he put out information he received from his dispatch regarding the carjacking, which included a description of the suspect, the Mercedes, and that a knife was used in the commission of the theft. Detective Damewood shared images which included a photograph of the theft suspect.

Sergeant Sanchez pulled his vehicle up, facing the front of the Mercedes at an angle, directly to the right of the police F-150 truck that was already facing the Mercedes head-on. Sergeant Sanchez was positioned facing Mr. Castaneda with the driver's door of his police vehicle open, which he used as a shield. While the other officers were giving Mr. Castaneda orders, Sergeant Farmer instructed Sergeant Sanchez to bring out the 40-millimeter less-lethal launcher, so Sergeant Sanchez did. When he reached into his vehicle to get it, Sergeant Sanchez briefly lost sight of Mr. Castaneda, at which time he heard officers shout, "Gun, gun, gun." Immediately, he focused on Mr. Castaneda's waistband to see if he could see the gun. Sergeant Sanchez saw what appeared to be black but could not confirm from his position whether it was in fact a gun.

"Almost immediately" after officers yelled about the gun, Mr. Castaneda's "actions completely changed." Sergeant Sanchez saw Mr. Castaneda's hands "immediately c[o]me down with no direction from anyone and it was almost so instantaneous and purposeful that his hands came down." Mr. Castaneda's hands came "directly down" "with speed towards his waistband." Sergeant Sanchez "immediately" thought that Mr. Castaneda "was going to reach for the gun." He believed "it was clear that he [Mr. Castaneda] was going to reach for that gun" and that if Mr. Castaneda had access to the gun, "he could shoot one of" the officers or Sergeant Sanchez because Sergeant Sanchez was "pretty close" to Mr. Castaneda. Sergeant Sanchez believed "instantaneous action" was required so he "immediately discharged one round" from his less-lethal launcher and struck Mr. Castaneda "somewhere in his upper torso." Then Sergeant Sanchez heard "several shots fired" from the detectives in the Ford F-150.

INTERVIEW OF CIVILIAN WITNESS

The following statement is a summary of a civilian witness interview, which describes the incident from the point of view of the witness. Please note that the interview contains facts relayed by the witness that may be inaccurate or inconsistent with the facts of this incident as they are currently understood.

Interview of W-1 (Passenger)

After the shooting, NPD Detectives A. Musantry and J. Hunter interviewed W-1 in a private interview room at the Newark Police Station.

On the day of the shooting, Mr. Castaneda picked up W-1 in the Mercedes at Birch Grove Park. W-1 then drove himself and Mr. Castaneda in the Mercedes to the Chase Suite Hotel. W-1 backed the Mercedes into a parking stall at Mr. Castaneda's direction because the vehicle did not have tags. W-1 became suspicious that the Mercedes was stolen because Mr. Castaneda told him he bought the vehicle for $400 or $500, which W-1 did not believe. W-1 and Mr. Castaneda then went to Newpark Mall.

After walking around Newpark Mall, W-1 and Mr. Castaneda walked back to the Mercedes. W-1 entered the front passenger seat while Mr. Castaneda entered the driver's seat. W-1 did not know that Mr. Castaneda had a gun on him. He knew Mr. Castaneda carried pocket knives.

Once W-1 saw officers block the Mercedes, he realized they were police officers. It also confirmed his initial suspicion that the Mercedes was stolen.

Just before officers shot at Mr. Castaneda, W-1 saw him reach his arm down towards his hip.

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.)

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 the death of Mr. Castaneda. This analysis is based on all of the evidence obtained by DOJ in this matter, including law enforcement reports, witness interviews, forensic evidence, autopsy, and body-worn camera video.

Because a prosecuting agency would need to affirmatively prove beyond a reasonable doubt that Detectives Hartman, Degenstein, Piol, and Damewood did not act in lawful defense of themselves or others, this is the primary issue in determining whether criminal charges should be filed. An in-depth review and analysis of the evidence demonstrates that criminal charges cannot be supported.

Objectively Reasonable Belief of Need to Act in Self-Defense

Prior to the shooting, the officers on scene all knew that Mr. Castaneda was sitting in the driver's seat of the same Mercedes that was stolen at knife point. The officers also knew that Mr. Castaneda fit the description of the suspect who committed that offense.

When Mr. Castaneda suddenly reached for his apparent firearm and removed it from his waistband, each officer's belief that he intended to use that gun, and that their lives were at risk, was objectively reasonable. The officers did not fire a single shot until after the gun was visible and Mr. Castaneda reached for it. An officer in the same position would have also reasonably believed it was necessary to use deadly force in self-defense when faced with a sudden reach for a firearm during an arrest where the suspect is in possession of a vehicle that was stolen by means of an armed carjacking.

There was no reason for the officers to suspect that the gun was not real based on the split-second sighting of the weapon. The firearm had no visible markings on it—such as an orange tip—indicating it was anything other than a lethal weapon. According to Sergeant Romely, nothing about the gun appeared to be plastic, even up close. Moreover, the manner in which Mr. Castaneda carried the weapon in his waistband is also the same manner in which suspects often carry lethal firearms for quick access and use. Finally, it is of no significance that "Air Model Firearms" was printed on the barrel because officers would not be expected to read it from where they stood, in the split-second they had to react. Therefore, the officers' belief that this firearm posed a threat to their lives in Mr. Castaneda's possession was objectively reasonable. They were under no obligation to wait and see what Mr. Castaneda planned to do with the gun after he reached for it before discharging their weapons.

Subjective Belief of Need to Act in Self-Defense

Each of the officers described seeing the firearm in whole or in part and Mr. Castaneda reach for it before discharging their weapons, coupled with the fear that Mr. Castaneda would shoot them or the other officers on scene if they did not act immediately.

Detective Piol "could clearly see [Mr. Castaneda] go for the gun." He believed that Mr. Castaneda was "going for the gun" in order "to hurt" the officers. Detective Piol stated that he "[f]ear[ed] for [other officers'] lives and [his own] life" when he fired.

Detective Hartman "saw the handle of what looked like a black pistol wedged into [Mr. Castaneda's] … waistband on the … right side." Then, he heard an officer command Mr. Castaneda, "Hey, don't go for that gun." Detective Hartman only discharged his weapon when he saw Mr. Castaneda's "hands quickly dip down towards his waistband." Like Detective Piol, he believed Mr. Castaneda was "going to turn and shoot" and feared that if Mr. Castaneda "shot at [other officers], he could then very quickly just turn and shoot at [Detective Hartman]" as well.

Detective Degenstein believed that he saw "both of [Mr. Castaneda's] hands … go down towards his waistband" just as Detective Heidebrecht yelled, "Gun, gun, gun." Then Detective Degenstein saw Mr. Castaneda pull a black gun from his waistband area. Detective Degenstein "believed [Mr. Castaneda] was trying to shoot to kill [his] partners or [Detective Degenstein]." Detective Degenstein actually saw Mr. Castaneda pull the gun out of his waistband, while other detectives merely saw Mr. Castaneda "reach" for the gun. Detective Degenstein's observation of Mr. Castaneda pulling the gun from his waistband corroborates the other witnesses' observations, including the passenger, of Mr. Castaneda reaching for it. Figure 4 depicts Mr. Castaneda's gun falling out of his hand as he was shot, which in turn corroborates what Detective Degenstein saw.

Detective Damewood heard Mr. Castaneda being ordered to keep his hands up. When he heard someone say, "Gun, gun, gun," Mr. Castaneda was turned with his back to detectives, facing away from Detective Damewood. With his hands up, Mr. Castaneda's shirt was raised above his waist, and Detective Damewood saw what appeared to be a black semi-automatic handgun in his waistband. Suddenly, he saw that Mr. Castaneda "went straight" for the gun by bringing his right hand down. Only then did Detective Damewood discharge his weapon. Detective Damewood stated that he believed Mr. Castaneda was intending to either try to kill or seriously injure the officers on scene and that shooting Mr. Castaneda was his only option.

For the foregoing reasons, a detailed analysis of the evidence fails to establish that any of the four detectives did not actually believe that lethal force was necessary in self-defense and fails to establish that the detectives were objectively unreasonable in their determination that lethal force was necessary to protect others or themselves.

CONCLUSION

Based on the investigation and review of evidence, along with the applicable statutes, legal principles, and subsequent analysis, there is insufficient evidence to support a criminal prosecution of Detectives Hartman, Degenstein, Piol, and Damewood. As such, no further action will be taken in this case.

CALIFORNIA

DEPARTMENT OF JUSTICE

Policy and Practice Recommendations for the the Fremont and Newark Police Departments Related to the Officer-Involved Shooting of Elmer Lopez Castaneda on April 13, 2023

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

July 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.

As background, on April 13, 2023, at approximately 3:19 p.m., Newark Police Department (NPD) dispatch received and broadcast to local police radio channels an alert from an automated license plate reader (ALPR) for a vehicle that was reported stolen during a carjacking with a knife two months earlier, advising that the current driver was unknown. NPD patrol officers and the Southern Alameda County Major Crimes Task Force (SACMCTF), which included an NPD detective and detectives from the Fremont Police Department (FPD), responded to search for the vehicle, which was found at approximately 3:53 p.m. backed into a stall in a hotel parking lot.

At 4:00 p.m., FPD Sergeant Keith Farmer assumed control of the operation to apprehend anyone returning to the vehicle. He coordinated the response of SACMCTF and FPD personnel, including three sergeants, six detectives, and two officers. Other NPD officers were also in the area to provide additional support as necessary. Sergeant Farmer established a plan to block the vehicle and assigned officers to contain the area if suspects attempted to flee on foot.

At approximately 4:46 p.m., two people entered the driver and front passenger seats of the vehicle. Sergeant Farmer radioed the order to move in. A truck, containing three detectives, quickly blocked the vehicle and confronted the occupants. They were joined by other officers, all with their weapons drawn. The passenger and the driver, later identified as Elmer Lopez Castaneda, immediately put their hands in the air and complied with instructions.

Initially, officers talked over one another while giving commands to the subjects and talking to each other. Then, FPD Detective Piol instructed FPD Detective Heidebrecht to take over communication with the driver and told everyone else to hold. Detective Heidebrecht then directed: "Driver, step out of the vehicle with your hands in the air. Driver." Mr. Castaneda exited the vehicle, as instructed. Detective Heidebrecht gave the next instruction: "Keep your hands up. Walk toward me." Mr. Castaneda complied. At this point, an NPD detective broadcast on the radio: "We have compliance so far."

After Mr. Castaneda took a few steps forward, Detective Heidebrecht told him, "Turn around, turn around." Mr. Castaneda began to turn with his hands still in the air, at which point Detective Heidebrecht yelled, "Gun! Gun! Drop down to the ground now!" Other officers also yelled: "Drop down," "Nope," and "Hey." As "gun" was announced, Mr. Castaneda paused briefly and looked back at the officers, then continued to turn away. As "drop down" was commanded, Mr. Castaneda started lowering his hands. With his left hand, he reached down to take what appeared to be a firearm out of his left pocket or waistband.[1]

At this point, there were eight officers surrounding the vehicle, seven of whom fired their weapons, discharging 15 firearm rounds, several pepperball rounds,[2] and several 40mm rounds[3] within a two-second period at 4:47 pm.

Mr. Castaneda fell to the ground, face up. The imitation firearm landed within about a foot of Mr. Castaneda's left shoulder. Officers kept their weapons drawn on Mr. Castaneda, called for a shield, and took cover behind car doors. Officers told Mr. Castaneda, "Don't reach" and "Don't move." While on the ground, Mr. Castaneda made minimal movements but did not reach for the imitation firearm. Officers fired several more pepperball and 40mm rounds at him. Approximately 90 seconds after the shooting, FPD Sergeant Romley took command, and ordered officers to move in, saying "Let's just push up. We've got plenty of people, and he's disabled." Officers then approached, handcuffed Mr. Castaneda, and rendered aid until paramedics arrived. Paramedics called time of death at 4:59 p.m. According to the autopsy, Mr. Castaneda had eight gunshot wounds to his back and the left side of his torso.

The Police Practices Section has evaluated all the facts and available evidence, and pursuant to its obligations under Government Code section 12525.3, subdivision (b)(2)(B)(iii), advises the Fremont and Newark Police Departments to review and implement four recommendations:

Recommendation One: Provide Additional Training on Advance Tactical Planning for High-Risk Stops and Arrests

The Police Practices Section recommends that the Fremont and Newark Police Departments provide additional training on tactics when engaged in high-risk stops, including operational planning, assignment of roles, and communication.

California law encourages agencies to provide periodic updates on "use of force scenario training, including simulations of low-frequency, high-risk situations and calls for service, shoot-or-don't shoot situations, and real-time force option decision-making." (Pen. Code, § 13519.10, subd. (b)(11).) When officers follow their training by maintaining distance and cover, it can reduce the intensity of the

1 After the shooting, it was later determined that the gun was an imitation firearm. The precise location of the imitation firearm on Mr. Castaneda is not clear in body worn camera footage, and in their interviews, officers reported seeing it in different locations (pants pocket, waistband).

2 Pepperball rounds are projectiles fired from a kinetic energy rifle that contain oleoresin capsicum (OC) powder. They explode on contact, releasing a cloud of OC that affects a person's respiratory system (burning, irritation, gasping, gagging, coughing), eyes (tearing, burning, involuntary closing), and skin (burning and stinging).

3 40mm rounds are foam-tipped plastic projectiles fired from a kinetic energy rifle. On impact, they cause significant pain and potential blunt force injury.

situation, minimize the need to use force, including deadly force, and improve safety outcomes for subjects and officers. (Police Executive Research Forum, Integrating Communications, Assessment, and Tactics: A Training Guide for Defusing Critical Incidents (Oct. 2016), pp. 48-49.)

FPD and NPD each have policies addressing operations planning for high-risk and surveillance operations. (FPD Policy Manual, Policy No. 616; NPD Policy Manual, Policy No. 615.) According to policy, such operations require a written operational plan or, in the absence of sufficient time, a verbal plan. In either event, the plan should address a variety of subjects, including operation strategies, communication, and participants and their roles. (FPD Policy Manual, Policy No. 616.7; NPD Policy Manual, Policy No. 615.6.)

Additionally, existing FPD training for high-risk stops instructs officers to plan and "[m]ake sure that all roles have been identified before ordering people out" of vehicles, including: (1) lethal coverage responsibilities; (2) assignment of less lethal roles, such as 40mm or pepperball; (3) voice commands; and (4) the arrest team. (FPD Training on Traffic Stops & High-Risk Stops, dated May 19, 2022.) These policy and training materials are consistent with best practices and appropriately emphasize the importance of advance planning and communication between officers as to their roles and responsibilities.

In this incident, the SACMCTF team had approximately 45 minutes to set up surveillance on the stolen vehicle and prepare for the takedown before Mr. Castaneda entered the vehicle. Personnel were assigned to assist with the takedown or to perform containment at various locations. However, the planning does not appear to have included any provisional designation of roles or positions during the takedown. There is no evidence of advance discussion of which officers would serve as cover officers, with a firearm, or which officers would communicate with the subjects. Although the availability of less lethal weapons was discussed, no officers were specifically assigned to them. There is also no evidence of a plan regarding which team members would handle the driver versus any passenger(s) or where officers would be positioned during the takedown.

When the SACMCTF team members approached the vehicle, no officer took initial command of the incident. Officers spoke over each other, and multiple officers gave instructions to Mr. Castaneda and the passenger at the same time. Some team members called out if they had "lethal" or "less lethal" weapons, but they failed to indicate who they were covering or speaking to. Approximately thirty seconds after making contact, Detective Piol directed all officers to hold so that Detective Heidebrecht could take over communications with Mr. Castaneda and get him into custody. At that time, five officers were on the passenger side of the stolen vehicle, and only two were on the driver side. After Detective Heidebrecht directed the driver out of vehicle, two sergeants joined the officers on the driver side.

Greater control over this incident potentially could have been achieved if the tactical planning had included discussion of roles and positions prior to the takedown. Even absent advance planning, the subjects' initial compliance may have provided an opportunity for the tactical team to reposition themselves, assign roles, and ensure adequate cover.

The Police Practices Section recommends that the Fremont and Newark Police Departments provide additional training on advance planning for high-risk stops and arrests, including roles and responsibilities, and clear communication during an operation to address any unplanned issues or necessary adjustments.

Recommendation Two:
Provide Additional Training on Clear Communication with Subjects

The Police Practices Section recommends that Fremont and Newark Police Departments provide additional training on communicating clearly with subjects during arrests, particularly with potentially armed suspects.

Clear and concise communication is essential for effective control during arrests and to avoid confusion between team members and with the subject. It also ensures that all law enforcement personnel are aware of the situation as it develops and remain mindful of their specific roles and responsibilities. Best practice for avoiding misunderstandings during a chaotic scene is for each officer to speak clearly, give specific instructions, and direct instructions to specific persons. (See Police Executive Research Forum, Critical Response Toolkit for First-Line Supervisors.) Consistent with these principles, FPD training on high-risk traffic stops instructs officers to maintain control by designating one officer to give "simple" and "specific" commands that direct a subject through a series of steps for taking them into custody. (FPD Training on Traffic Stops & High-Risk Stops, dated May 19, 2022.)

During the incident, Detective Piol directed Detective Heidebrecht to give Mr. Castaneda commands and for everyone else to hold. Some communications during the incident were clear and specific, e.g., "Driver, step out of the vehicle with your hands in the air." However, in other instances, the officers' communications were confusing, ambiguous, or not clearly directed at any particular officer or subject. For example, in the initial moments after the officers made contact, a number of officers were talking at the same time and a detective stated, while facing the passenger with his firearm drawn, "Come to me. Somebody come to me." The detective intended to communicate with his team members, but the passenger responded by opening the car door and placing his right foot out of the car. The detective instructed: "Hey, do not fucking move, Bro!" The passenger stopped and responded, "You told me to come to you." The detective then clarified, "No. Stay right there. Stay right there."

After Mr. Castaneda exited his vehicle, Detective Heidebrecht yelled an urgent warning to officers—"Gun! Gun!"[4]—followed immediately by an order to Mr. Castaneda to "Drop down to the ground now!" At this pivotal moment when it was important to give Mr. Castaneda clear commands that would keep his hands up and visible, the commands were potentially confusing and could have been interpreted to mean drop the gun to the ground. Providing more specific instructions, e.g., "Driver, keep your hands in the air and drop down to your knees now," is best practice for officer safety during high-risk situations.[5]

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[4] At the time that Detective Heidebrecht called out the warning, according to officer interviews, no one else had seen a gun or knew its location. Providing more specific warnings, if feasible based on the circumstances—e.g., "Gun, driver pants pocket"—can assist officers in assessing danger during high-risk and rapidly evolving situations.

5 The "drop down" instruction may have been an unintended result of FPD training. FPD training for SWAT officers directs that in situations of non-compliance, "the next command should be for the suspect to get on the ground!" (Fremont SWAT Training on High-Risk Vehicle Stops, undated.) Other FPD training for officers regarding high-risk stops states that officers should "consider" commanding a subject who fails to follow commands while out of the vehicle to "get on the ground into a prone position." (FPD Training on Traffic Stops & High-Risk Stops, dated May 19, 2022.) While Mr. Castaneda did not fail to comply with a command prior to the order to drop down to the ground, FPD nevertheless should consider revising the training for situations involving weapons because the order to drop down, without further guidance, may cause a suspect to lower his hands quickly in a way that may be perceived as threatening. Indeed, several officers indicated in their interviews that they did not hear Detective Heidebrecht's command for the driver to drop down to the ground and therefore, perceived Mr. Castaneda as non-compliant with the earlier order to put his hands in the air.

The Police Practices Section recommends that the Fremont and Newark Police Departments provide training on communication with subjects during high-risk stops, including providing specific guidance for situations where a high-risk stop involves a person who may be armed or has a visible weapon.

Recommendation Three: Provide Training to Fremont Police Department Officers on the Deployment of Less Lethal Projectile Weapons on Injured or Incapacitated Persons

The Police Practices Section recommends that Fremont Police Department provide training on the deployment of less lethal projectile weapons on injured or incapacitated persons.

Under FPD policy, pepperball and 40 mm launchers are designated for use on individuals engaged in violent behavior or who present a threat to the safety of officers or the public. (FPD Policy Manual, Policy Nos. 305.3, 305.7, 305.9.1.) For both pepperball launchers and 40mm launchers, FPD policy instructs officers to give a verbal warning, if practicable and where it would not endanger officer safety. (FPD Policy Manual, Policy Nos. 305.3, 305.9.2.) The warning is intended "to give the individual a reasonable opportunity to voluntarily comply." (FPD Policy Manual, Policy No. 305.9.2.) Both policies state that "any discharge of less than 10 feet should be intentionally aimed at the arms or legs only" to lower the risk of serious bodily injury or death. (FPD Policy Manual, Policy Nos. 305.7.2, 305.9.2.)

Immediately following the shooting, when Mr. Castaneda fell to the ground, officers yelled "hands up," and Mr. Castaneda appeared to comply, raising his hands in front of him. Mr. Castaneda's arms then fell to the ground, and he lay on his back with minimal movement. During the 30 second period following the shooting, officers commanded, "Don't move" and "Don't reach." Although the imitation firearm fell near Mr. Castaneda's shoulder, none of the body worn camera recordings show him reaching for it or otherwise threatening the officers from the ground. Approximately 30 seconds after the shooting, FPD Sergeant Romley told officers, "I'm going to hit him with less lethal. I'm gonna hit him." Without giving a warning to Mr. Castaneda, he then discharged pepperball rounds at Mr. Castaneda's upper shoulder or chest area. At the same time and without warning, FPD Sergeant Sanchez fired one round from his 40 mm launcher at Mr. Castaneda's stomach area. Both deployments were from approximately 10-15 feet away. When the impact munitions hit Mr. Castaneda, they did not appear to elicit a response. To Sergeant Romley's credit, he thereafter took command and established a plan to quickly and safely approach Mr. Castaneda, which officers executed.

Although officers can reasonably protect themselves from an injured suspect who continues to present a threat, officers should not use significant force on an injured person who does not reasonably present a continued threat of violence.[6] After the shooting, officers took cover behind car doors, retrieved a shield, and continued to closely observe Mr. Castaneda, with both lethal and less lethal options at the ready. Additionally, when officers approached Mr. Castaneda while behind a shield, they

6 *Zion v. County of Orange* (9th Cir. 2017) 874 F.3d 1072, 1076 [If a "suspect is on the ground and appears wounded, he may no longer pose a threat" and in the absence of an immediate threat "continued force against a suspect who has been brought to the ground can violate the Fourth Amendment."]; *Nelson v. City of Davis* (9th Cir. 2012) 685 F.3d 867, 878-81 [Without threatening conduct, the "failure to fully or immediately comply with an officer's orders neither rises to the level of active resistance nor justifies the application of a non-trivial amount of force," including less lethal projectile weapons which are significant force.].

did so after communicating a plan to have lethal force pointed at him, to assign an officer to secure the apparent gun, and to assign officers to check him for any other weapons. These tactics prepared the officers to use reasonable force, if necessary, to address any imminent threat if one arose and illustrate that using projectiles on Mr. Castaneda did not appear to be necessary at this stage of the encounter.

The Police Practices Section recommends that Fremont Police Department provide training that adequately guides officers on the continued use of force, in particular the use of projectile weapons, on persons who are injured or incapacitated.

Recommendation Four: Amend Fremont Police Department Policy and Provide Officers Training on Activation of Body Worn Cameras

The Police Practices Section recommends that Fremont Police Department amend its body worn camera (BWC) policy to require activation prior to the beginning of a law enforcement operation and provide training consistent with the policy.

Body worn cameras benefit both officers and members of the public by providing footage of officers' interactions with the public, including incidents like this one that resulted in the use of deadly force. BWC footage can assist law enforcement agencies and the public in evaluating and making necessary determinations regarding administrative violations, civil liability, and deficiencies in training, tactics, and equipment. It can also assist in identifying positive interactions that merit commendation.

The FPD and NPD personnel who were involved in the incident were all equipped with body worn cameras. Although they all activated their BWC at some point, several FPD officers did not activate their BWC prior to contacting the subjects. Two FPD officers who fired their weapons did not activate their BWC until after the shooting, and no video exists of the shooting from their perspectives.

The FPD Policy Manual states that members of the department "should activate their BWC during all calls for service and the performance of law enforcement-related functions." (FPD Policy Manual, Policy No. 433.5) On the issue of timing, the policy states, "BWC should be activated as soon as reasonably practicable" as long as it would not jeopardize officer safety. (*Ibid*.) The policy does not make activation mandatory and does not state that BWCs should be activated prior to making contact on a call for service or other law enforcement operation.

The Police Practices Section recommends that Fremont Police Department amend its BWC policy to require BWC activation and to specify that activation should occur prior to or at the outset of a law enforcement operation or contact. The Police Practices Section further recommends that Fremont Police Department provide training on activation of BWCs.