



OFFICE OF THE
DISTRICT ATTORNEY
ORANGE COUNTY, CALIFORNIA

TODD SPITZER

February 19, 2026

Chief Adam Foster
La Habra Police Department
150 N. Euclid Street
La Habra, California 90631

Re: Officer-Involved Shooting on February 7, 2024
Non-Fatal Incident involving Gustavo Adolfo Bahena
District Attorney Investigations Case # SA 24-000248
La Habra Police Department Case # 24-004466
Homeland Security Investigations Case # OR04PR24OR0001
Orange County Crime Laboratory Case FR # 24-41128
Orange County Fire Authority Case #24-019018

Dear Chief Foster,

Please accept this letter detailing the Orange County District Attorney's Office's (OCDA) investigation and legal conclusion in connection with the above-listed incident involving on-duty La Habra Police Department (LHPD) Detective Anthony Luster. Gustavo Adolfo Bahena, 25, was injured in the incident but survived his injuries. The incident occurred in the City of Seal Beach on February 7, 2024.

OVERVIEW

This letter contains a description of the scope and the legal conclusions resulting from the OCDA's investigation of the February 7, 2024, non-fatal, officer-involved shooting of Bahena. The letter includes an overview of the OCDA's investigative methodology and procedures employed, as well as a description of the relevant evidence examined, witnesses interviewed, factual findings, and legal principles applied in analyzing the incident and determining whether there was criminal culpability on the part of the LHPD officer involved in the shooting. The format of this document was developed by the OCDA at the request of many Orange County police agencies to foster greater accountability and transparency in law enforcement.

On February 7, 2024, investigators from the OCDA Special Assignments Unit (OCDASAU) responded to this incident. During the course of their investigation, 12 interviews and 18 witness contacts were conducted. OCDASAU investigators also obtained and reviewed the following: LHPD reports; Homeland Security Investigations (HSI) reports; audio dispatch and radio traffic recordings; Orange County Fire Authority (OCFA) reports; Orange County Crime

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Laboratory (OCCL) reports, including toxicology, forensic alcohol examination, latent print, DNA collection and analysis, officer processing and firearms examination reports; crime scene investigation photographs; medical records and photographs related to the injuries sustained by Bahena; criminal history records related to Bahena; video recordings of the incident; and other relevant reports and materials including audio recordings of the neighborhood canvass that was conducted.

The OCDA conducted an independent and thorough investigation of the facts and circumstances of this incident and has reviewed all evidence and legal standards impartially. The scope and findings of this review are expressly limited to determining whether any criminal conduct occurred, and if the use of force by LHPD officers or personnel, specifically Detective Luster, was consistent with the law. The OCDA will not be addressing any possible issues of policy, training, tactics, or civil liability.

In a case where there is an officer-involved shooting incident and the OCDA files criminal charges against the individual shot by the police, it is the OCDA's policy not to release the final report regarding the officer-involved shooting incident until after the issue of guilt is decided in the underlying filed criminal case. This policy is in place to ensure that OCDA is not releasing any information that may be viewed as prejudicing the right of a defendant to receive a fair trial while his or her case is still pending.

INVESTIGATIVE METHODOLOGY

Among other duties, the OCDASAU is responsible for investigating officer-involved shootings within Orange County when someone has been injured or killed as a result of police gunfire. An OCDASAU investigator is assigned as a case agent and is supported by other OCDASAU investigators, as well as investigators from other OCDA units.

Six investigators are assigned to the OCDASAU on a full-time basis. There are additional OCDA investigators assigned to other units in the office trained to assist when needed. On average, eight investigators respond to an incident within an hour of being called. The investigators assigned to respond to an incident perform a variety of investigative functions that include witness interviews, scene processing, evidence collection, and hospital investigative responsibilities as needed. The OCDASAU audio records all interviews, and the OCCL processes all physical evidence related to the investigation.

Deputy district attorneys from the Homicide, TARGET/Gangs, and Special Prosecutions Units review fatal and non-fatal officer-involved shootings and custodial death cases and determine whether criminal charges are appropriate. Thus, when the OCDASAU investigator has concluded the investigation, the file is turned over to an experienced deputy district attorney for legal review. If necessary, the reviewing prosecutor will send the case back for further investigation.

Throughout the review process, the assigned prosecutor will consult with the Assistant District Attorney supervising the Special Prosecutions Unit of the OCDA, who will eventually review any legal conclusions and resulting correspondence. It is also common for the case to be reviewed by several other experienced prosecutors and their supervisors. Ultimately, the

District Attorney personally reviews and approves all officer-involved shootings and custodial death letters.

An important part of the investigation of an officer-involved shooting is attempting to obtain a statement from the involved officers. Detective Luster gave a voluntary statement to OCDA investigators on February 14, 2024.

FACTUAL SUMMARY

After reviewing witness statements, LHPD and HSI reports, laboratory and identification reports, medical records, incident scene digital images, surveillance and cellular phone video, and other relevant reports and materials, the following summary of events was developed. All times were approximate and derived from reports, body worn camera (BWC) video recordings, and surveillance video recordings.

On February 7, 2024, at approximately 5:30 a.m., 16 law enforcement members from the HSI, California Department of Cannabis Control (CDCC), Orange County Probation Office (OCPO), and LHPD met to discuss a federal search warrant pertaining to the possible [REDACTED] and [REDACTED] taking place at the residence located at [REDACTED]. During the briefing, four people were identified as living at the residence, including Bahena.

Following a briefing, the personnel drove to the 4000 block of Almond Avenue, arriving at approximately 5:59 a.m. They parked and walked north on [REDACTED] to [REDACTED].

The residence at [REDACTED] was located at a bend in the roadway, at the northeast corner of [REDACTED]. The building is a two-story dwelling in a residential area with single-family residences located on both sides of the roadway. The front area of the home was shaped in an "L" configuration, with the front door facing a southwest direction. A covered concrete entryway was located at the front of the home, with concrete pavers leading southwest to the front driveway/sidewalk. The garage, located in the southeast portion of the residence, had an entrance which faced southwest. The master bedroom was located directly above the garage. The master bedroom had a dual window that faced in a northwest direction, overlooking the front door and entry. Surveillance cameras were located on both the west/east portions of the residence.

There were two vehicles located at the residence:

Vehicle #1 - 2014, Nissan NV200 van, White, California vehicle license plate # [REDACTED]. The registered owner was Gustavo Adolfo Bahena at [REDACTED]. The vehicle was unoccupied and parked in the driveway of the residence.

Vehicle #2 - 2013, Chevrolet Equinox, Charcoal Grey, Texas license plate # [REDACTED]. The registered owner was [REDACTED]. The vehicle was unoccupied and parked on the street, facing west, to the front of the residence.

At approximately 5:59:26 a.m., LHPD Officer Carlos Perez activated his BWC and followed LHPD Detective Nick McDermott, LHPD Detective Cassandra Robles, LHPD Detective Kyle Angel, Detective Luster, and HSI Special Agent Edwardo Angelo to the residence. The officers were dressed in "C" uniforms, which displayed "POLICE OFFICER/LA HABRA POLICE" badges on the top left portion of the outer vests, and 11x3 inch white bold letters stating "POLICE" on the back of the outer vests.¹

At approximately 6:00:40 a.m., the above-mentioned personnel approached the front door of the residence. Other members of the detail positioned themselves southwest and southeast of the residence in a supporting role.

At approximately 6:00:41 a.m., Officer Perez' BWC audio captured four loud knocks followed by Special Agent Angelo giving verbal announcements, "Police search warrant, open the door," four additional knocks, then Special Agent Angelo repeating, "Police search warrant."

At approximately 6:00:51 a.m., Officer Perez' BWC audio captured Detective McDermott as he used a battering ram to attempt to breach the front door. Detective McDermott is captured battering the front door approximately 11 times.

As Detective McDermott was battering the front door, Detective Luster, who had his handgun drawn, was positioned behind and to the left of Detective McDermott and was pointing his handgun at a window located just west of the front entry door. Officer Perez was positioned behind Detective Robles, below the northwest second-story window. Special Agent Angelo was standing next to and to the left of Detective McDermott. A surveillance camera at the residence also captured a limited view of the officers standing near the front door/entry area as they attempted to make entry.²

In a voluntary interview with OCDASAU investigators, Officer Perez stated that during the attempted entry to the residence, he heard the sliding of a window above his head, on the second floor. Officer Perez looked up and saw a male subject, later identified as Bahena, yell, "Stop. Stop that."

Special Agent Angelo, in a voluntary interview with OCDASAU investigators, stated that he was standing next to Detective McDermott when he heard an unknown male yelling from behind him, but he could not understand what was being said.

¹ A "C" police uniform is a tactical uniform used for special assignments and is further described as an outer vest with a Police Badge on the left front and "POLICE" lettering in white on the back.

² The surveillance camera's time was set incorrectly. The time of the recordings from the camera was approximately 11 minutes and 15 seconds ahead of the actual time. References to times in this letter are to approximate actual times, and not to the times embedded within the surveillance video.

Detective Luster, in a voluntary interview with OCDASAU investigators, stated he had prior breaching experience with Detective McDermott, as both worked together on their department's Special Weapons and Tactics Team (SWAT). Detective Luster's handgun was aimed at the window located just west of the front entry door, guarding Detective McDermott as he attempted to breach the door. Detective McDermott rammed the door several times, but the door remained secure.

At approximately 6:01:07 a.m., Detective Luster told investigators that he made the decision to relieve Detective McDermott. Detective Luster prepared to holster his weapon and move from his position to Detective McDermott's position so he could take over ramming the door.

Detective Luster stated that as he began to turn around, he then heard Bahena yelling from the second-story northwest-facing window, "Hey! What are you doing?" Detective Luster turned his attention towards Bahena he yelled down at officers. Detective Luster feared for his team as Bahena was directly above him and fellow officers attempting to breach the door.

Detective Luster stated that he did not holster his weapon and, instead, activated his weapon-mounted light and raised his handgun toward the second-story window. Detective Luster could only see part of Bahena's upper body through the window, as Bahena yelled from the second floor with what Detective Luster described as an angry look on his face.

Detective Luster said Bahena was approximately 20 feet away, holding a dark-colored handgun in his left hand. Detective Luster said he could clearly see the slide and grip of the firearm, including the barrel. Detective Luster said Bahena was moving the handgun around and at one point, he saw the front circular barrel of the handgun.

Detective Luster saw Bahena move the firearm toward the windowsill. Detective Luster yelled, "Gun!" and then saw Bahena quickly back away from the window. Detective Luster stated to investigators that he feared Bahena was further arming himself or planning with others to assist him in harming Detective Luster or fellow officers.

Officer Perez stated to investigators that he also saw Bahena as he moved back, away from the window, briefly out of sight. Officer Perez was closer to the wall with a limited view; however, he saw Bahena return to the window, now appearing to be holding an unknown object in his hands.

Detective Luster also saw Bahena return to the window, now more concealed, and could only see a small portion of the left side of his body. Detective Luster noticed Bahena still appeared angry with eyebrows furrowed and wrinkles on his forehead.

At approximately 6:01:10 a.m., Detective McDermott breached the front door.

At approximately 6:01:10 a.m., Officer Perez' BWC audio captured the front door being breached and Detective Luster shouting commands at Bahena. Detective Luster shouted "Raise your fucking hands up. Raise your fucking hands up."

Officer Perez said he heard the commands being yelled, but Bahena did not comply.

Detective Luster stated he then saw that Bahena had the handgun in his left hand, parallel to the windowsill, pointed toward officers standing near the front door. Detective Luster said Bahena was using the wall as cover while pointing his handgun toward Detective Luster's fellow officers. Detective Luster indicated that he believed Bahena had a tactical advantage by being over the officers and having a clear view of the front doors where officers were breaching the door. Detective Luster feared Bahena was going to shoot him and fellow officers standing at the front of the residence.

At approximately 6:01:14 a.m., Officer Perez' BWC audio captured Detective Luster yelling, "Gun!"

At approximately 6:01:15 a.m., Officer Perez' BWC audio captured Detective Luster firing one round at Bahena. The audio then captured him firing a second round within less than a second.

Detective Luster indicated he was "positive" he hit Bahena with the first round, but saw Bahena's firearm was still on the windowsill, facing the direction of fellow officers. Since the gun was still facing the officers, Detective Luster fired a second round at Bahena. Detective Luster stated that he believed the shooting happened within a second.

Following the shooting, all the police personnel immediately backed away from the front of the residence to positions of cover.

Officers called out to parties in the residence, ordering them to exit.

At approximately 6:02:50 a.m., Officer Perez' BWC captured Bahena exiting the residence, bleeding from his front left shoulder, and apparent blood covering his front torso and back left shoulder. Officer Perez took custody of Bahena and placed him into handcuffs. Bahena was moved to a safe location where officers began to provide medical treatment to Bahena.

At approximately 6:05:10 a.m., OCFA paramedics were dispatched to the scene.

At approximately 6:12:00 a.m., OCFA Engine 48 arrived on the scene. An OCFA paramedic saw Bahena seated at the northeast corner of Almond Avenue and Columbine Street being treated by officers. Bahena had a large volume of blood covering his body. The paramedic examined Bahena, and believed Bahena sustained a gunshot wound that entered his back, and exited his left front shoulder. Bahena was alert as the wounds were dressed. Paramedics administered intravenous (IV) saline fluids.

At approximately 6:21:18 a.m., Bahena was transported to the Long Beach Memorial Medical Center (LBMMC).

At approximately 6:35 a.m., Bahena arrived at LBMMC, and his care was relinquished to emergency room personnel. An LBMMC physician assistant (PA) treated Bahena for the

gunshot wound he sustained to his left shoulder. [REDACTED]

[REDACTED]

At approximately 11:10 a.m., OCDA Investigator Thomas Hoang attempted to interview Bahena as he was being medically treated at the LBMMC, but Bahena refused to provide a statement without an attorney present.

At approximately 12:09 p.m., Bahena was discharged from LBMMC.

At approximately 2:15 p.m., officers executed the search warrant for Bahena's residence and were assisted by the OCCL. The bedroom on the second floor, above the garage, was identified as the master bedroom. There was a dresser along the northwest wall with the top drawer partially open. Protruding from the top drawer of the dresser was the handle of a Glock Model 19, 9mm, semi-automatic handgun, Serial # [REDACTED]. There was a window on the northwest wall, with a window open, and a screen present. The window screen had an apparent bullet hole in the lower south corner, and the window glass was undisturbed. This window was approximately five feet northeast of the dresser with the loaded Glock Model 19 handgun. There was a large puddle of apparent blood on the ground to the front of the dresser, bed, and window.

On February 9, 2024, the OCDA filed the following criminal charges against Bahena in the Orange County Superior Court case number 24WF0406:

- One felony count of Penal Code section 245(d)(2) (Assault with a Semi-Automatic Firearm on a Peace Officer)
- Two misdemeanor counts of Penal Code section 32310(c) (Possession of a Large Capacity Magazine)
- One enhancement pursuant to Penal Code section 12022.53(b) (Personal Use of a Firearm)

After the charges were filed, senior deputy district attorneys reviewed the case, including the officers' BWC video. Given that it was relatively early in the morning and dark outside, the

officers were not wearing traditional police uniforms, other residents of the house did not realize the officers were police, the growing awareness and publicity associated with home invasion robberies, and the fact that marijuana and cash were in the residence, it was determined that it would be reasonable for Bahena to believe intruders were unlawfully attempting to break into his residence. This would support a self-defense argument that the prosecution would not be able to overcome. Furthermore, there was insufficient evidence to establish that the large capacity magazine had been unlawfully acquired.⁴ Therefore, on April 25, 2025, the criminal charges against Bahena were dismissed upon motion of the Orange County District Attorney's Office.

EVIDENCE COLLECTED

An OCCL Forensic Scientist (FS) collected the following items of evidence. The items were collected under the following Evidence Markers (EM):

- EM #1 - Two cartridge cases head stamped "FC 9mm LUGER"
- EM #2 - One Glock, Model 19, 9mm, semi-automatic pistol, serial # [REDACTED] with a fully loaded 17-cartridge capacity magazine and one chambered cartridge

An OCCL Forensic Specialist (FSP) collected DNA swabs from the textured grip, slide, and trigger of the Glock, Model 19, Serial # [REDACTED]; the 18 cartridges recovered from the Glock handgun's loaded magazine and chambered round; and the two cartridge cases head stamped "FC 9 mm LUGER."

The following markers were photographed:

- PM-A – Apparent bullet hole in the window screen of the master bedroom
- PM-B – Apparent strike mark on stucco

There were nine less lethal "2581 Super Sock" shotgun shell cases located in the street to the front of the residence at [REDACTED], [REDACTED]. The Super Shock less lethal munitions were used by officers after the OIS, and before officers went into the residence to

⁴ The large capacity magazine could have been lawfully purchased during "Freedom Week." The period known as "Freedom Week" originated from a federal district court's decision in the case of *Duncan v. Becerra* (2019) 366 F.Supp.3d 1131. This lawsuit challenged California's long-standing prohibition on large-capacity magazines, defined as those capable of holding more than 10 rounds of ammunition. On March 29, 2019, the U.S. District Court for the Southern District of California ruled that California Penal Code section 32310, which banned these magazines, infringed upon the Second Amendment rights of law-abiding citizens and was unconstitutional. The court issued a permanent injunction against the enforcement of this law, lifting the ban. This injunction created a temporary legal window during which the acquisition of large-capacity magazines became permissible. On April 5, 2019, the Ninth Circuit Court of Appeals issued a stay of the injunction and ultimately upheld the constitutionality of the ban. This action halted the ability to legally purchase new large-capacity magazines.

execute the service of a search warrant. More specifically, they were used to disable the surveillance cameras located on the outside of the residence as depicted in the photos. These cases were not collected as evidence.

An OCCL FSP took 266 digital color photographs at the scene.

OFFICER PROCESSING

Detective Luster wore a leather Sam Browne belt with the following equipment:

- Right-side holster containing a Staccato Model P, 9mm semi-automatic handgun, serial # [REDACTED], with a Streamlight TLR-1HL rail-mounted light
- Tourniquet holder, with missing tourniquet
- Keyring
- Baton ring
- Two handcuff pouches
- Police radio in holder
- TASER 7, Serial # [REDACTED], in holster

Detective Luster's pistol had one cartridge in the chamber, head stamped "FC 9mm LUGER." There was a 17-cartridge capacity magazine seated in the firearm, containing 15 9mm cartridges, head stamped "FC 9mm LUGER." Detective Luster chambered a single cartridge from the magazine before loading the magazine to capacity. Detective Luster carried two additional capacity magazines on his exterior vest. One magazine contained 17 9mm cartridges all with a head stamp of "FC 9mm LUGER." One magazine contained 16 9mm cartridges all with a head stamp of "FC 9mm LUGER."

At the conclusion of processing, it was determined that two cartridges were missing from Detective Luster's handgun.

An OCCL FSP collected the following evidence from Detective Luster:

- Staccato Model P, 9mm handgun, serial # [REDACTED] with accessories
- Three stainless steel Staccato magazines with 49 9mm cartridges

An OCCL FSP took 174 digital color photographs.

EVIDENCE EXAMINATION

Pre-admitting blood was collected from Bahena for testing, and the blood was examined for the presence of alcohol and illicit drugs. The following results and interpretations were documented:

Drug	Preadmitting
[REDACTED]	

FIREARMS EXAMINATION

STACCATO, MODEL P, 9mm SEMI-AUTOMATIC HANDGUN, SERIAL # [REDACTED]

The Staccato, Model P, 9mm semi-automatic handgun, serial # [REDACTED], was collected from Detective Luster during the officer processing. The handgun was examined by an OCCL FS and found to operate without malfunction.

The handgun was determined to have fired one of the two cartridge cases recovered from the scene (EM 1).

Although the second submitted cartridge case shared the same class and some individual characteristics as the test fires from the Staccato handgun, there was insufficient correspondence of marks to determine if it was fired from the Staccato handgun.

The bullet collected from Bahena at LBMMC was compared to the test fires from the Staccato handgun. Although the bullet shared the same class characteristics as the test fires, there was insufficient correspondence of marks to conclusively determine if it was fired from the Staccato handgun.

GLOCK, MODEL 19 X, 9MM SEMI-AUTOMATIC HANDGUN, SERIAL # [REDACTED]

The Glock, Model 19, 9mm semi-automatic handgun, serial # [REDACTED] (EM 2), was collected by an OCCL FS at the scene. Upon recovering the handgun, the magazine was released, and the slide pulled back. The weapon was found to have a cartridge in the chamber. The handgun was examined by an OCCL FS and found to operate without malfunction.

The Glock was determined not to have fired the cartridge cases at the scene due to class characteristics.

The Glock was determined not to have fired the bullet recovered from Bahena at LBMMC due to class characteristics.

DNA RESULTS

GLOCK TRIGGER:

A mixture of two contributors was obtained from the sample. Based on an analysis conducted by OCCL, it was determined that, it is at least one trillion times more likely than a random sample to observe this DNA mixture if it originated from Bahena and one random unrelated contributor.

GLOCK SLIDE:

A mixture of two contributors was obtained from the sample. Assuming two contributors, it is at least one trillion times more likely to observe this DNA mixture if it originated from Bahena and one random unrelated individual.

GLOCK GRIP:

A mixture of three contributors was obtained from the sample. Assuming three contributors, it is at least one trillion times more likely to observe this DNA mixture if it originated from Bahena

and two random unrelated contributors rather than if it originated from three random unrelated contributors.

17 CARTRIDGES AND MAGAZINE FROM GLOCK:

A mixture of two contributors was obtained from the sample. Assuming two contributors, it is at least one trillion times more likely to observe this DNA mixture if it originated from Bahena and one random unrelated contributor rather than if it originated from two random unrelated contributors.

CHAMBERED CARTRIDGE FROM GLOCK:

An insufficient quantity of DNA for typing was recovered from the cartridge sample.

BAHENA'S PRIOR CRIMINAL HISTORY

STANDARD LEGAL PRINCIPLES IN OFFICER-INVOLVED SHOOTING CASES

Possible criminal charges against an officer involved in a non-fatal shooting include attempted murder [Penal Code Section 664/187]; attempted manslaughter [Penal Code Section 664/192]; assault with a deadly weapon [Penal Code Section 245]; and assault by a police officer [Penal Code Section 149]. In order to convict an officer of any of these charges, however, it would be necessary to prove beyond a reasonable doubt that no legal justifications existed for the officer's actions. (*People v. Adrian* (1982) 135 Cal.App.3d 335, 340-342.) Several such justifications may apply in any given case and they are set forth in Penal Code sections 196, 197, and 835a.

Penal Code section 196 provides that use of deadly force by a police officer is justifiable when done in compliance with Penal Code Section 835a. Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

Penal Code section 835a allows a police officer to use reasonable force, when necessary, in the defense of human life. The decision to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to the officer at the time, rather than with the benefit of hindsight. The totality of the circumstances shall be taken into account when officers are forced to make quick judgments about using force.

Penal Code section 835a further states that a police officer is justified in using deadly force when the officer reasonably believes that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person. Deadly force may also be used to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believed that person will cause death or serious bodily injury if not immediately apprehended.

Consistent with existing law, Penal Code section 835a maintains the principle that a police officer, acting in compliance under this section, who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested, nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of objectively reasonable force to effect the arrest or to prevent escape or to overcome resistance.

Penal Code section 835a also requires that, prior to the use of deadly force, the officer make reasonable efforts to identify themselves and warn that deadly force may be used, when feasible, unless the officer reasonably believes the person is already aware of those facts. In determining whether deadly force is necessary, officers shall evaluate the circumstances of each situation independently and use other available resources and techniques if reasonably safe and feasible to do so.

In addition, Penal Code section 834a requires that if a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a police officer, that person must refrain from using force or any weapon to resist such arrest.

Similarly, the relevant criminal jury instruction as written by the Judicial Council of California and set forth in CALCRIM 3470 permits a person being assaulted to defend himself from attack if, as a reasonable person, he had grounds for believing and did believe that bodily injury was about to be inflicted upon him or upon another person. In doing so, such person may immediately use all force and means which he believes to be reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to defend against that danger and to prevent the injury which appears to be imminent.

The law as detailed in CALCRIM 3470 and in well-settled case law therefore permits a person, if confronted by the appearance of danger which arouses in his/her mind, as a reasonable person, an honest fear and conviction that he/she or another person is about to suffer bodily injury, to act in self-defense or defense of others upon such appearances, and from such fear and honest convictions. The appearance of danger can be based on a person's knowledge that the individual they are defending themselves against has threatened or harmed others in the past. Moreover, the person's right of self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 641-642.)

In determining whether a person has acted in lawful self-defense, jurors may also consider whether the alleged victim has threatened or harmed others in the past, even if the person who is claiming self-defense was unaware of the alleged victim's prior acts. (Evid. Code, § 1103(a)(1); CALCRIM 3470.)

Nevertheless, the above justifications must be interpreted in light of United States Supreme Court precedent that limits the right of a police officer to use deadly force. (*People v. Martin* (1985) 168 Cal.App.3d 1111, 1124.) Thus, in *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the United States Supreme Court ruled that a police officer is entitled to use deadly force only

when “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”

This limitation was, however, clarified subsequently by the United States Supreme Court in the seminal case of *Graham v. Connor* (1989) 490 U.S. 386, wherein the Supreme Court explained that an officer’s right to use force [*i.e.*, his/her weapon] is to be analyzed under the Fourth Amendment’s “objective reasonableness” standard. The Supreme Court further stated that the determination of the reasonableness of an officer’s use of force “must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Id.* at 396-397.)

The United States Supreme Court’s analysis and teachings in *Graham* are very much applicable to the circumstances surrounding the interactions of Detective Luster with Bahena.

LEGAL ANALYSIS

The facts in this case are determined by the relevant evidence collected and witnesses present at the incident.

The issue is whether the conduct of Detective Luster on February 7, 2024, was criminally culpable and without justification. As stated above, in order to charge Detective Luster with a criminal violation, it is required that the prosecution be able to prove beyond a reasonable doubt that no legal justification existed for the police officer’s conduct. Therefore, in order to lawfully charge Detective Luster with a crime, the prosecution must prove beyond a reasonable doubt that he did not act in lawful self-defense or defense of others. If the actions of the detective that day were justifiable as lawful self-defense or defense of others, then criminal charges will not be warranted.

As the Court of Appeal held in 1998, it is well settled that,

“unlike private citizens, police officers act under color of law to protect the public interest. They are charged with acting affirmatively and using force as part of their duties, because ‘the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.’ [Police officers] are, in short, not similarly situated to the ordinary battery defendant and need not be treated the same. In these cases, then, ‘the [] police officer is in the exercise of the privilege of protecting the public peace and order and he is entitled to the even greater use of force than might be in the same circumstances required for self-defense.’”

(*Edson v. City of Anaheim* (1998) 63 Cal.App.4th 1269, 1273 (quoting *Graham v. Connor*, *supra*, 490 U.S. at 396 and *Wirsing v. Krzeminski* (1973) 61 Wis.2d 513, 522.)

Where potential dangerous, emergency conditions or other exigent circumstances exist, the California Court of Appeal has noted that the United States Supreme Court’s definition of reasonableness is comparatively generous to the police. (*Brown v. Ransweiler* (2009) 171

Cal.App.4th 516, 528.) Quoting various United States Supreme Court and California appellate court precedent, the court in *Brown* noted that effectively,

“the Supreme Court intends to surround the police who make these on-the-spot choices in dangerous situations with a fairly wide zone of protection in close cases. A police officer’s use of deadly force is reasonable if the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others. Thus, an officer may reasonably use deadly force when he or she confronts an armed suspect in close proximity whose actions indicate an intent to attack.”

(*Brown v. Ransweiler*, *supra*, 171 Cal.App.4th at 528 (internal citations and quotations omitted).)

Additional analysis, pursuant to Penal Code section 835a, permits deadly force when the officer reasonably believes it is necessary, based upon a totality of the circumstances, to defend themselves or others against an imminent threat of death or serious bodily injury.

In this incident, while Detective Luster was not wearing a BWC, Officer Perez’ BWC audio recorded the incident and the home surveillance camera video partially captured the incident. While neither captures Bahena with the gun, the DNA evidence found on the Glock handgun and magazines, which were found next to the master bedroom window, conclusively corroborates Detective Luster’s description of the incident.

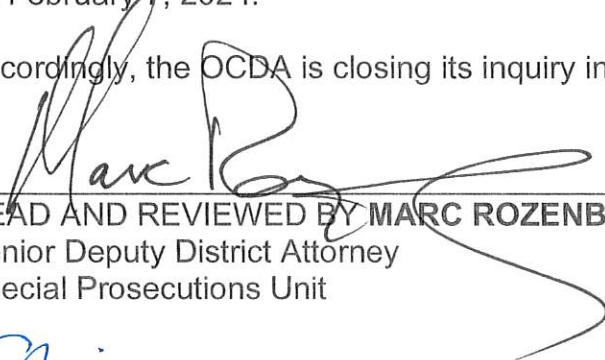
The evidence indicates that Bahena was standing at a window above the officers, approximately 20 feet away, and was holding a gun pointed in their direction. He disappeared from view and reappeared, still holding the gun. He was in a tactically advantageous position, armed, and did not obey commands to raise his hands. Detective Luster had to make a split-second decision to prevent potential harm to himself and his fellow officers. Detective Luster reasonably believed that Bahena posed a significant threat of death or serious physical injury to himself and others.

For Detective Luster to be justly and lawfully charged and convicted with a crime in this incident, it is the OCDA’s burden to prove beyond a reasonable doubt that he did not act in reasonable and justifiable self-defense or defense of another when he shot at Bahena. The prosecution would be unable to carry this burden in this case. Substantial reliable evidence supports the conclusion that at the time of the shooting, Detective Luster reasonably feared for his life and the lives of his fellow officers. Thus, a jury analyzing these facts would justly conclude that it was reasonable for Detective Luster to believe that his life and the lives of others were in danger.

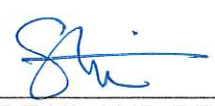
CONCLUSION

Based upon a review of all of the evidence provided to and obtained by the OCDA, and based on the entirety of the facts contained in all the available reports and interviews reviewed, and pursuant to the applicable legal principles, it is our legal opinion that there is no evidence to prove criminal culpability on the part of Detective Luster, and there is substantial evidence that his actions were reasonable and justified under the circumstances when he shot Bahena on February 7, 2024.

Accordingly, the OCDA is closing its inquiry into this incident.



READ AND REVIEWED BY **MARC ROZENBERG**
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Special Prosecutions Unit



READ AND REVIEWED BY **STEVEN SCHRIVER**
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READ AND APPROVED BY DISTRICT ATTORNEY **TODD SPITZER**