

**REPORT ON THE FATAL SHOOTING OF**

**MIGUEL GOMEZ**

**ON MARCH 19, 2024**



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## **I. PREAMBLE**

The summary of this incident was prepared after a review of materials submitted by the Campbell Police Department and the Santa Clara County District Attorney's Bureau of Investigation (BOI). The submissions included: reports of the responding police officers; reports summarizing interviews of the involved officers and witnesses; interview recordings; body-worn camera (BWC) footage; photographs and video; medical examiner's reports; and 911/police radio communications. This review is mandated by the Officer-Involved Incident Guidelines, which were revised by the Santa Clara County Police Chiefs' Association on September 9, 2021.

## **II. SYNOPSIS**

On March 19, 2024, Jane Doe contacted the Campbell Police Department ("CPD") via 911 text message stating that she was afraid of her live-in boyfriend, Miguel Gomez. He was acting erratically due to drug use, telling her she should barricade herself inside the bedroom of their apartment with her two children. Officers determined that Gomez had a "peaceful contact" domestic violence restraining order against him with Jane Doe listed as the protected party. When officers contacted Gomez from the doorway of the apartment to investigate a possible violation of the protective order, Gomez jumped up and rushed toward the children's bedroom holding a loaded firearm. Concerned for the children's safety, CPD Officer Stevie Munoz tackled Gomez in the adjoining hallway and struggled over control of Gomez's gun. Gomez was able to fire one round from the weapon nearly striking other officers in the living room. Sergeant Najib Magee, afraid for his life and the lives of the other officers, discharged three rounds from his department-issued pistol, killing Gomez.

### III. SUMMARY OF FACTS

On March 18, 2024, Jane Doe reported to police that her on-again, off-again boyfriend, Miguel Gomez, had been residing with her and her two children (ages six and nine months), located at 1845 South Bascom Avenue, Campbell, California. She said Gomez had not slept in four days due to chronic methamphetamine use.

According to Jane Doe, Gomez's behavior had become increasingly erratic. On March 18, 2024, at approximately 9:00 p.m., Gomez told Doe she "should barricade" herself inside the bedroom with the children. In the early morning of March 19, 2024, her fear reached a breaking point when Gomez began laughing uncontrollably while wrapped in a blanket laying on the living room floor. Doe would later describe to investigators Gomez's prior acts of domestic violence and his threat a month prior that if the police ever came to her house, "[He] would leave here dead."

Concerned for her safety and that of her children, Jane Doe contacted CPD 911 via text-message at 2:57 a.m. She told the 911 dispatcher via text message that Gomez had been "acting weird" and made comments that made her "uncomfortable." Jane Doe explained that Gomez was under the influence of drugs and had warned her to barricade herself inside her room. She told the dispatcher that Gomez was abusive to her in the past and then asked that police not respond because it would "make the problem worse."

CPD officers responded to Doe's apartment and arrived shortly after 3:00 a.m. Officers contacted her via text message and convinced her to leave the apartment and meet them in the courtyard area. There, she described her concerns over Gomez's behavior. She explained that Gomez was laying on the floor in the living room and her children were in the rear bedroom of the apartment. When asked if there were any firearms in the home, she replied, "No." A records

check revealed that Gomez had a domestic violence restraining order against him with Doe as the protected party that permitted them to have “peaceful contact.” There was also a misdemeanor domestic violence arrest warrant for Gomez. After CPD dispatch confirmed the arrest warrant and restraining order, Officer Stevie Munoz obtained Jane Doe’s key to her apartment.

Sergeant Najib Magee, the supervising officer at the scene, formulated the plan to contact Gomez inside the apartment. The officers had planned to “Wake him [Gomez] up and just talk to him” to determine: 1) if there had been a violation of the peaceful contact restraining order; and 2) conduct a welfare check on the children. Sergeant Magee told the other officers that they needed to “tread lightly” and would only enter the residence to “keep him away from the kids.” He explained that if Gomez moved toward the children’s bedroom, the officers should use non-lethal force by entering the apartment and physically restraining with their hands.

At approximately 3:56 a.m., CPD Sergeant Magee, Agent Wesley Joines, Officer Bonnie Brannen, and Officer Munoz approached the apartment’s front door. Using the key, Officer Munoz opened the front door, illuminated the living room with his flashlight and announced, “Campbell Police Department!” He observed Gomez wrapped in a blanket and laying on the living room floor. Officer Munoz again announced, “Campbell Police Department, man! Don’t move!” Gomez slowly woke up and called out to Jane Doe. He then grabbed a nearby 9mm semiautomatic handgun. Officer Munoz did not see the gun but heard a sound consistent with a round being chambered in a semiautomatic handgun (commonly referred to as a gun being “racked.”)

Officer Munoz drew his department-issued handgun and ordered Gomez not to move. Gomez, however, jumped to his feet and ran, still covered with the blanket, toward the hallway

leading to the children's bedroom. Wanting to prevent Gomez from getting to the children, Officer Munoz holstered his gun, ran into the apartment, and tackled Gomez in the hallway connecting the living room to the rear bedroom. Sergeant Magee, Agent Joines, and Officer Brannen followed into the apartment living room.

As Officer Munoz tackled Gomez onto the hallway floor, Gomez fired a single round in the direction of Sergeant Magee and Agent Joines, which left a bullet hole in the ceiling of the apartment. Seeing Gomez's gun, Officer Munoz immediately grabbed it with both hands, to prevent Gomez from aiming it at any of the officers. Officer Munoz used all his strength to hold the gun against Gomez's body and yelled, "Shots fired!" Sergeant Magee responded, "Shots fired!" and discharged one round from his department-issued .45 caliber handgun in the direction of Gomez's torso.

Gomez continued to struggle with Officer Munoz as the officers yelled at him to stop moving. According to Officer Munoz, Gomez was trying to point his gun in Officer Munoz's direction. Sergeant Magee asked, "Stevie, he's got a gun!?" Officer Munoz, still holding Gomez's gun against Gomez's body yelled, "Yeah, he's got a gun!" Sergeant Magee then fired two shots at Gomez's head while Officer Munoz attempted to control Gomez's firearm. Gomez's body immediately went limp, and he released his grip on his gun.

Officer Munoz advised the other officers that he was not hit and immediately handed Gomez's gun to Officer Brannen who was standing in the apartment doorway. Agent Joines went to the rear bedroom to attend to Doe's children who began crying. Officers called for Santa Clara County EMS after the shooting and immediately began administering CPR to Gomez. EMS continued CPR upon arrival but failed to resuscitate and pronounced Gomez deceased at the scene at approximately 4:15 a.m.

Sergeant Magee and Officer Munoz were transported separately to CPD headquarters where they were sequestered pending interviews by detectives.

#### **IV. WITNESS STATEMENTS**

Multiple police officers and civilian witnesses were interviewed in this case. Summaries of the three most pertinent interviews are included below.

##### **A. OFFICER STEVIE MUNOZ**

CPD Sergeant Andre Rebeiro and BOI investigator Brian McDonald interviewed Officer Stevie Munoz on March 19, 2024, at CPD. The interview audio was recorded, but video was not at the request of his attorney.

Officer Munoz has been an officer with CPD for six years leading up to this incident and had been assigned to the CPD SWAT team for the last five years. As part of that assignment, he attends monthly SWAT training.

On the evening of March 18, 2024, Officer Munoz was working patrol. He was dressed in a standard department uniform with a badge and armed with a department issued semiautomatic pistol.

Officer Munoz's recitation of the events was largely consistent with the BWC video that fully and accurately captured the incident. This footage was incorporated into the Summary of Facts above. There were two minor differences between his memory of the incident and the BWC video. Officer Munoz did not recall holstering his gun before chasing Gomez, and he did not recall handing Gomez's gun to Officer Brannen. The following excerpts from Officer Munoz's interview document his responses to questions about his state of mind.

Officer Munoz was asked why he entered the home and tackled Gomez in the hallway. He explained he couldn't "let [Gomez] get to the kids' room."

Officer Munoz was asked what he did after tackling Gomez in the hallway. He said he could feel Gomez's gun under the blanket, so he grabbed it with both hands. Although he could not see the gun, he could feel it and pinned it against Gomez's abdomen.

Officer Munoz explained that he pinned Gomez's gun to his abdomen to prevent Gomez from shooting him or his fellow officers. During the struggle, Officer Munoz could feel Gomez trying to point the barrel toward him. After the first shot was fired by Sergeant Magee, Gomez continued to try to point the gun at Officer Munoz. After the third shot from Sergeant Magee, Gomez released his grip on the gun.

Officer Munoz was asked what he thought when he heard Gomez "rack" a round in his gun. Officer Munoz said he was afraid for his own safety, as well as the safety of his fellow officers and the safety of the children in the house. Officer Munoz stated, "If you rack a round, you're probably going to use it."

#### **B. SERGEANT NAJIB MAGEE**

CPD Sergeant Andre Rebeiro and BOI investigator Brian McDonald interviewed Sergeant Najib Magee on March 19, 2024, at CPD. The interview audio was recorded, but video was not at the request of his attorney.

Sergeant Magee has been law enforcement officer with CPD for eight years leading up to the incident in this case. Over that time, he has worked as a patrol officer, field training officer, SWAT officer, and canine handler. At the time of the incident, he was a night-shift patrol supervisor. He is aware of his agency's use-of-force policies.

On March 18, 2024, Sergeant Magee began his patrol shift at 8:00 p.m. He was dressed in a standard department uniform displaying a badge over his left breast and armed with a department issued semiautomatic pistol.



On March 19, 2024, at around 3:00 a.m., he was notified that Jane Doe texted 911 that she needed help with her boyfriend at her apartment on South Bascom. Sergeant Magee was made aware that Gomez instructed her to barricade herself inside her bedroom, but later Jane Doe told officers not to respond because she did not want to “make it worse.” According to Sergeant Magee, the officers who interviewed Jane Doe at the scene told him that she and Gomez had a prior domestic violence history. A review of court records showed that Gomez had a “peaceful contact” domestic violence restraining order against him with Jane Doe as the protected party, as well as a misdemeanor warrant for domestic violence.

Sergeant Magee’s recitation of the events was consistent with the BWC video that fully and accurately captured the incident, which was incorporated into the Summary of Facts above. The following excerpts from Sergeant Magee’s interview document his responses to questions about his state of mind.

Sergeant Magee, the supervising officer at the scene, was asked if he formulated a plan before opening the apartment door. Sergeant Magee stated the plan was just to “wake [Gomez] up and just talk to him” to determine if there had been a violation of the peaceful contact restraining order and conduct a welfare check on the children. Sergeant Magee told the other officers that they would only enter the residence to “keep him away from the kids.” He explained that if Gomez went toward the children’s bedroom, the officers planned to use non-lethal force to physically restrain Gomez with their hands.

Sergeant Magee was asked what safety concerns he had before the apartment door was opened. He explained that he did not want Gomez to “get to the kids” and create a barricade situation.

Sergeant Magee was asked why he fired his gun at Gomez. Sergeant Magee said that he saw Officer Munoz struggling with Gomez and it appeared the officer was “fighting for his life.” He heard a gunshot and then Officer Munoz say, “Shots fired!” This led Sergeant Magee to believe Officer Munoz had been shot. Sergeant Magee was afraid Gomez was going to “get off another round.” In fear for his own life and the other officers, he fired three times.

Sergeant Magee was asked why he shot Gomez in the head. The sergeant explained that after the first round, he no longer had a clear shot of Gomez’s torso because Gomez was still struggling with Officer Munoz. Sergeant Magee said at that point, his only clear shot was Gomez’s head.

### **C. JANE DOE**

CPD Sergeant Michael Kardan and BOI investigator Michael Gaynor interviewed Jane Doe on March 19, 2024, at CPD. The interview was audio and video recorded.

Jane Doe was not present inside the apartment when the shooting occurred. Her recollection as to the events leading up to the incident have been incorporated into the Summary of Facts above. Additional relevant details are documented below.

Jane Doe and Gomez have one child together. They have had a tumultuous on-again, off-again relationship since 2010, marked with frequent methamphetamine use. The relationship ended in 2021 after Gomez pointed a gun at her and threatened to kill himself. The couple reconciled in 2022 because they share a daughter, and Doe was hopeful they could build a family. Gomez’s methamphetamine use, however, continued. According to Doe, Gomez would sometimes care for the children while under the influence of methamphetamine.

Recently, however, their relationship became strained. About one month ago before the incident in this case, Doe became frustrated that Gomez refused to help around the house or with

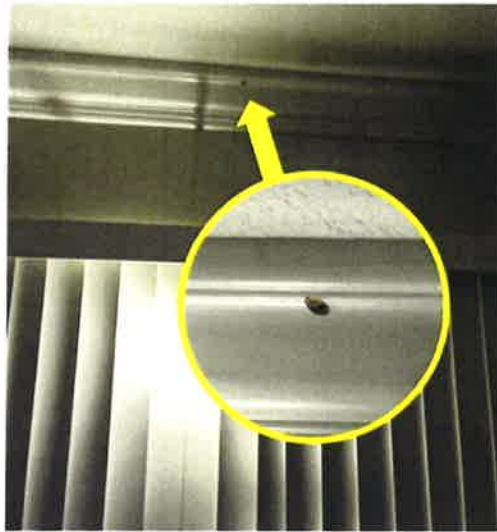
the kids. Doe told Gomez he needed to move out. When he refused, Doe told him she would call the police if he did not leave. Gomez challenged her to “call the cops,” stating that if she did so, he would “only leave here dead.”

As to the events leading up to the shooting, Doe stated that Gomez had not slept in “four or five” days due to chronic methamphetamine use. On March 18, 2024, at approximately 9 p.m., Gomez told Doe that she should “barricade” herself in her room. Then, at approximately “2 or 3 a.m.” on March 19, 2024, Gomez began laughing uncontrollably on the living room floor while wrapped in a blanket. At that point, she contacted 911 via text message because she was scared. Doe explained that her goal was not for him to be arrested, but to have the police get him out of her apartment so she and her children would be safe.

## **V. EVIDENCE**

### **A. CRIME SCENE**

In addition to booking Gomez’s 9mm handgun into evidence, CPD investigators processed the apartment for evidence. In the living room, investigators collected three .45 caliber spent shell casings from Sergeant Magee’s firearm and a single 9mm spent shell casing from Gomez’s gun. Investigators also photographed the bullet hole in the apartment ceiling caused by the round Gomez fired in the direction of Sergeant Magee and Agent Joines:



## **B. AUTOPSY**

Medical Examiner Mehdi Koolaee, M.D., conducted an autopsy on Gomez's body on March 20, 2024. Dr. Koolaee determined Gomez's cause of death to be homicide from three gunshot wounds to the chest, face and head. The toxicology analysis was positive for methamphetamine.

## **C. BODY-WORN CAMERA VIDEO AND 911 COMMUNICATION**

Campbell CSI collected the BWC video of the incident from all officers that were present. The videos were carefully reviewed and incorporated into the Summary of Facts above. Jane Doe's 911 text messages were also preserved by Campbell CSI investigators and reviewed in the preparation of this report.

## **VI. LEGAL ANALYSIS**

### **A. RELEVANT LEGAL PRINCIPLES**

This review was conducted pursuant to the joint protocol between this office and all Santa Clara County law enforcement agencies, which calls upon the District Attorney to conduct an independent assessment of the circumstances surrounding the use of deadly force.

Possible criminal charges against the officers involved in this case include Murder (Penal Code § 187), Manslaughter (Penal Code § 192), and Assault with a Deadly Weapon (Penal Code § 245). However, to convict an officer of any of these charges, it is necessary to prove beyond a reasonable doubt that no legal justification existed for the officer's actions. (*People v. Banks* (1976) 67 Cal.App.3d 379, 383–384.) The justifications pertinent to this case are self-defense and defense of others. (See Penal Code § 835a.)

California Penal Code section 835a(a)(1) states that “the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life . . . [E]very person has a right to be free from excessive use of force by officers acting under color of law.” Section 835a(a)(3) recognizes that “the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.”

California Penal Code section 835a(c)(1)(A) permits officers to use deadly force when necessary to protect themselves and others from the “imminent threat of death or serious bodily injury.” Under section 835a(e)(2), the threat of death or serious bodily injury is imminent if, “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 another person . . . An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”

The relevant criminal jury instruction is set forth in Judicial Council of California Criminal Jury Instruction No. 507 (2020, “Justifiable Homicide: By Peace Officer”). The instruction states that a peace officer acts in lawful self-defense or defense of another when the officer kills, or attempts to kill, if he or she: “[r]easonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to the defendant [officer] or another person.” (CALCRIM No. 507.)<sup>1</sup>

When determining whether the use of force was lawful, section 835a(a)(2) requires the consideration of “other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” Section 835a(a)(4), however, states that “the decision by a peace officer 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 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.”

Section 835a(a)(3) requires the District Attorney’s Office to evaluate use of force cases “carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers in order to ensure that officers use force consistent with law and agency policies.”

A person may resort to the use of deadly force in self-defense or defense of another when there is a reasonable need to protect oneself or someone else from an apparent, imminent threat of death or great bodily injury. Self-defense requires subjective honesty and objective

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<sup>1</sup> CALCRIM 507 differs from the homicide self-defense instruction for non-officers in CALCRIM 505. CALCRIM 507 is missing the third element from 505 requiring that the killer “use no more force than reasonably necessary.” Until there is further clarification as to whether this change was an oversight by the Judicial Council in crafting 507 or intentional by the legislature, the DA’s Office will assume for purposes of this report that officers using more force than reasonably necessary in self-defense is unlawful.

reasonableness. (*People v. Aris* (1989) 215 Cal.App.3d 1178, 1186.) Additionally, “[i]mminence is a critical component of both prongs of self-defense.” (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1094.) Notably, the trial court’s clarifying instruction made in *Aris* that “[a]n imminent peril is one that, from appearances, must be instantly dealt with” was later approved by the California Supreme Court. (*Aris* 215 Cal.App.3d at 1187; see *In re Christian S.* (1994) Cal.4th 768, 783.)

In the related context of cases alleging excessive force by police, the test of reasonableness as to an officer’s use of deadly force is an objective one, viewed from the vantage point of a reasonable officer on the scene, rather than with 20/20 hindsight. (*Graham v. Conner* (1989) 490 U.S. 386, 396.) It is also highly deferential to the police officer’s need to protect himself and others. The calculus of reasonableness must allow 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.)

An officer’s right to self-defense is the same whether the danger is real or merely apparent. (*People v. Jackson* (1965) 233 Cal.App.2d 639, 642.) If the officer’s beliefs were reasonable, the danger does not need to have existed. (CALCRIM No. 505.) What constitutes “reasonable” self-defense or defense of others is controlled by the circumstances. (*Ibid.*) The question is whether action was instantly required to avoid death or great bodily injury. In this regard, there is no duty to wait until an injury has been inflicted to be sure that deadly force is indeed appropriate. In *People v. Reed*, a robber pointed a gun at his victim and a deputy sheriff was called to the scene of the robbery. (*People v. Reed* (1969) 270 Cal.App.2d 37, 41.) Before the robber could get off a shot, the deputy fired his weapon, wounding the robber. (*Id.* at 42.)

The appellate court remarked that “[s]uch aggressive actions required immediate reaction unless an officer is to be held to the unreasonable requirement that an armed robber be given the courtesy of the first shot.” (*Id.* at 45.) Further, under Penal Code section 835(d), there is no requirement that a police officer retreat even if safety could have been achieved by retreating. (See also CALCRIM No. 505.)

#### **B. SERGEANT MAGEE AND OFFICER MUNOZ ACTED LAWFULLY**

Article V, section 5.02(b)(iii)(1) of the District Attorney’s Office Policy and Procedure Manual states that a criminal complaint cannot be issued against a suspect unless there is sufficient evidence to prove the offense beyond a reasonable doubt. To convict any of the officers involved in the shooting of Gomez, the prosecution bears the burden of overcoming the presumption of innocence and disproving at least one of the three elements of self-defense, or defense of others beyond a reasonable doubt. Based on the law and evidence, in this case, Sergeant Magee and Officer Munoz acted in lawful self-defense.

First, the BWC footage from the incident indisputably shows Gomez posing an imminent threat of death or great bodily injury to the officers and the children. Gomez told Jane Doe that she should “barricade” herself inside the children’s bedroom and that if the police came for him, he would “leave there dead,” powerful evidence that he intended to use lethal force on her, the children, or police. After being notified the police were present, Gomez armed himself with a loaded gun and ran toward the children’s bedroom. After Officer Munoz tackled him, Gomez fired his handgun in the direction of the officers while being apprehended. Gomez’s actions demonstrate his readiness to use lethal force while attempting to flee to the children’s bedroom. After being shot in the torso, he continued to struggle to point his gun at Officer Munoz.



Second, there is ample evidence that the force used in this case was necessary. Gomez already got one shot off at the officers and refused to drop the gun. Officer Munoz had no choice but to restrain Gomez by holding the gun against his body so he could not fire another round. Sergeant Magee, likewise, had no choice but to shoot Gomez after Gomez fired a round at the officers inside the apartment. Even after being shot, Gomez continued to pose a threat as he kept struggling over the gun with Officer Munoz, making it necessary for Sergeant Magee to fire again to stop him.

Third, the amount of force used was certainly reasonable. Officer Munoz holstered his sidearm before tackling Gomez to apprehend him with non-lethal force despite hearing Gomez chamber a round as he fled. Sergeant Magee only fired his first shot at Gomez after Gomez fired at the officers. Further, Sergeant Magee fired two more shots only when it was clear Gomez was still armed and refused to surrender, believing Officer Munoz had been shot. Once Gomez released the gun, Sergeant Magee immediately stopped firing.

### **C. DEPARTMENT POLICY**

CPD policies were considered among the totality of circumstances in evaluating the three elements of self-defense. In 2019, the California Legislature declared in SB 230 that police training and policies “may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably.” “[T]he decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.” (Penal Code § 835a(a)(3).) “The policies and training may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably.” (Sen. Bill No. 230 (2019-2020 Reg. Sess.) §

1(g.) That said, agency policies “shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.” (*Ibid.*) Penal Code section 835a(c)(1)(B)) states: “When feasible, officers shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.” In 2020, CPD incorporated Penal Code section 835a into Policy 300 (Deadly Force).

In this case, the BWC video shows that the actions of Sergeant Magee and Officer Munoz were within departmental policy as required by Penal Code section 835a. The officers clearly identified themselves to Gomez as “Campbell Police” multiple times. Although Sergeant Magee did not warn Gomez that lethal force would be used, there were objectively reasonable grounds to believe Gomez was aware of that fact. He told Jane Doe he would only leave the apartment “dead” if the police came for him, armed himself with a loaded handgun when the police announced their presence, and fired a gunshot at the officers upon being tackled. Further, Sergeant Magee had no time to make such an express warning under the exigent circumstances of this case. Officer Munoz was struggling to hold onto Gomez’s gun, literally, for dear life. Any further delay to neutralize the threat posed by Gomez could have cost Sergeant Magee his life, or the life of a fellow officer.

## **VII. CONCLUSION**

The actions of Sergeant Najib Magee and Officer Stevie Munoz were both lawful and justified, demonstrating exemplary courage and training. Together, the two officers put themselves directly in harm’s way to protect two young children and fellow officers from the threat of great bodily injury or death posed by Miguel Gomez. Under the facts of this case and the applicable law, the officers reasonably believed they needed to use deadly force, and such

force was necessary and reasonable under the circumstances. Consequently, no criminal liability attaches to them.

Dated: 2/13/25

Respectfully submitted,

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JEFFREY F. ROSEN  
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