

In-Custody Death of Eric Briceno
Los Angeles County Sheriff's Department

Deputy Jennifer Romero, #617957
Deputy David Vaca, #518180
Deputy Danny Galvez, #611166
Deputy Nathaniel Trujillo, #617315

J.S.I.D. File #20-0110



GEORGE GASCÓN
District Attorney
Justice System Integrity Division
June 28, 2023

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
Los Angeles County Sheriff's Department
Homicide Bureau
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Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: In-Custody Death of Eric Briceno
J.S.I.D. File #20-0110
L.A.S.D. File #020-04100-0250-058

DATE: June 28, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 16, 2020, in-custody death (ICD) of Eric Briceno involving Los Angeles County Sheriff Department (LASD) Deputies Jennifer Romero, David Vaca, Danny Galvez, and Nathaniel Trujillo. It is our conclusion there is insufficient evidence to prove beyond a reasonable doubt that the deputies are criminally responsible for Briceno's death.

The District Attorney's Command Center was notified of this in-custody death on March 16, 2020, at approximately 5:45 p.m. The District Attorney Response Team did not respond to this ICD due to COVID-19 virus precautions.

The following analysis is based on reports, recorded interviews, and photographs submitted to this Office by the LASD Detective Division, Homicide Bureau. The analysis also considered documents and depositions submitted to this Office by the civil law firm representing the Estate of Eric Briceno in a federal suit against the County of Los Angeles. No compelled statements were considered in this analysis. The LASD deputies that responded to this incident were not equipped with body worn cameras.

FACTUAL ANALYSIS

On March 16, 2020, a physical altercation between Eric Briceno and his elderly father, [REDACTED] occurred at a residence on 58th Street in the City of Maywood. At approximately 10:50 a.m., East Los Angeles Deputy Sheriff Jaime Robles responded to the residence and made contact with [REDACTED]. Briceno had left the premises before Robles arrived. [REDACTED] informed Robles that [REDACTED] got into a verbal altercation with Briceno in the kitchen. To avoid any future confrontation, [REDACTED] walked away to his bedroom. Briceno followed him and pushed [REDACTED] face causing [REDACTED] to fall onto his bed. Briceno then grabbed [REDACTED] head and pressed [REDACTED] face forcibly onto the bed. [REDACTED] stated that his vision blurred and he could not breathe. [REDACTED] stated that Briceno smashed his face against the bed for approximately two minutes. [REDACTED] stated he felt like he was going to lose

consciousness. Briceno then let him go and left the location. [REDACTED] told Robles he was very fearful that Briceno would cause him further harm when he came home.

Robles noted that [REDACTED] had blood all over his face and neck area. He also had an approximate three-inch laceration to the left side of his head, a superficial scratch to the left side of his upper lip and an approximate two-inch laceration to the right side of his face with blood on it. Robles also noted that [REDACTED] had an active protective order protecting him from physical harm from Briceno.¹

Robles informed [REDACTED] and his wife, [REDACTED] to contact the police if Briceno came back to the residence.

A few hours later, Briceno came back home and [REDACTED] called the police. The police dispatcher relayed over the radio to the responding units that the battery suspect from a prior call was back at the residence. At approximately 3:39 p.m., Deputies Jennifer Romero, David Vaca, Danny Galvez, and Nathaniel Trujillo arrived at the residence.² They met with [REDACTED] and [REDACTED] and they asked [REDACTED] to wait outside. [REDACTED] then guided Romero, Vaca, and Galvez to the northwest bedroom where Briceno was laying on a bed face down. Briceno was given verbal commands to place his hands behind his back, to which he ignored. Romero, Galvez, and Vaca approached Briceno to detain him. Deputies reported Briceno kicked Galvez, stood up and took a “fighting” stance. Briceno charged towards Romero. Galvez deployed his Taser, which struck Briceno’s chest area. The Taser appeared to be ineffective. Briceno removed the probes and lunged again towards Romero. To prevent Briceno from hitting Romero, Galvez jumped on Briceno’s back from behind. Galvez and Briceno fell to the ground facing up, landing with Galvez trapped under Briceno. Galvez was able to free himself, however, Briceno took Romero’s hand and put it in an arm lock. Romero broadcasted over the emergency radio traffic that the deputies were involved in a fight.

Trujillo responded by running inside to assist the deputies. Romero freed herself, but the deputies were unable to control Briceno’s arms. Trujillo sprayed Briceno with Oleoresin Capsicum (OC) spray, which also appeared ineffective. Briceno got a hold of Romero’s arm again and pulled her into him. In an attempt to make Briceno let go of Romero’s arm, Trujillo punched Briceno’s left arm and left torso. In an attempt to subdue Briceno, Vaca punched Briceno in the face several times. Galvez deployed his Taser a third time, but the effects were minimal. After several seconds struggling with Briceno, the deputies were able to control Briceno’s arms and he was handcuffed. Briceno continued kicking at the deputies, despite repeated commands to stop. A hobble restraint was applied to his legs and the leash end of the hobble restraint was held by another deputy. None of the deputies reported using a choke hold or carotid restraint.

Briceno was carried to the living room by multiple deputies. Once in the living room, Briceno was placed on the floor and appeared unresponsive. He was rolled onto his back, uncuffed, and

¹ In case BA453674, Briceno was convicted of elder abuse against [REDACTED] and a protective order was issued.

² Romero was 5’5 tall and weighed 140 pounds. Vaca was 5’8 tall and weighed 185 pounds. Galvez was 5’9 tall and weighed 190 pounds. Trujillo was 5’9 tall and weighed 180 pounds. Briceno was six feet tall and weighed approximately 300 pounds.

CPR was started. A rescue ambulance transported Briceno to St. Francis Hospital. Dr. Chae pronounced Briceno deceased at 4:55 p.m.

Romero suffered a strained right wrist and forearm, lacerations to her left knuckles and left palm, and bruises to her knee. Galvez suffered a fracture to his right wrist. Vaca suffered a fracture to his right hand. Trujillo sustained a cut to his left hand.

Residue resembling methamphetamine was found in the pocket of a pair of pants found in the back seat of Briceno's vehicle.

Deputy Medical Examiner Dr. Juan Carrillo ruled the cause of death was asphyxia resulting from a fracture of the hyoid bone and injury to the thyroid cartilage.³ He ruled the manner of death a homicide.

Statement of [REDACTED]

[REDACTED] stated that [REDACTED] Briceno, and himself lived at their residence together. Briceno had started using methamphetamine at the age of 17 and was diagnosed with schizophrenia in his twenties. [REDACTED] did not know whether Briceno took medication for the mental disorder or not.

Approximately three years ago, Briceno had been prosecuted and jailed for elder abuse against [REDACTED]. Recently, Briceno had become out of control and acted more aggressively toward [REDACTED].

On March 16, 2020, [REDACTED] told Briceno to eat breakfast and get out of the house because Briceno had used drugs. [REDACTED] threatened to call the police. Briceno started arguing with [REDACTED] who walked away and into his bedroom. Briceno followed and Briceno pushed [REDACTED] face into the bed, causing [REDACTED] to have difficulty breathing. [REDACTED] felt like he was going to lose consciousness and begged Briceno to stop. [REDACTED] stated he would not call the police and Briceno released [REDACTED]. Briceno then left the house. [REDACTED] sustained scratches to his face.

[REDACTED] reported the assault, but Briceno was gone by the time deputies arrived. They took a report and told [REDACTED] to call 9-1-1 if Briceno returned. Approximately three hours later Briceno returned. [REDACTED] went to the backyard, dialed 9-1-1, and informed the operator that Briceno had returned and that [REDACTED] wanted law enforcement to "come and get him."

Deputies arrived and they entered the home. [REDACTED] called [REDACTED] into the house. [REDACTED] went toward the northwest bedroom and saw Briceno with his stomach on the floor with approximately six deputies on him. While trying to handcuff Briceno, the deputies were hitting and tasing him. [REDACTED] heard Briceno say, "I can't breathe." More deputies arrived and [REDACTED] and [REDACTED] were separately transported by patrol car to the Sheriff's Station.

³ The hyoid bone is a small horseshoe-shaped bone located in the front of the neck. It sits between the chin and the thyroid cartilage and is instrumental in the function of swallowing and tongue movements.

Statement of [REDACTED]

On March 16, 2020, at approximately 8:55 p.m., [REDACTED] was interviewed with a Spanish language translator. Briceno lived with [REDACTED] and [REDACTED] his entire life. Briceno abused methamphetamine since approximately age 18. Approximately 15 years ago, when [REDACTED] and [REDACTED] placed Briceno in a drug rehabilitation center in Tijuana, Mexico, he was diagnosed with schizophrenia. Briceno stayed at the rehabilitation center for approximately seven months.

Approximately three years ago, Briceno was jailed for assaulting his father. He was then placed into "Telecare Mental Health Treatment" where he was prescribed "Respidol," which [REDACTED] controlled. She gave Briceno a 3mg dose at night. Briceno used methamphetamine almost daily and had become irritable as a result. [REDACTED] believed his usage had increased in the past three months.

Briceno and [REDACTED] never had a good relationship. On March 16, 2020, at approximately 10:00 a.m., [REDACTED] heard Briceno and [REDACTED] talking to each other. [REDACTED] was upset with Briceno and an argument ensued between them. Briceno cussed at [REDACTED] and [REDACTED] went into the room and told Briceno to "calm down." Briceno became enraged after [REDACTED] stated he would call the police.

[REDACTED] went to his bedroom and [REDACTED] saw Briceno "going after him." When [REDACTED] tried to prevent Briceno from reaching [REDACTED] Briceno pushed her aside and grabbed [REDACTED] [REDACTED] saw Briceno with his hand on [REDACTED] face push [REDACTED] onto the bed. [REDACTED] tried to stop Briceno without success. [REDACTED] was worried because [REDACTED] had recently had heart surgery, so [REDACTED] begged Briceno to stop. Once [REDACTED] stated he would not call the police, Briceno released [REDACTED] and left the house. [REDACTED] then dialed 9-1-1.

Deputies responded and [REDACTED] reported to them what had just occurred. Approximately three hours later, Briceno returned while [REDACTED] was changing the door locks. When Briceno entered the home, [REDACTED] told him he had to leave. [REDACTED] believed [REDACTED] called the police regarding Briceno's return because she saw deputies arrive at their house again. She told the deputies Briceno was in the restroom and followed them into the house. Briceno was lying on the bed with his head toward the bedroom door when a female deputy touched Briceno. Briceno quickly stood up and [REDACTED] told Briceno to cooperate with them. In response, Briceno said, "No, they are going to tase me."

Briceno was facing [REDACTED] who was standing near the bedroom doorway, when the deputies commanded Briceno to put his hands behind his back. Briceno did not comply and he moved for the door. The deputies grabbed him and [REDACTED] heard the sound of a Taser. Due to Briceno's strength, the deputies struggled to get Briceno on the floor. [REDACTED] saw deputies hit Briceno's face with their fists. Even while Briceno was on the ground, however, Briceno continued to get up and the deputies struggled to keep him down.

[REDACTED] saw a yellow Taser on the floor and ran to call [REDACTED] When she returned, she heard moaning and heavy breathing. The deputies were hitting Briceno while he was on the floor. [REDACTED] heard the sound of a Taser several more times. She believed "one hundred" deputies

entered the bedroom and [REDACTED] saw Briceno handcuffed. She saw deputies carry Briceno into the living room and paramedics perform CPR on him.

[REDACTED] was put in a patrol car and taken to the Sheriff's Station. [REDACTED] stated Briceno never assaulted her, but he had been arrested in Texas for a physical altercation with his sibling.

Statement of Deputy Danny Galvez

On March 19, 2020, Deputy Danny Galvez was interviewed at the Association of Los Angeles County Deputy Sheriffs (ALADS) facility in Monterey Park. Galvez stated that he was an assisting unit assigned to respond to a service call for the return of elder abuse suspect Briceno. Galvez and Vaca arrived simultaneously at the residence. Upon their arrival, [REDACTED] came out of the house and met them. Vaca spoke with [REDACTED] regarding Briceno's location. [REDACTED] stated Briceno was using the restroom inside the house and did not have any weapons. Romero, Galvez, and Vaca formulated a plan – Romero would give commands, Galvez would use less-than-lethal force as needed, and Vaca would use lethal force if necessary.

The deputies approached the front entrance and made announcements for Briceno to reveal himself. Due to the lack of response, the deputies entered the house and started clearing every room. While the deputies cleared the house, Romero continued commanding Briceno to show himself, with no response. The deputies reached the northwest bedroom where the doorway was open. Galvez saw Briceno lying across the bed on his stomach. He had his arms spread out to his sides "like an airplane." He was lying on his left cheek facing the doorway, which was east, while his feet were pointed west. His face was visible and he had his eyes closed. Romero gave verbal commands again, but there was no response.

Galvez entered the room and positioned himself by Briceno's feet to the west side of the bed. Vaca and Romero situated themselves by Briceno's head, to the east side of the bed. Romero tapped Briceno's shoulder in a waking gesture while stating she needed to speak to him. Briceno awoke and Romero told him again that she needed to speak with him. She also told him to place his hands behind his back, to which Briceno mumbled something and started to comply. Vaca placed a handcuff on Briceno's left wrist while Romero moved toward his right hand. Briceno immediately pulled back his hands and struck Galvez's midsection with a full force "horse kick" with his shod foot. Galvez was pushed backwards and briefly lost his balance. Briceno quickly stood up and took what Galvez described as a "fighting" stance facing the deputies. Galvez stated Briceno stood with his feet shoulder-width apart, his right foot slightly in front of his left, and his arms raised and bent with clenched fists like a boxer. Galvez believed Briceno was approximately 6' to 6'2" and 250 to 260 pounds. Galvez retreated and put about five feet between himself and Briceno. Briceno appeared to be fixated on Romero, who was behind the other deputies. Galvez drew his Taser and pointed it at Briceno. Briceno did not comply with commands to place his hands behind his back and repeatedly stated, "You don't know me!" [REDACTED] said, "Don't fight them. Don't fight them." Briceno then advanced toward the deputies.

Based on Briceno's failure to comply, glazed over blank stare, and fighting stance, Galvez believed Briceno was going to continue his assault. In response, Galvez deployed his Taser.

The Taser darts struck Briceno's upper chest, however, Briceno was able to "swat" away the Taser darts. Briceno continued towards the deputies and Galvez deployed another set of Taser darts to Briceno's chest. The Taser did not appear to affect Briceno and he grabbed the Taser dart wiring and pulled the darts from his chest. Briceno ignored Galvez and Vaca as he looked past them and continued towards Romero. Briceno then lowered his head and moved his hands to the front of his body as he charged towards Romero. Briceno was about one step away from Romero when Galvez jumped on Briceno's back. While grabbing onto Briceno's upper body, Galvez dropped his Taser onto the floor. Galvez believed he was holding onto Briceno's shoulders and head. Galvez used his body weight to knock Briceno off balance which caused both Galvez and Briceno to fall onto the floor at the foot of the bed. Galvez kept his hold on Briceno as they fell and Galvez landed on his back with Briceno on top of him. Briceno's back was against Galvez's stomach and Galvez continued to hold Briceno in a "bear hug" despite feeling breathless.

Briceno continued to try and free himself by thrashing his limbs and attempting to get up. Galvez felt Briceno push his torso against him. Galvez believed keeping Briceno on the floor was the safest way to control him due to his large size. While he was holding Briceno, he saw Vaca and Romero attempt to hold Briceno's flailing arms. Galvez told Romero and Vaca to roll Briceno onto his stomach. Galvez freed himself from under Briceno and the deputies turned Briceno onto his stomach despite his continuous attempts to get up. Romero continued commanding Briceno to stop resisting. Galvez saw Romero fall into Briceno while she was kneeling next to him and trying to control his right hand. Romero yelled, "He's got my arm! He's got my arm!" Galvez believed Briceno had hold of Romero's right arm and was trying to pull her closer and underneath him. Briceno seemed to be trying to gain control of her firearm or overtake her. To free Romero, Galvez punched Briceno in the face with his right fist approximately four times. Romero freed herself, but Briceno continued fighting.

In a push-up position, Briceno started lifting himself off the ground. Galvez saw Romero and Vaca get lifted off the floor despite their combined weight being pressed on Briceno's back. Galvez pressed his chest and forearms against Briceno's head and upper back. Galvez was surprised by Briceno's ability to raise himself despite having three deputies trying to keep him on the ground. █████ entered the room and said, "Don't hurt him," while attempting to pull Romero away from Briceno. Romero pushed █████ back into the hallway and Galvez heard █████ yelling at █████ to leave the deputies alone and stay in the kitchen.

Vaca yelled, "Drive stun him!" and Galvez yelled at Romero to give him the Taser that was on the floor near her. Romero retrieved the Taser and gave it to Galvez. The deputies continued to struggle to control Briceno. Galvez put his Taser directly on Briceno's midback and deployed it again. The Taser did not cause Briceno to cease struggling and he yelled, "Just shoot me already!"

Galvez noticed that Trujillo was now inside the bedroom and he also tried to control Briceno. Trujillo gave an OC warning and deployed OC spray at Briceno's face. The spray did not appear to effect on Briceno, but caused discomfort, blurriness, and exhaustion for Galvez. Romero told Galvez to drive stun Briceno's bare skin, so Galvez deployed his Taser against the exposed skin

of Briceno's lower back. This time the Taser affected Briceno and the deputies were then able to gain some control over Briceno's arms. Briceno, however, continued to resist by flailing and kicking, while keeping his arms under him.

Vaca yelled out, "My hand! My hand! Fuck!" indicating Briceno had a hold of Vaca's hand. To assist Vaca, Galvez drive stunned Briceno's lower back again. Simultaneously, Briceno released Vaca and the deputies were able to place Briceno's right arm behind his back. Briceno then used his left hand and grabbed Romero's right hand, pulling her in again. This caused Romero to fall forward into Briceno, but she was able to free herself and one handcuff was placed on Briceno's right wrist. The deputies continued struggling with Briceno's left arm and kicking legs. Briceno continually yelled, "Shoot me! Shoot me!" Believing Briceno would not stop resisting, Galvez drive stunned Briceno's lower back again with a five-second burst.

To pull Briceno's arm away from his body, Trujillo used a flashlight like a "pry bar" by putting it between Briceno's upper arm and torso. Trujillo was unsuccessful and Galvez drive stunned Briceno's lower back again with a five-second burst.⁴ The deputies were able to handcuff Briceno's left wrist, but Briceno continued to violently flail and kick.

To keep Briceno from turning to his side, Galvez put his shin against Briceno's back. Galvez saw additional deputies arrive and Romero requested a hobble restraint, which was placed on Briceno's lower legs to prevent him from kicking.

A deputy relieved Galvez and he walked out of the residence. He was exhausted, out of breath, and feeling pain in his right hand. He was transported to Beverly Hospital where he was diagnosed with a fracture to his right hand and fitted with a soft cast.

Galvez Second Statement

On March 26, 2020, at approximately 11:40 a.m., Galvez was interviewed again, this time at the Sheriff's Homicide Bureau in Monterey Park. Galvez provided a more detailed account of his contact with Briceno on March 16, 2020.

Galvez stated that he jumped on Briceno's back and grabbed near his upper shoulders. Galvez struggled wrapping his arms around Briceno due to Briceno's broad shoulders. Approximately one second after Galvez had hold of Briceno, they both fell to the ground. Galvez had the wind knocked out of him because Briceno landed on top of him. While regaining his breath, Galvez struggled to prevent Briceno from standing up. Galvez feared Briceno would overcome all the deputies due to his strength and size. Briceno had not been searched for weapons and Galvez was fearful for his life and the lives of his partners. Galvez was conscious of his own weapons during the struggle and to prevent Briceno from getting up and overpowering the deputies, Galvez grabbed Briceno anywhere he could. Galvez stated he had no intention of harming Briceno during the struggle; he just wanted to gain control.

⁴ Galvez believed control over Briceno was gained every time he was drive stunned and deployed the Taser approximately seven times during the entire struggle.

Briceno never complied or stopped resisting. He continually thrashed his limbs, head, and torso, which caused Galvez to continually lose his grip and re-engage with different body parts. Galvez believed the only other time his hands contacted Briceno's face or neck, besides when Galvez punched Briceno, was during their fall.

Statement of Deputy Jennifer Romero

On March 19, 2020, Deputy Jennifer Romero was interviewed. Romero stated she was assigned to handle a service call regarding the return of an elder abuse suspect. She responded to a residence and three other units were assigned to assist her. Prior to responding to the call, Romero was briefed regarding the prior elder abuse call and of Briceno fleeing. She was the fourth unit to arrive and remembered the location from a visit she made to the residence a few months prior where [REDACTED] had called the police regarding a theft.

When she arrived, Romero saw Galvez and Vaca talking to [REDACTED] at the entrance of the residence. [REDACTED] told Romero that Briceno was in the back bedroom and [REDACTED] was in the backyard. She stated Briceno just returned home after having assaulted [REDACTED] earlier that day. Romero created a plan to enter the residence and contact Briceno. From the front door, Romero made multiple announcements telling Briceno to show himself. Receiving no response, Romero, Galvez, and Vaca entered and cleared the rooms while continually making announcements. At the north end of the hallway, Romero saw Briceno in the bedroom lying on his stomach across the bed. His arms were near his head. Romero told Briceno to show his hands and Briceno moved his arms down, positioning himself like an airplane. Romero observed Briceno blink at this time.

Romero stepped inside the bedroom along the east wall and told Briceno to put his hands behind his back. Vaca entered and took position on the south side of the room. Galvez entered and took position on the west side, near Briceno's feet. Romero put her hand on Briceno's left wrist and immediately felt and saw his body become rigid. Vaca attempted to handcuff Briceno's right wrist and Briceno "horse kicked" Galvez in the chest. The kick made Galvez stumble backwards. Briceno jumped up from the bed and pulled his wrists away from the deputies. Briceno took a fighting stance on the west side of the bed. His feet were shoulder-width apart, hands clenched, and arms bent in front of him. Immediately, Romero broadcasted a deputy-involved fight. She believed Briceno was approximately 6'0" tall and 280 pounds. He was wearing a jean jacket and blue jeans. A deputy told Briceno to relax or he would be tased. Romero used her arm to prevent [REDACTED] from entering the room and ordered her to stay out. She heard [REDACTED] say, "Don't fight them."

Briceno did not comply with the orders and Galvez deployed his Taser. The darts hit the chest area of Briceno's jean jacket, but he "swiped" them away and charged toward Romero. Galvez deployed another set of Taser darts, but Briceno pulled them away again. Briceno said, "You don't know who I am." Briceno charged a couple steps toward Romero making her fearful he would overtake her. Romero attempted to keep Briceno away by raising her arm toward him. To prevent Briceno from reaching Romero, Galvez jumped on the right side of Briceno's back and grabbed him into a bear hug. Both Galvez and Briceno fell to the ground with Galvez's back on the floor and Briceno's back pressing on Galvez. Briceno swung his arms and kicked at the deputies. Romero ordered Briceno to stop fighting and put his hands behind his back. Briceno

did not comply. To free Galvez and control Briceno's arms, Romero used her fist to hit Briceno on the right cheek and jaw area approximately eight times. Briceno was left unaffected and the deputies continued to struggle to handcuff Briceno.

While struggling to control Briceno, Briceno grabbed Romero's right hand. Romero yelled at Briceno to release her hand, but he twisted it towards himself to roll Romero under him. Romero felt pain in her right hand and believed she was losing control of her "gun side." To free herself, she used her fist and elbow to strike Briceno's arm and face. When Briceno pushed himself up, Vaca and Romero were lifted off the ground. Trujillo entered and took a spot on Briceno's right side. Romero moved to control Briceno's legs, and someone deployed OC spray, which caused Romero to have difficulty breathing. While attempting to handcuff Briceno behind his back, Briceno grabbed the sleeve and chest area of Romero's uniform, pulling her into him. She freed herself, but there was a moment Briceno had hold of her handcuff. Romero pried her handcuff away and placed it on Briceno's right wrist. The struggle to control Briceno's left wrist and legs continued.

Romero retrieved Galvez's Taser from the floor and handed it to Galvez. Galvez drive stunned Briceno over his jean jacket which was ineffective. Romero noticed exposed skin on Briceno's lower back and told Galvez to drive stun him there. Galvez complied and this allowed the deputies to handcuff Briceno's left arm. Briceno continued to kick at Romero. After failing to bear hug his legs, Romero requested a hobble restraint. Deputy Jaime Cadena entered and helped control Briceno's legs. Briceno continued kicking, but the hobble restraint was eventually applied.

After applying the handcuffs and hobble restraint, Romero, Galvez, Vaca, and Trujillo left the room. Romero was exhausted and had pain in her right wrist, left elbow, and left knuckles. During the struggle, a couple fingernails were ripped off along with her metal nameplate on her uniform shirt. Romero was transported to Beverly Hospital and diagnosed with a strained right wrist and forearm, lacerations to her left knuckle and palm, and bruising to her left knee.

Statement of Deputy David Vaca

On March 19, 2020, Deputy David Vaca was interviewed at the ALADS facility. Vaca stated he was aware that earlier in the day the police were called for an elder abuse call against Briceno. Vaca specified that he was assigned to assist detaining Briceno since he returned to the residence after the original report was made.

Vaca arrived at the residence at the same time as Galvez. Trujillo was already present and positioned at the rear of the residence. Upon their arrival, Vaca and Galvez met [REDACTED]. She informed them Briceno was inside using the restroom. Shortly thereafter, Romero arrived and spoke with [REDACTED]. Romero then created a plan to contact Briceno.

At the entrance to the residence, Romero and Vaca announced their presence. Briceno did not respond. The deputies then entered and cleared each room. Briceno was found lying on his stomach across a bed with his arms out like "an airplane" in the northwest bedroom. Vaca saw Briceno open and close his eyes, ignoring Romero's commands to put his hands behind his back

and exit the room. Vaca entered and positioned himself south of the bed. Romero was along the east wall and Galvez took a position near Briceno's feet on the west side of the room. Briceno put his right hand near his back causing Vaca to remove his handcuffs and reach for Briceno's right wrist. Briceno pulled away with force and "horse kicked" Galvez's stomach, knocking Galvez backwards.

Galvez repositioned next to Vaca, and Romero stood behind them. Briceno jumped up from the bed into a fighting stance with his feet shoulder-width apart, torso bladed toward the deputies, and arms bent up in front of him. Vaca believed Briceno was 6'2" and 300 pounds. Galvez warned Briceno that he was going to tase Briceno, but Briceno maintained his stance. Galvez deployed the Taser, which struck Briceno's chest. Briceno swiped the Taser darts away. Galvez deployed the Taser another time, striking Briceno's chest again. Briceno pulled the Taser darts away. Briceno would not comply with commands and now appeared fixated on Romero. Vaca was fearful Briceno would continue his assault. Briceno stated, "You don't know me" then lunged between Galvez and Vaca at Romero. Galvez grabbed Briceno's upper body with his arms, and the two fell to the ground. Galvez had his back on the ground, and Briceno's back was pressed against Galvez's chest.

Vaca unsuccessfully attempted to grab Briceno's arms. The deputies eventually turned Briceno onto his stomach and commanded him to put his hands behind his back. Briceno did not comply. Romero said, "He's got my arm!" and Vaca noticed that Briceno was holding onto Romero's arm. It appeared to Vaca that Briceno was trying to pull Romero under him and to possibly grab her firearm. Vaca released Briceno's left arm and grabbed his right arm but failed to free Romero. Vaca punched Briceno's face with his right fist approximately six times and felt sharp pain in his right hand. Galvez drive stunned Briceno with his Taser and Briceno released Romero. The struggle to control Briceno continued and Briceno stated, "Just shoot me!" Trujillo entered the room, began punching Briceno's back, and deployed OC spray into Briceno's face. Romero successfully handcuffed Briceno's left wrist, but the fight continued. With the deputies on top of him, Briceno pushed himself off the ground to get up. Romero stated, "He's got my shirt!" and Vaca pulled Romero's arm away from Briceno.

Galvez drive stunned Briceno's exposed lower back, which seemed effective. With two sets of handcuffs, Vaca handcuffed Briceno behind his back. Vaca heard a deputy request fire personnel and Briceno continued kicking and thrashing. Cadena entered the room and placed a hobble restrain on Briceno's legs. Once Briceno was restrained, Vaca left the bedroom exhausted. He had immense pain in his right hand. Vaca was transported to Beverly Hospital and diagnosed with a fractured right hand.

Statement of Deputy Nathaniel Trujillo

On March 19, 2020, Deputy Nathaniel Trujillo was interviewed at the ALADS facility. Trujillo stated he was assigned to assist a response to a residence to detain the return of elder abuse suspect Briceno.

Upon Romero's request, Trujillo positioned himself one street north of the residence listening to Romero's radio communication. He ran to the residence when he heard of deputies fighting.

When he entered the residence, he heard struggling in the northwest bedroom. He entered the bedroom and saw deputies attempting to handcuff Briceno who was lying on the floor on his stomach facing the bedroom door. The deputies appeared to be exhausted. Trujillo noticed Briceno clenching his arms under his stomach and pushing himself up while kicking his legs. Trujillo went to Briceno's right side and unsuccessfully tried to pull his arm out. To weaken Briceno's right arm, Trujillo used a six-inch flashlight to "hammer fist" Briceno's lower right back. Trujillo also struck Briceno approximately three times but was unsuccessful in getting Briceno to release his arms. Trujillo told Briceno he would be OC sprayed if he did not put his hands behind his back. Briceno did not comply, and Trujillo deployed the OC spray to Briceno's face. The spray affected the breathing of Trujillo and the deputies, but did not seem to affect Briceno. Trujillo struck Briceno's lower left back with both fists to no prevail.

Galvez drive stunned Briceno's lower back approximately four times and the deputies were able to handcuff Briceno's right wrist. Trujillo lengthened the handcuffs by attaching a second pair of handcuffs. Briceno continued fighting, but the deputies successfully handcuffed Briceno's left wrist. Additional deputies entered the bedroom and assisted by placing a hobble restraint on Briceno's legs. Trujillo was relieved and left the room. He was exhausted from the struggle and estimated Briceno weighed 300 pounds. Trujillo stated he had lost his flashlight in the room.

The struggle with Briceno left Trujillo with a cut to his left hand and possible blood transfer from Briceno. Trujillo was transported and treated at Beverly Hospital.

Statement of Sergeant Joseph Bernas

On March 16, 2020, at approximately 11:25 a.m., Sergeant Joseph Bernas, was interviewed at the East Los Angeles Sheriff's Station. Bernas stated that when he arrived at the residence to assist, Bernas saw [REDACTED] and Deputy Nikolis Perez at the front doorway. Bernas was directed to the northwest bedroom where he saw Briceno lying face down on the ground. Approximately five other deputies were in the room. Briceno was already handcuffed behind his back with his legs in a hobble restraint. The prominent odor of OC spray permeated the room and Bernas saw Romero walk out of the room.

Bernas ordered deputies to check Briceno's vitals. Deputy Steven Martinez confirmed Briceno was breathing after rolling him to his right side. Bernas saw Briceno spitting blood onto the floor while fidgeting. He ordered Briceno to be taken to the living room to get fresh air. Assisting deputies relieved the deputies involved in the use of force and moved Briceno.

The deputies were approximately five feet into the hallway when they had to set Briceno down due to his large stature. Bernas believed Briceno weighed approximately 250 pounds. Bernas ordered another vital check. Martinez rolled Briceno onto his right side again and verified Briceno was breathing. The deputies resumed carrying Briceno into the living room, where they waited for fire personnel.

Bernas ordered the deputies to roll Briceno into a recovery position on his side and monitor his breathing. Briceno did not seem to be breathing, so the deputies checked Briceno's neck for a pulse. Los Angeles County Fire Department personnel arrived and checked Briceno for a pulse.

At a paramedic's suggestion, Bernas ordered the removal of handcuffs and the hobble restraint. Briceno was placed on his back and chest compressions began.

Statement of Deputy Eric Chinarian

On March 17, 2020, at approximately 12:57 a.m., Deputy Eric Chinarian was interviewed at the East Los Angeles Sheriff's Station. On March 16, 2020, Chinarian and Martinez were assigned together and responded to Romero's request for assistance.

When they arrived, Martinez ran into the residence and Chinarian entered through the back door of the residence. Hearing scuffling coming from the northwest bedroom, Chinarian walked in that direction. As he walked down the hall, Chinarian smelled OC spray. Upon his arrival at the northwest bedroom, Chinarian saw six to eight deputies trying to restrain Briceno, who was lying on his stomach at the foot of the bed near the doorway. Chinarian heard someone yelling numerous commands including, "Stop fighting," "Stop kicking," and "Stop, or I'll tase you." Chinarian saw the deputies at Briceno's side being moved side to side causing him to believe Briceno was resisting and flailing his limbs. Chinarian also heard Romero request a hobble restraint for Briceno's legs.

As Chinarian stood by the doorway, he did not witness or hear any deputy deploy a Taser. Additional deputies started to arrive and Chinarian moved to an adjacent bedroom to recover from the OC spray odor. The odor caused coughing, teary eyes, and difficulty breathing. Chinarian observed other deputies in the room with the same symptoms. Bernas arrived and the deputies involved in the struggle were relieved.

When Chinarian re-entered the bedroom, he saw Briceno face down on the floor with his arms handcuffed behind his back with two sets of handcuffs. Chinarian replaced a deputy on Briceno's right side. Martinez confirmed Briceno was breathing when Bernas ordered a vital check. Chinarian saw and heard fire personnel preparing in the front yard.

All the deputies in the bedroom appeared affected by the odor of the OC spray. Chinarian and approximately six other deputies carried Briceno out and placed him down in the hallway. Bernas ordered another vital check. Again, Martinez confirmed Briceno was breathing. The deputies continued to carry Briceno out to the living room. Briceno was initially placed on his stomach and then rolled onto his right side. Bernas ordered another vital check and the fire personnel entered. The fire personnel requested deputies start CPR. The handcuffs were removed, Briceno was turned onto his back, and a deputy started chest compressions. Fire personnel then immediately took over doing CPR on Briceno.

Statement of Deputy Manan Butt

On March 17, 2020, at approximately 1:30 a.m., Deputy Manan Butt was interviewed at the East Los Angeles Sheriff's Station. On March 16, 2020, Butt and Deputy Joana Palombi got into Butt's car and responded to the request for assistance.

Upon arriving at the residence, Butt ran to the front yard and saw [REDACTED] leaning against the fence with other deputies. Butt entered the house and saw Galvez, Trujillo and Romero exiting. Butt noticed blood on Galvez's uniform sleeve. After confirming the deputies were fine, Butt went further into the house. He saw [REDACTED] seated at the dining room table, saw deputies gathered at the north end of the hallway, and heard Bernas commanding the suspect be moved from the bedroom to the living room area.

Butt saw deputies carrying Briceno, who was handcuffed, into the hallway and placed on his stomach. He was able to smell the OC spray spreading down the hallway and saw other deputies coughing. Butt heard Bernas order a vital check and it was confirmed Briceno was breathing. Bernas then ordered the deputies to continue carrying Briceno into the living room.

Butt entered the living room and contacted [REDACTED] who had two other deputies with her. When Briceno was carried into the living room, [REDACTED] approached the deputies triaging Briceno and asked, "Did you kill him?" Bernas ordered another vital check after Briceno was placed on his right side. Butt noticed Briceno's face turning bluish. Deputies uncuffed Briceno and rolled him onto his back when a fireman entered. The fireman cut Briceno's shirt and requested CPR. Deputy Hilda Ruiz started chest compressions on Briceno until other fire personnel arrived and took over.

Statement of Deputy Andrew Magallanes

On March 17, 2020, at approximately 2:22 a.m., Deputy Andrew Magallanes was interviewed at the East Los Angeles Sheriff's Station. Magallanes responded to the residence to assist deputies in a fight.

Upon arriving and entering the home, Magallanes immediately noticed the smell of OC spray. He made his way to the back bedroom and saw several deputies inside with Briceno. Briceno was lying on the ground face down. Magallanes immediately asked who needed to be "swapped out." He took over Trujillo's spot on Briceno's right side. He noticed two sets of handcuffs were used to handcuff Briceno behind his back and his ankles were secured with a hobble restraint. Magallanes believed Briceno was over six feet tall and weighed over 300 pounds. When Magallanes relieved Trujillo, Trujillo handed him a Taser. He believed the Taser cartridge was still inside the Taser housing because he did not see any prong wires protruding from the Taser and it was turned "off."

Upon Bernas' orders to check Briceno's vital signs, Magallanes helped roll Briceno onto his right side. Magallanes heard Briceno mumbling and grunting as he was being rolled, and a deputy verified Briceno's breathing. Bernas ordered the deputies to carry Briceno into the living room to provide space to triage Briceno and wait for fire personnel. Magallanes noticed blood on the bedroom floor where Briceno had been lying and on Briceno's face, however, he did not know the source of the blood.

Magallanes held Briceno by the handcuffs and helped six to eight other deputies carry Briceno into the hallway. Once in the hallway, Briceno was placed on his right side and his vitals were checked again. Magallanes heard Briceno grunting and mumbling again, and a deputy verified

Briceno was breathing. The deputies resumed carrying Briceno into the living room and placed him on the floor on his stomach. Magallanes gave the Taser to another deputy to be secured and Bernas ordered another vital check. Magallanes noticed Briceno was pale while assisting the deputies turn Briceno onto his right side. He checked Briceno's neck for a pulse in several areas but was unable to locate one. Fire personnel arrived and Magallanes informed them Briceno did not have a pulse. Upon the request of fire personnel, the deputies removed the handcuffs and hobble restraint and rolled Briceno onto his back. The deputies started CPR until fire personnel took over.

Magallanes was given the task of transporting ██████ to the East Los Angeles Sheriff's Station. At the Sheriff's Station, Magallanes provided security for both ██████ and ██████. When ██████ was interviewed, Magallanes stayed with ██████ in a separate room where they conversed.

██████ spontaneously informed Magallanes of his failure in raising Briceno. For the past 20 years, Briceno had abused methamphetamine and had assaulted ██████. ██████ stated he believed Briceno was better off in jail or dead because the alternative was life-long homelessness.

Statement of Deputy Israel Herrera

On March 17, 2020, at approximately 3:16 a.m., Deputy Israel Herrera was interviewed at the East Los Angeles Sheriff's Station. He stated that he and Deputy Daniel Gonzalez were assigned together and responded to the residence after receiving an assistance request. Upon their arrival, Herrera entered the back door of the residence and saw ██████ in the living room. ██████ saw Herrera and pointed toward the northwest bedroom, from where he heard arguing and struggling. Herrera ran to the bedroom and saw Briceno handcuffed and lying face down on the floor. There were several deputies holding Briceno down. Herrera saw a pool of blood on the floor and Briceno violently kicking at the deputies. A deputy yelled out that Briceno was kicking. Herrera also heard a deputy yelling for a hobble restraint to be placed on Briceno's legs.

Herrera entered the room and took a spot near Briceno's feet. He put pressure on the back of Briceno's legs to prevent his kicking, which allowed deputies to apply the hobble restraint. Briceno groaned and continued to attempt to get up. The strong odor of OC spray caused Herrera to have trouble seeing and breathing. He noticed other deputies were also coughing. Herrera heard Bernas order deputies to roll Briceno onto his side to check his vital signs and it was confirmed Briceno was breathing. Bernas then ordered the deputies to carry Briceno out of the bedroom. Herrera held Briceno's upper leg but could not continue due to the narrow doorway. Herrera estimated Briceno was approximately 6'0" and 300 pounds. In the hallway, Briceno was placed on the floor and rolled onto his right side. After it was verified that Briceno was breathing, the deputies resumed carrying him into the living room.

In the living room, Bernas ordered another vital check and a deputy yelled Briceno was not breathing. Bernas ordered the removal of the handcuffs and hobble restraint. Herrera removed the handcuffs and Briceno was rolled onto his back. Someone said, "chest compressions," and a deputy started CPR until fire personnel relieved him. Herrera and Gonzalez followed Briceno's ambulance to Saint Francis Medical Center where he was pronounced dead.

Statement of Deputy Jose Lopez

On March 17, 2020, Deputy Jose Lopez was interviewed at the East Los Angeles Sheriff's Station. Lopez stated that he and Perez responded to a request for assistance for a deputy involved fight. When he arrived at the residence, Lopez saw [REDACTED] standing in the front yard. [REDACTED] directed them into the residence. Lopez entered the residence and noticed the strong odor of OC spray and numerous deputies coughing, including Romero, as she left the bedroom.

Lopez looked in the bedroom and saw several deputies inside and Briceno lying on the floor face down. As Lopez entered, he noticed that Briceno was already handcuffed. Briceno, however, was moving and kicking his feet towards the deputies. To prevent Briceno from getting up, Lopez put his right hand into the middle of Briceno's back. Lopez could feel Briceno's lower body continuing to move. Bernas ordered the deputies to carry Briceno into the hallway. Lopez assisted and grabbed Briceno by his belt. Approximately six deputies were needed to carry Briceno due to this large statue. Briceno was placed on his right side on the hallway floor, and it was confirmed he was still breathing. Lopez then grabbed Briceno's belt again and assisted in carrying Briceno into the living room. Briceno was placed on the floor and Bernas ordered another vital check. Fire personnel arrived at that time and Lopez exited the house.

Statement of Deputy Rolando Corrales

On March 17, 2020, Deputy Rolando Corrales was interviewed at the East Los Angeles Sheriff's Station. Corrales stated he responded to an assistance call.

Upon his arrival, Corrales entered the residence and saw Briceno being carried out of the back bedroom by several deputies. Corrales assisted by putting his left hand under Briceno's armpit. He estimated Briceno weighed approximately 260 pounds. About five other deputies were needed to carry Briceno. Briceno was handcuffed behind his back and had a hobble restraint on his feet. Corrales saw Briceno moving his head up and down as he was being carried away.

Briceno was placed on his right side on the hallway floor and an order was given to check his pulse. Once Briceno's breathing was verified, the deputies continued carrying him into the living room. Briceno was placed on his right side, in a recovery position, on the living room floor. Fire personnel arrived and checked Briceno's vital signs. Fire personnel requested deputies remove the handcuffs and hobble restraint. The handcuffs and hobble restraint were removed and Corrales began CPR chest compressions on Briceno. Ruiz relieved Corrales and continued the CPR before fire personnel took over.

Statement of Deputy Steven Martinez

On March 19, 2020, Deputy Steven Martinez was interviewed at the ALADS facility in Monterey Park. He had been assigned to patrol with Deputy Chinarian when they responded to a call of a deputy involved fight in the rear room of a residence. They arrived at the residence and entered through the rear kitchen entrance. Martinez was directed to a back room by the [REDACTED] Briceno was laying on the floor at the foot of a bed, by the entrance to the bedroom. He was laying on his stomach, moving his torso side to side, kicking, moving his head side to side, and spitting

blood. Based on the movements, Martinez believed Briceno was intentionally spitting blood at the deputies. Approximately four to five deputies were in the room at the time.

To prevent Briceno from moving his head and spitting, Martinez placed his knee between Briceno's shoulders and held his trapezoid area. Despite Martinez's weight, Briceno continually thrust his body from side to side and kicked his feet. Martinez saw Galvez on Briceno's left side. Galvez commanded Briceno to stop kicking and biting. Commands were continually given, but Briceno ignored them and continued to move his head and spit blood. Martinez heard Romero ask for a hobble restraint, but did not see deputies put it on Briceno. Bernas entered the room, directed the deputies to lift Briceno, and asked Martinez to check his vital signs. Martinez lifted Briceno by the shirt and Martinez saw Briceno continually moving his head and heard him breathing. Briceno was carried out into the hallway and then put onto his right side. Bernas ordered another vital check. Martinez saw Briceno moving his head and breathing heavily. Martinez tried to get a pulse in the hallway, but due to the difficulty moving in the narrow hallway and Briceno's large size he was unable to. Bernas then had the deputies move Briceno to the living room.

Martinez was relieved and walked towards the living room. He saw Briceno placed down on his right side in a recovery position. Fire and paramedic personnel entered the residence. At that time, Briceno was not breathing, and a deputy was told to start chest compressions on Briceno.

Statement of Deputy Jaime Cadena

On March 19, 2020, Deputy Cadena was interviewed at the ALADS facility in Monterey Park. Cadena was on patrol when he heard of a deputy involved fight. Upon his arrival, he entered the back kitchen door and ran down the hallway to a bedroom at the rear left of the residence. He saw three to four deputies inside. Briceno was handcuffed and lying on the floor facing the bedroom entrance. The room smelled of OC spray and Briceno was resisting the deputies by moving around and kicking. Cadena attempted to stop Briceno from kicking by grabbing his feet, but Briceno broke free. Cadena then tightly tied his hobble restraint around both Briceno's ankles. Briceno was now both handcuffed and hobbled, however, Briceno continued to ignore the commands to stop resisting and kept attempting to kick his feet.

Bernas arrived soon after and asked the deputies to take Briceno into the hallway. Cadena held his feet and assisted in carrying Briceno. Briceno was placed down in a recovery position and Bernas asked someone to check his status. Briceno was still kicking and resisting. Bernas had Briceno taken to the living room and he was continually moving and attempting to kick when he was lifted. Bernas ordered another check of Briceno's vitals and a deputy stated he was not breathing. The handcuffs were removed and Cadena removed the hobble restraint. Briceno was placed on his back and fire personnel, who were preparing outside, requested the start of chest compressions. Cadena then stepped outside.

Autopsy

On March 20, 2020, Los Angeles County Department of Coroner Deputy Medical Examiner Dr. Juan Carrillo, performed a post-mortem examination of Briceno. Carrillo noted Briceno had

multiple blunt force injuries to the face in the form of contusions, abrasions, and lacerations. Contusions were also present in the right lower leg and left foot. Carrillo also observed focal thermal injury to the skin caused by multiple applications of a Taser. None of these injuries resulted in fatal trauma.

Toxicology results showed the presence of 1.5 micrograms per milliliter of methamphetamine in blood, which is considered a toxic level.

Finally, Carrillo observed significant injuries to Briceno's neck resulting in the fracture of the hyoid bone and injury to the thyroid cartilage. This was caused by a neck compression that caused Briceno to asphyxiate.

Carrillo stated that he cannot opine exactly how much force is necessary to cause a fracture of the hyoid bone, but he did state that he would expect "significant" force necessary for the type of injury he observed. Carrillo stated that the force Galvez told investigators he used, is not consistent with force necessary to cause the injury Carrillo observed.

Carrillo determined the cause of death was cardiopulmonary arrest due to restraint, conducted electrical device use, and neck compression. Contributing to the death are the effects of methamphetamine use. He determined the manner of death to be homicide.

Civil Documents

On May 23, 2022, the civil attorney for the estate of Eric Briceno provided our Office with depositions of several witnesses: [REDACTED] [REDACTED] Dr. Juan Carrillo, and some responding firefighters/EMTs.

According to the civil attorney, the depositions of his clients, [REDACTED] and [REDACTED] demonstrate the contrast between his clients' observations and the deputies' statements about the use of force used against Eric B. Of note, [REDACTED] stated in her civil deposition that she "saw the female officer with her knee on his neck and she was hitting him with her elbow real solid and fast and hard, and he wasn't even moving." She later added that while the female was hitting her son, that the female had her knee on Briceno's neck for "probably ten seconds." [REDACTED] however, gave a 45-minute recorded interview the evening the ICD occurred and at no time did she state she observed such force being used against her son.

The deposition of Dr. Carrillo did not provide any additional information regarding the manner and cause of death that was not already known to this office.

Finally, the firefighters' depositions provided information about what took place after the four deputies who are the subject of this review were already relieved of duty and no longer on scene. All four of the subject deputies were relieved of duty due to exhaustion related to the physical altercation. As such, the firefighters' depositions provide no evidentiary value to the analysis of the lawfulness of the use of the force by the four subject deputies and their statements are therefore not relevant to the analysis in this memorandum.

LEGAL ANALYSIS

The decision by a police 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. Penal Code § 835a(a)(4).

Any police officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Penal Code § 835a(b).

A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivision (b). Penal Code § 835a(d).

A person is guilty of murder if:

- 1) The person committed an act that caused the death of another person;
- 2) When the person acted, he had a state of mind called malice aforethought; AND
- 3) He killed without lawful excuse of justification

CALCRIM No. 520.

An act causes death if the death is the direct, natural and probable consequence of the act and the death would not have happened without the act. CALCRIM No. 582.

A person is not guilty of murder or manslaughter if he killed someone as a result of accident or misfortune. Such a killing is excused and is therefore not unlawful if:

- 1) The person was doing a lawful act in a lawful way;
- 2) The person was acting with usual and ordinary caution; AND
- 3) The person was acting without any unlawful intent.

CALCRIM No. 510.

A person acts with usual and ordinary caution if he acts in a way that a reasonably careful person would act in the same or similar situation. *Id.*

The people have the burden of proving beyond a reasonable doubt that the killing was not excused. If the people have not met this burden, the Defendant is not guilty of murder or homicide. *Id.*

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. As such, when the

deputies arrived at Briceno's residence the second time that day, they had the legal duty to arrest Briceno for the protection of [REDACTED]

Briceno had assaulted [REDACTED] earlier that same day. Briceno attacked [REDACTED] to the point that [REDACTED] breathing was compromised. [REDACTED] told Robles that he was terrified of Briceno returning and feared the harm that would come to him. [REDACTED] was so scared that he tried to change his house locks to keep Briceno away. Deputies were aware that Briceno had attacked [REDACTED] on multiple prior occasions and that on at least one occasion Briceno was convicted of elder abuse. Deputies were also aware that [REDACTED] was in possession of an active protective order, protecting [REDACTED] from Briceno. The deputies, armed with all of this information, had probable cause to arrest Briceno for assault as well as violating an active protective order. As such, the deputies were under a duty to protect [REDACTED] from Briceno.

Faced with the duty to protect [REDACTED] the evidence examined shows that the deputies appeared to use only the force necessary to arrest Briceno. Initially, they tried to handcuff him while he was laying prone on the bed. Immediately, Briceno resisted by kicking Galvez in the chest. Briceno, weighing 300 pounds, rushed to attack Romero who was the only female in the initial group of deputies. In defense of Romero, Galvez jumped on Briceno's back, which caused both men to fall to the ground. Over the next several moments, Galvez, Romero, and Vaca tried to unsuccessfully handcuff Briceno. Briceno was so strong he was able to lift multiple deputies off the floor as he attempted to get up. In response, Galvez tased Briceno multiple times in order to gain compliance. As Briceno continued to resist, he got a hold of Romero's arm and began to drag her underneath him. In fear that he was trying to get her weapon, the deputies punched Briceno in the face multiple times. Trujillo entered the room and sprayed OC at Briceno in hopes of gaining compliance. Throughout the entire struggle, Briceno yelled at the deputies to shoot him. The deputies were finally able to handcuff Briceno, but due to his large stature they had to use two sets of handcuffs. Even while handcuffed, Briceno kept resisting, causing the deputies to utilize a hobble restraint on his legs.

It was not until Briceno ultimately lost consciousness that he stopped resisting. During the fight, Briceno suffered a neck compression that caused him to asphyxiate. Although we do not know definitively who caused the neck compression, the evidence suggests that it likely happened when Galvez jumped on Briceno's back and they both fell to the floor.

There is no evidence, however, that the neck compression was done intentionally. Galvez stated he never intended to grab Briceno's neck and the only time he may have done so was when he jumped on Briceno's back to protect Romero. There is no evidence that Galvez intentionally asphyxiated Briceno. In fact, in his initial interview Galvez denied ever doing so. Since we cannot prove beyond a reasonable doubt that Briceno did not die as a result of an accident or misfortune, there is insufficient evidence to prove beyond a reasonable doubt criminal liability for the deputies' conduct.

Finally, it was Briceno's actions that caused the deputies to use the physical force employed to arrest him. The physical force used in conjunction with the Taser and OC spray were reasonable considering the circumstances. It took multiple deputies employing physical force, strikes, Tasers, and OC spray to finally place handcuffs on Briceno.

Briceno's death was most likely caused by an accidental neck compression that Galvez used in defending Romero. Under the circumstances and evidence presented, there exists insufficient evidence to prove beyond a reasonable doubt that the deputies actions were unlawful.

CONCLUSION

Based upon the foregoing analysis, we find insufficient evidence to prove beyond a reasonable doubt that deputies Romero, Vaca, Galvez, and Trujillo are criminally responsible for Briceno's death.