

**Fatal Officer Involved Shooting of Alfredo Aceves  
Los Angeles County Sheriff's Department**

**Deputy Scott Smith, #530050**

**J.S.I.D. File #21-0166**



**GEORGE GASCÓN**

**District Attorney**

**Justice System Integrity Division**

**August 20, 2024**

**MEMORANDUM**

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

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

SUBJECT: Fatal Officer Involved Shooting of Alfredo Aceves  
J.S.I.D. File #21-0166  
LASD File #021-06915-1197-013

DATE: August 20, 2024

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 29, 2021, fatal shooting of Alfredo Aceves by Los Angeles County Sheriff's Department (LASD) Deputy Scott Smith. It is our conclusion that Smith acted in lawful self-defense and defense of others at the time he fired his weapon.

The District Attorney's Command Center was notified of this shooting on April 29, 2021, at approximately 12:20 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on reports and body worn camera video (BWV) submitted to this office by Detectives Mark Davis and Joe Valencia of the LASD Homicide Bureau. Additional materials were submitted to this office on April 10, 2024. Smith gave a voluntary statement which was considered in this analysis.

**FACTUAL SUMMARY**

On April 29, 2021, [REDACTED] called 9-1-1 to report that a man, later identified as Alfredo Aceves, was armed with a shotgun and pointing the gun at passing vehicles. LASD Deputies Jeremiah Nurse and Alberto Portillo responded to the scene on Rawhide Avenue in Lake Los Angeles. While Nurse and Portillo were en route, the radio call was updated that Aceves had pointed the shotgun at [REDACTED]. The call was further updated that Aceves had thrown trash and debris into the street attempting to barricade the street. The radio call was further updated that Aceves had shot at a passing vehicle.

As they arrived at the scene, both Nurse and Portillo heard a single gunshot. [REDACTED] was standing on the street corner waving her arms and screaming, “He just shot that woman!” [REDACTED] directed the deputies to a residence bordering Rawhide Avenue where Aceves was located. Portillo and Nurse, along with LASD Deputy Michael Montesdoca, set up a containment around the residence. Portillo gave verbal commands for Aceves to come out with his hands up but received no response. Portillo activated a countywide radio transmission requesting additional units to the location.

[REDACTED] told Portillo that she was driving on Rawhide Avenue when she observed Aceves’ barricade. [REDACTED] was confused and stopped her vehicle in front of the barricade. [REDACTED] looked towards Aceves’ residence, located next to the barricade, and saw Aceves holding a “long gun” mounted on his shoulder and pointed directly at her. [REDACTED] heard two gunshots and drove her vehicle over the rocks.



Still image of the rocks placed by Aceves across Rawhide Avenue.

[REDACTED] told Portillo that she was driving when she saw Aceves holding a large object which, as she got closer, she recognized as a shotgun. Aceves mounted the shotgun on his shoulder and pointed it at [REDACTED]

Portillo spoke with unidentified witnesses at a nearby residence. They told him that they had heard a single gunshot.

LASD Special Enforcement Bureau (SEB) personnel responded to the scene and set up a command post in a nearby park. A containment perimeter was established and evacuations of nearby residences were conducted.

At the command post, LASD Deputy Eric Moreno re-interviewed [REDACTED] [REDACTED] told him that as she was driving northbound on Rawhide Avenue, she observed a Hispanic male in his 60s wearing a dark colored shirt and pants holding a short-barreled shotgun. [REDACTED] drove past him and called 9-1-1. [REDACTED] saw him throw several objects onto the roadway. After several minutes another vehicle approached the man, who, still holding the shotgun, pointed the shotgun at the passing vehicle, moved behind a fence, and fired one shot at the vehicle.

Moreno re-interviewed [REDACTED] [REDACTED] stated that she was driving and saw a white male standing behind a chain link fence. The man pointed a shotgun at her and fired it at her vehicle.

Aceves's daughter, [REDACTED] called the LASD Lancaster station. [REDACTED]'s initial call was recorded. [REDACTED] told the dispatcher that she believed deputies were looking for her father, that her father was confused and was suffering from mental health issues, and that he did not own any guns. [REDACTED] was transferred to LASD Deputy Carrie Almanza on a non-recorded line.

[REDACTED] told Almanza that her brother, a landlord for a property near the scene, had called her and told her that his tenants had told him that LASD deputies were looking for someone in the area that was possibly their father. Aceves was living in a small shed in the backyard portion of a residence on 167<sup>th</sup> Street. Aceves had a cellphone and iPad, and [REDACTED] provided Almanza with the contact numbers, but informed her that the cellphone battery was dead or turned off and that Aceves never responded to her on the iPad. Almanza asked [REDACTED] to continue to try and contact Aceves via the two devices.

[REDACTED] told Almanza that Aceves did not own or possess any firearms or any other weapon and that Aceves often worked with pieces of metal that he carried around the yard. [REDACTED] stated she had been at the property on April 24, 2021, five days previous, and had not seen anything that was or resembled a firearm. [REDACTED] stated Aceves was suffering from mental illness, possibly dementia or Alzheimer's Disease. Almanza instructed [REDACTED] to drive to the command post. Almanza forwarded the information she had received to the command post.

LASD Deputies Scott Smith and Randy Gomez were deployed to the rear yard of a residence on Frontier Circus Street whose backyard contained Aceves' residence, separated by a fence. Smith took a position behind the fence with a view of the front door of Aceves' residence. Gomez took a position behind the fence to the north of Smith. Aceves opened the front door of his residence and exited holding what appeared to be a shotgun. Smith radioed that Aceves had exited the residence and was in possession of a firearm. Smith observed Aceves shoulder the item he believed to be a shotgun in a shooting position and walk towards Frontier Circus Street to the north. Aceves then veered towards Smith and Gomez. Smith yelled, "Drop the gun." Aceves did not drop the gun and Smith fired two rounds from his department issued Colt M4 rifle, at least one of which struck Aceves. The impact of the bullet caused Aceves to turn towards Smith, and Smith fired a third round at Aceves. Aceves stumbled and fell to the ground.

Smith and Gomez re-positioned themselves behind a pickup truck. Gomez radioed that a deputy-involved shooting had occurred.

LASD Paramedic Crew Deputies James Moss and Daniel Farrel approached Aceves behind the cover of an LASD armored vehicle. Aceves was laying in the driveway. Moss and Farrel dragged Aceves behind the armored vehicle. Despite lifesaving measures, Aceves was pronounced deceased at 11:17 a.m.

Neither Smith nor Gomez were equipped with BWV. No other deputy's BWV captured Aceves' exit from his residence or Smith's shooting of Aceves.

An LASD Aero helicopter was present at the scene. LASD Deputy Javier Flores was the designated observer in the helicopter at the time Smith fired his weapon. The helicopter was in an orbit away from the scene and Flores did not observe Smith fire his weapon nor the events immediately preceding Smith firing his weapon.

Smith was armed with a department-issued Colt M4 carbine rifle. There was one magazine attached to the rifle and it was loaded with 24 .223 caliber cartridges stamped "Rem 223 Speer 11." An unfired .223 cartridge identically marked was in the chamber. Three discharged "Speer 11" .223 cartridge cases were recovered by investigators from the rear yard of the residence on Frontier Circus Street where Smith was positioned at the time he fired his weapon.

Investigators recovered an approximately three-foot long object from the ground south of the LASD armored vehicle. The object was comprised of five gold color metal rods secured together with black tape at one end. Investigators noted two parallel drag impressions leading from the object to Aceves.



Still image of the three-foot long object.

On May 3, 2021, Deputy Medical Examiner Doctor Matt Miller determined that Aceves sustained at least two gunshot wounds, one to the chest and one to the left arm. Miller deemed the gunshot wound to the chest rapidly fatal, and the cause of death was determined to be a gunshot wound to the chest. No bullets were recovered during the autopsy. A toxicology screen detected amphetamines and methamphetamines in Aceves' blood.

Subsequent investigation revealed that for the months prior to the incident Aceves had been seen by neighboring witnesses carrying a firearm and mimicking the sound of gunshots while walking in and around his residence.

## **LAW ENFORCEMENT STATEMENTS**

### ***Deputy Scott Smith<sup>1</sup>***

Smith provided a voluntary statement to Detectives Mike Davis and Joe Valencia of the LASD Homicide Bureau on April 29, 2021. Smith stated he was on duty on April 29, 2021, when he heard a radio call for an active shooter near Rawhide Avenue and Frontier Circus Street in Lake Los Angeles. The radio call reported gunshots had been heard. Smith responded to the scene. Smith received further information that the suspect had shot at two vehicles with a shotgun. A description of the suspect was of a thin male Hispanic wearing a dark colored shirt and jeans.

At the scene, Smith received more information that the suspect's neighbors had heard gunshots coming from the suspect's property, the suspect was armed with a shotgun, and the suspect was brandishing the shotgun in an intimidating manner.

Smith assisted law enforcement personnel with the evacuations of civilians in nearby residences and set up a position of containment in the rear yard of a residence on Frontier Circus Street adjoining the suspect's property. Gomez took a position slightly north of Smith. From his position Smith could see the front door of the property. Smith saw the front door open and Aceves exit. Smith radioed that the suspect was exiting the property armed with a firearm. Smith believed the firearm was a shotgun. Smith observed Aceves walk towards Rawhide Avenue where additional LASD deputies were gathered. Smith observed that the deputies gathered on Rawhide Avenue had an obstructed view of Aceves. Smith observed Aceves shoulder what he believed to be a shotgun by placing the stock to his shoulder and pointing it towards the street. Smith believed that Aceves was holding the shotgun in a manner that indicated Aceves was going to fire the weapon.

Smith yelled, "Drop the gun!" Aceves ignored the command and continued to walk in the direction of both the deputies on Rawhide Avenue and Gomez. Smith fired three rounds from his rifle. Smith believed he struck Aceves twice. Smith lost sight of Aceves behind a truck and yelled to Gomez to fall back.

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<sup>1</sup> Smith was involved in another fatal officer involved shooting on May 6, 2012, and found to have fired his weapon lawfully in self defense and defense of others. This information was considered but does not change the analysis.

Smith stated he was in fear for his life, in fear for Gomez's life, and in fear for the lives of the deputies on Rawhide Avenue when he fired three times at Aceves. Smith believed Aceves was armed with a shotgun.

### ***Deputy Randy Gomez***

Gomez provided a voluntary statement to Davis and Valencia on April 29, 2021. Gomez stated he was on duty on April 29, 2021, when he heard a radio call for an active shooter in the Lancaster area. Gomez responded to the scene. While en route, Gomez received a description of the suspect, later identified as Aceves, over the radio. Further radio updates indicated gunshots had been fired and Aceves was holding a shotgun in the middle of the street and placing trash or debris in the road to create a barricade.

Gomez arrived at the scene. Gomez took a position of containment in the rear yard of a residence on Frontier Circus Street adjoining Aceves' property. Gomez stood on a ladder overlooking a fence into Aceves' yard. Gomez was approximately 20 yards north of Smith. Gomez observed the front door of Aceves' residence open and close. Gomez yelled to Smith, "Open door, open door! Door, door, door!" Gomez observed through bushes in his line of sight, "somebody just kind of beelining it, holding something in his hands." Gomez thought Aceves was holding a firearm. Gomez took cover behind the fence because he thought he was going to be shot at. Gomez initially stated he heard two to four gunshots, and later in the interview stated that he heard two to three gunshots. Gomez did not observe Smith firing his weapon nor did he observe Aceves being struck by gunfire.

### ***Sergeant Kevin Brown***

Brown was interviewed by Davis and Valencia on May 5, 2021. Brown was assigned to the LASD SEB on April 29, 2021. Brown responded to the Lake Los Angeles area after receiving a report of an active shooter. Brown received information that the shooter was a male Hispanic who had fired shots at a passing motorist. Brown flew to the scene in an LASD helicopter and received further information that the shooter was armed with a rifle or a shotgun.

Brown, along with other SEB personnel, began evacuating residences surrounding Aceves' location. Brown employed the assistance of LASD Parole Compliance Team deputies to secure the yard of an adjoining residence on Frontier Circus Street. Brown continued to evacuate nearby residences. After clearing a residence on Frontier Circus Street, he heard gunshots coming from a nearby residence and was informed that members of the LASD Parole Compliance Team had engaged Aceves. Brown walked to the scene and met with Smith and Gomez. Smith told Brown that he had fired his weapon because Aceves had exited his residence armed with a rifle. Brown initiated a medical rescue plan. Brown observed an object resembling a rifle next to Aceves. LASD SEB Deputies James Moss and Casey Cheshire exited from an armored personnel transport, dragged Aceves to a position of cover and attempted to perform



lifesaving measures.<sup>2</sup> Aceves was pronounced deceased. Brown observed an object resembling a long gun next to Aceves before Aceves was moved.

### ***Deputy John Montenegro***

Montenegro was interviewed by Davis and Valencia on May 5, 2021. Montenegro stated that he responded to the Lake Los Angeles area in response to an active shooter. Montenegro was informed that a man, later identified as Aceves, was standing in the middle of Rawhide Avenue armed with a shotgun and had possibly retreated inside a shed off of Rawhide Avenue. While driving to the scene, Montenegro received information that Aceves' daughter had contacted law enforcement and stated that the man was her father and resided off Rawhide Avenue. Montenegro also received information from an LASD helicopter that an unknown person was walking through nearby hills with a rifle strapped to their back. Once at the scene, Montenegro joined approximately 30 other law enforcement personnel at the intersection of Rawhide Avenue and Frontier Circus Street. Montenegro assisted in evacuating and clearing nearby residences. While clearing nearby residences Montenegro heard several gunshots. Montenegro observed Aceves laying on the ground and an object resembling a shotgun next to him.

### ***Deputy Jeremiah Nurse***

Nurse wrote a police report and a supplemental report regarding the incident. Nurse responded to Lake Los Angeles regarding an assault with a deadly weapon call. The call stated that a Hispanic male was armed with a shotgun and pointing the gun at passing vehicles. The call was updated that the man had pointed the gun at the person who called 9-1-1. The call was further updated that the man was throwing trash into the street attempting to create a barricade. The call was updated again that the man had shot at a passing vehicle. Nurse and his partner, Portillo, arrived at the scene and Nurse heard a single gunshot. Nurse simultaneously saw a woman frantically waving her arms screaming, "He just shot that woman!" Nurse and Portillo took a position of containment and gave verbal commands for the man to come out with his hands up. Nurse received no response. Nurse activated a countywide radio transmission and requested additional law enforcement personnel.

### ***Deputy Alberto Portillo***

Portillo wrote a police report regarding the incident. Portillo responded to Lake Los Angeles regarding an assault with a deadly weapon call. The call indicated an adult Hispanic male was walking around his property armed with a shotgun and pointing the shotgun at passing vehicles. The call was updated that the man was barricading the street with rocks and sticks. While driving to the scene with his partner, Nurse, Portillo heard a single gunshot. Portillo observed a woman, [REDACTED], jumping up and down pointing eastbound on Rawhide Avenue saying, "He just shot that woman!" Portillo observed the barricade on Rawhide Avenue and saw a black

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<sup>2</sup> Moss wrote a police report, *infra.*, that indicates the two deputies who dragged Aceves behind the armored vehicle were Moss and Farrell.



Honda stopped at the barricade. Portillo signaled the driver of the Honda to drive towards him for safety.

Portillo interviewed ██████████ ██████████ told Portillo that she was driving on Rawhide Avenue and observed the barricade. ██████████ was confused and stopped her vehicle short of the barricade. ██████████ observed a male Hispanic with a long gun mounted on his shoulder. ██████████ looked away and heard two gunshots. ██████████ drove over the barricade towards Nurse and Portillo.

Portillo interviewed ██████████ ██████████ stated she was driving westbound on Rawhide Avenue when she observed a man holding a large object. As ██████████ got closer she recognized the object to be a shotgun. The man shouldered the shotgun and pointed it at ██████████ ██████████

### *Deputy Carrie Almanza*

On April 29, 2021, Almanza received a phone call that was transferred to the non-recorded watch commander line. The caller identified herself as ██████████, and the adult male in Lake Los Angeles as her father, Alfredo Aceves.

██████████ told Almanza that her brother, a landlord for a property near the scene, had called her and told her that his tenants had told him that LASD deputies were looking for someone in the area that was possibly their father. ██████████ told Almanza that Aceves was living in a small shed in the backyard portion of a residence on 167<sup>th</sup> Street. ██████████ told Almanza that Aceves had a cellphone and iPad, provided Almanza with the contact numbers for those devices, but informed her that the cellphone battery was dead or turned off and that Aceves never responded to her on the iPad. Almanza asked ██████████ to continue to try and contact Aceves via the two devices.

██████████ told Almanza that Aceves did not own or possess any firearms or any other weapon and that Aceves often worked with pieces of metal that he carried around the yard. ██████████ stated she had been at the property on April 24, 2021, five days prior, and had not seen anything that was or resembled a firearm. ██████████ stated Aceves was suffering from mental illness, possibly dementia or Alzheimer's Disease. Almanza was directed to instruct ██████████ to drive to the command post. Almanza forwarded the information she had received to the command post.

### *Deputy Eric Moreno*

Moreno responded to the area of Rawhide Avenue and Frontier Circus Street in Lancaster. Moreno was advised that the suspect was last seen on a yard off of Rawhide Avenue and was armed with a shotgun-type firearm. Moreno went to a command post that had been set up nearby and interviewed ██████████ ██████████ told Moreno that she was driving northbound on Rawhide Avenue and saw a male Hispanic in his 60's standing in the roadway.<sup>3</sup> As ██████████

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<sup>3</sup> Rawhide Avenue runs east/west. This is likely a typographical error.

got closer she saw that the man was holding a shotgun. [REDACTED] drove past the man and called 9-1-1. [REDACTED] continued to observe the man from a distance and saw him throw objects into the roadway. [REDACTED] observed a vehicle approaching the man, the man pointing the shotgun at the vehicle, and the man retreating behind a fence and firing a single gunshot.

Moreno also interviewed [REDACTED] [REDACTED] told Moreno that she was driving a vehicle northbound on Rawhide Avenue when she saw a white male standing behind a chain-linked fence.<sup>4</sup> The man pointed a shotgun at [REDACTED] and fired it at her vehicle. [REDACTED] quickly drove past and met with police officers on the scene.

### *Deputy James Moss*

Moss and his partner, Farrell, responded to Lake Los Angeles regarding an active shooter call. While helping to evacuate nearby residences, Moss heard three gunshots. Moss was advised that a deputy-involved shooting had occurred. Behind an LASD armored vehicle, Moss approached a residential driveway where Aceves was laying on the ground. For his safety, Moss conducted a tactical rescue of Aceves and dragged Aceves behind the armored vehicle. Moss noticed that Aceves did not have a pulse and Farrell determined that Aceves was deceased.

## **CIVILIAN STATEMENTS**

[REDACTED]

[REDACTED] was interviewed on April 29, 2021, by LASD Detective Esteban Soliz. The interview was audio recorded. [REDACTED] stated that she rented her residence from Aceves' son. Aceves lived on the back half of the property. [REDACTED] stated she could, in the past, hear Aceves talking early in the morning and making "Boom, Boom" sounds.

[REDACTED]

[REDACTED], a minor, was interviewed on April 29, 2021. The interview was audio recorded. [REDACTED] stated that earlier in the morning of April 29, 2021, he was walking outside his residence and observed Aceves standing inside his (Aceves') property yelling at him in Spanish. Aceves was holding a long object, pointing his fingers imitating a firearm, and making gunshot sounds.

[REDACTED]

[REDACTED], a minor, was interviewed on April 29, 2021. The interview was audio recorded. [REDACTED] stated at approximately 10:00 a.m., he was on a video conference for school when he observed Aceves standing inside his (Aceves') property holding a long, skinny, "brownish" object. Aceves was holding the object like a rifle and aiming at the street.

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<sup>4</sup> See footnote 3.

██████████

██████████ placed a phone call to Davis as Davis was en route to the scene after the shooting had occurred on April 29, 2021. The call was not recorded. ██████████ told Davis that her father, Aceves, had been mentally confused for the last five years. ██████████ had attempted to have Aceves seen by doctors, and asked whether or not a weapon had been recovered. Davis told ██████████ that an object resembling a rifle had been recovered. ██████████ was upset because she told Davis she had informed an LASD dispatcher that there was metal at the property, that Aceves would make sounds resembling gunshots, and that she had cleaned the house and did not find any guns or bullets.

██████████

██████████ was interviewed on June 18, 2021, by Davis and Valencia. The interview was audio recorded. ██████████ stated that she was driving on Rawhide Avenue when she observed Aceves on the side of the road waving what she thought was a cane. As she drove closer, Aceves pointed the cane at her. ██████████ saw two barrels on the front of the cane and realized it was a gun. ██████████ accelerated her vehicle past Aceves and stopped a short distance past him on Rawhide Avenue, continuing to observe Aceves. ██████████ called 9-1-1. Aceves walked back and forth from his yard to Rawhide Avenue carrying rocks and pieces of wood. Aceves, still carrying the firearm, threw the rocks and wood onto Rawhide Avenue attempting to make a barricade. As cars drove by Aceves would point the firearm at them. Aceves was yelling but ██████████ was too far away to hear what he was saying.

██████████ stated that as she heard the sirens of an approaching police vehicle, a black Honda approached the barricade on Rawhide Avenue and stopped. ██████████ observed Aceves pointing the firearm at the Honda and heard a gunshot. The Honda pulled forward a short distance and stopped again. ██████████ at first believed the driver of the Honda had been shot, but the Honda resumed moving and drove over the barricade. ██████████ saw an LASD patrol vehicle and yelled for help.

██████████

██████████ was interviewed by Davis on May 25, 2021. The interview was audio recorded. ██████████ stated that her sister, ██████████, called her on April 29, 2021, and stated that an unknown person had pointed a shotgun at her. ██████████ drove to ██████████'s location and observed Aceves walking in and out of his residence throwing rocks into the road. Aceves shouldered and pointed a shotgun in her direction. ██████████ attempted to warn other drivers on Rawhide Avenue. ██████████ observed a vehicle drive over the rocks in the road and heard two gunshots as LASD deputies arrived on the scene. ██████████ spoke with LASD deputies and returned to her residence. ██████████ did not observe Smith firing his weapon.

██████████

██████████ gave a statement to Nurse on April 29, 2021. The statement was recorded on Portillo's BWV. ██████████ stated she arrived near the intersection of Rawhide Avenue and 166<sup>th</sup> Street and met her sister, ██████████ ██████████ saw Aceves place rocks on Rawhide Avenue and point a gun at passing motorists. ██████████ heard a gunshot but was unsure from where the gunshot originated.

██████████ was interviewed by Davis on May 25, 2001. The interview was audio recorded. ██████████ stated she accompanied ██████████ to meet ██████████ ██████████ observed Aceves place large rocks and sticks in the road, creating a barricade. ██████████ observed Aceves exit his residence armed with what she believed was a shotgun. Aceves pointed the weapon at her, ██████████, and ██████████, and pretended to shoot them. As cars drove past the location, Aceves pointed the shotgun at the cars. ██████████ attempted to warn approaching drivers. ██████████ observed a vehicle approach the barricade and heard two large pops which she believed to be gunshots. ██████████ believed that Aceves had shot the driver of the vehicle. LASD deputies arrived immediately after ██████████ heard the gunshots and Aceves retreated behind a fence.

██████████

██████████ made a statement to Nurse on April 29, 2021. The statement was recorded on Portillo's BWV. ██████████ stated she was driving on Rawhide Avenue and saw rocks in the street. ██████████ slowed her vehicle and saw two women waving at her to get her attention. ██████████ turned to her left and saw Aceves pointing a long firearm at her. Aceves yelled at her but ██████████ could not understand what he was saying because her windows were rolled up. ██████████ heard a loud noise and accelerated her vehicle away.

██████████ was subsequently interviewed by Davis and Valencia on April 30, 2021. The interview was audio recorded. ██████████ stated that on April 29, 2021, she was driving her vehicle on Rawhide Avenue near 167<sup>th</sup> Street when she saw rocks and sticks strewn across Rawhide Avenue. ██████████ slowed her vehicle in front of the debris and observed an LASD deputy on Rawhide Avenue. ██████████ slowly drove around the rocks in the road and observed a man, later identified as Aceves, holding a "long gun" and pointing it at her. ██████████ heard a single gunshot and accelerated her vehicle away.

## LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal. 4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal. 4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal. 4th 1073, 1082; *see also*, CALCRIM No. 505.

A peace officer is justified in using deadly force upon another person when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code §§ 835a(c)(1)(A) & (B).

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or 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. Penal Code § 835a(e)(2).

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force, are taken into consideration. Penal Code §§ 835a(a)(4) & (e)(3). The peace officer's decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code § 835a(a)(4).

The available evidence in this case indicates that Smith responded to the scene of a reported active shooter. Smith had received information that Aceves was armed with a shotgun and had fired shots at civilians. Both Portillo and Nurse heard a gunshot upon their arrival at the scene. Smith observed Aceves exit the door of his (Aceves') residence armed with what Smith believed to be a shotgun. Smith observed Aceves shoulder what he (Smith) believed to be a shotgun and take a shooting stance. Smith observed Aceves walk towards both Gomez, who was approximately 20 yards to the north of Smith, and towards law enforcement personnel on Frontier Circus Street.

The available evidence shows that it was reasonable for Smith to believe that deadly force was necessary to defend against death or serious bodily injury to Gomez or the law enforcement personnel on Frontier Circus Street. Aceves appeared to be armed with a shotgun shouldered in a shooting stance as Aceves walked towards Gomez and Frontier Circus Street. Previous radio reports indicated that Aceves had already fired his weapon at civilians. Aceves refused to drop the imitation shotgun when ordered to by Smith and instead continued to walk towards Gomez and Frontier Circus Street. It was reasonable for Smith to believe that Aceves would fire his weapon again, causing great bodily injury or death to both Gomez or law enforcement personnel on Frontier Circus Street, and thus lawful for Smith to use deadly force.

Aceves was not, in fact, armed with a shotgun, nor did he fire any shots. Aceves had bundled together multiple approximately 3-foot long gold-colored metal rods bent at one end and wrapped with black tape. The object resembled a shotgun. Aceves was also able to imitate the sound of a gunshot realistically enough to fool two LASD deputies and multiple civilians. Smith had been informed that Aceves had fired a shotgun at civilians earlier. It was a reasonable,

though mistaken, conclusion that when Aceves exited his residence holding the object and shouldered the object in a shooting stance for Smith to believe that the object was, in fact, a shotgun.

Aceves' daughter, [REDACTED], had reported to law enforcement that she had checked Aceves' residence five days prior to the incident and had not seen anything resembling a firearm, that Aceves was suffering from mental illness, and that Aceves worked with pieces of metal on the property. The available evidence does not show that this information was communicated to Smith prior to Smith firing his weapon, but ultimately would not change the analysis. While [REDACTED] stated she had not observed any firearms, she had not been to the residence in five days and there were multiple reports from both civilian witnesses and law enforcement personnel that Aceves was armed with a shotgun and had fired the shotgun at people.

## **CONCLUSION**

Smith acted lawfully in self-defense and defense of others when he used deadly force.