

**Non-Fatal Officer Involved Shooting Adonay Lozano**  
**Los Angeles School Police Department**

**Officer Alejandro Munguia #1325**

**J.S.I.D. File #19-0311**



**GEORGE GASCÓN**

**District Attorney**

**Justice System Integrity Division**

**September 6, 2023**

## MEMORANDUM

TO: CHIEF STEVEN ZIPPERMAN  
Los Angeles School Police Department  
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Los Angeles, California 90017

CAPTAIN OMAR BAZULTO  
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Force Investigation Division  
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: Non-Fatal Officer Involved Shooting of Adonay Lozano  
J.S.I.D. File #19-0311  
F.I.D. File #F032-19

DATE: September 6, 2023

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 15, 2019, non-fatal officer involved shooting of Adonay Lozano<sup>1</sup> by Los Angeles School Police Department (LASPD) Officer Alejandro Munguia. We have concluded that the District Attorney's Office cannot prove beyond a reasonable doubt that Officer Munguia acted unlawfully.

The District Attorney's Command Center was notified of this shooting on July 15, 2019, at approximately 1:50 p.m. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on reports, recorded interview transcripts, autopsy and toxicology reports, and videos and photographs submitted to this office by the LAPD's Force Investigation Division (FID) on June 6, 2023. Munguia and his partner officer were not equipped with body worn camera video (BWV). Munguia gave a compelled statement which was neither reviewed nor considered in this analysis. Based on this incident, Lozano was prosecuted. Munguia testified at the preliminary hearing in that matter. Munguia's preliminary hearing testimony was considered in this analysis.<sup>2</sup>

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<sup>1</sup> Lozano gave police the name Ever Quintanilla when he was first arrested. A fingerprint check revealed his true name to be Adonay Lozano. He will be referred to by his true name of Adonay Lozano for purposes of this memorandum.

<sup>2</sup> A review of Munguia's personnel file pursuant to Penal Code Section 832.7 was conducted and did not provide any information relevant to this analysis.

## FACTUAL SUMMARY

### Introduction

On July 15, 2019, Adonay Lozano and [REDACTED] spent the night smoking methamphetamine and looking for items to steal. Lozano was driving a Ford Ranger truck ("Ranger") and [REDACTED] was the front passenger in the vehicle when they saw [REDACTED] leave his lawnmower unattended in his Ford F-150 truck ("F-150") after working on a job. [REDACTED] got out of the Ranger and placed [REDACTED] lawnmower into the Ranger's rear bed. Lozano drove the Ranger away from the location. [REDACTED] saw the lawnmower being taken away and gave chase. While giving chase, [REDACTED] encountered LASPD Officers Alejandro Munguia and Anthony Hernandez and told them about the stolen lawnmower he was trying to retrieve from Lozano and [REDACTED]. [REDACTED] continued chasing Lozano and [REDACTED] while Munguia and Hernandez chased both the F-150 and Ranger. The trucks drove on Broadway away from the officers, then both made a U-turn and drove back towards Hernandez and Munguia. Munguia got out of his vehicle and tried to order Lozano to stop. Lozano continued driving the Ranger towards Munguia, striking Munguia as he drove past him. Munguia responded by firing 10 rounds at Lozano and the Ranger, hitting Lozano three times.

### Officer Hernandez's Statement

Hernandez was interviewed on the day of the incident at approximately 5:53 p.m. Hernandez gave a compelled statement to investigators. Hernandez and Munguia were inside a school police office when they received a radio call to respond to an elementary school to take a police report. Hernandez and Munguia responded to the radio call together with Munguia driving and Hernandez in the passenger's seat of the patrol vehicle.

While stopped at the stoplight at Manchester Avenue and Main Street, Hernandez saw Lozano's Ranger drive south on Main Street into the intersection against a red light and nearly collide with a light pole. [REDACTED] F-150 approached immediately after the Ranger and nearly collided with the patrol vehicle. [REDACTED] stopped his F-150 and told both officers he was chasing the Ranger because the people in the Ranger had stolen his lawnmower. [REDACTED] continued chasing the Ranger. Both the Ranger and F-150 made a right turn at the first intersection, 86<sup>th</sup> Place, and drove westbound at a high rate of speed towards Broadway – the next street - while Hernandez and Munguia followed behind them. Hernandez broadcast via radio that he was following both vehicles and gave his location. 86<sup>th</sup> Place is a one-way street at that location heading westbound, the direction the three vehicles were traveling.

While driving mid-block on 86<sup>th</sup> Place, Hernandez put out a radio call with his status, stating, "We'll be on 86<sup>th</sup> approaching Main. I have a vehicle chasing another vehicle saying he stole his lawnmower." Based on Hernandez's subsequent interview and review of the location where the final shooting took place on Broadway, it appears as if Hernandez was actually traveling westbound towards Broadway **from** Main Street, not **towards** Main Street, when he put out that call. Munguia activated the lights and sirens of his patrol vehicle at 86<sup>th</sup> Place and Broadway.

At the intersection of 86<sup>th</sup> Place and South Broadway, Lozano made a left turn on Broadway heading southbound without stopping at the stop sign. [REDACTED] followed Lozano and pulled alongside him. Lozano made a U-turn at 87<sup>th</sup> Street and drove north on Broadway back towards 86<sup>th</sup> Place. Hernandez said he heard a siren as Munguia stopped the patrol vehicle on the side of Broadway closer to the east curb as the two Fords made U-turns and drove back towards them.

Hernandez got out of the front passenger door, Munguia got out of the driver's door and both pulled out their duty weapons to get both drivers to stop. Hernandez said the F-150 was closer to his side, so Hernandez directed his attention towards the driver of the F-150, while Munguia directed his attention to the Ranger. The driver of the F-150 put his vehicle in park and exited the vehicle, Hernandez ordered him, "Get on the ground." The driver cooperated and laid out prone on the ground.

Hernandez said at the exact same time this was happening, the Ranger drove towards Munguia attempting to squeeze between Munguia's patrol vehicle and the curb. Hernandez estimated the Ranger's speed at that time to be approximately 10-12 miles per hour. Hernandez opined that Lozano was either actively trying to hit Munguia or escape in the Ranger. As Hernandez was focused on [REDACTED] and the F-150, he did not hear what commands, if any, that Munguia was giving to Lozano as Lozano drove past Munguia.

Hernandez believed the Ranger squeezed through between Munguia and the curb. Out of the corner of his eye he saw Munguia jump quickly, and at that time he heard Munguia fire his duty weapon. Hernandez estimated that Munguia fired approximately five rounds. Hernandez did not see Munguia fire the first round but saw him firing the subsequent rounds as Lozano drove past the patrol vehicle and turned right onto eastbound 86<sup>th</sup> Place. As 86<sup>th</sup> Place is a one-way street going westbound, Lozano was driving the wrong way when he squeezed between Munguia's patrol vehicle and the curb onto 86<sup>th</sup> Place. Hernandez was able to see Munguia firing in a northbound direction as the Ranger turned towards 86<sup>th</sup> Place.

Hernandez saw the Ranger come to a slow stop and saw Munguia take cover behind a brick structure on the sidewalk at the corner of Broadway and 86<sup>th</sup> Place. Hernandez then called for backup units. Hernandez was not aware at the time of the shooting if there was anyone in the Ranger besides the driver.

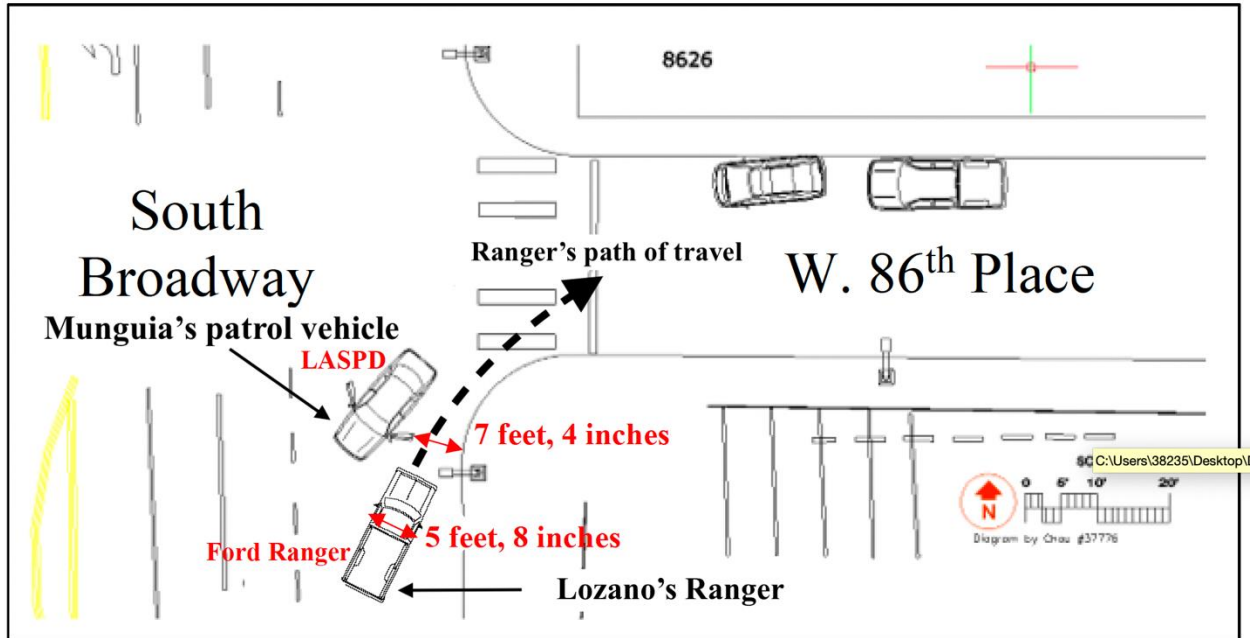


Diagram of scene showing Munguia's vehicle blocking the road and path of travel of Lozano's Ranger as it turned right on to West 86th Place.

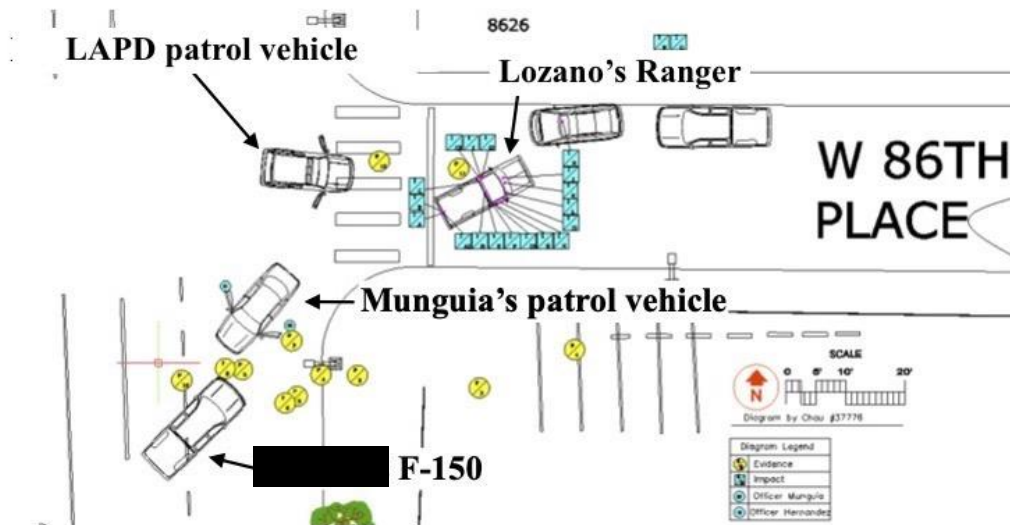


Diagram of scene of the shooting depicting the location of all vehicles immediately after the shooting with notations of all bullet strikes in the Ranger and neighboring building as well as the casings left on the ground.

## Munguia's Preliminary Hearing Testimony

On September 4, 2020, Munguia testified voluntarily at the preliminary hearing of Lozano in Department 10 of the Compton Superior Court. Munguia testified that as he and his partner were

at a traffic light, they observed Lozano driving his Ranger recklessly, almost driving into incoming traffic. At that time [REDACTED] F-150 drove up and stopped in front Munguia's patrol vehicle. [REDACTED] got out of his vehicle and said, "Hey, that fucking guy just stole my lawn mower!" Munguia said that [REDACTED] got back in his F-150 and kept following Lozano's Ranger.

Munguia testified that they followed the two trucks on 86<sup>th</sup> Place towards Broadway, saw them making U-turns and driving back towards his patrol vehicle. Munguia pulled into the intersection to stop the vehicles. Lozano tried to maneuver the Ranger between Munguia's patrol vehicle and the curb to drive eastbound back down 86<sup>th</sup> Place. This was the wrong way down 86<sup>th</sup> Place, which is a one-way street heading westbound. Munguia testified that he and his partner got out of their patrol vehicle thinking that the Ranger was going to hit the vehicle. As Munguia got out, he pulled out his service pistol. The Ranger slowed down to a slow roll as it came towards Munguia's patrol vehicle.

Munguia testified that as he got out of his vehicle he yelled at the driver of the Ranger, "Stop! Police officer! Stop!" As Munguia got out of the vehicle he thought the Ranger was stopping, so he went around the open door to his vehicle to approach the driver and talk to him. At this time, Munguia testified that he heard the Ranger's engine rev loudly, and then drive straight at him. Munguia testified that he did not believe that there was enough space between the curb and his vehicle for the Ranger to get by, so he jumped back away from the Ranger. As the Ranger approached Munguia, it struck him on his left knee.

Munguia testified that the next thing he remembered was the vehicle passing him and him discharging his duty weapon at the Ranger. Munguia testified that he thought Lozano was trying to kill him by hitting him with the vehicle when he fired his weapon, surmising that if Lozano was willing to kill a police officer then he was willing to kill anybody in the public.

Munguia testified that he did a tactical reload of his duty weapon, checked to see if his partner was alright, and then asked if it was okay if he ran to hide behind the shelter on the corner. Munguia testified that at this time his knee was in severe pain and he was having trouble standing. At around that time, officers from the LAPD arrived and took over the scene, and Munguia began receiving treatment.

Munguia testified that he suffered a small fracture just below his left tibia, a three millimeter disk bulge on his spine between the L4 and L5, and also suffered from the mental trauma of the incident. Munguia testified that he was off duty for five months and on modified duty for an additional two months. He did physical therapy for his leg issues and had two back "surgeries" in the form of injections into his L4 and L5 on his left side.

## **Lozano's Statement**

Lozano was interviewed at 6:20 p.m. on the evening of the incident. Lozano told investigators that he received a call from [REDACTED] that day telling him that someone had loaded a lawn mower into a truck at 87<sup>th</sup> Street and Broadway. Lozano said that he drove to the location and met [REDACTED] who loaded the lawn mower into the back of Lozano's Ranger. As [REDACTED] loaded the lawn mower into his vehicle, the owner of the lawn mower saw them and approached them. [REDACTED] got into the Ranger, and they fled the location. While fleeing, Lozano said that Munguia confronted him and Lozano tried to flee by driving past him, even driving up on the curb to get away. Lozano said that he did not try to hit Munguia, nor did he try to hurt him.

The investigator asked Lozano how he would feel if the roles were reversed and Munguia had driven at him in that manner. Lozano said that he would feel as if Munguia were trying to run him over.

## **[REDACTED] Z.'s Statement**

On the day of the incident at approximately 3:30 p.m., investigators spoke with [REDACTED] about the incident. [REDACTED] invoked his *Miranda* rights and refused to give a statement. Investigators obtained an administrative statement from him.<sup>3</sup> [REDACTED] said that he and Lozano were driving around since 3:00 a.m. the day of the incident in Santa Monica looking for things to steal. At 8:00 a.m. the two smoked methamphetamine together. They eventually drove to the Los Angeles area, observed [REDACTED] truck with the lawn mower and [REDACTED] took it, putting it into the back of Lozano's Ranger. [REDACTED] said that Lozano was on probation and did not want to go to jail. When Munguia tried to stop Lozano he tried to drive past Munguia to get away. [REDACTED] said the incident happened so quickly that he did not know if the Ranger struck Munguia. [REDACTED] heard approximately six gunshots. Lozano stopped the vehicle and said he had been hit in the chest.

## **[REDACTED] J.'s Statement**

[REDACTED] gave a statement to the police on the day of the shooting at approximately 2:40 p.m. On that day, [REDACTED] was cutting grass at a residence on Broadway between 86<sup>th</sup> Place and 87<sup>th</sup> Street. When he finished, he put his lawnmower into his truck and went to the corner store. While coming out of the store he saw someone taking his lawnmower, loading it into a Ford Ranger, getting into the passenger side of the vehicle and leaving the location. [REDACTED] followed the Ranger northbound to Manchester Avenue, and then eastbound on Manchester Avenue towards Main Street. The Ranger turned right onto Main Street, and before continuing to follow the truck, [REDACTED] stopped to tell police officers stopped in their patrol vehicle at the intersection about the theft of the lawnmower. [REDACTED] continued chasing the Ranger.

[REDACTED] followed the Ranger back down 86<sup>th</sup> Place with the police vehicle following him as the Ranger turned onto Broadway, then made a U-turn in the middle of the street. While the Ranger

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<sup>3</sup> An administrative statement is a statement investigators obtain for purposes of reviewing any use of force issues in their investigations after giving assurances that the statement will not be used in any criminal action against the declarant.

made the U-turn, the patrol vehicle came upon the intersection and stopped it at the corner, attempting to block the Ranger from driving further. The patrol vehicle had its police lights on.

█████ said that the officers got out of their patrol vehicle, one of them pointed a gun at the Ranger, and ordered the driver to stop and get out. At this time, █████ got out of his F-150. The Ranger stopped for a moment, then drove towards the patrol vehicle's open car door to go onto 86<sup>th</sup> Place when the officer standing at the door shot at the Ranger. █████ told officers, "The car [Ranger] stopped. He's right there. 'Hold it! Stop!' The car stopped for a minute, because I'm just looking – I'm ready to go over there and get my stuff. You know, come out the car now. And then the car just – he tried to push by the officer, and the officer was standing up. He had to move to the side, and, you know, he just had to do what he had to do." █████ did not believe that the Ranger hit the officer, opining that the Ranger hit the car door

█████ said that as the Ranger drove past the patrol vehicle, the officer on the driver's side of the vehicle jumped backwards and fired his weapon while the Ranger was next to him. Meanwhile, the officer at the passenger side of the patrol vehicle ordered █████ onto the ground. █████ got down on the ground and was able to hear gunshots continuing but could not see any more shots due to his position on the ground. █████ estimated that he heard approximately five gunshots.

In describing the shooting, █████ said, "officers didn't do nothing wrong," and, "He did his job. I seen that the man tried to go forward, the officer got out. He did what he was supposed to do. 'Stop! Hold it!' The man wouldn't do it, he kept pushing on forward." █████ said that the Ranger was not moving fast, but the Ranger was moving eastbound towards 86<sup>th</sup> Place going the wrong way on 86<sup>th</sup> Place, which is a one-way street heading westbound. █████ opined that the Ranger was trying to get away from the patrol vehicle when driving towards 86<sup>th</sup> Place. █████ felt the Ranger represented a threat to the officers in trying to drive past them. █████ said about the driver of the Ranger, "The dude was fixin' hurt that officer if he was in the way. You understand what I'm saying? The officer did what he had to do."

Police officers removed █████ from the location before the people were taken out of the Ranger, so █████ was not able to see how many people were in there or what transpired after he laid down on the ground.

### █████'s Statement

█████ was on the sidewalk in front of the liquor store with the surveillance camera when he heard Munguia yell, "Stop, Stop!" just before the Ranger drove between the patrol vehicle and the southeast curb. █████ observed Munguia firing his handgun at the Ranger as the Ranger passed by. █████ then ducked for cover. █████ estimated that he heard five to seven gunshots in total.

### Injuries

Munguia injured his left leg. X-rays and a CT scan taken on July 15, 2019, did not reveal any acute fractures or dislocations in his leg. Munguia was diagnosed with blunt trauma to his leg, a



sprained knee, sprained ankle and a lower back sprain. An MRI taken two weeks later showed a mild sprain of Munguia's medial collateral ligament (MCL), and no fractures. Munguia was on light duty for more than a year as a result of pain that he claimed from this incident.

Lozano sustained three gunshot wounds: two to his upper right back (entry/exit) and one to his upper left back, which fractured his left scapula. Lozano was discharged from the hospital on the same day as the incident.

In the initial briefing by investigators in this case, prior to the receipt of any medical records or other confirmation, it was reported that Munguia suffered a broken leg as a result of this incident. The information that Munguia suffered a broken leg was disseminated shortly after the incident. A thorough review of the medical records failed to show any broken bones or any injury other than a possible sprain, and investigators removed any further references to Munguia having suffered a broken leg because no evidence substantiated such a conclusion. Munguia continued to claim that he suffered from a broken leg, testifying to that effect in the preliminary hearing.

On August 10, 2022, LAPD Detective Eduardo Gonzalez of FID prepared a follow up report related to how a broken leg came to be associated with this case. On July 5, 2022, Gonzalez asked Munguia about his claims to have suffered from a broken leg. Munguia stated that he was told by hospital staff when first taken to the hospital that he had suffered from a broken leg, and his leg was put into a full cast. Munguia also said that his interpretation of the CT Scan from July 15, 2019 indicated he sustained a fracture to his left leg. Gonzalez also noted that Munguia's leg was in a removeable brace when he visited Munguia at his residence on July 19, 2019, shortly after this incident took place.

### **Body Worn Video (BWV)**

Neither LASPD officers were equipped with body cameras. All responding LAPD officers were equipped with body cameras and captured the time after the incident took place on their BWV. However, none of them captured the actual incident on their BWV. LAPD Officer Roberto Yanez was one of the first backup officers to arrive at the scene. Yanez arrived to find [REDACTED] laying on the ground prone in front of Munguia's patrol vehicle, Hernandez taking cover at the rear of the patrol vehicle facing the Ranger, and Munguia taking cover behind the structure at the corner of 86<sup>th</sup> Place and Broadway.

Yanez's BWV shows him contacting Munguia and escorting him to the rear of a LAPD patrol SUV. cursory questioning of Munguia at that moment reveals that Munguia did not know if there was anyone in the passenger side of the vehicle.

The BWV also shows the responding LAPD officers getting the driver out of the Ranger and discovering a passenger inside the vehicle as well.



Screenshot from Yanez's BWV showing the scene of the shooting immediately after the shooting as LAPD Officers responded.

## Surveillance Video

A surveillance camera at a liquor store on the corner of 86<sup>th</sup> Place and Broadway captured much of the confrontation at the corner. The video footage shows [REDACTED] F-150 and Lozano's Ranger travelling westbound on 86<sup>th</sup> Place as they approach the intersection of Broadway. The F-150 appears to try and cut off the Ranger as both cars make a left turn. After the left turn, as both vehicles drive southbound on Broadway, the F-150 overtakes the Ranger. The Ranger makes a U-turn to get away from the F-150, and the F-150 immediately makes a U-turn behind the Ranger. At that moment, Munguia and Hernandez approach Broadway from 86<sup>th</sup> Place in their patrol vehicle. As the F-150 and the Ranger make U-turns on Broadway, Munguia pulls into the intersection attempting to stop both trucks as they begin driving northbound on Broadway approaching 86<sup>th</sup> Place.

Munguia and Hernandez get out of the patrol vehicle and face the Ranger and the F-150 as both trucks approach the patrol vehicle. The Ranger first approaches the front of the patrol vehicle and stops towards the left front fender of the patrol vehicle. Moments later, the F-150 pulls forward to the front right side of the patrol vehicle. As the Ranger slows to a crawl, Munguia gets out of the driver's seat of his patrol vehicle directly in front of the Ranger. At the same moment Hernandez gets out of the front passenger's seat of the patrol vehicle and faces the F-150, which is directly in front of him.

The Ranger appears to stop for a moment as Munguia gets out of the vehicle, then slowly inches forward and then drives through the gap between the patrol vehicle and the curb at the southeast corner of Broadway and 86<sup>th</sup> Place. Munguia can be seen stepping back from the Ranger as it drives past him, then moving back away from his vehicle after the Ranger has passed him. He then moves towards the sidewalk on the southeast corner of 86<sup>th</sup> Place and Broadway, out of view of the surveillance camera, and towards the location where he can be later seen on Yanez's BWV.

Hernandez can be seen directing his attention first towards the F-150. [REDACTED] gets out of the F-150 and lays onto the ground. Hernandez then directs his attention towards the Ranger, with his weapon drawn.



Photograph from surveillance video showing the Ranger and F-150 turning southbound on to Broadway from westbound 86<sup>th</sup> Place



Photograph from surveillance video showing Munguia's patrol vehicle at the intersection of 86<sup>th</sup> Place and Broadway as the Ranger and F-150 make a U-turn and begin to approach the patrol vehicle.



Photograph from surveillance video showing Munguia standing at the door of his patrol vehicle as the Ranger is at the front of the patrol vehicle.



Photograph from surveillance video showing the Ranger squeezing between the patrol vehicle and the curb. Munguia is leaning back towards his vehicle and not visible in this photograph.





Photograph from surveillance video showing the Munguia firing his weapon at the Ranger as the Ranger has driven past his patrol vehicle and is turning eastbound on 86<sup>th</sup> Place.



Photograph from surveillance video showing Munguia moving eastwards and firing his weapon at the Ranger as the Ranger is now out of sight 86<sup>th</sup> Place.

## Physical Evidence and Trajectory Analysis

Investigators with Los Angeles Police Department collected evidence at the scene, took measurements, and conducted a trajectory analysis of the direction in which all bullets fired by Munguia struck Lozano's vehicle.

Based on the number of casings recovered at the scene, as well as an examination of Munguia's service weapon after the shooting, it was determined that Munguia fired 10 rounds at Lozano. LAPD investigators also conducted a gunshot trajectory analysis to determine the path of each bullet that struck Lozano's vehicle.

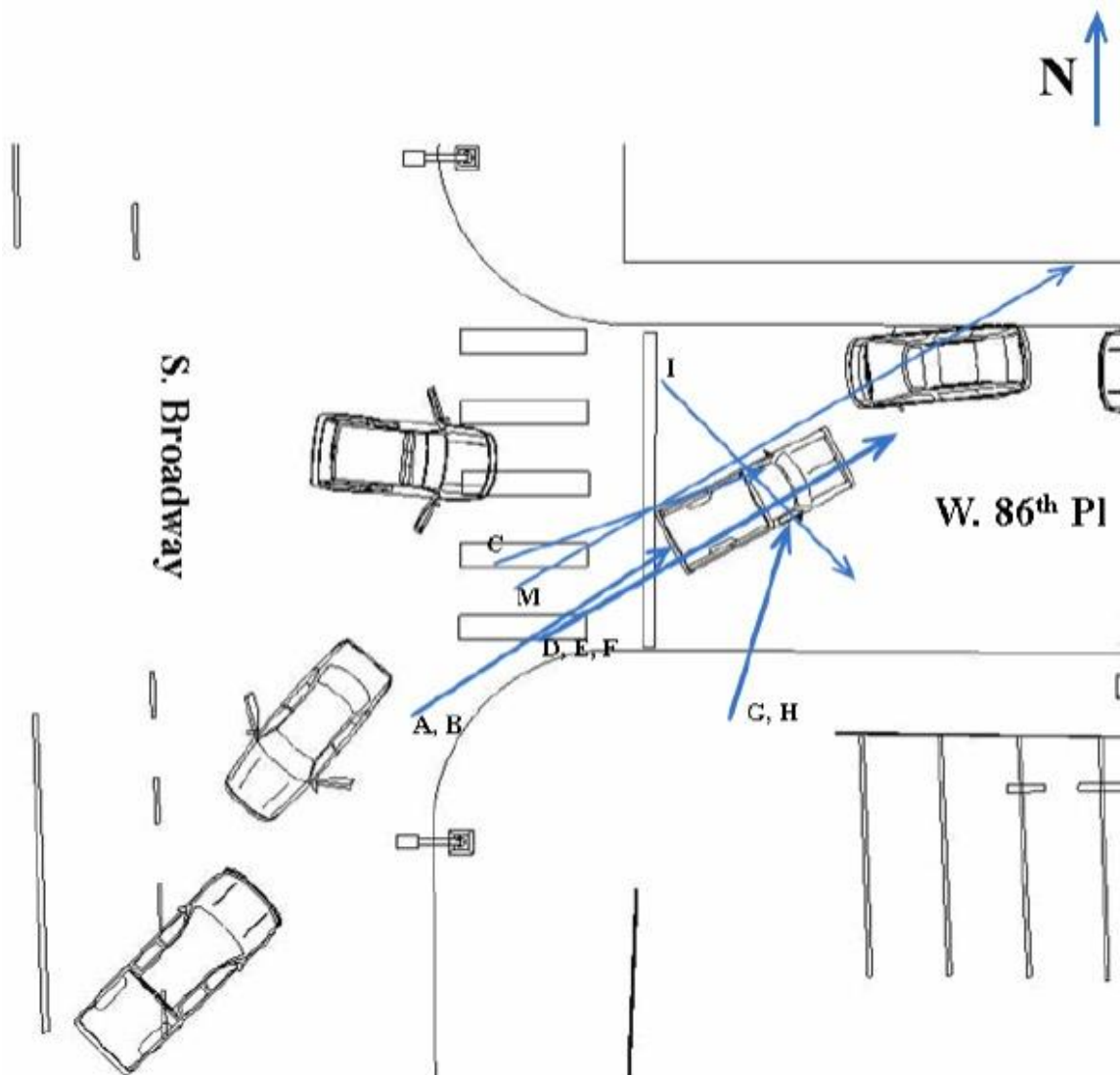


Diagram of scene with the bullet trajectory analysis conducted by LAPD investigators.

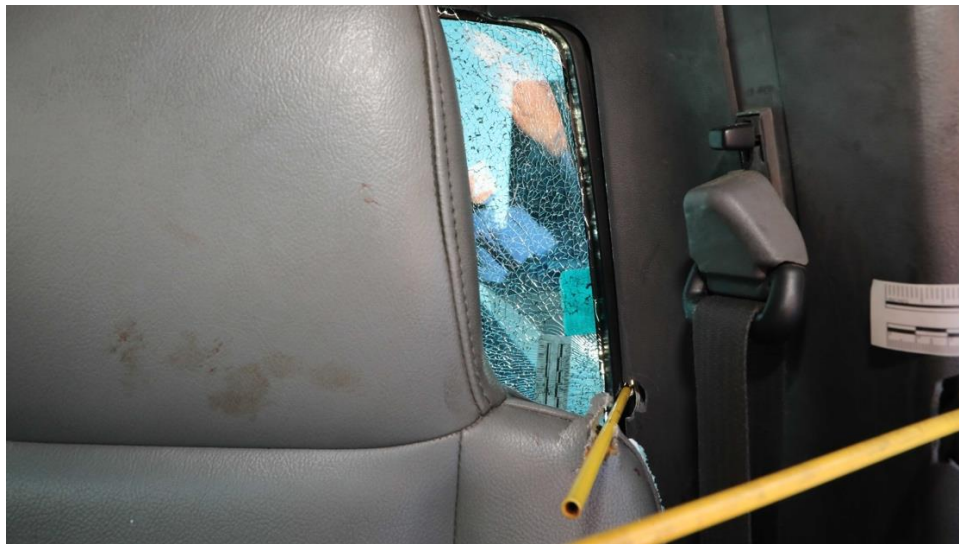
Investigators were not able to determine the order of the shots fired into the Ranger by Munguia. Six rounds struck the Ranger. Except for a single shot fired into the driver's side of the Ranger from a perpendicular angle, all of the other shots were fired from behind the Ranger. One of the

remaining shots was fired into the passenger side of the vehicle, also from the rear. The remaining four bullets that struck the Ranger hit the rear of the Ranger.

The following photos are the photos of the paths of travel of the bullets that struck the Ranger and contributed to the analysis in the diagram above.



Photograph showing the path of travel of bullet impact “I” entering the driver’s door of the Ranger and exiting the passenger’s window.



Photograph showing the entry of bullet impacts “I” and “C” entering the driver’s seat area of the Ranger.





Photograph showing the impact of bullet strikes “D,” “E,” and “F” into the rear window of the Ranger, as well as impacts “C” and “I” into the driver’s area of the Ranger.



Photograph showing the impact of bullet strikes “B” and “C” into the rear of the Ranger.





Photograph showing the impact of bullet strike “I” entering the driver’s side door and exiting the passenger’s window represented by a yellow rod, and bullet strike “G” entering the Ranger from the passenger’s door represented by a red rod.



Photograph of the passenger door of the Ranger with bullet strikes “G” and “H” visible on the door, as well as the exit strike from “I.”

The bullet strike analysis could not determine exactly in which order the shots took place. It appears as if strike “I” was likely the first shot fired by Munguia at the Ranger as it passed closely by him and hit him in his left leg. The vehicle appears to have continued away from Munguia as he fired numerous other shots, while Munguia made his way to cover behind the concrete structure on the sidewalk. Since strikes “A,” “B,” “C,” “D,” “E,” and “F” all appear to

hit the Ranger from behind, they appear to have been fired as the Ranger drove away from him. Bullet strikes “G” and “H,” enter from the passenger’s side of the vehicle, which appears consistent with Munguia having fired his weapon from the sidewalk area in the direction of the concrete structure that he ended up covering behind as LAPD arrived at the location minutes later.

### **Lozano’s Criminal Case**

On July 17, 2019, Lozano was charged in felony complaint TA149546 with a count of Penal Code Section 245(c), assault with a deadly weapon against a police officer causing great bodily injury (under the mistaken impression that Munguia had suffered a broken leg in the incident), and petty theft. He was charged under the name “Ever Quintanilla” because he provided that name at the time of arrest. On September 18, 2020, an information was filed charged those same charges, as well as a violation of Penal Code Section 664/187, attempted murder. On August 19, 2021, Lozano pled guilty to the charge of attempted murder and was later sentenced to five years in state prison.<sup>4</sup>

### **LEGAL ANALYSIS**

Penal Code Section 835a governs police officer’s use of force in making an arrest of a suspect. In 2019, Penal Code Section 835a read as follows:

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

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 section 197; *People v. Randle* (2005) 35 Ca1.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Ca1.4th 1172, 1201); *People v. Humphrey* (1996) 13 Ca1.4th 1073, 1082; see also, CALCRIM No. 505.

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. Penal Code section 835a. California law permits the use of deadly force

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<sup>4</sup> It was later discovered that the surveillance video of the incident from the liquor store on the corner of 86th Place and Broadway had not been provided to either the prosecution or the defense in this case. The video was subsequently turned over to the assigned deputy district attorney and the Public Defender’s Office for their review. To date, no action has been taken.

by police officers when necessary to affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily harm. People v. Ceballos (1974) 12 Cal.3d 470, 477-484. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious bodily injury. Ceballos, supra, 12 Cal.3d at 479. Attempted murder, in violation of Penal Code Section 664/187, is considered an atrocious felony.

In evaluating whether a police officer's use of force was reasonable, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight...The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

In this case, Lozano stole a lawn mower and then fled as [REDACTED] chased him to recover his stolen lawn mower. Munguia and Hernandez became involved when they observed [REDACTED] following Lozano and [REDACTED] told them about the theft of the lawn mower. Munguia and Hernandez properly followed them in an attempt to stop and possibly arrest a suspect for erratic driving and the theft of property. Munguia's subsequent attempt to stop [REDACTED] and Lozano as they drove towards Munguia's patrol vehicle, and Lozano's failure to follow a lawful command by a peace officer gave Munguia the right to use reasonable force to detain Lozano under Penal Code Section 835a.

There are three possible justifications for Munguia's use of deadly force against Lozano: that Munguia acted in reasonable self-defense, that Munguia acted to stop a fleeing felon who posed an imminent risk of death or serious bodily injury to the public, or that Munguia acted to stop someone who had committed an atrocious felony. If a reasonable doubt exists as to any of those justifications, then a case cannot be proven against him beyond a reasonable doubt.

### **Munguia's Belief That His Life Was In Danger**

Munguia was justified in using deadly force if he reasonably believed that his life was in danger and that he needed to use deadly force to protect himself from that danger. Munguia's belief needs to be both honest and objectively reasonable, as viewed by a reasonable person in Munguia's position. Munguia testified at the preliminary hearing that he feared for his life when Lozano drove at him. The preliminary hearing did not involve detailed questioning about each shot Munguia fired, but Munguia's claim of self-defense appears to be honestly held based on the facts he testified to.

Munguia's use of force must also be objectively reasonable. Several facts suggest that Munguia may have been objectively reasonable in at least his first shot at Lozano. While Lozano said he drove a little up on to the curb to avoid hitting Munguia and that he did not try to hit Munguia, Lozano also said that if he was in Munguia's position, he may think that the driver was trying to kill him. Lozano's passenger [REDACTED] said that Lozano did not want to get arrested and violate

his probation. However, Lozano's intentions do not determine Munguia's state of mind at the time of the shooting.

The physical evidence showed no damage to Munguia's patrol vehicle's door, suggesting that Lozano's Ranger did not strike the patrol vehicle. Even though Munguia said that Lozano's Ranger struck him in the leg, Munguia was able to immediately run for cover after he began firing at Lozano.

Two civilian witnesses, [REDACTED] and [REDACTED] in addition to Munguia's partner Hernandez, all corroborate that Munguia had to jump quickly out of the way of the Ranger, but they do not corroborate Munguia's statement that he was struck by the Ranger. According to medical records, Munguia suffered from a sprain to his knee, which could be consistent with either trying to avoid Lozano or being struck by Lozano. Munguia testified that he suffered a broken leg, and when interviewed years later he still believed that he had suffered a broken leg. While that diagnosis was incorrect, the belief may have been reasonable based on what medical staff at the hospital first told Munguia, and was corroborated in his mind by a subsequent cast which was put on his leg. Munguia also sustained a sprain and a bulging disk in his back following this incident. There is insufficient evidence to prove Munguia was not injured by Lozano's truck.

Munguia's first shot at Lozano appears to take place as Lozano is driving right by Munguia. At that moment Munguia had moved out of the way of the approaching Ranger. Munguia claimed that he was in fear at that moment. It cannot be proven beyond a reasonable doubt that Munguia's fear at that moment was objectively unreasonable.

Munguia's shooting did not stop when Lozano had driven past him. The physical evidence suggests that Munguia shot nine more rounds after that, hitting Lozano's vehicle several times as it drove away from him. Since the direct threat to Munguia's life had passed when Lozano's vehicle was past him, Munguia's subsequent shots do not appear to be calculated to defend his own life at that moment.

### **Munguia's Belief That Lozano Posed an Imminent Risk to Public Safety**

Lozano drove past Munguia in the Ranger heading the wrong way on 86<sup>th</sup> Place. In his preliminary hearing testimony, Munguia said he felt that if Lozano was willing to kill a police officer while driving, then he was willing to kill anyone else in public as he drove away. Munguia's partner, Hernandez, was also aware that Lozano was heading in the wrong direction on 86<sup>th</sup> Place as he drove past Munguia.

The objective evidence showed that Munguia shot at Lozano's vehicle from behind after Lozano had driven at a high rate of speed trying to evade [REDACTED] through a residential neighborhood, refused to yield to a police officer parked in front of his vehicle, and at the very least driven dangerously close past Munguia despite Munguia's clearly identifying himself as a police officer. When Munguia shot at Lozano's vehicle from behind, Lozano was driving in the wrong direction on 86<sup>th</sup> Place.

Based on Munguia's testimony at the preliminary hearing and the available objective evidence of the incident, Munguia's belief that Lozano posed an imminent threat to public safety when he fired his weapon at Lozano's vehicle from behind cannot be disproven beyond a reasonable doubt.

### **Munguia's Belief Lozano Committed an Atrocious Felony**

Munguia testified that he felt Lozano was trying to run him over in his car as Munguia stood outside his patrol vehicle trying to stop Lozano. None of the percipient witnesses to the incident ever said that they thought Lozano was trying to run over Munguia. Lozano said that he was trying to avoid Munguia. The video is not dispositive, but it does not appear from the video that Lozano attempted hit Munguia with his car. Munguia does not appear to suffer any serious injuries consistent with an atrocious felony.

However, when questioned by investigators, Lozano responded to their questioning by saying that had he been in Munguia's position that he would have felt the car was trying to kill him. Munguia testified about the incident at the preliminary hearing and stated that he thought Lozano was trying to kill him. Munguia's testimony was sufficiently believable to convince a judge that there was probable cause that Lozano committed an attempted murder (an atrocious felony). Lozano pled guilty to an atrocious felony. Considering Munguia's preliminary hearing testimony, Lozano's admission that he would have felt the car was trying to kill him had he been in Munguia's position and the fact that Lozano's conviction for attempted murder remains in effect, it cannot be proven beyond a reasonable doubt that Munguia's belief that Lozano had just committed an atrocious felony in his presence was wrong, and that his use of deadly force to apprehend Lozano was unlawful.

### **CONCLUSION**

Given these circumstances, the evidence is insufficient to prove beyond a reasonable doubt that Munguia acted unlawfully.