

**Fatal Officer Involved Shooting of Dai Phuoc Nguyen**

**El Monte Police Department**

**Officer Justin Calatayud #684**

**J.S.I.D. File #19-0496**



**Justice System Integrity Division**

**November 23, 2020**

**MEMORANDUM**

TO: CHIEF DAVID REYNOSO  
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION  
Los Angeles County District Attorney's Office

SUBJECT: Fatal Officer Involved Shooting of Dai Phuoc Nguyen  
J.S.I.D. File #19-0496  
L.A.S.D. File #019-00094-3199-013

DATE: November 23, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the December 2, 2019, fatal shooting of Dai Phuoc Nguyen by El Monte Police Department (EMPD) Officer Justin Calatayud. We have concluded that Officer Calatayud acted lawfully in self-defense.

The District Attorney's Command Center was notified of the shooting at approximately 1:50 p.m., on December 2, 2019. The District Attorney Response Team responded to the location and was given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene by Los Angeles County Sheriff's Department (LASD) Homicide Bureau Lieutenant Scott Hogle.

The following analysis is based on investigative reports, audio recordings, firearm analysis reports, photographic and video evidence, and witness statements submitted to this office by LASD Homicide Bureau Detectives Ralph Hernandez and Joseph Iberri. Deputy Calatayud's voluntary statement was considered as part of this analysis.

**FACTUAL ANALYSIS**

On Monday, December 2, 2019, at approximately 12:25 p.m., Calatayud was in full uniform and was working patrol as a single-officer unit. Calatayud was driving a marked black and white Ford Explorer equipped with an emergency light bar and siren. He was armed with his service weapon, a

Sig Sauer semiautomatic 9mm caliber handgun, Model P226, housed with a magazine containing 18 live rounds, and one live round chambered.

At 12:24 p.m., Nguyen called 9-1-1 and spoke to the dispatcher in a loud, agitated voice in Vietnamese for several seconds, then hung-up. The dispatcher called him back. Nguyen again yelled loudly and agitatedly in Vietnamese. A female voice could be heard in the background for a few seconds, but her words were faint and indistinct.<sup>1</sup> Nguyen continued yelling, wailing and crying. Suddenly, he asked in English, “Who are you?” The dispatcher replied, “The police department. You called 9-1-1.” Nguyen renewed unintelligibly yelling in Vietnamese. The dispatcher asked, “Do you have an emergency?” Nguyen replied in English, “Yes!” Dispatch asked, “What’s the emergency?” Nguyen yelled unintelligibly in Vietnamese, then screamed in an agonized tone and sounded like he was crying. He wailed, cried and yelled again in Vietnamese. Nguyen yelled in English, “I [unintelligible] kill you,” then continued yelling in Vietnamese. Within the background noise of the 9-1-1 recording, Calatayud’s broadcasted words, “[unintelligible] northeast corner [unintelligible],” could be heard. Nguyen’s voice, as he continued to yell unintelligibly, became fainter. Three gunshots in rapid, steady succession are heard. Another dispatcher is heard in the background stating, “Shots fired.” The 9-1-1 dispatcher stated, “I heard it over the phone!” The return call lasted over four minutes.

Los Angeles County Fire Department Engine 90 arrived shortly thereafter. Cardiopulmonary resuscitation was administered by paramedics without success. Nguyen was pronounced deceased at-scene at 12:45 p.m.

### **Statement of EMPD Officer Justin Calatayud**

On December 11, 2019, Calatayud provided a voluntary statement to Detectives Hernandez and Iberri. Calatayud stated that he was dispatched to investigate a 9-1-1 hangup call on Cortada Street. Calatayud responded Code-3<sup>2</sup> from the EMPD station. Calatayud received updated information from dispatch as he was driving. The updated information stated that the male caller was heard yelling, and stated that he had either just killed somebody or wanted to kill somebody, then disconnected the call. Calatayud recalled dispatch broadcasting an update that the “history at the [caller’s] location showed priors for 5150’s,” or “priors for 5150 at the location.”<sup>3</sup> Calatayud disabled his siren prior to reaching Cortada Street to avoid providing advance notification of his arrival, because he believed he was approaching the scene where someone had possibly just killed another person. Calatayud was worried, given the comments of the call and the updates by dispatch, that the call might involve an ambush. Calatayud approached the location with caution.

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<sup>1</sup> A female English-speaking neighbor living in a residence behind Nguyen’s rear garage room told investigators she heard Nguyen yelling in Vietnamese on the phone and asked him if he needed help, but Nguyen ignored her.

<sup>2</sup> “Code-3” refers to when an officer responds to an incident with the police vehicle’s emergency lights and siren activated.

<sup>3</sup> While Calatayud and EMPD Officer Gabriela Norris were en route to Nguyen’s residence, EMPD dispatch broadcast that the caller stated in broken English, “I won’t kill you, or I killed you.” Dispatch broadcast an additional update, “[T]here’s an alert for 5150...at that location.” Records show that Nguyen was taken into protective custody and was involuntarily placed on a 72-hour hold for mental health evaluation pursuant to W&I Code section 5150 on November 15, 2019

Calatayud saw the rolling driveway gate at the fence-enclosed residence quickly open, then observed Nguyen walk through the open gate at a very fast pace directly toward Calatayud's vehicle. Calatayud stopped his vehicle at a northeasterly angle in the middle of the street approximately 25 yards from the gate opening. Calatayud quickly put the vehicle in park, exited the vehicle, and stood in the space between his open driver's side doorway and the vehicle. Calatayud saw an approximately 12-inch bladed knife in Nguyen's right hand. Nguyen was waving the knife "at his side," and was yelling something unintelligible as he looked directly at Calatayud and continued to walk "at a very fast pace directly towards me." Calatayud drew his department-issued service weapon, aimed it at Nguyen, and ordered, "Stop! Drop the knife!" approximately three times. Nguyen continued his rapid approach toward Calatayud while waving the knife he held in his right hand horizontally back and forth in front of him at his shoulder level. Nguyen closed the distance to within three to five yards of Calatayud. Calatayud stated, "I felt like this person's going to attack me. This person's going to stab me...I could tell he was not calling me for help...he looked angry, agitated...if he got any closer...if I had waited any more, I'm positive [Nguyen] would have killed me...he gave me no other choice...if he had gotten past me and made it to the [Cortada Elementary] school, who knows what he could have done."<sup>4</sup> Calatayud discharged his service weapon three times. After the third shot, Nguyen stumbled back several paces and fell to the ground, dropping the knife. Calatayud stated, "Where he fell was not where I shot him."

Calatayud, believing Nguyen no longer posed a deadly threat to him, holstered his service weapon, donned gloves, then administered cardiopulmonary resuscitation to Nguyen. EMPD Steven Fonseca arrived and took over administering cardiopulmonary resuscitation until the fire department personnel arrived. Despite life saving measures, paramedics pronounced Nguyen deceased at the scene.

### **Statement of EMPD Officer Gabriela Norris**

Hernandez and Iberri interviewed Norris on December 11, 2019. Norris was working a single-officer unit. As she turned from Portrero Avenue to Cortada Street, she saw Nguyen walking from the sidewalk into the street toward Calatayud. Nguyen's right arm was extended out in front of him slightly lower than chest height as he held a "foot long" knife in his right hand. Norris stated, "[Nguyen] had his eyes set on [Calatayud, who was] about eight feet [away]. [Nguyen] was walking in a fast pace towards [Calatayud]... I heard...two to three...shots fired...[Nguyen was] six feet away [from Calatayud]...it was really fast." Norris could not hear whether any words were spoken prior to the shooting because all of her vehicle windows were closed.

### **Statement of Ligia V.**

KNBC news reporter Beverly White, in a Channel 4 News broadcast on December 2, 2019, stated that an eyewitness to the officer-involved shooting stated that she "...saw the man and the knife, and the police had no choice." A small portion of an interview with Ligia V. was broadcast. Ligia spoke in Spanish. A man positioned off-camera translated her statements.

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<sup>4</sup> Cortada Elementary School is located across the street from Nguyen's residence, approximately thirty feet to the west.

Ligia waved her right hand at the side of her head as she spoke, and stated that the police told the man to stop three times and the officer shot very quickly.

On December 3, 2019, Hernandez and Iberri interviewed Ligia. Hernandez conducted the interview in Spanish. Ligia stated she heard and saw Nguyen “screaming desperately,” and watched him tip over a trash can located in the front area of his residence. Ligia believed Nguyen had been shot or stabbed based on the way he was screaming. Ligia heard sirens, then saw Nguyen walk quickly into the street. Nguyen was holding an approximately 18-inch long spade or pirate sword in his right hand that she believed was a yellow plastic toy. Nguyen, talking in a foreign language, waved his hands around in the air as he walked quickly into the street toward Calatayud. Calatayud yelled, “Stop!” three times, but Nguyen continued walking toward Calatayud, waving the object in his hand. Nguyen appeared to be losing his balance as he came to within approximately 12 to 15 feet of Calatayud. Ligia both heard and saw Calatayud fire his duty weapon three times. Nguyen walked backward and fell to the ground on his side.

### **Statement of Bob S.**

On December 5, 2019, Hernandez and Iberri interviewed Bob S. He stated that, on December 2, 2019, he was standing at the back of his truck which was parked facing northbound at the east curb of Portrero Street, just north of Cortada Street. A male voice “yelling like crazy” from within the property next to his truck caught his attention. Bob S. did not hear any other voices. The yelling stopped. Bob S. observed Calatayud, driving his police SUV, negotiate a wide turn from northbound Portrero Street to eastbound Cortada Street, then suddenly stop at a slightly northeast angle just east of Portrero Street. Regarding what he observed next, Bob S., who had crouched on his haunches in the street just south of the back of his truck, stated, “...I watched [Calatayud] every second...he gets out of the car...pulls out a handgun...he was behind the [driver] door...and then he shouts three times ‘Drop the knife!’ and he escalated in his tone. He was telling this guy ‘Drop the knife!’ in a pace, and then, pop, pop, pop, three [gun] shots....” Bob S. stated that he could see only Calatayud during the interaction leading up to the shooting due to vantage point visual limitations. Bob S. did not see the person Calatayud was addressing.

### **Statement of Mui L.**

Mui L. was interviewed on December 2, 2019.<sup>5</sup> Mui and her husband Ung own the residence on which Nguyen’s detached garage rental room was located. Nguyen moved into the rental room in either August or September 2019.

At some time in the morning of December 2, 2019, Mui saw Nguyen on their property. Nguyen told her he was in the process of moving out, and was almost finished doing so. Nguyen’s behavior appeared normal to her. Mui was inside her home when she heard heard Nguyen yelling, screaming and cursing aggressively in Vietnamese and English. Mui heard, but did not see, two to three gunshots outside of her residence.

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<sup>5</sup> Mui speaks Vietnamese. Mui’s entire statement was obtained utilizing the translation services of LASD Deputy Yen To, who is certified by the LASD as a Vietnamese speaker and translator. The interview was recorded.

## **Statement of Ung U.<sup>6</sup>**

On December 2, 2019, Ung's distance vision was somewhat limited as a result of recent surgery. Ung walked outside to the gated front portion of his residence and saw his tenant, Nguyen, standing outside his rear garage room. Ung asked Nguyen, who was in the process of moving out, if he needed help moving his property from the residence. Ung offered to allow Nguyen to use Ung's personal vehicle to accomplish the move. Nguyen was nice to Ung but did not respond to the offer of assistance; he instead complained to Ung that his two friends had "screwed him over" with a moving vehicle, and Nguyen did not know where they were. Nguyen cursed as he complained.

Ung saw and heard Nguyen speaking to someone on his cellular telephone utilizing the speaker function. Nguyen was cursing and yelling as he moved quickly toward the front yard of the property. Nguyen walked into the street yelling and screaming. Ung could only partially see Nguyen because the bougainvillea growing on the fence obstructed his view.<sup>7</sup> Ung could not see into the street because of his blurry distance vision, as well as the bougainvillea. Ung heard three gunshots in rapid succession. Ung saw Nguyen fall to the street. Ung could not see if Nguyen was holding an object either at the time he left the yard, or as Nguyen fell to the ground.

## **Statement of Stacey T.**

Stacey T. was interviewed on December 2, 2019. Stacey did not know Nguyen personally. Stacey was inside her single-story residence located east of and adjacent to Nguyen's garage rental. Stacey heard yelling but could not determine its origin. She went to her open bedroom window that overlooks the enclosed driveway in front of Nguyen's garage rental. She saw Nguyen in the enclosed driveway, screaming in a foreign language. Stacey saw an older man come into the yard and talk to him in a foreign language. Nguyen walked to the southeast corner of the property and flipped the rolling municipal trash container over onto its side, then walked back toward the garage.

Stacey heard sirens, and saw the flashing lights of a black and white police vehicle approaching, but could not see the entire vehicle, as her view was partially blocked by the tall gate in front of Nguyen's residence that was covered in vegetation. Nguyen ran through the open driveway gate toward the police vehicle that had stopped. Stacey could not see Calatayud from her vantage point. Nguyen was yelling and had his hands down at his sides. Stacey could not tell whether Nguyen held anything in his hands.

Nguyen's back was to her as he ran toward the police vehicle. She initially could only see the top of the back of his head from the top of his ears due to his height over the obstructing gate. Stacey then saw the back of Nguyen's hands rise to either side of his head, his hands slightly waving, his fingers splayed. Stacey heard but did not see three gunshots fired in rapid succession, then saw Nguyen's hands and head disappear. Stacey estimated that the entire

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<sup>6</sup> Ung speaks Vietnamese. Ung's statement was obtained utilizing the translation services of LASD Deputy Yen To. The interview was recorded.

<sup>7</sup> Ung showed Detectives Hernandez and Iberri where he was standing when he heard and saw the shooting. Ung was approximately five feet inside the exterior fence, and a few feet east of the front door to his home.

elapsed time, from when Nguyen ran outside the gate, to when she heard the three shots, was approximately one second. Stacey never saw a knife in Nguyen's hands.

### **Statement of Loan T.**

Loan T. was interviewed on December 2, 2019.<sup>8</sup> Loan was renting a single room in the front of the garage in which Nguyen's rental room was located. On the morning of December 2, 2019, Loan was inside his residence. Loan heard Nguyen screaming loudly between 10:00 to 11:00 a.m. At around 12:30 p.m., he again heard Nguyen screaming and yelling loudly. Loan stayed in his room with the front door closed because he was scared. Loan could not discern what Nguyen was saying, other than, "Hey, I let you borrow my car. Where are you?" in Vietnamese.<sup>9</sup> Loan thereafter heard sirens as Nguyen was yelling, followed by three to four gunshots.<sup>10</sup> Loan did not see the shooting.

### **VIDEO EVIDENCE**

Neither Calatayud nor Norris was wearing a body-worn video camera. Neither Calatayud nor Norris's vehicle was equipped with a dash camera.

A surveillance video camera was affixed to the wall on the front exterior second story of the main residence on Cortada Street.<sup>11</sup> Hernandez and Iberri obtained the video recording captured at the time of the officer-involved shooting. The recording shows Nguyen exit the gated driveway holding a knife just prior to the officer involved shooting. Calatayud is not visible in the recording.



Nguyen, holding a knife in his right hand, exited the gated driveway entrance, then raised the knife and extended it to chest height in front of him.

<sup>8</sup> Loan only speaks and understands Vietnamese. Loan's entire statement was obtained utilizing the translation services of LASD Deputy Yen To. The interview was recorded.

<sup>9</sup> Loan had previously seen Nguyen driving a four-door sedan-type vehicle.

<sup>10</sup> Loan spoke the words, "Boom, boom, boom" in rapid succession.

<sup>11</sup> Additional operable non-recording interior and exterior cameras were located.

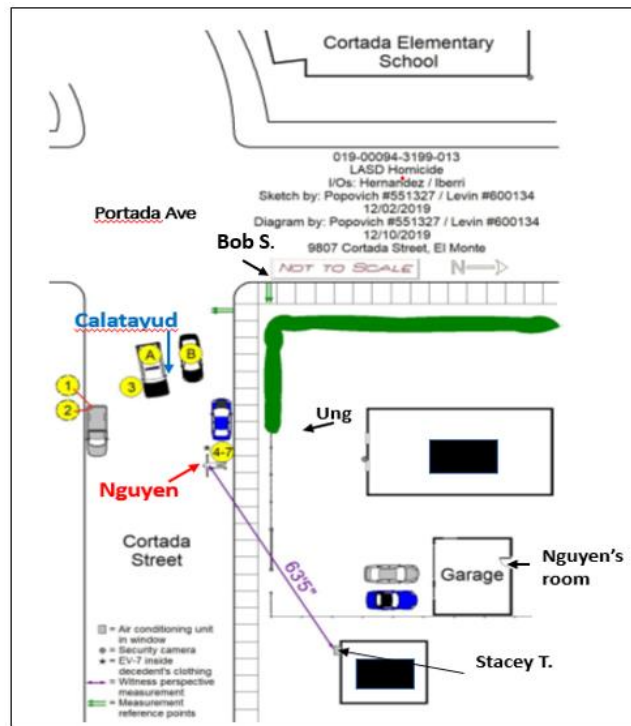
## PHYSICAL EVIDENCE

After this incident, Calatayud's duty weapon was examined and found to contain sixteen rounds. Two expended 9mm casings were recovered from under the back of a pickup truck parked at the south curb of Cortada Street adjacent to Calatayud's vehicle. One expended 9mm casing was recovered from the street approximately three feet south of the front passenger door of Calatayud's vehicle. The positioning of the expended casings is consistent with Calatayud's position behind his vehicle's driver door. A narrow sharp-bladed 14-inch-long kitchen knife with an approximate seven-inch metal blade was located on the street a few inches west of Nguyen's left foot.



Photo of the knife located in the street next to Nguyen's left foot.

LASD Forensic Identification Specialist (FIS) Popovich created an incident scene sketch to document relative positioning of evidence at the incident scene.



A sketch of the incident scene.



Los Angeles County Deputy Medical Examiner (DME) Vadims Poukens conducted an autopsy on Nguyen on December 4, 2019. DME Poukens determined that Nguyen sustained two gunshot wounds. Both gunshot wounds were oriented from front to back. One of the wounds was a non-fatal gunshot wound to the cartilage of Nguyen's left ear. The other wound was an immediately life-threatening gunshot wound to Nguyen's left lower chest. An analysis of Nguyen's blood revealed cocaine benzoylecgonine (metabolite) in his system.

## LEGAL ANALYSIS

According to California law, a person acted in lawful self-defense or defense of another if (1) he reasonably believed that he or someone else was in imminent danger of being killed or suffering great bodily injury and (2) he reasonably believed that the immediate use of deadly force was necessary to defend against that danger. CALCRIM No. 505.

California law permits any person to use deadly force in self-defense or in the defense of others if he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. CALCRIM No. 3470; *see also* 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. In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. Id.

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146.

In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, 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.

The evidence examined in this investigation shows Nguyen walked quickly toward Calatayud and aggressively waved a long sharp-bladed knife in his right hand next to his head. Nguyen ignored Calatayud's three separate commands to stop. Nguyen quickly closed the distance between them to approximately three to five yards without stopping his aggressive forward movement as he waved the knife toward Calatayud. Calatayud believed he was about to be killed. Reasonably fearing for

his life and forced to make a split-second decision, Calatayud fired three rounds from his service weapon.

## **CONCLUSION**

We find that Officer Justin Calatayud acted lawfully in self-defense when he used deadly force against Nguyen. We are closing our file and will take no further action in this matter.