

**Non-Fatal Officer Involved Shooting of Isaias Cervantes
Los Angeles County Sheriff's Department**

Deputy David Vega, #538845

J.S.I.D. File #21-0128



GEORGE GASCÓN

District Attorney

Justice System Integrity Division

November 30, 2022

MEMORANDUM

TO: CAPTAIN ANDREW D. MEYER
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Homicide Bureau
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Monterey Park, California 91755

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

SUBJECT: Non-Fatal Officer Involved Shooting of Isaias Cervantes
J.S.I.D. File #21-0128
L.A.S.D. File #021-04312-0262-058

DATE: November 30, 2022

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 31, 2021, non-fatal shooting of Isaias Cervantes by Los Angeles County Sheriff's Department (LASD) Deputy David Vega. We have determined that there is insufficient evidence to prove Deputy Vega did not act in lawful self-defense and the defense of his partner when he fired his duty weapon.

The District Attorney's Command Center was notified of the shooting on March 31, 2021, at approximately 10:20 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Lieutenant Scott Hogle.

The following analysis is based on reports and other materials, including body worn video (BWV), recorded interviews, 9-1-1 calls, radio communications, and photographs submitted to this office by LASD Homicide Bureau. No compelled statements were considered in this analysis.

FACTUAL ANALYSIS

On March 31, 2021, Cervantes, a 25-year-old man, became verbally and physically aggressive with his mother, sister, and behavioral counselor at his parents' house located on Live Oak Street in Cudahy. As reported by family members, Cervantes was diagnosed with mental health conditions for which he was taking medication.

At approximately 7:23 p.m., Cervantes' mother called [REDACTED], a crisis counselor, who had been working with Cervantes for approximately nine months. Cervantes' mother told [REDACTED] that Cervantes was being verbally aggressive. At 7:26 p.m., Cervantes called 9-1-1, but did not speak. Approximately 30 minutes after being called, [REDACTED] arrived at the house. [REDACTED] observed Cervantes calling his mother profane names. [REDACTED] talked to Cervantes, who explained he was upset at his mother. [REDACTED] counseled Cervantes to calm him. [REDACTED] also observed Cervantes

being verbally abusive to his sister, [REDACTED]. At one time, Cervantes blocked his mother's path inside the house and pushed her. Cervantes also pushed [REDACTED]. Cervantes' sister told [REDACTED] that Cervantes had pushed her as well.

At 8:40 p.m., one of Cervantes' sisters, [REDACTED] called 9-1-1 and reported that Cervantes was "pushing" their mother and getting "violent." [REDACTED] requested that Cervantes be taken to the hospital. She stated that Cervantes was diagnosed with depression, obsessive compulsive disorder, anxiety, and that he was "hard of hearing." She stated that Cervantes was taking his medication. [REDACTED] told Cervantes that the police were coming to the house.

Deputy David Vega and his partner, Deputy Jonathan Miramontes, were on patrol in separate patrol cars. Both deputies were wearing their standard police uniforms. The deputies responded to the call and arrived at the house at approximately 8:52 p.m. Both deputies activated their body worn cameras. Cervantes' mother and [REDACTED] spoke with the deputies for several minutes outside the house and directed the deputies to Cervantes, who was inside the house. Cervantes' mother told the deputies that Cervantes had been pushing her. [REDACTED] told deputies that Cervantes had pushed her and Cervantes' sister as well. The deputies were also informed that Cervantes suffered from mental health issues. Miramontes asked if Cervantes was aggressive with police officers and his mother stated, "No." She stated that police officers had talked to Cervantes in the past and he had not been aggressive with them.²

At approximately 8:58 p.m., the deputies walked up a ramp to the threshold of the front door. Vega's BWV shows that he opened a metal security gate and looked inside the partially open front door. Vega identified Cervantes by name and saw Cervantes seated on a couch in the living room next to a family friend, who walked into the adjoining kitchen along with Cervantes' sister, [REDACTED]. Vega asked Cervantes to, "Come over here real quick. We want to talk to you."

Vega asked Cervantes several times to come outside to speak. Vega, in a polite tone, told Cervantes that they were there to help him. Vega spoke to Cervantes for approximately 40 seconds at the doorway. Cervantes did not stand up but motioned for Vega to come inside several times and stated, "Come into my house, please." Vega responded, "I prefer if you come over here, please." Cervantes once again stated, "You can come in my house, please."

¹ Cervantes has two sisters: [REDACTED] and [REDACTED]

² After the officer involved shooting, Cervantes' sister, [REDACTED] told a deputy at the scene that before their sister, [REDACTED] called 9-1-1, Cervantes had stated, "Call the police. Tell them to shoot me. I don't want my dad to die, and I want to die too." Cervantes' father had been hospitalized earlier that day. [REDACTED] also told the deputy that before she called 9-1-1, Cervantes had stated, "My dad is in the hospital. My dad's gonna die, and I'm gonna die . . . You're gonna die too." [REDACTED] stated that Cervantes did not like the police. The deputies were not informed of Cervantes' dislike of the police or recent statements about dying before they contacted Cervantes. The above statements were recorded on the deputy's BWV.



Photo still from Vega's BWV after he entered the front door. Cervantes motioned for Vega to come inside and sit down.

Vega entered and approached Cervantes. Vega asked Cervantes to stand up as he held Cervantes' left arm and Miramontes held onto his right arm. Cervantes reluctantly stood up and asked, "Hand behind my back?" As soon as Vega removed his handcuffs, Cervantes suddenly pulled his arms out of the deputies' grip, kicked his right heel back toward Miramontes' groin area, and turned toward Miramontes.



Photo still from Miramontes' BWV as he held Cervantes' right arm as Vega prepared to handcuff Cervantes' left hand.



Photo still from Vega's BWV depicting Cervantes' heel kick to Miramontes' groin.

The deputies' body worn cameras were dislodged shortly after the physical altercation began. The cameras continued to record and captured the audio leading up to and after the officer involved shooting. Approximately eight second after Cervantes turned and kicked at Miramontes, Miramontes broadcast on the radio, " Fighting and then yelled, " He's going for my gun! He's going for my gun!" Miramontes' voice appeared very alarmed. Three seconds later, Vega yelled, " Does he have your gun?" Two seconds later, amidst the continuing sounds of scuffling, a gunshot is heard.³

██████████ who was standing in the kitchen, described the deputies' initial contact with Cervantes in a recorded interview, " Rightway when [Cervantes] stood up and they got his arms, and they tried to handcuff him, that's when he right away started like getting physical... Yeah, out of nowhere. It was out of nowhere... He just started getting physical. He was hitting the officer." After the deputies and her brother fell to the floor, she heard the deputies talking about Cervantes getting their gun, " an[sh]e was scared, like what if [Cervantes] starts shooting or something." Then, she heard a gunshot.

Vega had shot Cervantes in the torso with his service weapon, a 9mm handgun. After the gunshot, the deputies yelled, " Leto!" several times. Vega broadcasted that an officer involved shooting occurred and asked ██████████, who was in the house to " getack" several times. Miramontes and Cervantes were positioned on the floor. Approximately 50 seconds after the gunshot, ██████████ stated, " Leto of the gun, Isaias!" Miramontes stated, " got his hand off!" Vega retrieved his body worn camera and recorded Miramontes extending Cervantes' right arm away from his holster as they both remained on the floor.

³ Approximately 16 seconds elapsed from when Cervantes initially kicked Miramontes to the sound of the gunshot.



Vega pointed his body worn camera at Miramontes and Cervantes.

Vega placed the body worn camera back down and grabbed his handcuffs that had fallen during the struggle. Cervantes was handcuffed. Cervantes' mother and [REDACTED] could be seen and heard in the upward facing body worn camera before additional deputies arrived and guided them out of the house. Cervantes was transported to the hospital and survived his injuries.

On April 19, 2021, investigators attempted to interview Cervantes at the hospital, but medical staff denied them access, citing hospital policy. Continued efforts to interview Cervantes and other family members were met with a denial through their attorney.

Deputy Vega's Statement

Deputy Vega provided a voluntary statement to investigators. He stated that he spoke with Cervantes' mother in Spanish, who told him that Cervantes had pushed her in the chest area and face. Vega believed that Cervantes' mother stated that Cervantes was bipolar or schizophrenic.

Vega and Miramontes walked to the doorway with a plan to have Cervantes exit the house. Vega spoke to Cervantes, who was seated on the couch in the living room. Cervantes appeared to hear Vega, but refused to come out and gave Vega a hand gesture to enter and stated, "Come in."

Vega entered and intended to detain Cervantes because he had committed a battery on his mother. Vega believed Cervantes displayed a "calm demeanor." The deputies approached on either side of Cervantes. As Vega attempted to handcuff Cervantes' left wrist, Cervantes swung his left arm towards Vega, who moved to avoid being struck. Cervantes stepped away quickly and began striking Miramontes. Vega tried to assist and handcuff Cervantes, but "[they] fell to the ground."

Miramontes yelled, "He's going for my gun!" Vega asked Miramontes if Cervantes had his gun. There was a lot of "commotion" before he heard Miramontes state, "He's got my gun!" In response, Vega unholstered his duty weapon and fired one round at Cervantes "left flank." Vega

was not able to see Miramontes' holster when he fired his service weapon. Vega stated he fired his duty weapon "in fear of [his] safety and [his] partner's safety." Vega then handcuffed Cervantes and placed him in a recovery position. Vega also radioed for an ambulance to provide aid to Cervantes.

During the physical confrontation, Vega's body worn camera dislodged from his uniform. After the shooting he grabbed it to "capture" Miramontes' arm hold of Cervantes before handcuffing Cervantes. Vega was not injured.

Deputy Miramontes' Statement

Deputy Miramontes provided a voluntary statement to investigators. He stated after he arrived at the location of the family disturbance, he spoke to Cervantes' sister, crisis counselor, and mother. When asked, Cervantes' mother told Miramontes that Cervantes had not been aggressive toward the police before and that he would cooperate with them.

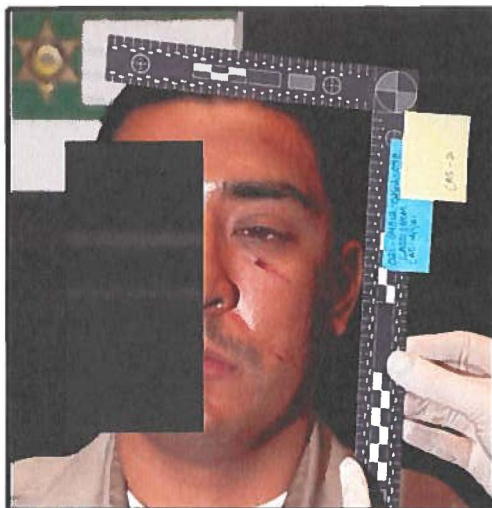
Miramontes followed Vega inside the residence and saw Cervantes seated on the couch in the living room. Miramontes grabbed Cervantes' right arm and asked him to stand up. He placed Cervantes' right hand behind his back with no resistance. Then, Cervantes broke Miramontes' grip and turned away and toward Miramontes.⁴ Cervantes struck Miramontes, who felt a "really hard impact" on his right eye, which caused him to feel dizzy and impaired his vision making it hard to see Cervantes. Miramontes felt Cervantes punching him in the face. Miramontes closed the distance between them and tried to take Cervantes to the floor. He fell on the floor "hard" and tried to broadcast "deputy in a fight" on his radio when he felt a sharp pain in his left eyeball and "claw" across his face and eye.

Miramontes tried pulling his face away and "felt [his] gun coming loose" and he could "feel it being gripped." Miramontes felt his gun coming out of his holster and "[saw] him grabbing [his] gun." Miramontes fought to keep his gun in the holster by pushing down on Cervantes' "hand and the gun" to keep it in the holster. Miramontes feared being shot. Simultaneously, he notified his partner, "He's going for my gun! He's got my gun!" Miramontes heard a gunshot and separated Cervantes' hand by grabbing Cervantes' wrist and extending it out. Miramontes then assisted Vega in handcuffing Cervantes. During the physical confrontation, Miramontes' body worn camera dislodged from his uniform.

Miramontes sustained facial abrasions, a cervical sprain, bilateral eye contusions, and a corneal abrasion. Photographs of Miramontes shortly after the officer involved shooting depicted several red scratches to the left side of his face and one on the right side of his nose. Miramontes' right eye was swollen and bruised. He stated he felt pain in both eyeballs.

In August 2021, Miramontes was charged with filing a false report in case number BA498018. The crime is alleged to have occurred in September 2018, arising from Miramontes' false statements regarding circumstances surrounding another deputy's use of force, which were allegedly contradicted by video evidence. The felony case is currently pending.

⁴ After reviewing his BWV, Miramontes also remembered Cervantes kicked him in the "groin area."



Miramontes' injuries were photographed.

█'s Statement

On April 1, 2021, at approximately 2:00 a.m., several hours after the officer involved shooting, investigators interviewed █. █ told investigators what she saw and heard leading up to the deputies' arrival to the house, which was incorporated into the summary above.

She also described the deputies' contact with Cervantes. She was outside the house when a deputy made verbal contact with Cervantes and entered the house. She stated she heard "shoveling [sic] happening" and ran inside the house. She saw Cervantes "pinned on the ground" and "laying on his stomach flat." She believed a deputy "had his knee" in Cervantes' back area. "[The deputy] left his handcuffs on the couch and stated, "I can't find my handcuffs." Then, the deputy handcuffed Cervantes.

The deputy then stated, "He has my gun. He has my gun." █ stated she told Isaias, "If you have the gun, let it go." █ also noticed that Cervantes was "kind of motionless." █ and Cervantes' mother told the deputies that the force they were using was unnecessary because █ believed Cervantes was unable to breathe. She stated, "And I don't know how long it was between the time when we were telling them this, but the guy that had his back, his knee on Isaias's back, the Sheriff or the police, um . . . Yeah. Um, that officer had the gun pointed at his um rib area . . . and then all we hear, and I saw him shoot. And then that's when [the deputies] started yelling at us, like, 'You guys need to get out. Get out.'" Upon further inquiry, █ restated, "They handcuffed him before they shot him. . . He was handcuffed already when they shot him." She "saw a flash of light and [she] heard the pop."

BWV Contradicts █'s Statement

Vega did not shoot Cervantes after he handcuffed Cervantes. BWV and the other witness statements directly contradict that assertion. During the struggle between deputies and Cervantes, █ is heard on the BWV repeatedly calling Cervantes by his first name before the gunshot is heard. Vega immediately radioed that an officer involved shooting had occurred. Vega asked █ "to get back, please" to which she replied, "We are back." █ continued, "You guys can't

get off of him and just . . .” Almost one minute after the gunshot, [REDACTED] is heard asking Cervantes to, “Let go of the gun.” Over one minute after the gunshot, after Vega grabbed his body worn camera and captured Miramontes holding Cervantes’ hand away from his body, Vega is heard and partially seen from the upward facing body worn camera getting his handcuffs and handcuffing Cervantes. Vega and Miramontes can be heard communicating with each other and over the radio while Cervantes’ mother and [REDACTED] are seen and heard on the upward facing body worn camera attempting to go to a bedroom of the house to check on Cervantes’ brother. At this time, over two minutes after the shooting, the deputies yelled commands at [REDACTED] to back away and exit the house. Shortly thereafter, another responding deputy escorted [REDACTED] and Cervantes’ mother outside.

Scientific Analysis

Investigators submitted Cervantes’ clothing to the crime lab for a muzzle to target distance determination. The criminalist concluded that the gunshot was fired at “a distance greater than contact, but less than [three] inches away” from near the left armpit of the soccer jersey Cervantes was wearing.

Miramontes’ duty belt and service weapon, a 9 mm pistol, were collected by investigators for DNA analysis. Samples were collected from the following items: (1) trigger/trigger guard (2) grip (3) slide/frame (4) magazine (5) holster attached to duty belt. In addition, samples were collected from Miramontes’ right eye area and scratch marks on his face. Samples were also collected from Cervantes’ bloodstained knuckles on both hands, fingernails on right hand, and bloodstained fingernails on his left hand.

DNA analysis provided “strong support” for the proposition that Cervantes is a contributor to the DNA obtained from the trigger/trigger guard sample. The analysis provided “very strong support” for the proposition that Cervantes is a contributor to the DNA obtained from the grip, the slide/frame, and the holster. Due to the limited amount of DNA in the profile of the magazine, it was unsuitable for interpretation.

Also, DNA analysis provided “strong support” for the proposition that Cervantes is a contributor to the DNA obtained from the right eye area of Miramontes. Cervantes was excluded as a contributor to the sample from Miramontes’ scratch marks. DNA analysis provided “limited support” for the proposition that Miramontes is a contributor to the DNA obtained from Cervantes’ bloodstained right-hand knuckles. Miramontes was excluded as a contributor to the DNA obtained from the right fingernails and bloodstained left-hand knuckles of Cervantes. Finally, DNA analysis provided “very strong support” for the proposition that Miramontes is a contributor to the DNA obtained from the bloodstained left-hand fingernails of Cervantes.

LEGAL ANALYSIS

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. In protecting himself or another, a person may use that amount of 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 imminent injury. *Id.*

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. A peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person. A peace officer who attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force. Cal. Penal Code § 835a(b), (c)(1)(A), and (d).

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. Cal. Penal Code § 835a(e)(2).

“Totality of circumstances” means 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. 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. Cal. Penal Code § 835a(a)(4) and (e)(3).

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 with 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.

Prior to the deputies’ involvement, Cervantes had become increasingly agitated. Despite the efforts of his crisis counselor to calm him, Cervantes’ verbal insults escalated to pushing his mother, sister, and counselor. Cervantes’ sister called 9-1-1 to report a “mental health crisis” and reported that Cervantes was pushing their mother. Cervantes was aware that the police were coming to the house.

The deputies arrived at the house, and they spoke to Cervantes’ mother and [REDACTED] for several minutes. Cervantes’ mother and [REDACTED] told the deputies that Cervantes had pushed them. The deputies were not aware of Cervantes’ statements to his sisters about dying or his dislike of the police. Vega calmly spoke to Cervantes from the doorway – there was no indication that Cervantes was a threat to the deputies. Despite being hard of hearing as reported by his family, Cervantes appeared to understand Vega – in response to Vega’s requests from the doorway, Cervantes refused to exit the house and Cervantes invited Vega inside. The deputies entered the house and approached Cervantes on either side. As Vega and Miramontes prepared to handcuff Cervantes, Cervantes unexpectedly attacked Miramontes.

Cervantes punched Miramontes in the eye and face. Soon thereafter, Miramontes and Cervantes fell, Cervantes scratched Miramontes' eye, and Miramontes stated he felt Cervantes attempting to remove his handgun from the holster. Miramontes notified Vega of the danger in a manner that placed both Vega and Cervantes' sister in fear of what Cervantes would do if he took the handgun.

The totality of the evidence, including Miramontes' injuries and the DNA evidence, corroborates Miramontes' account and supports the truth of Miramontes' stated belief that Cervantes was attempting to take his handgun, and Vega's belief of the same danger, which would have placed the lives of the deputies at risk. This evidence supports a reasonable belief that the use of deadly force was necessary to defend against an imminent threat of death or serious bodily injury to the deputies.

Cervantes' attack on Miramontes was unexpected. It appears from all the available evidence that Cervantes rapidly escalated the threat level by grabbing Miramontes' handgun. After the officer involved shooting, Cervantes' sisters recounted Cervantes' statements about the police shooting him and dying. The deputies were unaware of these statements, but the statements may explain Cervantes' state of mind and aggressive acts against Miramontes. Cervantes' actions placed the deputies in circumstances that were tense, uncertain, and rapidly evolving. In response to Cervantes' actions, Vega made a split-second decision and fired one round from his service weapon at Cervantes. The deadly force used by Vega allowed Miramontes to extend Cervantes' hand away from his gun and holster, eliminating the threat.

CONCLUSION

We have determined that there is insufficient evidence to prove Deputy Vega did not act in lawful self-defense and the defense of his partner when he fired his duty weapon.