

**Officer Involved Shooting of Richard Mendoza
Los Angeles Police Department**

Officer Miguel Alarcon, #38928

J.S.I.D. File #18-0326



JACKIE LACEY

District Attorney

Justice System Integrity Division

January 29, 2020

MEMORANDUM

TO: COMMANDER TIMOTHY NORDQUIST
 Los Angeles Police Department
 Force Investigation Division
 100 West First Street, Suite 431
 Los Angeles, California 90012

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

SUBJECT: Officer Involved Shooting of Richard Mendoza
 J.S.I.D. File #18-0326
 F.I.D. File #F047-18

DATE: January 29, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the July 27, 2018, fatal shooting of Richard Mendoza by Los Angeles Police Department (LAPD) Officer Miguel Alarcon. We find that Officer Alarcon acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on July 27, 2018, at 11:52 p.m. The District Attorney Response Team responded to the scene and was given a briefing and walk-through by Lieutenant James Antonucci.

The following analysis is based on reports prepared by the LAPD Force Investigation Division and submitted to this office by Detectives Guy Golan and Eduardo Gonzalez. The reports include body worn video, photographs, audio-recorded interviews of witnesses, and radio transmissions.

FACTUAL ANALYSIS

Summary

On July 27, 2018, at approximately 10:10 p.m., LAPD Officers Miguel Alarcon and Nicole Minarik were in uniform and on patrol in a marked police car when they observed Richard Mendoza driving a silver car. Minarik and Alarcon knew that Mendoza was a gang member on federal probation for a weapons violation. They conducted a traffic stop on Mendoza to conduct a probation search and to investigate possible gang activity.

As Minarik was escorting Mendoza from the driver's seat for the purpose of handcuffing and searching him, Mendoza drew a semiautomatic handgun and shot Minarik in the leg. Mendoza then aimed the gun at Alarcon, who was covering Minarik during the traffic stop, and fired a round at him. Alarcon fired his duty weapon at Mendoza. The incident was recorded on body

worn video. A frame from that video, which shows Minarik falling after being shot, and Alarcon and Mendoza firing at each other, is shown below:



Figure 1- Photo of Mendoza and Alarcon firing at each other, and Minarik falling to the ground after being struck by gunfire.



Figure 2 – Photo of Mendoza falling to the ground after being struck by gunfire.

Mendoza was struck by the gunfire, fell to the ground, and dropped his handgun, which was located under his vehicle after the incident. Paramedics were called and Mendoza was transported to the hospital. He was searched and found in possession of approximately seven grams of methamphetamine. As a result of his actions, and while he was in the hospital

receiving medical treatment, Mendoza was charged in case number BA470029 with two counts of attempted murder of a police officer, possession for sale of methamphetamine, and being a felon in possession of a firearm.¹

Autopsy

Mendoza died in the hospital 28 days after the incident. On August 27, 2018, Dr. Scott Luzi, M.D. performed a postmortem examination of Mendoza's remains and determined that Mendoza sustained three gunshot wounds. He had gunshot wounds to the head, left shoulder, and right hand. The gunshot wound to the head was fatal.

Officers' Injuries

Minarik sustained a gunshot wound to her leg. She survived her injury. Alarcon was not injured.

Firearms Evidence

Mendoza was armed with a .380 caliber semiautomatic handgun that was located under his vehicle near the area where he fell to the ground after being struck by gunfire. The gun was inspected and found to contain one round in the chamber and two rounds in the magazine. Two .380 caliber cartridge casings were recovered from the scene, which is consistent with Mendoza firing twice during the incident. A photograph of Mendoza's gun and unfired rounds is shown below:



Figure 3 – Photo of Mendoza's .380 caliber semiautomatic handgun, magazine, and three live rounds.

¹ The case has been dismissed due to Mendoza's death.

Alarcon was armed with a .40 caliber semiautomatic handgun. It was inspected after the shooting and found to contain one round in the chamber and ten rounds in the magazine. Five .40 caliber cartridge casings were recovered from the scene, which is consistent with Alarcon firing five times during the incident.

LEGAL ANALYSIS

The Law

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.

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 need not 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. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3^d 325, 333.

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to another." CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict great bodily injury on himself or those acting with him." *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing

because he might have resorted to other means to secure his safety.” *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

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.

Analysis

There is compelling evidence in this case, including video evidence, that Mendoza shot Minarik, and fired at Alarcon, in an attempt to kill both of them. Alarcon saw Mendoza shoot his partner, and then point the gun at him and fire. Alarcon knew that he and Minarik were under a deadly attack and it was reasonable and lawful for him to use deadly force in order to save their lives.

CONCLUSION

We find that Officer Alarcon acted lawfully in self-defense and in defense of others when he used deadly force against Richard Mendoza. We are closing our file and will take no further action in this matter.