



**Office of the District Attorney
Alameda County**

Nancy E. O'Malley
District Attorney
alcoda.org

March 30, 2022

Chief Nishant Joshi
Alameda Police Department
1555 Oak Street
Alameda, CA 94501

Dear Chief Joshi:

Enclosed is the District Attorney's Office Report on the in-custody death of Mario Gonzalez Arenales-p[which occurred on April 19, 2021.

I have reviewed the report and agree with the conclusion that the evidence does not justify criminal charges against any law enforcement agency.

As indicated in the report, no further action will be taken in this case.

A copy of the report will be available to the public no earlier than five calendar days after March 30, 2022.

Very truly yours,

Nancy E. O'Malley
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District Attorney



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Enclosed is the District Attorney's Final Report on the in-custody death of Mario Gonzalez Arenales which occurred on April 19, 2021. I have thoroughly reviewed the Report. I concur in the conclusions that the evidence does not support criminal charges being filed against any law enforcement official related to this incident.

When there is a death of a person in law enforcement custody, there are serious impacts on the community, on the family and friends of the person, and on the law enforcement officials involved. The Alameda County District Attorney's Office, and I as the District Attorney, take seriously the need for accountability. As such, it is our legal and ethical obligation to conduct a separate, independent, thorough and impartial investigation into the case.

The District Attorney does not take over the investigation. The police agency in whose jurisdiction the in-custody death occurred has that primary responsibility. The police agency's investigation is reviewed by the District Attorney's Critical Incident Team, as is all evidence in order for the District Attorney's Office to render its final decision.

After a comprehensive review of all of the evidence gathered by and presented to the Critical Incident Team, there is one question that we, as prosecutors, must answer in the criminal law context: Can we prove beyond a reasonable doubt that any law enforcement official acted unlawfully and in violation of the law? As in every criminal case filed, my prosecutors also consider whether or not a jury of 12 people would convict the person of the potential charges alleged. The suspect's potential defenses must be considered in that analysis. This legal axiom protects all of our rights against unfair accusations of a crime.

There can be confusion about the District Attorney's role if the law enforcement agency finds that a law enforcement official acted outside of agency policy or used improper tactics. Acting out of policy or using improper tactics are not crimes. Those issues are sometimes determined by a civil action. The standard of proof in a civil trial is much lower than in a criminal trial. The District Attorney's Office is not making determinations about civil liability.

We know that when a person dies in the custody of law enforcement, families are devastated. Family and friends are grieving and the community is in pain. That is why the District Attorney's Office must adhere to all ethical and legal standards under criminal law as we do in all cases. By doing so, we are upholding our commitment and our sworn duty to protect all members of our community.

DISTRICT ATTORNEY'S REPORT

IN CUSTODY DEATH

OF

MARIO GONZALEZ ARENALES



NANCY E. O'MALLEY
District Attorney

Critical Incident Team

March 30, 2022

INVESTIGATION OF THE IN-CUSTODY DEATH OF MARIO GONZALEZ ARENALES

INTRODUCTION AND SCOPE OF INVESTIGATION

The Alameda County District Attorney's Office has assembled a Critical Incident ("CI") Team. The CI Team consists of experienced Senior, Assistant, and/or Deputy District Attorneys as well as experienced District Attorney Inspectors, who are sworn peace officers. The CI Team conducts an investigation involving any death of a person in police custody in Alameda County. The CI Team is authorized by agreement with each local law enforcement agency serving Alameda County to conduct a separate, but parallel, investigation into the circumstances leading to the in-custody death.

The CI Team focuses exclusively on the question of whether (1) there is evidence that a crime was committed, and (2) there is sufficient evidence to prove beyond a reasonable doubt that a law enforcement official committed a crime in connection with the in-custody death. The CI Team does not examine collateral issues such as whether law enforcement officials complied with internal policies, used appropriate tactics, or any issues that may give rise to civil liability. This report should not be interpreted as expressing any opinions on non-criminal matters. In addition, this report considered the changes to Penal Code Section 835a(a), effective on January 1, 2020, wherein the California Legislature declared its intent that a peace officer's use of force be evaluated carefully and thoroughly in order to ensure that officers use force consistent with law and agency policies, and that use of force is evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, accounting for occasions when officers may be forced to make quick judgments about using force.

The CI Team prepares a report documenting the investigation, factual background, and legal conclusions. The prosecutor supervising the CI Team reviews materials from the investigation and the CI Team report. The case is reviewed by multiple veteran prosecutors, including the Chief Assistant District Attorney and the District Attorney. When the report has been completed and approved, it is delivered to the Chief of Police or Sheriff of the involved law enforcement agency. Thereafter, the report is made available to the public.

The Alameda Police Department ("APD"), who initially investigated the incident, notified the CI Team of the incident. On the day of the incident, the Alameda County Sheriff's Office ("ACSO") took over the criminal investigation from APD upon agreement between the two agencies. The CI Team conducted a parallel investigation. As part of its investigation, the CI Team responded to the scene, viewed physical evidence, and later participated in the interviews of Officers McKinley, Fisher, Leahy, and W1. The CI Team also thoroughly reviewed, among other things, police reports, dispatch recordings, body worn camera footage, recorded statements, and photographs. The CI Team also reviewed the Coroner Investigator's Report, Autopsy Report, and toxicology report relating to Mr. Gonzalez.

FACTUAL SUMMARY:

On April 19, 2021, at approximately 10:42 a.m., Alameda Police Department ("APD") Officer Eric McKinley arrived at a small park located in front of 802 Oak Street in Alameda in response to a citizen call reporting an individual was acting strangely and talking to himself. A recording of this call included the citizen describing the individual as being right outside of his front yard and that his conduct was

scaring his wife. A second citizen call was received by APD regarding an individual breaking security tags off alcohol bottles, but this call was received after Officer McKinley arrived on scene and he did not receive information regarding the second call.

Upon arrival, Officer McKinley observed Mr. Mario Gonzalez Arenales ("Mr. Gonzalez") standing in the park next to two small Walgreens' shopping baskets containing numerous items, including multiple bottles of alcohol. One of the bottles had a black store security cap on it and another bottle was open, with pieces of another black plastic store security cap on the ground. Officer McKinley began speaking with Mr. Gonzalez to determine his well-being and his identity. Based on his observations of the alcohol bottles, Officer McKinley requested Officer James Fisher investigate whether a theft occurred from the Walgreens across the street.

Officer Fisher arrived on the scene as a cover officer for Officer McKinley. The two officers continued to speak with Mr. Gonzalez but were repeatedly unsuccessful in identifying him or getting any information from him. Mr. Gonzalez appeared to have trouble putting thoughts and sentences together. In speaking with him for over nine minutes, the officers observed that Mr. Gonzalez appeared to be under the influence of alcohol or a drug and could not care for himself. Additionally, the officers did not have full information regarding the alcohol bottles which appeared to be stolen.¹ While speaking with the officers, Mr. Gonzalez frequently changed positions and placed his hands in his pockets. Out of concern for their safety, the officers asked Mr. Gonzalez to take his hands out of his pockets.

Based on the criminal violations observed and for officer safety reasons, Officer McKinley and Officer Fisher attempted to detain Mr. Gonzalez by placing his hands behind his back and putting handcuffs on him. Mr. Gonzalez immediately began physically resisting the officers' attempts to put handcuffs on him by bending over at the waist, straightening out his left arm, and bringing this arm in front of his body. For approximately two minutes and thirty-eight seconds, officers attempted to place handcuffs on Mr. Gonzalez while he was standing. During this entire time, Mr. Gonzalez would not comply and continued to physically resist, moving the officers with him as he resisted. The officers repeatedly and calmly requested that Mr. Gonzalez place his hands behind his back and that he stop resisting, but he did not comply.

Due to the lack of success getting handcuffs on Mr. Gonzalez while standing, the officers brought Mr. Gonzalez to the ground in a wood chipped area near the driveway of 802 Oak Street. Mr. Gonzalez was lying face down with Officer McKinley and Officer Fisher struggling on top of him to get his arms behind his back and into handcuffs. Mr. Gonzalez continued to resist the officers while he was on the ground, moving his entire body, including his legs. W1, after observing the officers struggling with Mr. Gonzalez, arrived to assist in controlling his legs from kicking. After approximately, one minute and twenty-three seconds of struggling on the ground, Officer McKinley was able to handcuff Mr. Gonzalez with his arms behind his back.

Once the handcuffs were on, Officer McKinley, Officer Fisher, and W1 continued to attempt to physically control Mr. Gonzalez body as he continued to resist, moving his upper body and legs. Officer McKinley used his arm and body to hold down Mr. Gonzalez's left arm area. Officer Fisher

¹ ACSO Detectives later obtained video footage from a CVS located at 2314 Santa Clara Avenue, in Alameda, on April 18, 2021, in which Mr. Gonzalez can be seen taking an alcohol bottle from the store shelves without paying for it. The brand of this alcohol bottle with security cap matches one found at the scene with the security cap in the Walgreens' shopping basket.

used his arm and his right knee to hold down Mr. Gonzalez's right shoulder area. The officers attempted to limit the amount of body weight and pressure placed on Mr. Gonzalez's neck and back area. W1 attempted to use his body to control Mr. Gonzalez's legs. Officer Cameron Leahy arrived at the scene and took over W1's efforts to control Mr. Gonzalez's legs. Mr. Gonzalez continued to physically resist being held, moving his body and legs. The officers continued to talk to Mr. Gonzalez and request he stop resisting. After approximately three minutes and thirty-nine seconds of restraining Mr. Gonzalez while handcuffs were on, Mr. Gonzalez became unresponsive. Officers immediately checked for Mr. Gonzalez's pulse, then began life-saving measures, and radioed for medical assistance. Mr. Gonzalez was taken to a hospital where he was later pronounced dead.

BODY WORN CAMERA RECORDINGS:

Officers McKinley, Fisher and Leahy all activated their body worn cameras upon arrival at the scene. Each officer arrived at the scene at different times during the incident. When applicable, the camera footage for each officer will be referenced using the first letter of the officer's last name and the time from the beginning of that officer's respective recording. For example, the beginning of Officer McKinley's footage would be "M00:00" and the beginning of Officer Fisher's footage would be "F00:00." This avoids confusion related to the body worn camera time stamps being slightly different between officers.

Officer McKinley's recording began with him driving his vehicle to the area of 802 Oak Street in Alameda. Officer McKinley gets out of his vehicle and radios that he is present at the scene at M00:46. He walks over to the small park in front of 802 Oak Street and Mr. Gonzalez can be seen standing in the park next to two grey "Walgreens" shopping baskets with his back to Officer McKinley. Inside the grey baskets are numerous items, with one containing what appear to be two alcohol bottles. One bottle containing brown alcohol has a large black store security cap on it. The other bottle does not appear to have any cap on it and contains clear alcohol.

At M01:04, Officer McKinley says to Mr. Gonzalez, "Hey bud. How's it going? Just coming to check on you, make sure you're ok. Somebody called and said that you were maybe not feeling so great." Mr. Gonzalez responds, "Um, I'm feeling alright, I guess. It's just that I think I've been staying here for longest." Officer McKinley responds, "Really, I don't think we've met before,"

From M01:09 to M02:09, Officer McKinley and Mr. Gonzalez continue to talk to each other, but Mr. Gonzalez appears to have difficulties putting sentences and thoughts together. At M02:14, Mr. Gonzalez drops an item from his hand that falls to the ground. Officer McKinley attempts to direct him to the fallen item. Mr. Gonzalez then picks up what appears to be a blue medical mask and several pieces of black plastic. He holds the plastic pieces in his right hand and then appears to collect some more pieces from the ground.

At approximately M02:31, Officer McKinley asks Mr. Gonzalez, "Do you feel like hurting yourself?" Mr. Gonzalez responds, "Hurting myself? Um, it's not that." Officer McKinley then asks, "What is it then?" Mr. Gonzalez responds but he it is unclear what he is saying. He leans up against a small tree, drops the medical mask, and then picks it up.

At M03:21, Officer McKinley radios to Officer Fisher to stop at Walgreens to determine if they had any "walk outs" fitting the description of 5'5" and 250 pounds.

Mr. Gonzalez continues to talk to Officer McKinley but again does not appear to put sentences together that make sense. Officer McKinley asks him some questions about how he ended up in the park but received unresponsive answers.

At M04:55, Officer McKinley asks Mr. Gonzalez for his name. Mr. Gonzalez does not provide his name but talks about something else. Officer McKinley tries to talk to Mr. Gonzalez and asks him again at around M05:39 if he's feeling alright or if he feels like hurting himself or anyone else. Mr. Gonzalez responds but not to the question asked.

M06:00, Officer Fisher can be heard over the radio, stating "41 to 31, negative" to Officer McKinley. Officer McKinley then asks Mr. Gonzalez where he got all the stuff in the baskets and where he bought the alcohol from. Mr. Gonzalez continues to talk but he does not answer Officer McKinley's specific questions.

M06:37, Officer McKinley radios to Officer Fisher that he can park on Otis Street.

M06:44, Mr. Gonzalez looks towards Otis Street and drops the black plastic items in his right hand into the grey basket, then picks up another black item off the ground and throws it into the grey basket.

Officer McKinley continues to talk with Mr. Gonzalez and again asks him for his name. Mr. Gonzalez does not provide a name. Officer McKinley says that he wants to know his name and introduces himself to Mr. Gonzalez. Mr. Gonzalez leans up against a small tree. Officer McKinley again asks Mr. Gonzalez for his name.

At around M07:30, after Officer McKinley asks him again what his name is, Mr. Gonzalez responds, "Something Mario, that's it." Mr. Gonzalez looks towards Otis Street and puts his hand in his right shorts pocket. Officer McKinley asks Mr. Gonzalez not to put his hands in his pocket. At around this time, Officer Fisher parks his police vehicle on Otis Street next to the park (F00:17). Mr. Gonzalez then walks towards the baskets, saying, "Well, I guess that's it," and drops the medical mask into the basket.

Officer McKinley responds by saying, "Hold on, so we're going to talk because I am concerned about this open container and everything." At around M07:54, Mr. Gonzalez bends over and takes something from the basket and tries to screw it to the top of the clear bottle in the basket. Also, at around this time, Officer Fisher can be seen walking from his patrol vehicle on Otis Street on the walkway in the small park (F00:40).

At around M08:01, Officer Fisher arrives at the park area to join Officer McKinley and Mr. Gonzalez, while Mr. Gonzalez is talking. Officer McKinley tries to confirm that Mr. Gonzalez's name is "Mario." Mr. Gonzalez responds, "No, sorry, it's not that." Officer McKinley asks, "What is your name then?" Mr. Gonzalez does not respond.

At around M08:35, Officer McKinley says, "Ok, here is the plan. Ok. I got to identify you, so I know who I'm talkin' to. Make sure you don't have any warrants or anything like that, ok? You come up with a plan, let me know you're not going to be drinking in our parks over here. And then we can be on our merry way, ok?" Mr. Gonzalez responds, "Merry way? Merry-go-round?" Officer McKinley asks if Mr. Gonzalez has any "ID" on him and Mr. Gonzalez does not respond or provide identification. Officer McKinley then states, "If you can't do that, then I'm going to have to take you. Ok?"

At around M09:14 (F02:00), Officer Fisher begins to speak to Mr. Gonzalez and says, "Hey sir, we don't want to waste your time. We just want to make sure you are ok. Alright, do you have an ID with you?" Mr. Gonzalez looks at Officer Fisher but does not respond. Officer Fisher asks at around F02:13, "Do you have like a driver's license or anything? So, we just know who we're talking to, that way we can just document that we came out and talked to you. That way we can just, that way we can just write down who we talked to."

At around M09:47 (F02:32), Mr. Gonzalez is speaking lowly when Officer Fisher asks him, "Do you live here in the City of Alameda?" At around M09:51 (F02:35) Mr. Gonzalez can be seen quickly moving his fingers at his sides, and then Mr. Gonzalez puts his left hand in his short's pocket. At around M09:54 (F02:40), Officer Fisher states, "Ok, can you just do me one favor? Yeah, can you just keep your hands out of your pockets for us?" Officer McKinley also states, "Just keep your hands out of your pockets." At around M10:01 (F02:46), Officer McKinley can be seen placing his right hand around his left wrist in a signal, and says, "Let's just," and then repeats this signal of placing his right hand around his left wrist.

At around M10:02, Mr. Gonzalez steps up and stands on a short telephone post in the ground. At around M10:09 (F02:54), Officer McKinley places his hands on Mr. Gonzalez's left arm and Officer Fisher places his hands on Mr. Gonzalez's right arm. Officer Fisher states, "Do me a favor. We're going to stand over here. Hey, come over here. Come over here, we don't want you to fall down, ok?" and they walk Mr. Gonzalez forward away from the post. Mr. Gonzalez pauses and states, "They're getting [unintelligible]. I gotta. I gotta, no, wait, wait, wait. It's, it's, wait, what the heck? Well, it's not that," as he turns to look in the direction of the baskets.

At around M10:25, Officer Fisher asks Mr. Gonzalez to walk with him and says, "There you go. Thank you. Thank you. Appreciate it." Officer Fisher can be seen holding Mr. Gonzalez's by his right wrist and bicep area, with Mr. Gonzalez's arm bent behind his back. Officer McKinley can be seen holding Mr. Gonzalez's left arm, trying to place it behind his back but his arm is straightened out. Officer McKinley states to Mr. Gonzalez, "Just relax. Just relax." Officer Fisher also states, "Hey Mario, please don't do that. Just relax for us, ok?"

At around M10:36 (F03:21), Officer Fisher can be seen holding handcuffs in his right hand, with his left hand still holding Mr. Gonzalez's right wrist behind his back. Mr. Gonzalez can then be seen turning to his right and lifting his right elbow upward quickly and towards Officer Fisher. Officer Fisher responds to this movement by saying, "Hey! Hey, hey," and placing his right hand on Mr. Gonzalez's shoulder. Mr. Gonzalez says to Officer Fisher, "No, it's not that. Sorry." At around F03:27 (M10:40), Officer Fisher says, "Do me a favor Mario. Mario, please don't resist us," as Mr. Gonzalez is in a bent over position and stating, "No, I didn't do nothing. I didn't stole nothing, ok?"

At around M10:43 (F03:28), Mr. Gonzalez is bent over and rotating left towards Officer McKinley with his left arm not behind his back. Officer Fisher states, "Mario, please don't resist us, ok?" Mr. Gonzalez states, "I didn't stole nothing, ok?" Officer Fisher repeats, "Mario, please don't resist us, ok?" Mr. Gonzalez states, "It's not that." Officer Fisher again repeats, "Mario, please do not resist us, ok?"

At around M10:52 (F03:37), Mr. Gonzalez is in a bent over position with Officer Fisher holding his right wrist behind his back but Officer McKinley still attempting to control his left arm, which is straightened out. Officer Fisher states, "Put your arm behind your back please." Officer McKinley also tells Mr. Gonzalez, "Put your hand behind your back, ok?" Officer Fisher repeats, "Mario, put your arm behind your back. Hey, Mario. Mario."

At around M10:57, Officer McKinley can be seen trying to control Mr. Gonzalez's left arm with both of his hands to get Mr. Gonzalez's left arm behind his back but Mr. Gonzalez resists and brings his left arm in front of his body. Officer McKinley says, "That's fine." Mr. Gonzalez says, "There. Holy smokes." Officer McKinley says, "Yeah, we got this. We got this." At around F03:49, Officer Fisher can be seen using his radio and saying, "41, can we get one more unit?"

At M11:07 (F03:52), the officers get Mr. Gonzalez into an upright position but his left arm being held by Officer McKinley is still not behind his back. Mr. Gonzalez states, "So, I didn't try to do that, ok?" Officer Fisher states, "Hey Mario, just put your hand behind your back please." Mr. Gonzalez then brings his left arm from his side upward and to the front of his body while Officer McKinley has his left hand on Mr. Gonzalez's left wrist. Officer McKinley reaches under Mr. Gonzalez's left arm and places it in the wrist area to bring Mr. Gonzales's arm back downward. Mr. Gonzalez says, "Sorry, sorry. There." Officer McKinley has both of his hands on Mr. Gonzalez's left arm which is still in the front of his body by his mid-section. Officer Fisher repeats, "Mario, Mario. Please put your hand behind your back."

At M11:17, Officer McKinley says, "I think we've talked before Mario. This is all coming back to me now." Mr. Gonzalez says, "No, it's not that. No, it's not that. Thank you." Officer McKinley states, "It's ok. Alright. We just got to figure out what's going on, alright. So, we just need your cooperation real quick here." Mr. Gonzalez bent over says, "Oh, no wonder. I got it now."

At M11:30 (F04:16), Officer Fisher states, "Mario, put your hand behind your back, ok? Please. Please put your hand behind your back." At this point, Officer McKinley attempts to bring Mr. Gonzalez's left arm behind his back again, but Mr. Gonzalez brings his arm forward. Officer Fisher repeats, "Mario, put your hand behind your back." Officer McKinley then brings Mr. Gonzalez's left arm towards his back and Mr. Gonzalez keeps his arm straight, but Officer McKinley uses two hands to bend his left arm behind his back. The two officers continue to struggle with Mr. Gonzalez as he is bent over and says, "I didn't do nothing ok."

At M11:45 (F04:29), Officer Fisher states, "Mario, please put your hand behind your back. Please stop resisting us. Don't fight us." Mr. Gonzalez states, "It's not that. It's something else, ok?" At this point, Mr. Gonzalez is standing more upright, and it appears that the officers briefly have both hands behind his back. Officer McKinley's sunglasses fall from his shirt area onto Mr. Gonzalez's back during all of the movements. Officer McKinley says, "You just got to relax." Officer Fisher states, "Please."

At M12:00 (F04:45), Mr. Gonzalez says, "I didn't do nothing." Mr. Gonzalez bends over again and his left hand is no longer behind his back. The officers are struggling with Mr. Gonzalez and while bent over he can be heard saying, "There. Sorry. It's not that. Please. Stop. What the heck?" Officer Fisher states again, "Mario, put your hand behind your back." During this time, Officer McKinley can be heard grunting as he tries to control Mr. Gonzalez's left arm. Mr. Gonzalez has now rotated his body so they are now facing Otis Street and struggling with him.

At M12:21 (F05:06), Mr. Gonzalez's left hand can be seen behind his back with Officer McKinley holding it. Officer McKinley states, "You got it? You good?" Mr. Gonzalez states, "Oh my god. It's not that. It's not that." Mr. Gonzalez then straightens out his left arm bringing down from behind his back and rotates so that he is no longer facing Otis Street. At around F05:18 (M12:31), Officer Fisher states, "I think we might have to put him on the ground." Officer McKinley responds, "What's that? Yeah."

At around M12:34 (F05:19), Mr. Gonzalez states, "Don't do it. Don't do it," while Officer Fisher states, "Mario do me a favor ok? Can you please put your hand behind your back and stop resisting us?" Mr. Gonzalez then states, "Oh, no wonder. There, I got it. Ay, ya, yay." Officer McKinley responds, "What do you have?" Mr. Gonzalez states, "Sorry. No it's not that. No it wasn't that." Officer Fisher asks Officer McKinley, "Ready?" and Officer McKinley responds, "Yeah."

At around M12:47 (F05:32), Officer Fisher brings his left leg forward in front of Mr. Gonzalez and both officers and Mr. Gonzalez move forward and away from the small park. They move towards the driveway area of 802 Oak Street with a brief pause when Mr. Gonzalez states, "Stop. Stop. Stop." Grunting from the officers can be heard and at around M12:56 (F05:42), officers take Mr. Gonzalez to the ground in a wood mulch area next to the driveway of 802 Oak Street.

At around M13:00, while both officers are struggling on top of Mr. Gonzalez's back, Mr. Gonzalez says, "Ay, ya, yay." Officer Fisher's body worn camera does not show as much due to his proximity to Mr. Gonzalez. Officer Fisher can be seen to the right of Mr. Gonzalez's body with his left knee on his lower back with his left foot on the ground, and he states, "Put your hand behind your back." Mr. Gonzalez says, "No it's not that." At M13:08, Officer Fisher has both feet on the driveway pavement as he struggles on Mr. Gonzalez's right side, while Officer McKinley is heard grunting and struggling to gain control of Mr. Gonzalez's left arm. At M13:24, it appears that Officer McKinley has gained control of Mr. Gonzalez's left arm behind his back and Officer Fisher's upper body is across Mr. Gonzalez's upper shoulder and head area with Officer Fisher's left hand under Mr. Gonzalez's right side by his arm. At around F06:05, Officer Fisher states two times, "Put your hand behind your back," as Officer McKinley can be seen controlling Mr. Gonzalez's left arm and hand.

At around M13:29 (F06:14), Officer McKinley asks, "You have his legs?" (to W1). At around M13:33, Officer Fisher repositions his body over to the left side of Mr. Gonzalez's body so that his upper body and arms are above Mr. Gonzalez's right arm. Officer Fisher's lower body covers Mr. Gonzalez's head area during this movement and Mr. Gonzalez can be heard saying, "Hey, hey, hey. [unintelligible]." Officer McKinley asks, "You able to get his arm out?" At around M13:45, Officer Fisher shifts his body again where his lower body is on top of Mr. Gonzalez's head area and his upper body is over Mr. Gonzalez's right side. Mr. Gonzalez can be heard speaking during this movement, but it is unclear what he is saying.

At around M13:45, Officer McKinley can be seen holding handcuffs in his right hand. Officer Fisher states, "Mario, put your hand behind your back." Mr. Gonzalez says, "Hello." Someone, perhaps W1, can be heard saying, "Relax." At M13:52 (F06:39), Officer Fisher quickly shifts his body from Mr. Gonzalez's left shoulder area to his right shoulder area, with his lower body off of Mr. Gonzalez's body and on the driveway pavement. Mr. Gonzalez says, "Hey. Hey. There. I'm so sorry." Officer Fisher places his right arm across Mr. Gonzalez's back with his upper body positioned to Mr. Gonzalez's right side. At M14:05, Officer Fisher is using his right arm and upper body across Mr.

Gonzalez's back to gain control and asks Officer McKinley, "Can you give me some space?" Officer McKinley responds, "Yup."

At around M14:11 (F06:55) Office Fisher has a hold of Mr. Gonzalez's right arm behind his back using both his right hand and his left arm. Officer McKinley attempts to place handcuffs on Mr. Gonzalez and can be heard grunting and breathing heavily. Mr. Gonzalez can be heard speaking in Spanish and laughing. At M14:19, clicking of handcuffs can be heard and Officer McKinley states, "Ok, got it." At around M14:22, Officer McKinley radios something unintelligible. Officer Fisher continues to hold Mr. Gonzalez's arm in the same manner. Mr. Gonzalez can be heard grunting and Officer Fisher says, "Ok, Mario, we need you to stop resisting us, ok?"

At around M14:30, Officer McKinley can be seen using a key to lock the handcuffs. At around M14:34, Officer Fisher asks, "Good?" Officer McKinley puts the key in his chest pocket and replies, "Yup." During this application of the handcuffs, Officer Fisher's legs appear to the right of Mr. Gonzalez's body on the wood chip area with Mr. Gonzalez right side slightly off the ground.

At around M14:37, Officer McKinley asks, "Do you think we're going to have to 'Wrap' him?" As the officer continue to hold Mr. Gonzalez, at around M14:44, he grunts and says, "Oh my. Are you serious?" At around M14:50, Officer McKinley asks, "Alright, what are we going to do? Keep him pinned down until the 'Wrap' comes?" Officer Fisher replies, "Yeah."

At M15:00, Office Fisher says, "Hey Mario," and then he changes his position, pushing down on Mr. Gonzalez's right shoulder area with his hands. Officer McKinley's left arm is across Mr. Gonzalez's back, putting pressure on to keep the right shoulder down. At around M15:09, Officer Fisher places his right knee onto Mr. Gonzalez's right shoulder, while Officer McKinley still has his left arm across Mr. Gonzalez's back. Mr. Gonzalez grunts and says, "Hey!" Officer McKinley says, "It's ok, Mario." At this point, Mr. Gonzalez grunts and says, "Oh my gosh!" Officer McKinley says, "We're going to take care of you, ok?" Mr. Gonzalez says, "Don't!" Officer McKinley repeats, "We're going to take care of you."

At around M15:21 (F08:06), Mr. Gonzalez turns his head to his right and says, "There, thank you." Mr. Gonzalez then grunts. Around this time, Officer Fisher right toe portion of his boot can be seen coming off the ground several times and he states, "He's lifting my whole body weight up." W1 can also be seen at Mr. Gonzalez's leg area, holding his leg with his hands. Mr. Gonzalez grunts and states, "There I got it. Thank you! Thank you." Officer McKinley asks, "You good?"

At around M15:35, while holding down Mr. Gonzalez's left side as he struggles and grunts, Officer McKinley states, "It's ok. It's ok. What's your name?" Mr. Gonzalez responds, "Mario." Officer McKinley states, "Mario. What's your last name, Mario?" Mr. Gonzalez responds, "Alberto." Officer McKinley states, "Alberto. What's your birthdate? We got you. It's ok. It's alright. We're ok." Mr. Gonzalez's head is turned to his left during this exchange with Officer McKinley. Mr. Gonzalez lets out several high-pitched groaning sounds

At around M15:58 (L00:33), Officer Leahy arrives on scene and W1 can be seen laying on Mr. Gonzalez's legs. Officer Fisher can be seen on Mr. Gonzalez's right side in a crouching position with his left leg bent and his left foot flat on the driveway, and his right knee bent and his right toe on the pavement. At around M16:01 (L0:35), Officer Fisher still has his right knee on Mr. Gonzalez's right shoulder, and he is holding Mr. Gonzalez's hands. Officer Leahy tells W1 that, "You can go and get

up [W1]. I got him,” and appears to move in position to control Mr. Gonzalez’s legs. At around L00:37, as W1 moves away from Mr. Gonzalez’s legs, Officer Fisher can be heard saying, “Watch his ribs.” Officer Leahy responds, “Yup.” Officer Leahy grabs Mr. Gonzalez’s left leg with his left hand and you can see this leg moving on the woodchips as Mr. Gonzalez grunts. At this time, Officer McKinley can be seen on Mr. Gonzalez’s left side with his legs on the ground in the woodchips and his elbow on Mr. Gonzalez’s bent elbow.

At around M16:15 (L00:50), Officer McKinley asks Mr. Gonzalez what his birthdate is. Officer Fisher can be heard asking Officer Leahy, “Can you ‘figure-four’ him?” Officer Leahy responds, “I’m not going to be able to. I don’t want to lose what I got.” Mr. Gonzalez can then be heard grunting very loudly. At around M16:31, Officer Fisher’s right arm can be seen on Mr. Gonzalez’s back area and his knee still on Mr. Gonzalez’s right shoulder. Mr. Gonzalez grunts and says, “I’m sorry.” Officer McKinley says, “Mario, just talk to me, ok? What’s your birthday Mario?” Mr. Gonzalez says again, “I’m sorry.” Officer McKinley responds, “It’s ok. I forgive you.” Mr. Gonzalez responds with a year. Officer McKinley states, “1984. What month?” Mr. Gonzalez responds again and can be seen moving during this time even when being held by the officers.

At around M17:03, Mr. Gonzalez states, “I didn’t do drugs.” Officer McKinley responds, “I just think you had too much to drink today. That’s all. Ok?” Mr. Gonzalez grunts and says something that is unintelligible from the video. At around M17:15, Mr. Gonzalez continues to grunt and move his body on the ground. Officer Fisher, still in the position with his right knee on Mr. Gonzalez’s right shoulder and holding his hands with both of his hands, says, “Mario, calm down please.” At around M17:19 (L01:53), Officer Leahy states, “Stop kicking, Mario. Stop kicking,” and his sneaker can be seen moving on the ground. Mr. Gonzalez can be heard grunting and can be seen moving and jerking his body, causing the officers to move on top of him.

At around 17:32 (L02:07), Officer Fisher asks, “Do you think we can roll him on his side?” Officer Leahy responds, “I don’t want to lose what I got man.” Officer Fisher responds, “Ok.” At around M17:39 (L02:13), Officer Leahy can be heard asking, “Can you grab the wrap out of 111?”

At around M17:45, Mr. Gonzalez can be heard grunting and Officer Fisher asks him, “Mario, just please stop fighting us.” Officer McKinley says, “It’s alright.”

At around M17:49 (L:02:24), Officer Fisher places his hand on Mr. Gonzalez’s back and states, “We have no weight on his chest.” In response, Officer McKinley appears to stand up and begins to change his positioning towards and onto Mr. Gonzalez’s back. Officer Fisher immediately states, “No, no, no. No weight. No weight. No weight.” Officer McKinley repositions himself back on Mr. Gonzalez’s left side.

At around M17:58, as Officer McKinley returns to Mr. Gonzalez’s left side, he notices that he is not responsive and he begins to turn Mr. Gonzalez over, stating, “He’s gone nonresponsive.” At around M18:19 the officers then ask if he’s got a pulse and begin checking for a pulse. At around M18:24, Officer McKinley checks Mr. Gonzalez’s neck for a pulse and they turn Mr. Gonzalez onto his back. At around M18:30, Officer Fisher says, “He’s still holding his head up.” At around M18:40, Officer McKinley states, “No pulse, I’m going to start CPR.” Officer Fisher confirms that there is no pulse and at around M18:45, Officer McKinley starts CPR. Within five minutes Alameda Fire Department arrives for additional medical support.

OFFICER STATEMENTS

Officer Eric McKinley

The CI Team participated in the statement taken of Officer Eric McKinley on April 26, 2021 at the Alameda Police Department ("APD"). At the time of the incident on April 19, 2021, Officer McKinley had been a police officer with the APD for two years and nine months.

During the incident, Officer McKinley was dressed in full APD uniform. Officer McKinley possessed a SIG-226 duty pistol in a holster on his right hip as well as a Taser; a can of pepper spray; an expandable asp baton; a flashlight; and two sets of handcuffs. Officer McKinley stated that he was 6 foot, 3 inches tall and weighed 180 pounds with his police gear, 150 pounds without the gear.

Officer McKinley stated that on April 19, 2021, he was dispatched to a report of a male in front of a residence on Oak Street who was talking to himself and possibly having a psychiatric emergency. A brief description was also provided of the individual. Officer McKinley stated that the dispatch was based on a call received from a citizen. Officer McKinley drove his police vehicle to the south end of the 800 block of Oak Street, and he observed Mr. Gonzalez in the park with his back towards him. Officer McKinley stated that he parked, got out and quietly closed his police car door so that he could take the opportunity, with Mr. Gonzalez's back turned, to observe Mr. Gonzalez in the state he was in before interacting with him.

Officer McKinley observed Mr. Gonzalez pacing around, holding a black comb in his left hand, combing his hair but he had a cap on, and he was talking to himself. Officer McKinley saw next to Mr. Gonzalez were two grey hand baskets with the words "Walgreens" on the side. In the basket closest to Mr. Gonzalez, Officer McKinley observed two alcohol bottles, one of them had a store security cap on it and it was a brown liquor. He recognized the store security cap as a cap which prevents the bottle from being opened in the store and activates store alarms. Officer McKinley noticed the other bottle was a one-liter plastic bottle of vodka that was open with approximately two cups of liquid missing from the bottle. Based upon his initial observations, Officer McKinley stated that his initial thought was that Mr. Gonzalez had possibly committed a shoplifting of the alcohol bottles, possibly from the Walgreens across the street. Officer McKinley also stated that other potential crimes he was thinking about was the open container in the park, and after observing Mr. Gonzalez's behavior, being under the influence of alcohol in a way that made it unsafe to care for himself.

Officer McKinley stated that he then contacted Mr. Gonzalez and let him know that someone called and said he was talking to himself, so he was checking on him. He stated that he tried to have a conversation with him and asked him if he was ok; if he needed anything; and establish what was going on with him. Officer McKinley immediately noticed that Mr. Gonzalez was having trouble connecting sentences. Mr. Gonzalez could not complete a sentence such that he would start a sentence and then change whatever he was talking about to a different subject. Mr. Gonzalez was being cooperative and did not seem overly aggressive according to Officer McKinley.

Officer McKinley stated he noticed that Mr. Gonzalez was fondling pieces of black and grey plastic in his right hand and the pieces of plastic looked like they were from another bottle security cap. Officer McKinley stated that his understanding of the situation was that Mr. Gonzalez possibly stole these bottles from Walgreens, forcibly removed the bottle security cap, and consumed the two cups of alcohol that was missing from the bottle.

Officer McKinley radioed to his partner, Officer Fisher, who was on his way to the scene to stop at Walgreens across the street from the park where he and Mr. Gonzalez were speaking, to see if the store had any walkouts matching Mr. Gonzalez's description. Officer Fisher reported back to Officer McKinley that the store had no known loss at the time. Officer McKinley stated that he had every intention of continuing to investigate the potential shoplifting of the alcohol bottles after Mr. Gonzalez had been safely detained. Officer McKinley stated that he intended to ask Mr. Gonzalez if there was a receipt, where the alcohol came from, and check other Walgreens to see if they had stolen alcohol.

Officer McKinley stated that Officer Fisher parked on Otis Street on the other side of the small park and came over to assist Officer McKinley. Officer McKinley noticed that W1 was in the front passenger seat of Officer Fisher's patrol vehicle.

Officer McKinley continued to try and identify Mr. Gonzalez and determine if he was safe to be on his own. He asked Mr. Gonzalez if he felt like hurting himself or anyone else. Office McKinley was also trying to determine if Mr. Gonzalez was under the influence of alcohol and able to care for his own safety. By this time, he had noticed an odor of alcohol on his breath, as well as bloodshot watery eyes. At this point, Officer McKinley stated that if Mr. Gonzalez was able to identify himself to him and he could check him for wants or warrants, that would help him determine if he was able to care for himself. He told Mr. Gonzalez that he wanted to confirm who he was, that he was "clear," and then he could send him on his way.

Officer McKinley stated that Mr. Gonzalez told him that his name was "Mario," but could not provide any more information than that. Officer McKinley did not characterize Mr. Gonzalez as being uncooperative but just that he did not understand what he was asking him, his train of thought would change in the middle of a sentence. He asked Mr. Gonzalez for an "ID," and Mr. Gonzalez responded with a question, like he did not understand the question. Officer McKinley stated that for most of his interactions with him, Mr. Gonzalez was verbally cooperative – he did not seem to be intentionally uncooperative verbally. Officer McKinley stated however, physically, Mr. Gonzalez was absolutely resisting with all of his force.

Officer McKinley stated that he made the determination that Mr. Gonzalez was not going to be able to identify himself because he was the under the influence of alcohol and he was not able to care for his own safety in the park. Office McKinley further stated that Mr. Gonzalez was drinking in a public park with an open container, and he would likely continue drinking alcohol if Officer McKinley left the scene. He did not believe it was safe to leave Mr. Gonzalez on his own.

Officer McKinley stated that when Office Fisher arrived at the scene and was walking from his patrol car, Mr. Gonzalez noticed him approaching and seemed to get a little bit nervous. When he observed Officer Fisher approaching, Mr. Gonzalez stated something to the effect of, "I'll go now." Mr. Gonzalez then walked over to the basket with the alcohol bottles in it and tried to put this broken piece of cap onto the open vodka bottle. Officer McKinley could see that the cap was broken and would not go on the bottle, but Mr. Gonzalez kept trying to put the broken cap on the bottle.

When he arrived, Officer Fisher also tried to get Mr. Gonzalez's cooperation and name, and according to Officer McKinley, Officer Fisher did so calmly, with a calm voice. Officer McKinley stated that again, Mr. Gonzalez did not seem to understand what he was being asked. Mr. Gonzalez kept trying to put his hands in his jacket pockets, but he couldn't because his jacket was inside out and he didn't seem

to recognize this. During this time when Officer Fisher was speaking with him, Mr. Gonzalez started to move around the area a little bit more, and Mr. Gonzalez tried to put his hands in his pocket. Officer McKinley stated that Mr. Gonzalez put his hands into the pockets of his shorts. Officer McKinley stated that he and Officer Fisher asked Mr. Gonzalez to keep his hands out of his pockets but it appeared that Mr. Gonzalez did not understand what he was being asked to do.

At this point, Officer McKinley became uncomfortable allowing Mr. Gonzalez to move around freely and at times turning away from him. Mr. Gonzalez had not been searched, his jacket was covering his waistband, and Officer McKinley did not know what Mr. Gonzalez had on his person. Officer McKinley stated that at this point he did not know if Mr. Gonzalez had a weapon or not. Officer McKinley signaled to Officer Fisher that he wanted to put Mr. Gonzalez in handcuffs by grabbing his own left wrist with his right hand. Both officers walked up to Mr. Gonzalez on either side of him, with Officer McKinley grabbing Mr. Gonzalez's left wrist and Officer Fisher grabbing his right arm.

Officer Fisher was able to quickly gain a control hold by bringing Mr. Gonzalez's right arm behind his back. Officer McKinley stated that as soon as he grabbed Mr. Gonzalez's left arm, Mr. Gonzalez stiffened it and kept it straight down by his side and resisted as he tried to bring Mr. Gonzalez's arm behind his back. Officer Fisher began giving orders to Mr. Gonzalez to put his arms behind his back as Officer McKinley kept trying to put his left arm behind his back. He stated that he was successful bringing his left arm back a few times, but Mr. Gonzalez was able to wrestles his arm back in front towards the center of his jacket to open it or towards his waistband. Officer McKinley's goal was to keep Mr. Gonzalez from accessing anything he had on him, so he kept trying to bring his arm back behind him. Officer McKinley was concerned that Mr. Gonzalez was unsearched and could gain access to a weapon. Officer McKinley got his left arm behind him several times, but Mr. Gonzalez brought it forward again each time. Officer McKinley described this back and forth, the whole time he was holding his wrist, trying to get Mr. Gonzalez in a control hold so that they could apply the handcuffs. He estimated that they were standing with Mr. Gonzalez for two to three minutes attempting to handcuff him.

Officer McKinley stated that when he grabbed Mr. Gonzalez's arm, he recalled a previous incident with Mr. Gonzalez when he had resisted in the same manner by stiffening his arm and trying to bring his hands in front of him so they could not bring his hands behind his back. The position he was in reminded Officer McKinley of the previous incident and he realized he would not be able to control Mr. Gonzalez while standing up because of his strength and determination to resist. Officer McKinley stated that he then tried to have a conversation with Mr. Gonzalez telling him that he remembered him from the prior incident with the intention of gaining his cooperation or distracting him from resisting. He stated that he said something to the effect of, "Hey, you know, I remember you. We have met before." Officer McKinley stated that his attempt to calm him down didn't seem to have any effect on Mr. Gonzalez.

Officer McKinley stated that it appeared that Officer Fisher also realized that they would not be able to get the handcuffs on Mr. Gonzalez while standing up, and Officer Fisher said, "Let's take him to the ground," or something similar. Officer McKinley stated that he was concerned about hurting Mr. Gonzalez by taking him to the ground in their current position because they were near the curb. He took a step or two forward so that the three of them rotated and were all facing north in line with the sidewalk. Officer McKinley stated that he and Officer Fisher had Mr. Gonzalez's arms and they each placed their inside legs in front of Mr. Gonzalez's legs to try and push him over their feet to lower him to the ground. Officer McKinley stated that Mr. Gonzalez stepped over their feet, and that this happened

several times. Eventually, they ended up by a driveway and they were able to get him to the ground by using more body weight to overcome Mr. Gonzalez being able to stay standing. They landed in mulch-covered area of the driveway. Officer McKinley stated that taking Mr. Gonzalez to the ground was the best option to detain him at the time because any other force option would have allowed him to potentially gain access to a weapon.

Officer McKinley stated that Mr. Gonzalez was trying to roll over and also get his left hand back under his front. Officer McKinley straddled Mr. Gonzalez, climbed over him and placed his hips on Mr. Gonzalez to use his body weight to keep him from being able to roll over. Officer McKinley stated that Mr. Gonzalez was using so much force that he was able to lift Officer McKinley off the ground two or three times. Officer McKinley could not determine whether it was Mr. Gonzalez lifting straight up or turning one hip, but he was lifted several inches from his position while he was struggling. Officer McKinley stated that he had to use his feet to maintain his balance when Mr. Gonzalez did this because his knees were off the ground. Officer McKinley was able to get Mr. Gonzalez's left arm behind his back. At the same time, Officer Fisher was struggling with Mr. Gonzalez, who was able to keep his right hand in front of him.

Officer Fisher was trying to get Mr. Gonzalez's right arm behind his back and Officer McKinley stated that he was waiting to take his handcuffs out to avoid a situation where they had one cuff on but did not have control of the other hand. Officer McKinley stated that he considered using his Taser to "drive stun" Mr. Gonzalez to gain compliance or distract him but based on how much he was resisting and his body composition, he thought it would not be an effective tactic. Additionally, Officer McKinley stated he would not be able to remove the cartridge from his Taser with one hand while holding Mr. Gonzalez with his other hand.

Officer McKinley stated that Officer Fisher was able to start getting control of Mr. Gonzalez's hand. At this point, Officer McKinley stated that W1 approached from Officer Fisher's patrol car. Officer McKinley thought that W1 noticed that they were struggling with Mr. Gonzalez. Officer McKinley asked W1 to control Mr. Gonzalez's legs because he was using his legs to try and roll over. Officer McKinley stated that during this whole time, Mr. Gonzalez was talking to them or to himself about whatever he was talking about. Due to Mr. Gonzalez's body shape and his chest being so large, his face was lifted off of the ground.

Officer McKinley stated that with W1 controlling Mr. Gonzalez's legs, Officer Fisher was able to bring his right hand back. Officer McKinley removed his handcuffs from his belt and applied one cuff to Mr. Gonzalez's left wrist. He was then able to pull the left wrist over and apply the cuff to Mr. Gonzalez's right wrist and double-locked them, checking for fit. At this point, Officer McKinley stated that he immediately climbed off Mr. Gonzalez and held his left elbow down so that he could not roll over. Officer McKinley stated that Mr. Gonzalez continued to try to roll over at this point but with W1 on his feet and with he and Officer Fisher on his elbows, they were able to keep him from rolling over.

Officer McKinley stated that while on the ground, he initially had to hold Mr. Gonzalez's shoulders down to keep him from rolling over and he put some weight on his shoulder with his hand or forearm. Once he was detained in handcuffs, Mr. Gonzalez's legs were controlled by W1 or Officer Leahy. Officer McKinley stated that he moved off Mr. Gonzalez's body and he was able to control his elbow and shoulder from the side by kneeling on the ground next to him and holding his elbow. While handcuffed, Officer McKinley stated that he put pressure on Mr. Gonzalez by putting his elbow in the crook of Mr. Gonzalez's elbow and his hand on his shoulder. Officer McKinley stated that at this time

he was putting twenty percent of his body weight on Mr. Gonzalez to hold him down and keep him from rolling over. He repositioned himself so he could talk to Mr. Gonzalez.

While waiting for cover officers to arrive, Officer McKinley stated that he asked Officer Fisher what the plan was. Officer McKinley stated that he wanted to confirm with Officer Fisher that they agreed that Mr. Gonzalez would be going into a "Wrap" because of how much he was resisting and struggling, they would not be able to transport him safely if he wasn't in a "Wrap." They agreed to go with that plan and Officer McKinley believed that when Officer Cameron Leahy arrived later to the scene, he asked him to get the "Wrap" out of his patrol car.

Officer McKinley was kneeling on the ground next to Mr. Gonzalez and he brought his face down to him to try and talk to him and calm him down. Officer McKinley stated that he wanted to just talk to him reassuringly, telling him everything was okay. During this time, Mr. Gonzalez's face was turned to his left so that they were looking at each other from 12 to 14 inches away. Officer McKinley stated that when Mr. Gonzalez turned his head forward towards the ground, he still had room to breathe, and he was still talking while facing the ground. Officer McKinley tried to calm him down and he asked him his name again. Officer McKinley believed that Mr. Gonzalez responded with Mario Arturo. He then asked Mr. Gonzalez his birthdate and he believed the response was 1984. Officer McKinley asked him, what month he was born, and Mr. Gonzalez responded 1995.

Officer McKinley stated that at this point, Officer Cameron Leahy arrived and relieved W1 by controlling Mr. Gonzalez's legs. Officer McKinley continued to talk to Mr. Gonzalez. Mr. Gonzalez turned his face forward so that he was facing the ground. Mr. Gonzalez's face was off the ground, but as he was talking, woodchips were sticking to the saliva on his mouth and lips. Mr. Gonzalez stated several times, "I'm sorry." Officer McKinley stated that he was trying to reassure Mr. Gonzalez and said to him, "It's okay, I forgive you. I think you just had a little too much to drink."

Officer McKinley stated that at one point while Mr. Gonzalez was in handcuffs and he was off to his side, Officer Fisher said something to the effect of, "There's no weight on his back." At the time, because Mr. Gonzalez was still trying to roll over and used a lot of force to do so, Officer McKinley stated that they were still using weight to hold his arms down. Officer McKinley thought that Officer Fisher was requesting that he place some weight on Mr. Gonzalez's back to prevent him from rolling over. Officer McKinley lifted his right knee up and briefly placed his right shin on Mr. Gonzalez's lower left ribcage. Officer McKinley estimated that he put maybe ten to fifteen percent of his bodyweight in this area for three to four seconds. Officer McKinley stated that Officer Fisher immediately said, "No, no weight on his back," meaning do not put any weight on Mr. Gonzalez's back. Officer McKinley took his leg back off again and maintained his position at his side where he had been holding Mr. Gonzalez's arm and elbow down.

Officer McKinley stated that at this point, Mr. Gonzalez stopped moving around and stopped talking. It appeared that he lost consciousness and Officer McKinley was watching Mr. Gonzalez's face when this happened. Officer McKinley immediately told Officer Fisher and Officer Leahy that Mr. Gonzalez was unresponsive. He then rolled Mr. Gonzalez onto his right side, checked for a pulse, but could not find one. Officer McKinley stated that he ripped open Mr. Gonzalez's jacket because it was zipped closed, and he wanted to make sure that he was able to find a pulse and that it was not restricting anything. He checked again but he could not find a pulse. Officer McKinley stated that he immediately rolled Mr. Gonzalez on his back and began chest compressions. Officer Fisher moved around to Mr. Gonzalez's head area and maintained his airway.

Officer McKinley stated that he continued chest compressions until he was relieved by another officer. With regards to medical aid administered to Mr. Gonzalez, Officer McKinley began chest compressions as soon as he noticed Mr. Gonzalez was unresponsive while Officer Fisher maintained Mr. Gonzalez's airway. He administered chest compressions until he was relieved by other personnel. He also provided Narcan to Officer Leahy to administer to Mr. Gonzalez. Officer McKinley that spoke briefly with a sergeant about what had happened. He was photographed at the scene and then came back to the police department.

With regards to Mr. Gonzalez's actions which caused Officer McKinley to use force to detain or arrest him, Officer McKinley stated that several actions caused his use of force. These included Mr. Gonzalez keeping his arm straight and stiff at his side and trying to pull his arm towards his front. When they attempted to bring Mr. Gonzalez to the ground, Mr. Gonzalez stepped over their feet and continued to walk away from the officers as they tried to bring him to the ground. Once on the ground, Mr. Gonzalez kept trying to bring his arms back towards his front and he also tried to roll over onto his side.

Officer McKinley stated he used the tactics he was trained to use during the incident to gain Mr. Gonzalez's cooperation. Initially, he just tried to talk to Mr. Gonzalez to try and gain his cooperation verbally. When this was not successful, they gave Mr. Gonzalez orders to put his hands behind his back and used physical force and wrist locks to try to put his arms behind his back. Officer McKinley was not able to get his arm behind his back because Mr. Gonzalez was straightening his arm and pulling it forward. In response to this, Officer McKinley and Officer Fisher decided to bring Mr. Gonzalez to the ground where he placed Mr. Gonzalez in a rear wrist lock and applied the handcuffs.

Officer McKinley stated that he considered using different force options during the incident with Mr. Gonzalez. Officer McKinley considered and was planning to use the "Wrap" during the incident because it is a device that would be placed over a detained person's torso and legs, preventing the detained person from being able to move around and potentially hurt someone.

Officer McKinley considered using his baton on one of Mr. Gonzalez's pressure points to gain compliance but the risk of him using one of his hands to manipulate that would cause him to lose control of Mr. Gonzalez's hand. Officer McKinley also doubted the effectiveness on Mr. Gonzalez because he appeared disconnected from reality, which made Officer McKinley doubt that pain would gain any compliance. Officer McKinley considered using physical blows with parts of his body, but he did not have any space to land any blows to Mr. Gonzalez's head. Officer McKinley considered applying blows to other parts of Mr. Gonzalez's body but because of his physique, he did not think it would be effective.

Officer McKinley stated that he also considered using a Taser, but he did not believe he would be able to manipulate the Taser safely while still maintaining control of Mr. Gonzalez's hand. Officer McKinley did not choose to use any chemical agents because of his proximity to Mr. Gonzalez. Officer McKinley and Officer Fisher were so close to him that the chemical agent would have affected all three of them and would have caused unnecessary difficulty detaining Mr. Gonzalez.

Officer McKinley stated that he tried to use de-escalation techniques throughout his interactions with Mr. Gonzalez to gain his cooperation. When he first contacted him, he tried to remain friendly to keep him calm. Officer McKinley did not want Mr. Gonzalez to get worked up about a police officer being present so upon initial contact he told him he was just making sure he was ok, and he was checking on

him. When he had Mr. Gonzalez's wrist and they were standing, Officer McKinley again tried to calm him down and reassure him by stating that he remembered meeting him before and that it was going to be ok. Officer McKinley tried to keep his voice as calm and reassuring as possible during the interaction. Officer McKinley also considered taking Mr. Gonzalez down to the ground as a de-escalation technique because the officers lengthy struggle to detain him while standing created the opportunity for someone to get hurt.

Officer McKinley stated he was a member of the Critical Negotiation Team ("CNT") which provided him with training on gaining compliance verbally, through communication and not by force. Officer McKinley stated that this principle of gaining compliance verbally is one he uses with every call he goes to because he doesn't want anyone to get hurt. Consistent with his CNT training and defensive tactics training, Officer McKinley stated that he intended to maintain a calm demeanor so that he could calm Mr. Gonzalez down or gain his compliance. He stated that sometimes command presence and a raised voice is required in a situation but not this incident. Officer McKinley stated that during the incident he only raised his voice to overcome the sound of the struggling.

Officer McKinley stated that based on his observations, he couldn't conclude completely that Mr. Gonzalez talking to himself was due solely to a mental health issue. Officer McKinley also weighed whether Mr. Gonzalez's apparent intoxication was a factor in Mr. Gonzalez talking to himself. Officer McKinley stated that there is an option to contact the Alameda Mobile Crisis Response Team but only if someone is cooperative and not a danger to others. He determined that this option was not appropriate because Mr. Gonzalez's intoxication level prevented him from being able to cooperate with them.

Officer McKinley stated that after the handcuffs were applied, they decided to hold Mr. Gonzalez until they could get a "Wrap" because he had been so uncooperative and physically resistant. They were concerned that he would continue to resist and potentially hurt officers or himself by kicking around and throwing his body around, especially if he was able to get to his feet. Officer McKinley also did not believe that they would be able to walk him to a patrol car based on his conduct, so the "Wrap" provided handles to carry him.

With regards to whether Officer McKinley believed there was ever an option to stop holding Mr. Gonzalez down once he was handcuffs, he stated that because he was rolling around and resisting so much, he was concerned that if they let him go, he would attempt to escape or stand up and fall on his face. Additionally, Officer McKinley stated that Officer Leahy expressed that he didn't want to lose the position he had on his legs when Officer Fisher asked if they could roll Mr. Gonzalez on his side. This conveyed to Officer McKinley that if they repositioned Mr. Gonzalez, he would be kicking around and that they would not be able to safely control his legs again.

Officer McKinley confirmed that from the moment he put his hands on Mr. Gonzalez while standing to the point he became unresponsive, Mr. Gonzalez was resisting the entire time.

Officer James Fisher

The CI Team participated in the statement taken of Officer James Fisher on April 26, 2021 at the Alameda Police Department. At the time of the incident on April 19, 2021, Officer Fisher had been a police officer with the APD for approximately ten and a half years.

On the date in question, Officer Fisher was in full APD uniform and was travelling in a fully marked APD patrol SUV. In his vehicle, he was accompanied by a rider, W1. According to Officer Fisher, W1 was an APD jailor for a long time, and was currently an APD parking technician. W1 was not working on this date.

Officer Fisher stated that on April 19, 2021, he received a dispatch to go to 802 Oak Street to cover another officer who was investigating a suspicious person, possibly under the influence and yelling. As he drove to that location, Officer Fisher was redirected by the officer on scene to the Walgreens near Park Street and Otis Drive to see if there were any recent thefts at the store. Officer Fisher stated that the officer provided a description of the theft suspect as a Hispanic male, about 5'5", weighing about 250 pounds. Officer Fisher stated that he went into Walgreens and asked two store employees whether they had any recent thefts or merchandise stolen by anyone matching the provided description. Officer Fisher was told no by the employees, and he conveyed this information over police radio to the officer on scene. Officer Fisher then left Walgreens and drove to the scene, parking his police vehicle on Otis Drive, next to the park where he saw Officer McKinley.

Officer Fisher stated that he activated his body worn camera and walked on the walking path through the park towards Officer McKinley. As he approached, he stated that he saw Officer McKinley talking to an individual and he noticed two handbaskets, with the one on the left-hand side from his view containing two large liquor bottles. Officer Fisher stated that as he walked up, he saw the individual, Mr. Gonzalez, who matched the description given on the radio, screwing on the cap to a liquor bottle.

At this point, Officer Fisher stated that he was acting solely as a cover officer for Officer McKinley and that he stood by to let him handle the call, without interjecting. Officer Fisher observed that Mr. Gonzalez was talking incoherently, and that he was really off balance, really unsteady, and he was swaying. At one point, Mr. Gonzalez swayed backwards into a small pine tree that was behind him. Officer Fisher stated that based on his observations, he thought to himself, "Ok, I'm seeing large quantities of alcohol. This guy is really not making any sense. He's very unsteady. He's not answering any questions. He's, he looks pretty intoxicated."

Officer Fisher stated that he observed Officer McKinley continue to talk to Mr. Gonzalez, asking his name and trying to get information from him, but he was not really responding. Officer Fisher stated that Mr. Gonzalez was being completely uncooperative, not saying anything but mumbling or saying things incoherently. He stated that Officer McKinley was communicating to Mr. Gonzalez that he was just trying to get his name and date of birth so he can check to make sure he didn't have warrants or anything that needed to be taken care of. Officer Fisher stated that he interjected at some point to convey that they didn't want to waste his time, they just needed his information to do their job and they'd be on their way. He did not receive a response from Mr. Gonzalez.

With regards to his tone in talking to Mr. Gonzalez, Officer Fisher stated that he was very low key, very calm. He did not recall any verbal aggression towards Mr. Gonzalez and he was being very polite. It did seem to Officer Fisher that Mr. Gonzalez's responses were unrelated to the questions, and he was going completely off topic with random responses.

While Officer McKinley was talking to Mr. Gonzalez, Officer Fisher stated that at one point Mr. Gonzalez put his left hand in his pocket and both he and Officer McKinley asked him to take his hand out of the pocket. Officer Fisher stated that Mr. Gonzalez placing his hand in his pocket made him feel uneasy because he believed that Officer McKinley would have waited for his arrival before detaining

or pat searching Mr. Gonzalez, and therefore, he didn't believe that at that point, Mr. Gonzalez had been searched and he didn't know if he had any weapons.

Officer Fisher stated that shortly after this, Officer McKinley gave him a non-verbal, hand gesture, indicating that Mr. Gonzalez needed to be detained in handcuffs. Officer Fisher stated that he was completely supportive of Officer McKinley on the decision to detain. At this point, Officer Fisher stated he approached Mr. Gonzalez simultaneously with Officer McKinley. He grabbed Mr. Gonzalez's right arm and placed it into a rear wrist lock. Officer Fisher stated at that point a struggle began.

Officer Fisher stated that he did not want to lose control of Mr. Gonzalez's right arm, so he looked to make sure he had a proper grip on his right triceps area, wrist, and hand. He stated that he felt like he had a very secure rear wrist lock, but the struggle continued as Mr. Gonzalez was very powerful. Officer Fisher described Mr. Gonzalez movement as not jerking, but his natural strength was such that Officer Fisher was holding on while Mr. Gonzalez was dictating where they went.

Officer Fisher described holding Mr. Gonzalez's arm in a control hold like holding a slow-moving hydraulic piston in one spot. Officer Fisher did everything he could to limit Mr. Gonzalez's movement, but he was dictating where they went. He stated that his arms were exhausted from trying to hold this rear wrist lock. Officer Fisher stated it was a very long, strenuous, prolonged struggle, and it was taking a lot longer than a normal detention or handcuffing would take. Officer Fisher estimated they were standing and struggling with Mr. Gonzalez for approximately three or four minutes, and that placing someone who was not resisting into handcuffs would take on average ten to fifteen seconds.

Additionally, Officer Fisher stated that he continued to command Mr. Gonzalez, "Please, put your hands behind your back." He stated that he repeated this command multiple times in a very polite manner. Officer Fisher stated that he believed Mr. Gonzalez's conduct indicated that he was clearly trying to resist being arrested, he didn't want to go to jail, and he was willing to resist two officers as long as he could in an attempt to free himself.

At one point, Officer Fisher pulled out his handcuffs in his right hand to get ready to place him in handcuffs, but he noticed that Officer McKinley had not gotten Mr. Gonzalez's left arm behind his back yet. Officer Fisher noticed that Officer McKinley did not have the left arm, in a rear wrist lock or any type of control hold. Officer Fisher described Mr. Gonzalez's left arm as extended out in an arm bar fashion.

Officer Fisher stated that he continued to control Mr. Gonzalez's right arm with the rear wrist lock, while holding his handcuffs, as the struggle continued. Officer Fisher stated that the one thing he remembered was how powerful Mr. Gonzalez was and that he felt like if at any given time he would lose grasp, Mr. Gonzalez could just swing his arm wildly and if hit him in the right spot, he would probably get knocked out. As the struggle continued, at some point Officer Fisher stated that he observed that Officer McKinley was still unable to get Mr. Gonzalez's left arm behind his back into a control hold, and he remembered saying, "This isn't working," and that they were going to have to take him to the ground to gain some sort of control of him.

At this point, Officer Fisher lost his handcuffs. Officer Fisher stated that he attempted to do a leg sweep of Mr. Gonzalez by placing his left leg in front of Mr. Gonzalez's right leg, but it was unsuccessful. Officer Fisher stated that he didn't feel like he could budge Mr. Gonzalez because of the level of resistance and just the pure strength he had. They continued to struggle with Mr. Gonzalez and at some

point, after the attempted leg sweep, Officer Fisher stated that he lost control of Mr. Gonzalez's right arm. Officer Fisher stated that Mr. Gonzalez's body seemed to move forward and to the right, like he was taking a step. Officer Fisher reevaluated what he had to do, and he leaned down with his right shoulder to try and get closer to Mr. Gonzalez in case he came back with his backhand or something. As he leaned in with his shoulder, he felt Mr. Gonzalez's body weight come towards him and then they fell forward, with Officer Fisher falling off to Mr. Gonzalez's right side.

When they fell to the ground, Officer Fisher stated that tried to get on his knees as fast as he could to reach out and try to gain control of his right arm to get him in a rear wrist lock control hold from the ground. On the ground, Officer Fisher stated that he attempted to grab Mr. Gonzalez's right wrist but was unsuccessful. Officer Fisher remembers moving around a lot at this time because he was trying to gain control but also continually trying to reevaluate his position to try to affectively and safely get Mr. Gonzalez's arm behind his back. He recalled looking up to check on Officer McKinley and it appeared that he was trying to establish some sort of control of Mr. Gonzalez's left arm. Officer Fisher described Officer McKinley as straddling Mr. Gonzalez's waist or butt area and he had Mr. Gonzalez's left hand behind his back.

Officer Fisher stated that he felt comfortable that Officer McKinley had control of Mr. Gonzalez and knowing Officer McKinley was not injured, he was able to focus on establishing control of Mr. Gonzalez's right arm. Officer Fisher stated that he then tried to focus his body weight on his toes and knees and tried to move as much as he could to get more advantage with his body positioning to get Mr. Gonzalez's arm behind his back. At one point he shifted his body weight to position his body between Mr. Gonzalez's head and shoulder so that he could attempt a "360 arm sweep," where he shifted his body back to the left and try to hook Mr. Gonzalez's right arm with his left arm to force it back using momentum. Officer Fisher described this effort as unsuccessful and he stalled out, like he had hit a very, very stiff rubber band as far as the resistance.

Officer Fisher stated that he issued verbal commands to Mr. Gonzalez to stop resisting and to put his hand behind his back. He did not focus on any verbal response from Mr. Gonzalez but focused on what his actions were, and Mr. Gonzalez's actions didn't indicate to Officer Fisher that he was compliant.

Officer Fisher stated that he just kept on trying to pull Mr. Gonzalez's right arm up and eventually, he was able to get Mr. Gonzalez's arm up. He was then able to put Mr. Gonzalez's right arm in a rear wrist lock from the ground with his right arm between Officer Fisher's legs and his right knee resting somewhere near his right shoulder or shoulder blade. With regards to the pressure on Mr. Gonzalez at this time, Officer Fisher described it as ninety percent of his body weight on the balls of his toes and his right knee resting very, very lightly on Mr. Gonzalez's right shoulder.

Officer Fisher stated that during the incident, he was extremely conscious of positional asphyxiation, especially given current events. His understanding of positional asphyxiation is when you have somebody handcuffed in a prone position, you want to stay away from putting any type of weight on their back, neck, or anything that is going to cut off airways. This includes pressure and weight or placing the neck in an odd position where it cuts off the airway. Officer Fisher stated that the main focus is on staying away from the back. Officer Fisher stated that he received training on this recently, either late 2019 or early 2020. Officer Fisher stated that from the time that they hit the ground, concern for positional asphyxiation was all he could think about.

Officer Fisher described being solely focused on weight on knees and limiting his body weight on top of Mr. Gonzalez. In describing weight placed on Mr. Gonzalez's shoulder, Officer Fisher stated that the majority of his body weight was on the balls of his toes, with the point of contact with Mr. Gonzalez being his right knee. During the whole interaction with Mr. Gonzalez on the ground, Officer Fisher stated that the only time all his weight was on his knees, the balls of his feet, or a point of contact was to conduct the "360 arm sweep."

They were eventually able to get him handcuffed, and once he was handcuffed, Officer Fisher remembers saying no body weight on his back or something like that. Officer Fisher stated that he said this as a reminder to everybody at the scene to stay away from his back and do not obstruct his lungs. He described this as verbalizing positional asphyxiation. Officer Fisher described Officer McKinley starting to place his knee on his back and Officer Fisher stated, no, no body weight, and put his hand out to convey back off and Officer McKinley did so.

Officer Fisher stated that he saw Officer Leahy arrive right after he had attempted the "360 arm sweep," and he heard him say something like, "I got this." At this point, Officer Fisher stated that he looked over and saw someone laying across Mr. Gonzalez's legs. He did not know at the time who that person was. Officer Fisher stated that while he was on the balls of his toes, controlling Mr. Gonzalez's right arm, they were able to handcuff him.

Shortly after handcuffing Mr. Gonzalez, Officer Fisher stated that he asked Officer Leahy if they could roll Mr. Gonzalez over, and he received a reply of, "I don't want to lose what I have." When he received that reply, Officer Fisher took that to mean that there is still something else going on with the legs where he is kicking or something to that effect. Officer Fisher stated that it seemed within seconds after receiving that reply, Officer McKinley stated that Mr. Gonzalez was not breathing.

Officer Fisher described the request to roll Mr. Gonzalez to Officer Leahy as wanting to roll him into a "recovery position." Officer Fisher stated that the "recovery position" would be laying Mr. Gonzalez on his side to keep any weight off his diaphragm so that he could have free movement to breathe. Officer Fisher stated he was staying very conscious of this. Officer Fisher stated that the recovery position was not something that could be used prior to handcuffing when they were in a fight or struggle just to get him into handcuffs. Officer Fisher stated that when Officer Leahy told him he didn't want to lose what he had, he trusted his partner because Mr. Gonzalez was struggling throughout the whole process. Officer Fisher stated that there was no point in time that he remembered Mr. Gonzalez not struggling or resisting.

Officer Fisher stated that upon hearing Officer McKinley say he went unconscious, they immediately rolled Mr. Gonzalez over. Officer Fisher stated that he thought Officer McKinley checked Mr. Gonzalez for a pulse and stated that he didn't have a pulse. Officer Fisher then checked for a pulse and did not feel a pulse. They then immediately started CPR, with Officer McKinley initiating chest compressions and Officer Fisher stated he conducted a head tilt chin lift maneuver and held Mr. Gonzalez's C-spine to keep his airway open. Officer Fisher stated that he requested over the radio that Alameda Fire Department come to the scene. Officer Fisher stated that they continued to administer life-saving efforts until Alameda Fire Department personnel arrived.

With regards to Officer Fisher's training and experience with APD, over his ten and a half years, he received arrest and control techniques training bi-annually from the defensive tactics team with the department. These trainings cover arrest control, control holds, handcuffing techniques, but also

covered body position and positional awareness. Officer Fisher stated that positional awareness training focused on processing and evaluating a situation and adjust to it to make it as safe as possible and as fast as possible to effect a detention or an arrest.

Officer Fisher discussed his officer safety concerns when dealing with people who may be under the influence of alcohol. In his experience, individuals under the influence can go from completely compliant to extremely aggressive and violent, and their behavior is more unpredictable. In a lot of his encounters, when someone is under the influence and they realize that they are going to be taken into custody, that is when the violent behavior begins.

Officer Fisher stated that he did not believe that there was anything else that would have been a reasonable or feasible use of force option. The expandable baton or the Taser were not applicable to this situation given the physical altercation and the proximity between him and Mr. Gonzalez. Officer Fisher stated that he believed that they used the lowest level of force they could to affect a detention and arrest, which was control holds. Additionally, Officer Fisher stated that he has found through his career that staying calm, being polite, and respecting them has gained compliance. With this incident, he used the same technique by being extremely polite, not verbally aggressive, in a very low-key, monotone voice.

Officer Fisher stated that he did not believe Mr. Gonzalez had mental health issues. Based on his observations, Officer Fisher stated that it was extremely clear that alcohol was involved in this incident.

Officer Fisher stated that during the incident, he did not feel he had control over Mr. Gonzalez until the very end. Even when Mr. Gonzalez was in handcuffs, he was still moving his body around. Officer Fisher stated from the time they had a physical interaction with Mr. Gonzalez to the end, it was consistent throughout the whole incident. According to Officer Fisher, there was never a break when they were not struggling with Mr. Gonzalez until he went unconscious. Officer Fisher stated that when he asked if they could roll Mr. Gonzalez in the recovery position, he believed with three officers being there, they could get him in a recovery position. However, with Officer Leahy's response, Officer Fisher understood that to mean something was still actively going on below Mr. Gonzalez's waist and he wasn't in control.

Officer Cameron Leahy

The CI Team participated in the statement taken of Officer Cameron Leahy on April 27, 2021, at the Alameda Police Department. At the time of the incident on April 19, 2021, Officer Leahy had been a police officer with the APD for approximately three years and two months. Officer Leahy stated that he was approximately six feet tall and weighs about 170 pounds without his gear on, 195 pounds with is gear.

On the date in question, Officer Leahy was in full APD uniform and was travelling in a fully marked APD patrol SUV. Officer Leahy recalls hearing that Officer McKinley and Officer Fisher were dispatched to the area of Oak Street but he did not pay particular attention to the details of the call because it was not his beat and he was not dispatched. Officer Leahy was heading back to APD when he heard Officer Fisher request another cover unit to the scene. Again, Officer Leahy was not dispatched to the scene as a cover unit and continued to the police station.

Officer Leahy stated that he then heard dispatch attempt to get Officer Fisher to respond on the radio and neither he nor Officer McKinley were answering. At that point, Officer Leahy stated that he assumed that after the call for a cover unit and then the radio silence, that there may be some sort of emergency or the need for assistance. Officer Leahy stated that he was confident, due to the failure to respond to dispatch, that there was some sort of physical altercation going on or that the situation was getting worse. Also, in Officer Leahy's experience with Officer Fisher, he is not one to be quick to ask for additional units. Therefore, he responded to the scene "Code 3" or as an emergency response with lights and sirens.

Officer Leahy arrived to see Officer Fisher's patrol vehicle parked on Otis Drive with the passenger door open but nobody inside the vehicle. Initially, he didn't immediately see where they were but when he looked through the park, Officer Leahy observed Officer Fisher, Officer McKinley, and W1 physically restraining a subject on the ground, near the driveway of 802 Oak Street. Officer Leahy initial thought was that W1 was not a sworn police officer, so he wanted to relieve him.

Officer Leahy observed W1 controlling Mr. Gonzalez's legs on the ground with his chest in contact with the back of Mr. Gonzalez's calves. He observed Officer Fisher on the right side of Mr. Gonzalez, who was laying face down in the prone position. Officer McKinley was on Mr. Gonzalez's left side. Officer Leahy described each officer as controlling Mr. Gonzalez's arms to make sure that he could not stand up or continue to be combative. To Officer Leahy, it was obvious that the "fight" was still on. Officer Leahy stated that he did not see either of the officers applying body weight on Mr. Gonzalez's back. Officer Leahy described Officer McKinley and Officer Fisher as simply using their arms and upper body to control Mr. Gonzalez's arms and shoulders. Officer Leahy stated that at one point, there may have been a knee specifically on the upper shoulder area, but nothing near the spine, nothing directly on the back, and nothing on the neck.

Officer Leahy stated that he took over for W1 at Mr. Gonzalez's legs. Officer Leahy stated that Mr. Gonzalez was actively trying to kick upwards with his legs, kind of bending at his knees and moving his heels violently upwards. To deal with this, Officer Leahy placed his knees and shins over the back of Mr. Gonzalez's calves, and he did what he could to control his ankle to keep him from bending at his knees. Officer Leahy stated that he was perpendicular to Mr. Gonzalez's legs, facing towards Oak Street. Officer Leahy described Mr. Gonzalez as incredibly strong and extremely combative. Officer Leahy stated that he particularly remembered that with every thrust of him trying to kick his legs upwards and "buck" him off, he was actually being lifted off of the ground.

On two occasions during the incident, Officer Leahy stated that he said, "I don't want to lose what I've got." The first time he said this was when he first arrived at the scene and took control of Mr. Gonzalez's legs in response to Officer Fisher asking whether he was able to apply the "figure four leg lock" technique. Officer Leahy stated that this is a technique that he would have liked to use but because of Mr. Gonzalez's level of resistance and just the sheer force he was trying to kick back up, he was afraid that manipulating his legs to that extent would cause him to lose control of his legs so he didn't want to do it.

Officer Leahy stated that the second time said, "I don't want to lose what I've got," was when Officer Fisher asked if we could roll Mr. Gonzalez on his side. Officer Leahy stated that again, his fear was that in the process of rolling Mr. Gonzalez, he would lose control of his leg and particularly on his side, Mr. Gonzalez would have more ability to kick officers who were near his legs. That was the intention behind this response.

Due to this continued resistance, Officer Leahy felt it necessary to request an additional cover officer to come to the scene and to respond, "Code 3." His main focus was just controlling Mr. Gonzalez's legs as he didn't want himself, Officer Fisher, or Officer McKinley to be kicked. He also did not want to lose control of Mr. Gonzalez at that point because it was obvious there had already been a physical confrontation and he was still very combative. Officer Leahy stated that he believes that a sergeant arrived, and because of the continued level of resistance, he asked her to retrieve the "Wrap" restraint device from the back of Officer McKinley's patrol car.

Office Leahy stated that at this time he remembered hearing Officer Fisher making sure that everybody who was restraining Mr. Gonzalez was not applying specific pressure to his back. Shortly after this, he heard that Mr. Gonzalez had gone unresponsive. Officer Leahy stated that they immediately checked for breathing, checked for a pulse, and with neither of those present, they immediately switched gears. The officers rolled Mr. Gonzalez over and provided lifesaving efforts. He recalled Officer McKinley starting CPR and he radioed that CPR had been started. Office Leahy also stated that he applied two doses of Narcan to Mr. Gonzalez's nostril but did not see any noticeable change in his medical condition. Officer Leahy utilized Narcan because of the way Mr. Gonzalez went from so combative, strong, and resistant to unresponsive extremely quickly. It made him think that maybe Mr. Gonzalez had some sort of drugs in his system.

During the incident, Officer Leahy stated that he did not feel like he had complete control of Mr. Gonzalez's legs. He had an amount of control that was effective, but there was not complete control to prevent him from being able to push back at all.

Officer Leahy stated that he did not consider the use of any other force options to be appropriate besides physical hands-on control. Given that Mr. Gonzalez was already in handcuffs, he believed what was appropriate was maintaining the control they had, and then, when safe to do so, apply the "Wrap" restraint device. Officer Leahy also did not believe any other force options were appropriate because Officer McKinley and Officer Fisher were both communicating with Mr. Gonzalez, which is a de-escalation approach to try and gain compliance and reassure him. Officer Leahy stated that using any other force option would escalate things and be counter-productive to their goal, which was to safely take Mr. Gonzalez into custody.

Witness 1 ("W1")

The CI Team participated in the statement taken of Witness 1 ("W1") on April 27, 2021, at the Alameda Police Department. At the time of the incident on April 19, 2021, W1 was a parking technician with APD and has been in this position for approximately eight years. Before this position, W1 stated that he was a jailer with APD for ten years. W1 stated that he did receive some defensive tactics training when he first started as a jailer, and he learned basic control holds. As a jailer, W1 stated that he utilized control holds and he was also involved in scuffles in the jail. W1 also had experience dealing with people who were under the influence of alcohol.

On the date of the incident, W1 was not working. W1 and Officer Fisher had gotten a coffee together and he was then riding with Officer Fisher. W1 has ridden with Officer Fisher and other APD officers on many occasions. W1 stated that Officer McKinley requested that Officer Fisher check Walgreens to see if they had anything taken. Officer Fisher went into Walgreens and came back out,

communicating to Officer McKinley, "negative." They then went to the scene, parking on Otis. W1 remained in the car and watched which was about forty to fifty feet away with the window down.

W1 stated that Officer McKinley was standing and talking to Mr. Gonzalez. Officer Fisher then walked over to the area where Officer McKinley and Mr. Gonzalez were. W1 stated that the officers went to put Mr. Gonzalez in handcuffs. Officer Fisher went over and took his arm, and all of the sudden Mr. Gonzalez began to physically moving around, not fighting but just moving. W1 stated that Officer Fisher grabbed his arm and looked to have control. W1 stated that Officer McKinley took an arm and then looked like everything was going to be ok. W1 stated that then all the sudden Mr. Gonzalez started pushing away from Officer McKinley and because he was bigger, he pushed him off to the side. W1 stated that as Mr. Gonzalez pushed, he went back into Officer Fisher, and all three of them fell to the ground.

W1 stated that he knew better to get involved but all three went to the ground and that is when he decided to get out give a hand. W1 got out of the car and went over to them. W1 described them as scuffling with Mr. Gonzalez, trying to get him cuffed. W1 stated that Officer McKinley looked up and asked W1 if he could get his legs, so W1 just laid across Mr. Gonzalez's legs. W1 stated that he heard sirens and cars arrived, and then Officer Leahy came up to him and stated that he had his legs. W1 stated that he did remember stating twice to Mr. Gonzalez, "Mario, relax, relax."

W1 described Mr. Gonzalez's legs when he laid across them, stating that laying across the legs didn't do much because he was kind of lifting him up and down. W1 stated that before he laid across Mr. Gonzalez's legs, he observed Mr. Gonzalez was pushing, like he was trying to get himself forward to get up. W1 stated that after he laid on the legs, Mr. Gonzalez kept pushing and normally, W1 would have attempted a "figure four" but because Mr. Gonzalez was shorter, W1 would have ended up on top of him and in between everybody. Therefore, W1 just laid across the legs and held one ankle. W1 stated that Mr. Gonzalez was just pushing and just kept moving W1's body around quite easily. W1 estimated that he currently weighs between 210 to 215 pounds.

Initially when on his legs, W1 looked up to see the officers trying to get him into handcuffs but then he turned his back to them to try and hold Mr. Gonzalez's legs still. W1 stated that he did hear Officer Fisher state that Mr. Gonzalez was lifting him off the ground. W1, because of his experience as a jailer, did not get nervous or excited and dealt with individuals who were drunk all of the time. W1 stated that Officer McKinley tried to de-escalate things and get Mr. Gonzalez to calm down by asking him what his birthdate was.

With regards to the "figure four" leg lock, W1 described it as a technique to cross the legs over to control the legs from moving. Because the officers were wrestling with Mr. Gonzalez and grabbing each other, W1 thought executing this move would get in others' way. W1 stated that he was not sure he could complete this technique because Mr. Gonzalez was strong. W1 stated that he maybe could have bent one leg but trying to pull the other leg over the first leg would have been tough.

During the entire time he was on Mr. Gonzalez's legs, W1 stated that his legs never stopped moving and W1 never felt that he had control of Mr. Gonzalez's legs. W1 stated he did not see Officer McKinley and Officer Fisher do anything that concerned him as they tried to gain control of Mr. Gonzalez.

When in Officer Fisher's patrol car, W1 was paying attention the entire time. During the entire altercation, W1 stated that no one was shouting. W1 stated that commands were being made by officers, but no one was ever getting loud. W1 stated that he knew better than to get involved but once they went to the ground then W1 thought he better get out there because they might need help. W1 stated that things might get a little worse. In his experience riding along with officers, W1 has never gotten out of the vehicle to help officers even when there was grabbing. W1 had never been in a situation like this when officers had gone to the ground.

During the time that W1 was controlling Mr. Gonzalez's legs, W1 initially had personal items in his sweatshirt pocket. Following the altercation, W1 stated that he learned that his phone, keys, and chewing tobacco had all fallen out of his pocket during his movements attempting to restrain Mr. Gonzalez's legs.

AUTOPSY REPORT/TOXICOLOGY REPORT/CORONER'S BUREAU REPORT:

On April 21, 2021, Vivian S. Snyder, D.O., Chief Forensic Pathologist with the Alameda County Coroner's Bureau conducted the autopsy of Mr. Gonzalez, who was 26 years old at the time of his death. Dr. Snyder determined Mr. Gonzalez to be 5'5" tall, his weight to be 284 pounds, and his body mass index to be 47.25, which as discussed below constitutes morbid obesity. In her Autopsy Report dated September 25, 2021, Dr. Snyder determined the "Cause of Death" to be the "Toxic effects of methamphetamine." Additionally, Dr. Snyder determined "Other Significant Conditions Contributing to Death" to be "Physiologic stress of altercation and restraint; Morbid obesity; Alcoholism."

Dr. Snyder provided the following statement in the "Summary & Opinion" section of her Autopsy Report:

A forensic autopsy demonstrated features of morbid obesity and alcoholism including an enlarged and dilated heart (cardiomegaly) and an enlarged liver (hepatomegaly) that had severe fatty change (steatosis). The autopsy did not demonstrate any lethal injuries. Broken ribs (rib fractures) and liver tear (laceration) were documented at autopsy - features that are consistent with the consequences of aggressive resuscitative efforts.

Toxicology testing detected methamphetamine (907 ng/ml), amphetamine (methamphetamine metabolite; 134 ng/ml), naloxone (50 ng/mL), and ethanol (< 0.02 grams %). Specialized lab tests (vitreous chemistry) did not show any pathologic electrolyte abnormalities.

Based on the totality of available information, including investigative, autopsy, and laboratory findings, it is apparent that Mr. Gonzalez Arenales experienced cardiopulmonary arrest because of multiple factors. The methamphetamine detected in his blood combined with his enlarged and dilated heart could have together resulted in a fatal cardiac arrhythmia. During the interaction with law enforcement agents, he was face down on the ground (prone) with his hands handcuffed behind his back, and at times the officers were applying pressure to his torso and legs with at least some of the weight of their bodies. The stress of the altercation and restraint combined with prone positioning in the setting of morbid obesity and recent use of methamphetamine placed further strain on

Mr. Gonzalez Arenales' heart. Therefore, **the cause of death is the toxic effects of methamphetamine, with the physiologic stress of altercation and restraint, morbid obesity, and alcoholism contributing to the process of dying.** (Emphasis added)

The femoral blood sample collected from Mr. Gonzalez by Dr. Snyder during the autopsy was analyzed by Ascertain Forensics at Redwood Toxicology Laboratory. The toxicology results detected the following drugs in Mr. Gonzalez's blood sample: Methamphetamine 907 ng/mL; Amphetamine 134 ng/mL; Naloxone 50 ng/mL; Ethanol <0.02 grams %.

Dr. Snyder's autopsy of Mr. Gonzalez and conclusions were peer reviewed by two independent forensic pathologists. Both pathologists independently concluded Dr. Snyder's work was reasonable and concurred with the opinion.

On November 16, 2021, the Alameda County Coroner's Bureau Manner of Death Committee reviewed Mr. Gonzalez's death to determine the manner of death. The Coroner Investigator's Report, included the following statement:

The manner of death committee referred to the National Association of Medical Examiners "A Guide for Manner of Death Classification" while examining all available evidence regarding this death. The committee determined Gonzalez Arenales' death to be homicide based on the physical and medical evidence revealed during this investigation. (BAW1497)

APPLICABLE CALIFORNIA LAW:

The sole question addressed by the District Attorney's investigation was whether any law enforcement personnel violated any applicable criminal laws related to the death of Mr. Gonzalez. Whether or not any of the officers are criminally liable depends upon (1) the facts of the case, and (2) whether these facts constitute any criminal violations under existing statutory law. The quality of the evidence, if any, showing a criminal act or acts must be measured against the standards used by the District Attorney's Office in deciding whether or not to charge anyone with a crime.

The California District Attorney's Uniform Crime Charging Standards Manual directs that criminal charges shall not be brought unless the prosecutor, based upon a complete investigation and thorough consideration of all the pertinent information readily available to him or her, believes there is evidence that proves beyond a reasonable doubt, that the accused is guilty of the crime to be charged. Additionally, the charging standards direct that there must be legally sufficient admissible evidence to prove each element of the crime. The admissible evidence must be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after the fact finder has heard all the evidence and after considering the most plausible, reasonable, and foreseeable defenses that could be raised under the evidence.

In the criminal context, homicide is defined as the killing of one human being by another. A homicide can be lawful or unlawful. For the purposes of this legal analysis, the two unlawful types of homicide relevant here are murder and involuntary manslaughter.² To prove the crime of murder in violation of Penal Code 187, the People must prove beyond a reasonable doubt that: (1) A person committed an act

² Under the circumstance of this case, voluntary manslaughter, another type of unlawful homicide, does not apply and therefore, will not be analyzed.

that caused the death of another person; (2) When the person acted, he had a state of mind called malice aforethought; and (3) The person killed without lawful excuse or justification. (Penal Code Section 187; CALCRIM No. 520). Malice aforethought is a mental state that must be formed before the act that causes death is committed, and it can be either express malice or implied malice. (CALCRIM No. 520). A person had express malice if he unlawfully intended to kill. (CALCRIM No. 520). A person had implied malice if: (1) He intentionally committed the act; (2) The natural and probable consequences of the act were dangerous to human life; (3) At the time the person acted, he knew his act was dangerous to human life; and (4) The person deliberately acted with conscious disregard for human life. (CALCRIM No. 520).

To prove the crime of involuntary manslaughter in violation of Penal Code Section 192(b), the People must prove that: (1) A person committed a crime or a lawful act in an unlawful manner; (2) The person committed the crime or act with criminal negligence; and (3) The person's acts caused the death of another person. (Penal Code Section 192(b); CALCRIM No. 581). Therefore, to establish that an officer committed the crime of involuntary manslaughter as a result of the use of force in the course of employment, the People would need to prove either that the use of force was unlawful, that officer committed an assault under the color of authority, or used force that, while lawful, was done in a criminally negligent manner, and that this conduct actually caused the death.

To prove an officer committed an assault under color of authority, the People must prove beyond a reasonable doubt that: (1) The defendant was a police officer; (2) The defendant assaulted or beat another; (3) The assault took place while the defendant was engaged in the performance of his duties; and (4) The force used was not lawfully necessary. (Penal Code Section 149). An officer's use of force is not lawfully necessary when it is proven that the officer used more force than was necessary under the circumstances. (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1140).

"Criminal negligence" involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when: (1) He or she acts in a reckless way that creates a high risk of death or great bodily injury; and (2) A reasonable person would have known that acting in that way would create such a risk. (CALCRIM No. 581). A person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act. (*Id.*)

The California Supreme Court, in initially defining criminal negligence, explained how criminal negligence differs from civil negligence: "[T]here must be a higher degree of negligence than is required to establish negligent default on a mere civil issue. The negligence must be aggravated, culpable, gross, or reckless, that is, the conduct of the accused must be such a departure from what would be the conduct of an ordinary prudent or careful [person] under the same circumstances as to be incompatible with a proper regard for human life, or, in other words, a disregard of human life or an indifference to the consequences." (*People v. Penny* (1955) 44 Cal.2d 861, 879).

An act causes death if the death is the direct, natural, and probable consequence of the act and the death would not have happened without the act. (CALCRIM No. 520, 581). A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. (CALCRIM No. 520, 581). There may be more than one cause of death but an act causes death only if it is a substantial factor, more than a trivial or remote factor, in causing the death. (CALCRIM No. 520, 581).

Investigatory detentions are permissible if an officer possesses reasonable suspicion, meaning circumstances exist which are merely consistent with criminal activity. (*People v. Souza* (1994) 9 Cal.4th 224, 233). Officers may conduct an investigative detention for the purpose of determining whether there is probable cause to arrest a person, further investigation is necessary, or the officer's suspicions were unfounded. (*People v. McLean* (1970) 6 Cal.App.3d 300, 306). Probable cause to arrest requires information of a higher quality and/or quantity than that for reasonable suspicion and exists if there was a "fair probability" or "substantial chance" that the arrestee had committed the crime under investigation. Probable cause to arrest may be based wholly or in part on a suspect's possession of incriminating evidence, including contraband. (*People v. Martino* (1985) 166 Cal.App.3d. 777, 790).

A peace officer may use reasonable force to arrest or detain someone, to prevent escape, to overcome resistance, or in self-defense. (Penal Code Section 835a(b); CALCRIM No. 2670). 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 by the use of reasonable force to effect an arrest or to prevent escape or to overcome resistance. (Penal Code Section 835a(c)). While an officer need not use the least intrusive means of force, additional force would be necessary if less intrusive force was utilized without success. (*Miller v. Clark County* (9C 2003) 340 F.3d 959, 966). If a person is resisting arrest, officers are permitted to use non-deadly force. (*Graham v. Connor* (1989) 490 US 386, 396).

Handcuffing of a detainee is permitted where there was good reason to do so. (*US v. Purry* (DCC 1976) 545 F.2d 217, 219-20 (pulling away from officers); *People v. Osborne* (2009) 175 Cal.App.4th 1052, 1062 (tensing up); *US v. Thompson* (9C 1979) 597 F.2d 187, 190 (repeatedly attempting to reach inside clothing); *People v. Johnson* (1991) 231 Cal.App.3d 1, 14 (struggling with officers)).

In *Graham v. Conner* (1989) 490 U.S. 386, 396-397, the United States Supreme Court held that use of force cases are to be reviewed using an objective standard of the reasonable officer: "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. [Citation]...With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chamber,' [Citation] violates the Fourth Amendment. 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." Similarly, Penal Code 835a incorporates the objective standard of the reasonable officer when evaluating an officer's use of force. (Penal Code Section 835a(a)(4)).

Penal Code section 835a(a)(2), states that it is the intent of the legislature, "that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." The term "deadly force" is defined as "any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm." (Penal Code Section 835a(e)(1)).

The decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies. (Penal Code Section 835a(a)(3)). The decision to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force. (Penal Code Section 835a(a)(4)).

ANALYSIS AND CONCLUSION:

The Alameda County District Attorney's Office is aware that the citizens of the county are very concerned with police use of force, particularly when it results in a death. This concern has only been heightened by the recent high profile deaths involving use of force that have occurred nationwide. However, we are mindful that each and every incident is different. The circumstances and evidence surrounding each incident are unique. Even if a particular case appears to involve some similarities to high profile cases that have occurred throughout the country, this Office endeavors to analyze each critical incident on its own facts and evidence. The community, including the deceased, his family, and the involved officers, deserves an independent factual and legal analysis. This objective analysis, however difficult, is what the District Attorney's Office always strives for in every single case and this case is no different.

Analysis of Officers' Detention, Arrest, and Use of Force Pursuant to Penal Code Section 835a

In this case, the APD officers-involved were responding to a call from a concerned citizen regarding Mr. Gonzalez acting strangely and talking to himself. Immediately upon arrival to the scene, Officer McKinley observed two bottles of alcohol next to Mr. Gonzalez, one bottle retained the store security cap, and the other bottle had the broken remains of its security cap on the ground near Mr. Gonzalez. Officer McKinley concluded that there was evidence of a possible theft of the alcohol bottles from a store and/or that Mr. Gonzalez was in possession of stolen property. (Penal Code Sections 484 and 496). Additionally, Officer McKinley observed that the alcohol bottle with no cap also had about two cups of alcohol missing, which he believed was evidence of another public offense of having an open container of alcohol. After speaking with and observing Mr. Gonzalez for over approximately nine minutes, Officer McKinley determined that Mr. Gonzalez was under the influence of alcohol. He further concluded that due to Mr. Gonzalez's intoxication, he was unable to care for himself, which is also a criminal offense. (Penal Code Section 647(f)). Officer McKinley did not believe that it was safe to leave Mr. Gonzalez in this park. For all these reasons, Officer McKinley, and Officer Fisher, who arrived shortly afterwards, had reasonable suspicion to detain Mr. Gonzalez, as well as sufficient probable cause to arrest Mr. Gonzalez for multiple criminal offenses cited above.

Not only was the decision to detain and arrest Mr. Gonzalez supported by reasonable suspicion and probable cause, but it was also supported by officer safety reasons. As Officer McKinley and Officer Fisher continued to speak with Mr. Gonzalez, he began to move around and started putting his hands in the pockets of his short, even after the officers repeatedly requested that he not do so. At the time, the officers were not aware what Mr. Gonzalez possessed in his pockets or on his person, as he was yet to be searched. The officers stated that this caused them concern for their personal safety. Under these

circumstances the officers had reasonable and articulable reasons to be concerned about their safety given Mr. Gonzalez's intoxication, lack of ability to articulate himself, his failure to comply with the officers' requests, and his furtive motions towards the pockets of his shorts. In these circumstances it was also not unreasonable to detain Mr. Gonzalez for officer safety purposes.

Further, we cannot conclude that the officers' decision to detain and arrest Mr. Gonzalez was unreasonable in light of the number of possible criminal offenses observed, the inability to obtain any information from Mr. Gonzalez, and his unusual conduct. The officers were originally called to the scene because of a citizen call describing Mr. Gonzalez as acting strangely and talking to himself right outside the citizen's front yard which caused his wife to be scared. This conduct was confirmed by the officers over nine minutes of talking to Mr. Gonzalez. The officers also observed evidence to support the belief that Mr. Gonzalez was under the influence of alcohol. As Officer McKinley stated, leaving Mr. Gonzalez alone under these circumstances was not safe for him or safe for the public because Mr. Gonzalez could likely consume more alcohol. This could result in Mr. Gonzalez possibly continuing or escalating conduct that was the basis for the original citizen call.

Once the officers had lawfully attempted to detain Mr. Gonzalez, he physically resisted their efforts the entire time until he ultimately became unresponsive. Initially, when the officers tried to detain Mr. Gonzalez and place his hands behind his back, Mr. Gonzalez continually stiffened his left arm and brought it towards the front of his body away from Officer McKinley, preventing the officers from applying handcuffs. At one point, Mr. Gonzalez brought his right elbow up quickly towards Officer Fisher in resistance. For over two and a half minutes, the officers unsuccessfully attempted to put Mr. Gonzalez's hands behind his back into handcuffs while standing. During this time, Mr. Gonzalez moved the officers around the area by physically resisting their efforts to get control of his left arm, even though they repeatedly requested he put his hands behind his back. While attempting to detain Mr. Gonzalez in a standing position, the officers appeared calm and patient in their interactions with Mr. Gonzalez, but he never physically cooperated.

After Mr. Gonzalez continued to resist efforts to detain and arrest him while standing, the officers made the decision to bring Mr. Gonzalez to the ground. The officers brought Mr. Gonzalez to the ground on his stomach and attempted to get his hands behind his back to apply handcuffs. Mr. Gonzalez resisted these attempts by moving his upper and lower body, causing the officers to struggle to get his hands behind his back and into handcuffs. At times his resistance lifted officers off the ground or caused them to reposition themselves to control his body. W1 arrived to assist with controlling Mr. Gonzalez's legs. W1, who had experience as a jailer, stated that when he saw the two officers and Mr. Gonzalez fall to the ground, he became concerned enough to get out of Officer Fisher's vehicle and help the officers. After approximately a minute and twenty-three seconds, Officer McKinley and Officer Fisher were successful in placing handcuffs on Mr. Gonzalez.

Even after the handcuffs are applied, Mr. Gonzalez did not stop resisting. Mr. Gonzalez continued to forcefully move his upper and lower body, so the officers continued to take steps to hold him down. At this point, the officers planned to control a still-resisting Mr. Gonzalez on the ground until a "wrap" restraint device was brought on scene to control his legs. The officers requested a "wrap" and while waiting, Officer Fisher positioned his body on the right side of Mr. Gonzalez and placed his knee on Mr. Gonzalez's right shoulder to control him. Officer Fisher stated that he was aware of the importance of keeping his body weight off Mr. Gonzalez's back and neck area and, for this reason, kept the majority of his weight on the balls of his feet to limit his weight on Mr. Gonzalez's shoulder. Officer McKinley positioned himself on Mr. Gonzalez's left side and held him down primarily by placing weight on Mr.

Gonzalez's bent elbow area. Officer McKinley estimated that he used twenty percent of his body weight to hold Mr. Gonzalez down. Officer Leahy came to relieve W1 and held down Mr. Gonzalez's lower body, placing his knees and shins across Mr. Gonzalez's calves. Despite repeated requests from the officers that he stop resisting while handcuffed, Mr. Gonzalez continued to struggle as all three officers attempted to control him on the ground.

Once handcuffed, the evidence does not support the conclusion that the APD officers should have stopped their efforts to control a resisting Mr. Gonzalez. The law allows officers to use reasonable force to arrest or detain someone to overcome resistance. Furthermore, the law does not require officers to retreat with their efforts when met with resistance. (Penal Code Section 835a; CALCRIM No. 2670).

Here, Mr. Gonzalez, despite being handcuffed, was still resisting with his entire body, including his legs. On two occasions, Officer Leahy expressed concern that he would lose control of Mr. Gonzalez's legs if he attempted a control hold technique, or if they rolled Mr. Gonzalez over to his side. Therefore, the officers' continued attempts to control his body and not risk injury by being kicked were reasonable. It may not have been their only option, but the approach chosen by the APD officers was nonetheless lawful and objectively reasonable under the circumstances.

During the time that Mr. Gonzalez was handcuffed on the ground, he continued to speak with the officers, and he responded to questions. The officers took additional steps at this time to lessen any potential harm to Mr. Gonzalez who was still resisting. Officer McKinley stated that while on the ground, he tried to deescalate the situation by getting down and speaking with Mr. Gonzalez. He asked questions of Mr. Gonzalez, hoping to distract him from resisting. Officer McKinley stated that he could also see Mr. Gonzalez's mouth while talking to him to make sure he still had room to breathe. Officer McKinley also stated that once handcuffed, he moved to Mr. Gonzalez's side and placed about twenty percent of his body weight on Mr. Gonzalez's elbow or shoulder area to prevent him from rolling over.

Likewise, while attempting to control Mr. Gonzalez on the ground, Officer Fisher asked the other officers if he could roll Mr. Gonzalez on his side but Officer Leahy conveyed to him that he was concerned that he would lose the control he had of Mr. Gonzalez's legs. Officer Fisher stated that based on his training and current events he was mindful of putting weight on Mr. Gonzalez's back which could put Mr. Gonzalez's breathing at risk. Officer Fisher stated that he made sure to keep the majority of his weight on the balls of his toes to limit the weight on Mr. Gonzalez's back. Additionally, Officer Fisher confirmed with Officer McKinley that no pressure was being placed on Mr. Gonzalez's back. When Officer McKinley repositioned himself briefly to Mr. Gonzalez's back, Officer Fisher emphatically repeated that no weight be placed on Mr. Gonzalez's.

Approximately three minutes and thirty-nine seconds after the officers placed Mr. Gonzalez in handcuffs, he became unresponsive. Immediately after he became unresponsive, Officer McKinley and Officer Fisher rolled Mr. Gonzalez over, checked his pulse, and then began providing lifesaving measures to Mr. Gonzalez. Officer Leahy also assisted in the lifesaving efforts.

During the entire incident, the officers repeatedly attempted to deescalate the interactions with Mr. Gonzalez and did not escalate their physical interactions with Mr. Gonzalez beyond what was necessary to detain and arrest him. As reflected on their body worn cameras, Officer McKinley and Officer Fisher spoke to Mr. Gonzalez calmly and exercised patience during their interactions with him. Throughout the entire incident, the officers never raised their voices beyond what was necessary during the struggle. Additionally, the officers used only their physical strength to attempt to control Mr. Gonzalez. They

never escalated their use of force options. The officers did not strike Mr. Gonzalez or use any weapons during the incident. They did not use choke holds or put any pressure on Mr. Gonzalez's neck, and limited weight on his back. As will be discussed in more detail below, Mr. Gonzalez did not die due to asphyxiation, nor did he complain to the officers that he could not breathe. The detention of Mr. Gonzalez was not unreasonably prolonged. The officers' approach to Mr. Gonzalez detention and arrest, and their use of force appeared reasonable under the circumstances.

Furthermore, the reasonableness of the officer's use of force is supported by the Dr. Snyder's autopsy findings. With regards to injuries to Mr. Gonzalez, Dr. Snyder noted in her "Major Autopsy Findings" section, only "Minor superficial blunt trauma," consisting of "Cutaneous (skin) abrasions and contusions" and "No lethal injuries." Had the APD officers used unreasonable force, the observations by the Chief Forensic Pathologist should have revealed significant injuries, including lethal injuries. In areas of Mr. Gonzalez's body where the officers used holds and body weight to control his resistance, there were no significant injuries or findings.³

For example, regarding evidence of superficial blunt torso trauma, Dr. Snyder noted multiple abrasions of small size on the lower abdomen and left flank (between rib and hip) area, and a 1-inch diameter faint red-brown ecchymosis (skin decolorization caused by ruptured blood vessels) in the right flank area. An internal examination of the musculoskeletal system, which includes areas of the collarbone, chest, back and lower abdomen areas, found no fractures and the skeletal muscles were red and firm, indicating no injuries. Additionally, Dr. Snyder observed only minor abrasions and contusions on Mr. Gonzalez's arms and legs. These are all areas of Mr. Gonzalez's upper body where more serious or lethal injuries should be present if the officers used excessive and unreasonable force.

Further, there is no evidence of injuries to Mr. Gonzalez's neck area noted in the autopsy protocol, nor is there any evidence that Mr. Gonzalez's death was caused by positional asphyxiation. An internal examination revealed that there were no fractures, displacement (removal from proper place), hypermobility (movement beyond normal range), or crepitus (grinding sound associated with fractures) to the cervical vertebrae (bones within the neck). The muscles in the neck had no masses or ecchymosis (bruising). The anterior neck soft tissue had no hemorrhage (bleeding). The bone and cartilage structure of the larynx and trachea were normally formed and without fracture. The airway was unobstructed, lined by smooth, pink-tan mucosa (moist, inner lining), and contained no foreign material. These autopsy findings are all consistent with the lack of trauma imposed by the officers on Mr. Gonzalez's person and the reasonable steps that the officers took to avoid any holds or weight-bearing techniques involving Mr. Gonzalez's neck, even though he was physically resisting their efforts.

The CI Team reviewed the Alameda Police Department's Policy Manual, including but not limited to sections related to Use of Force; Handcuffing and Restraints; Control Devices and Techniques; Officer-Involved Shootings and Deaths; and Patrol Function. The officers conduct in this incident appeared consistent and in compliance with the applicable APD policies.

An analysis under Penal Code Section 835a requires that an officer's decision to use force be evaluated carefully and thoroughly to ensure that the use of force is consistent with law and agency policy. Additionally, an officer's use of force "shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at

³ The autopsy protocol notes Mr. Gonzalez had multiple rib fractures and liver laceration but Dr. Snyder attributed these injuries as being consistent with the aggressive resuscitative efforts by officers and first responders after Mr. Gonzalez became unresponsive.

the time, rather than with the benefit of hindsight[.]” (Penal Code Section 835a(a)(4)). Furthermore, the “totality of the circumstance shall account for occasions when officers may be forced to make quick judgments about using force.” (*Id.*) For the reasons discussed in detail above, we conclude that the officers’ decisions to detain and arrest Mr. Gonzalez, and their subsequent use of force was objectively reasonable considering the agency policies, the totality of the circumstances, and the officers’ stated rationale.

Analysis of Officers’ Criminal Liability

Homicide – Malice and Criminal Negligence

Turning to the APD officers’ criminal liability, in the criminal context, homicide is defined as the killing of one human being by another. Therefore, any death that occurs at the hands of a peace officer is a homicide. This does not mean a crime has been committed. A homicide can be lawful or unlawful. If a person kills with a legally valid excuse or justification, the killing is lawful, and he or she has not committed a crime. If there is no legally valid excuse or justification, the killing is unlawful and, *depending on the circumstances*, the person is guilty of either murder or manslaughter. However, a person is only guilty of murder or manslaughter if the evidence proves all the elements of these crimes beyond a reasonable doubt.

Here, there is no evidence that any of the officers acted with an intention to kill Mr. Gonzalez. Nor does the evidence support implied malice, that the officers’ actions were dangerous to human life, or that they knew their actions were dangerous to human life, or that the officers deliberately acted with conscious disregard for human life. As discussed in detail above, the District Attorney’s Office concludes that the officers’ conduct in detaining and arresting Mr. Gonzalez was reasonable under the circumstances and supported by the requisite reasonable suspicion and probable cause. The officers’ use of force to detain and arrest Mr. Gonzalez was also reasonable in response to his continuous physical resistance of their efforts and we cannot find the officers acted with malice. Therefore, there is insufficient evidence to support criminal liability for murder.

Similarly, there is insufficient evidence that any of the involved officers were criminally negligent to support criminal liability for involuntary manslaughter. Because the officers used objectively reasonable force to overcome Mr. Gonzalez’s resistance to their lawful attempt to detain and arrest him, their actions did not constitute an unlawful assault under color of authority. Nor is their evidence that the officers committed a lawful act with criminal negligence, i.e., acted recklessly in a way that created a high risk of death or great bodily injury and that they knowingly disregarded that risk.

The APD officers were confronted with a subject who actively resisted every effort at a lawful detention and arrest. Mr. Gonzalez continually resisted the officers’ efforts to detain and arrest him while standing. It was therefore reasonable for the officers to attempt to detain and arrest Mr. Gonzalez on the ground. While on the ground, Mr. Gonzalez resisted with his upper and lower body with such vigor that three officers were needed to control him. Even after handcuffs were applied, Mr. Gonzalez continued to forcibly resist, so much so that the officers determined they needed a wrap to control his lower body. The officers did not strike Mr. Gonzalez or restrict his airway. The officers took care not to put undue pressure on Mr. Gonzalez’s back area and stayed clear of his neck area. The period of restraint was not unreasonably prolonged given his continual resistance. As soon as the officers realized that Mr. Gonzalez became unresponsive, they immediately began life-saving efforts. The

evidence does not support a finding that officers' actions were reckless, creating a high risk of death or great bodily injury, and that they disregarded that risk, to support criminal negligence.

The lack of malice and criminal negligence is supported by several points of evidence: the officers' efforts to deescalate throughout the altercation by calmly engaging with Mr. Gonzalez; the officers never used or drew available weapons, such as Tasers, batons, or firearms; the officers' concern regarding Mr. Gonzalez's airway passages and weight on his back; and the officers' immediate medical attention to Mr. Gonzalez when he became unresponsive. Under these circumstances, the elements of murder and manslaughter cannot be proven beyond a reasonable doubt, a requisite for any filing of criminal charges.

Homicide – Causation

In addition to insufficient evidence related to malice and criminal negligence detailed above, causation is an additional element of concern regarding Mr. Gonzalez's death when evaluating the APD officers' criminal liability. As previously noted, the People must prove beyond a reasonable doubt that the action of the police were a substantial factor as well as the natural and probable consequences of Mr. Gonzalez's death.

The Chief Forensic Pathologist, Dr. Vivian Snyder, concluded the "Cause of Death" to be "Toxic effects of methamphetamine." Dr. Snyder then lists in a separate category "Other Significant Conditions Contributing to Death," the three conditions of "Physiologic stress of altercation and restraint; Morbid obesity; Alcoholism." Dr. Snyder's autopsy of Mr. Gonzalez and conclusions were peer reviewed by two independent forensic pathologists and both concluded Dr. Snyder's work was reasonable and concurred with the opinion.

In Dr. Snyder's autopsy protocol, she lists the one "cause of death" to be the toxic effects of methamphetamine in Mr. Gonzalez's blood. To support the finding that the cause of death was the toxic effects of methamphetamine, Dr. Snyder referenced the forensic toxicology lab report, which determined the methamphetamine level in Mr. Gonzalez's blood to be 907 ng/mL. Publicly available medical literature set the toxic levels of methamphetamine at significantly lower levels than the level present in Mr. Gonzalez's blood.⁴

The first significant condition contributing to death, the "physiologic stress of altercation and restraint," is the only condition which involves the APD officers. Dr. Snyder carefully reviewed the interactions of the officers with Mr. Gonzalez, including the efforts to physically detain and restrain him. Her review involved viewing available evidence in the case, including the body cam videos. Dr. Snyder summarized the incident as follows, "[d]uring the interaction with law enforcement agents, he was face down on the ground (prone) with his hands handcuffed behind his back, and at times the officers were applying pressure to his torso and legs with at least some of the weight of their bodies." After her thorough review, Dr. Snyder determined that the "physiologic stress of the altercation and restraint" contributed but was not the cause of death. Instead, Dr. Snyder concluded that the cause of death was the toxic effects of methamphetamine. Further, Dr. Snyder's autopsy of Mr. Gonzalez did not result in

⁴ Toxic blood levels of methamphetamine have been listed at greater than 120 ng/mL by the Chief Medical Examiner of North Carolina (<https://www.ocme.dhhs.nc.gov/toxicology/index.shtml>) and greater than 500 ng/mL by Clinical Laboratory Reference (<https://www.clr-online.com/cldr201213-table-of-cutoff-toxicity-doa.pdf>).

the finding of any lethal injuries as a result of the incident, which included the altercation and restraint by the officers.

Dr. Snyder also concluded that “morbid obesity” was another significant condition contributing to Mr. Gonzalez’s death. Mr. Gonzalez’s body mass index (BMI) was calculated to be 47.25. The Center for Disease Control (CDC) and World Health Organization (WHO) categorize those with a BMI of 40 or higher to be morbidly obese but use the revised terms “Class 3 obesity” or “severe obesity.” Prolonged exposure to obesity leads to worsening of cardiac (heart) function and heart disease.⁵ Indeed, Dr. Snyder found that Mr. Gonzalez’s heart weighed 450 grams and was enlarged (“cardiomegaly”). Dr. Snyder also observed that Mr. Gonzalez’s heart had “mild four-chamber dilation,” which means the heart muscle has become thinner and weaker. Both heart conditions cause the heart to pump less strongly and efficiently, leading to an increased risk of heart complications and heart failure, which is what occurred in this case. The APD officers had no way of knowing these conditions existed.

The third significant condition contributing to Mr. Gonzalez’s death is alcoholism. Dr. Snyder concluded that Mr. Gonzalez had a history of alcoholism as evidenced by “marked hepatomegaly (3920 grams) with severe steatosis.” Hepatomegaly is an enlarged liver and steatosis means that the liver has extra fat. Here, Dr. Snyder characterized both liver conditions as serious. Dr. Snyder also noted that toxicology testing detected alcohol (ethanol) in Mr. Gonzalez’s blood. Again, the officers had no way of knowing these underlying health conditions existed.

In her summary conclusion, Dr. Snyder stated, “[b]ased on the totality of available information, including investigative, autopsy, and laboratory findings, it is apparent that Mr. Gonzalez Arenales experienced cardiopulmonary arrest because of multiple factors.” Dr. Snyder continued, “[t]he methamphetamine detected in his blood combined with his enlarged and dilated heart could have together resulted in a fatal cardiac arrhythmia.” This suggests that even without the interactions with the APD officers, the toxic levels of methamphetamine and Mr. Gonzalez’s heart conditions due to morbid obesity could have caused his death, making the causation element of murder and manslaughter difficult to prove against the officers. Dr. Snyder adds to her summary that “the stress of the altercation and restraint combined with prone positioning in the setting of morbid obesity and recent use of methamphetamine placed further strain on Mr. Gonzalez Arenales’ heart.”

As previously stated, for both murder and manslaughter, causation must be proved beyond a reasonable doubt. The applicable law regarding the causation element requires the officers’ conduct to satisfy two causation requirements to find criminal liability when there may be more than one cause of death. First, the officers’ actions must be a substantial factor causing death, and second, the death must be a direct, natural, and probable consequence of the officers’ actions. For the reasons set forth below, the District Attorney’s Office concludes that the causation element cannot be proved beyond a reasonable doubt for any of the involved officers.

Beginning first with the substantial factor analysis, when there may be more than one cause of death, the law only requires that a cause be more than trivial or remote for it to be a substantial factor causing death. Given the physical interactions between the officers and Mr. Gonzalez, and Dr. Snyder’s conclusion that the stress of the altercation and restraint was a “significant condition contributing to death,” we cannot definitively conclude that the officers’ conduct was trivial or remote in causing the

⁵ The Cleveland Clinic lists this heart complication as one of many caused by “morbid obesity” or “Class 3 obesity.” <https://my.clevelandclinic.org/health/diseases/21989-class-iii-obesity-formerly-known-as-morbid-obesity>

death. For the purposes of this causation analysis only, we will assume that the officers' actions during the altercation and restraint were a substantial factor in Mr. Gonzalez's death.

It must be noted that there are significant hurdles to proving beyond a reasonable doubt that the officers' actions were a substantial factor in Mr. Gonzalez's death. Dr. Snyder's express medical opinion supports the possibility that the toxic effects of methamphetamine in combination with Mr. Gonzalez's enlarged and dilated heart "*could have together*" caused his heart to cease functioning (cardiac arrest). Based on this opinion, factors not attributable to the officers would have caused Mr. Gonzalez's death, and the officers' conduct could not be a substantial factor causing death. This creates a significant challenge in proving the officers' actions were a substantial factor causing death.

Further, Dr. Snyder concluded Mr. Gonzalez's cause of death to be the "toxic effects of methamphetamine." Dr. Snyder listed three contributing factors to the death, the physiologic stress of altercation and restraint; morbid obesity; and alcoholism, but she specifically listed these factors as "significant conditions contributing to death," and not "causes of death." An argument can be made that there was only one cause of death, and the substantial factor analysis should not even begin. This is also an argument of significant concern.

However, even assuming the officers' actions during the altercation and restraint were a substantial factor in Mr. Gonzalez's death, the causation element also has a second requirement, that the death be the "direct, natural, and probable" consequence of the officers' actions. To support a conviction, the evidence must also prove Mr. Gonzalez's death was a "direct, natural, and probable consequence" of the actions by the officers. A natural and probable consequence is one that a reasonable person would know is likely to happen if nothing unusual intervenes. (CALCRIM No. 520, 581).

Here, the officers were dealing with an individual in his mid-twenties who appeared to be drinking from a stolen bottle of alcohol based on the physical evidence and his conduct. While Mr. Gonzalez was a larger individual, a reasonable person could not be expected to know that Mr. Gonzalez had toxic levels of methamphetamine in his system, or that his heart and liver were compromised physically due to morbid obesity and alcoholism. These are conditions invisible to the naked eye and required laboratory testing and an autopsy to uncover. However, it was these same conditions which caused and contributed to Mr. Gonzalez's cardiac arrest. For these reasons, it is difficult to conclude that the direct, natural, and probable consequences of the officers' act of lawfully detaining and arresting a resisting Mr. Gonzalez would be death, particularly when the sole cause of death was determined to be the toxicity of methamphetamine, and the other contributing factors were morbid obesity and alcoholism.

Further, for many reasons discussed in the detention section of this report, a reasonable person would not know that their conduct of lawfully taking a person into custody who is actively resisting would result in death. In the circumstances that we have here, where the officers were taking care to deescalate the situation, to limit the weight placed on Mr. Gonzalez's back, to avoid any sort of hold that would restrict Mr. Gonzalez's airways, and to not strike Mr. Gonzalez or use weapons on him, we cannot conclude the officers were the direct, natural, and probable cause of Mr. Gonzalez's death.

A contrary conclusion regarding causation would require the officers to predict a detainee's level of intoxication or drug use and preexisting medical conditions. This would lead to a causation standard in which officers would be encouraged to allow certain resisting detainees to go free out of fear of criminal prosecution because some preexisting medical condition could lead to death. Such a result would also

encourage detainees to physically resist with the knowledge that officers must cease detention out of fear of a fatal medical incident.

For the reasons detailed above, we conclude that the requisite causation element cannot be proved beyond a reasonable doubt to support criminal liability for the officers.

Coroner's Bureau's Classification on Manner of Death

In order to be comprehensive and transparent, the District Attorney's Office will address the Coroner's Bureau's classification of Mr. Gonzalez manner of death as a "homicide." It cannot be overlooked that the definition of homicide in the context of the Coroner's determination of manner of death for a death certificate is a wholly distinct process from determining whether an unlawful homicide has occurred in the criminal context. The Coroner's Investigation Report states that Mr. Gonzalez's death was reviewed by the Coroner's Bureau Manner of Death Committee and that the committee referred to the National Association of Medical Examiners, "*A Guide for Manner of Death Classification*," ("Guide") in determining the death to be homicide. This Guide provides only five classifications for manner of death: (1) Natural; (2) Accident; (3) Suicide; (4) Homicide; and (5) Undetermined.⁶ With regards to the definition of homicide in this context, the Guide reads:

Homicide occurs when death results from a volitional act committed by another person to cause fear, harm, or death. Intent to cause death is a common element but is not required for classification as homicide (more below). **It is to be emphasized that the classification of Homicide for the purposes of death certification is a "neutral" term and neither indicates nor implies criminal intent, which remains a determination within the province of legal processes.** (Emphasis added.)

Therefore, the classification of homicide by the Coroner's Bureau is a neutral term and does not in any way affect the District Attorney's Office's determination in the criminal context, a determination that is guided by the applicable statutes in the Penal Code and the case law interpreting those criminal statutes. Indeed, Government Code Section 27491, with regards to a coroner's classification of death states, "Inquiry pursuant to this section does not include those investigative functions usually performed by other law enforcement agencies." Our prosecutorial decisions must be guided by these legal principles and the totality of the evidence before us, not by the classification of the Coroner's Bureau in an entirely different context, using different definitions and standards, and would very likely be inadmissible in a criminal proceeding. (*People v. Jones* (2013) 57 Cal.4th 899, 950 (Legal conclusions do not constitute substantial evidence); Evidence Code Sections 801 through 805, 352).

Conclusion

A prosecutorial decision must rest squarely on the ability to establish the elements of a crime beyond a reasonable doubt. As detailed above, after reviewing the evidence in this case, the elements of the relevant crimes cannot be proven beyond a reasonable doubt. Applying the high charging standards by which the District Attorney's Office is ethically bound, we can only conclude that the officers involved in this incident are not criminally liable. We are closing our file and will take no further action in this matter.

⁶ See also Government Code Section 27504 which limits Coroner's Inquest verdicts to only four manner of death classifications - (1) natural causes, (2) suicide, (3) accident, or (4) the hands of another person other than by accident.