



# COUNTY OF MADERA

## OFFICE OF THE DISTRICT ATTORNEY

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November 16, 2021

**Sally O. Moreno**  
District Attorney

**Jeffrey D. Dupras**  
Assistant District  
Attorney

David Riviere  
Chief of Police  
Chowchilla Police Department  
122 Trinity Ave  
Chowchilla, CA 93610

RE: Officer Involved Shooting of Angel Cruz Garza  
Madera Sheriff's Office No.: 21-2930  
District Attorney No.: 2021-OIS-01  
Chowchilla Police Department No.: 21-960  
Date of Incident: May 29, 2021  
Involved Officers: Nick Escalera, James DeWall, and Gilberto Marquez

Chief Riviere:

The Madera County District Attorney's Office has completed its investigation of the shooting of Angel Cruz Garza by Chowchilla Police Department officers.

The sole purpose of our investigation is to determine whether any violation of criminal law may have occurred.

To this end, we viewed the officers involved as suspects, and they received the same presumptions and protections provided to any suspects, including but not limited to the presumption of innocence.

Any analysis regarding provability must be made in light of the standard in criminal cases that any charges must be proved unanimously to a jury of twelve (12) citizens beyond a reasonable doubt. Our filing criteria in this, as in all other cases is:

“In making crime charging decisions, prosecutors should be guided by established standards ...

T: (559) 675-7726

F: (559) 674-4275

209 W. Yosemite Ave.  
Madera, California 93637

MaderaDA@maderacounty.com

maderacounty.com/government/district-attorney

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# COUNTY OF MADERA

## OFFICE OF THE DISTRICT ATTORNEY

---

November 16, 2021

Page 2

The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective factfinder after hearing all of the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor.” (California District Attorneys’ Association Uniform Crime Charging Standards)

This review does not examine issues such as compliance with the policies and procedures of any law enforcement agency; ways to improve training or tactics; or possible civil liability. Accordingly, this review should not be interpreted as expressing an opinion on those matters.

### **MATERIALS REVIEWED**

Our investigation included review of the following investigative materials:

Documents generated by the Madera County Sheriff’s Office and the Chowchilla Police Department including but not limited to: investigative reports, photographs of relevant real evidence, scene diagrams, body camera video, in car camera video, surveillance video, audio recordings of witness interviews, and all relevant incident reports.

### **FACTUAL SUMMARY**

On May 29, 2021, Officer Nick Escalera, Officer James DeWall, and Officer Gilberto Marquez were involved in a shooting with Angel Cruz Garza. This shooting occurred in the back parking lot of the Chowchilla Police Department (CPD). CPD is located at 122 Trinity Avenue in Chowchilla; it is a cement and brick building. The rear alley to CPD is unsecured and is open to the east on 1<sup>st</sup> Street, to the west on 2<sup>nd</sup> Street, and opens to the south to a parking lot. CPD parks their vehicles on the northside of the building under the carport.

CPD video footage shows Mr. Garza at CPD on Friday, May 28, 2021, around 9:41 p.m. He is seen walking from the west to the east behind the patrol vehicles wearing a graduation cap and singing and/or talking to himself. Video footage shows Mr. Garza standing around Sergeant Stacy Burns’s patrol vehicle (Unit 50). On May 29, 2021, video footage shows Mr. Garza around Unit 50 and shows the headlights of Unit 50 turn on. It should be noted that CPD cameras are motion activated.

At approximately 12:33 a.m. on May 29, 2021, Officer Escalera arrived at CPD and parked his department issued, marked patrol vehicle in the alley facing west. The headlights to Unit 50 turned on, however, Officer Escalera did not notice the lights. Officer Escalera had an arrestee in



# COUNTY OF MADERA

## OFFICE OF THE DISTRICT ATTORNEY

---

November 16, 2021

Page 3

his car at the time and he is seen on video escorting the arrestee into CPD. Approximately 10 minutes later, Officer Escalera came out of CPD, and his focus was drawn to Unit 50 as the headlights and taillights turned on. Officer Escalera then walked to the back of Unit 50, unholstered his duty weapon, a .40 caliber semi-automatic handgun, and requested via radio for units to respond to CPD as soon as possible with lights and sirens activated (Code 3). Officer Escalera also informed officers that Mr. Garza was armed with a rifle.

At approximately 12:44 a.m., Officer DeWall entered the alley in his marked patrol vehicle. Officer DeWall's lights and sirens were activated when he entered the alley; he was driving east to west and parked his marked patrol vehicle. Officer DeWall got out of his patrol vehicle wearing a department issued uniform and left on his flashing lights. Officer Marquez arrived simultaneously in his marked patrol vehicle with his lights and sirens activated. Officer Marquez traveled west to east into the alley and parked directly in front of Unit 50 approximately 15 feet from the front of Unit 50. Officer Marquez got out of the vehicle wearing a department issued uniform and left his lights activated and flashing. After these officers arrived, Officer Escalera moved from behind Unit 50 to the front driver side of Unit 50 approximately 15 to 20 feet away from Unit 50. Officer Marquez was in front of Unit 50, slightly west, positioned behind his vehicle with his department issued .40 caliber semi-automatic handgun drawn and pointed at Unit 50. Officer DeWall approached Unit 50 with his department issued AR15 style rifle drawn and moved toward Officer Marquez's vehicle. Officers ordered Mr. Garza to get out of Unit 50 and to drop his weapon. Mr. Garza removed his graduation hat, showed officers, and reached down into his lap and made movements with his hands.

Mr. Garza then raised his hands holding Unit 50's AR15 style rifle. Mr. Garza raised the butt of the rifle to his shoulder, pointed the rifle in the direction of Officer Escalera and fired the rifle. When Mr. Garza fired the rifle all 3 officers fired their weapons.

After the officers ceased fire, they checked each other for wounds and found that no one was injured. They then approached Unit 50 on the passenger side and entered Unit 50 through the passenger side window. Mr. Garza was observed unconscious and slumped over with the rifle slung around his shoulder. The barrel of the rifle was laying on the driver's side window seal with the butt of the rifle in Mr. Garza's lap. Officers also observed that Mr. Garza had the radio cord belonging to Unit 50 wrapped around his neck. Officer Marquez removed the rifle from Mr. Garza's hands and then cut the cord from around Mr. Garza's neck. Mr. Garza was then removed from the vehicle, handcuffed and then an officer began performing life saving measures until emergency medical services (EMS) arrived.



# COUNTY OF MADERA

## OFFICE OF THE DISTRICT ATTORNEY

---

November 16, 2021

Page 4

When EMS arrived, they administered aid to Mr. Garza. Mr. Garza was transported to the Chowchilla Airport and was flown to Community Regional Medical Center in Fresno, CA. Mr. Garza underwent emergency surgery. A bullet fragment was removed from his body during that surgery. On May 29, 2021, Mr. Garza was released from surgery and placed into a recovery room.

Mr. Garza later died because of injuries sustained during this incident. Mr. Garza died on June 11, 2021.

It was determined during the investigation that Officer Escalera fired approximately 8 rounds from his department issued .40 caliber firearm. Officer Marquez fired approximately 8 rounds from his department issued .40 caliber firearm, and Officer DeWall fired approximately 2 rounds from his department issued AR15 style rifle.

Officers Escalera, Marquez and DeWall were interviewed by Madera County Sheriff's detectives. During Officer Escalera's interview he stated that when he saw the barrel of the rifle pointed at him, he was afraid for his life and for his partners' lives. Officer Escalera also feared that if Mr. Garza was not stopped, he could possibly escape and go on a shooting rampage in the community.

Officer Marquez stated that immediately prior to the shooting he feared for Officer Escalera's life, his own life, and the life of Officer DeWall, and that is why he fired his duty weapon. Officer Marquez stated that had Mr. Garza been able to drive away from the scene he would have been a threat to the community.

Officer DeWall stated that he believed at the time that if Mr. Garza was allowed to leave the premises, he would have hurt someone else. Officer DeWall said that during the incident that he thought that Mr. Garza was going to shoot Officer Escalera because he was right in the line of fire of the rifle that Mr. Garza was holding. Officer DeWall stated he fired his weapon because he was afraid Mr. Garza was going to shoot him or his fellow officers.

### AUTOPSY

An Autopsy was performed on Angel Cruz Garza (DOB 3-8-1980) on June 16, 2021, by forensic pathologist Dr. Mark Super. During the autopsy Dr. Super determined that Mr. Garza had been shot in the back of his right forearm and the top portion of his head. The cause of death was a gunshot wound to the head.



# COUNTY OF MADERA

## OFFICE OF THE DISTRICT ATTORNEY

---

November 16, 2021

Page 5

### RELEVANT FACTS NOT KNOWN TO THE OFFICERS

A drug analysis revealed that Mr. Garza had Amphetamine and Methamphetamine in his system at the time of his death at the following levels:

Amphetamine           0.01 mg/L  
Methamphetamine   0.10 mg/L

Mr. Garza's level of methamphetamine was above the effective level.

Mr. Garza had the following convictions:

3-30-98	PC 475	Misdemeanor	Madera County
1-7-08	PC 273.5(a)	Misdemeanor	Madera County
4-2-09	VC 23152(b)	Misdemeanor	LA County
11-19-10	PC 148(a)(1)	Misdemeanor	Madera County
11-19-10	VC 14601.5(a)	Misdemeanor	Madera County
8-2-11	PC 148.9(a)	Misdemeanor	Madera County
10-31-13	HS11377(a)	Felony	Madera County
11-21-13	PC 459 1 <sup>st</sup>	Felony	Madera County
11-21-13	PC 148(a)(1)	Misdemeanor	Madera County
3-12-14	PC243(e)(1)	Misdemeanor	Madera County
9-21-15	PC 69 (3x)	Misdemeanor	Madera County
1-17-18	PC 647(f)	Misdemeanor	Madera County
8-6-18	PC 242	Misdemeanor	Madera County
8-6-18	PC 148(a)(1)	Misdemeanor	Madera County
8-6-18	PC 148(a)(1) (2x)	Misdemeanor	Madera County
8-6-18	PC 484(a)	Misdemeanor	Madera County
10-25-18	PC 273a(b)	Misdemeanor	Madera County
12-7-18	PC 69	Felony	Madera County
3-12-21	PC 148(a)(1)	Misdemeanor	Madera County

### APPLICABLE LAW

Penal Code section 197 provides that the use of deadly force by any person is justifiable when used in self-defense or in defense of others.

A person acts in lawful self-defense or defense of another if:

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# COUNTY OF MADERA

## OFFICE OF THE DISTRICT ATTORNEY

---

November 16, 2021

Page 6

1. They reasonably believed that they or someone else was in imminent danger of being killed or suffering great bodily injury;
2. They reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
3. They used no more force than was reasonably necessary to defend against that danger.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be. They must have believed there was imminent danger of death or great bodily injury to themselves or someone else. Their belief must have been reasonable, and they must have acted only because of that belief. They are only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation. If they used more force than was reasonable, the killing was not justified.

When deciding whether their beliefs were reasonable, consider all the circumstances as they were known to and appeared to them and consider what a reasonable person in a similar situation with similar knowledge would have believed. If their beliefs were reasonable, the danger does not need to have actually existed.

Their belief that they or someone else was threatened may be reasonable even if they relied on information that was not true. However, they must actually and reasonably have believed that the information was true.

If the decedent threatened or harmed them or others in the past, you may consider that information in deciding whether their conduct and beliefs were reasonable.

If they knew that the decedent had threatened or harmed others in the past, you may consider that information in deciding whether their conduct and beliefs were reasonable.

Someone who has been threatened or harmed by a person in the past, is justified in acting more quickly or taking greater self-defense measures against that person.

If they received a threat from someone else that they reasonably associated with the decedent, you may consider that threat in deciding whether they were justified in acting in self-defense or defense of another.



# COUNTY OF MADERA

## OFFICE OF THE DISTRICT ATTORNEY

---

November 16, 2021

Page 7

A person is not required to retreat. They are entitled to stand their ground and defend themselves and, if reasonably necessary, to pursue an assailant until the danger of death or great bodily injury has passed. This is so even if safety could have been achieved by retreating.  
(CALCRIM 505, April 2021 Update)

Penal Code section 196 also provides that the killing is justified, and therefore not unlawful, if:

1. The person was a peace officer; and,
2. The killing was committed while they either:
  - A. Reasonably believed, based on the totality of the circumstances, that the force was necessary to defend against an imminent threat of death or serious bodily injury to them or another person; or
  - B. Reasonably believed, based on the totality of the circumstances, that:
    - a. The decedent was fleeing;
    - b. The force was necessary to arrest or detain the decedent for the crime of assault on a peace officer;
    - c. The commission of the crime of assault on a peace officer created a risk of or resulted in death or serious bodily injury to another person; and
    - d. The decedent would cause death or serious bodily injury to another person unless immediately arrested or detained.

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or to another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.

Totality of the circumstances means all facts known to the peace officer at the time, including the conduct of the officer and decedent leading up to the use of deadly force.

Factors that may be considered when considering the totality of circumstances:

- Prior to the use of force, the peace officer identified or attempted to identify him or herself as a



# COUNTY OF MADERA

## OFFICE OF THE DISTRICT ATTORNEY

---

November 16, 2021

Page 8

- peace officer and warned or attempted to warn that deadly force may be used;
- Prior to the use of force, the peace officer had objectively reasonable grounds to believe the person was aware that they were a peace officer and that deadly force may be used;
  - The peace officer was able, under the circumstances, to identify or attempt to identify him or herself as a peace officer and to warn or attempt to warn that deadly force may be used.

A peace officer who makes or attempts to make an arrest need not retreat or stop because the person being arrested is resisting or threatening to resist. A peace officer does not lose their right to self-defense by using objectively reasonable force to arrest or to prevent escape or to overcome resistance.

(CALCRIM 507, April 2021 Update)

The test for determining whether a homicide was justifiable under California Penal Code section 196 is whether the circumstances “reasonably created a fear of death or serious bodily harm to the officer or to another.” (Kortum v. Alkire (1977) 69 Cal.App.3d 325, 333; accord, Reynolds v. County of San Diego (S.D.Cal. 1994) 858 F. Supp. 1064; 1074 1075; People v. Rivera (1992) 8 Cal. App. 4th 1000, 1007.) Martinez v. County of L.A., 47 Cal. App. 4th 334, 349 (Cal. App. 2d Dist. 1996)

Penal Code section 192 provides that voluntary manslaughter is committed when the killer acted in imperfect self-defense or imperfect defense of another. This is defined as follows:

The person acted in imperfect self-defense or imperfect defense of another if:

1. They actually believed that they or someone else was in imminent danger of being killed or suffering great bodily injury; and
2. They actually believed that the immediate use of deadly force was necessary to defend against the danger; but
3. At least one of those beliefs was unreasonable.

Belief in future harm is not sufficient, no matter how great or how likely the harm is believed to be.

In evaluating the peace officer’s beliefs, consider all the circumstances as they were known and appeared to them.



# COUNTY OF MADERA

## OFFICE OF THE DISTRICT ATTORNEY

---

November 16, 2021

Page 9

A danger is imminent if, when the fatal wound occurred, the danger actually existed or the peace officer believed it existed. The danger must seem immediate and present, so that it must be instantly dealt with. It may not be merely prospective or in the near future.

Imperfect self-defense does not apply when the peace officer, through their own wrongful conduct, has created circumstances that justify their adversary's use of force.

If the decedent threatened or harmed the peace officer in the past, you may consider that information in evaluating their beliefs.

If the peace officer knew that the decedent had threatened or harmed others in the past, you may consider that information in evaluating their beliefs.

If the peace officer received a threat from someone else that they associated with the decedent you may consider that threat in evaluating their beliefs.

(CALCRIM 571, April 2021 Update)

*People v. Flannel* (1979) 25 Cal.3d 668, 680–683 [160 Cal.Rptr. 84, 603 P.2d 1]; *People v. Barton* (1995) 12 Cal.4th 186, 201 [47 Cal.Rptr.2d 569, 906 P.2d 531]; *In re Christian S.* (1994) 7 Cal.4th 768, 773 [30 Cal.Rptr.2d 33, 872 P.2d 574]; see *People v. Uriarte* (1990) 223 Cal.App.3d 192, 197–198 [272 Cal.Rptr. 693]

An officer has probable cause to believe that someone poses a threat of death or great bodily injury when facts known to the officer would persuade someone of reasonable caution that the suspect poses a significant threat of death or serious physical injury to the officer or others.

(*Tennessee v. Garner* (1985) 471 U.S. 1, 4.)

In the related context of cases alleging excessive force by police, the test of reasonableness of an officer's use of deadly force is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham v. Conner* (1989) 490 U.S. 386, 396.) It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness must embody the 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.” (Id. at 396-397.)



# COUNTY OF MADERA

## OFFICE OF THE DISTRICT ATTORNEY

---

November 16, 2021  
Page 10

### CONCLUSION

Mr. Garza unlawfully entered a marked patrol vehicle that was parked in the back parking lot at CPD. After entering the vehicle, Mr. Garza took possession of a loaded AR-15 style rifle. Officer Escalera observed the lights of the patrol vehicle turn on and then noticed that Mr. Garza was inside the patrol vehicle armed with the rifle. Upon seeing Mr. Garza in the vehicle, Officer Escalera issued commands for Mr. Garza to get out of the vehicle and to drop the rifle. He also radioed for backup units to respond as soon as possible with lights and sirens activated to CPD. Officers DeWall and Marquez responded to CPD as soon as possible with lights and sirens activated. Upon arriving at CPD, Officer Marquez also issued orders for Mr. Garza to get out of the vehicle and drop the rifle. Mr. Garza refused to follow the commands of the officers. Then, Mr. Garza picked up the rifle, pointed the rifle at Officer Escalera and fired the rifle in the direction of Officer Escalera. When the officers saw Mr. Garza pick up the rifle, point the rifle at Officer Escalera, and fire the rifle, all the officers fired their weapons to protect themselves and Officer Escalera.

Officer Escalera's, Officer DeWall's and Officer Marquez's use of deadly force was a justifiable response to prevent the threat of imminent death or great bodily harm. Therefore, it is the opinion of the District Attorney's Office that the use of deadly force by Officer Escalera, Officer DeWall and Officer Marquez did not involve any criminal conduct.

Respectfully submitted,

Sally O. Moreno  
District Attorney