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# Report of the Law Enforcement Involved Fatal Incident Investigation
# JUAN CARLOS AYON BARRAZA
# Richmond Police Department and Oakland Police Department on April 16, 2020

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## Privacy Statement

This report includes redactions of the names and other identifying information of victims, witnesses, and family members. Specific addresses are also not provided in this report. The public interest in such information is limited as it is not necessary to gain an understanding of the incident. Thus, the interest in nondisclosure clearly outweighs any public interest in disclosure.

For reasons related to privacy, as well as the readability of this report, the victims and witnesses will be indexed as follows:

- Victim (V-1), Female who was kidnapped and murdered by BARRAZA
- Witness (Wit-1), Relative of BARRAZA
- Witness (Wit-2), Relative of BARRAZA

## Executive Summary

On April 16, 2020, around 8:00 am, the family of V-1 contacted the Vallejo Police Department to report that V-1 was missing and that the last person seen with her was Juan Carlos Ayon BARRAZA. The family of V-1 further reported that they were unable to reach V-1 by phone or text messages and confronted BARRAZA, who said that "something bad" had happened to V-1 before he fled from the area. V-1's family members were unable to locate/contact BARRAZA.

Vallejo Police officers broadcast a missing persons alert for V-1 after learning about BARRAZA's violent criminal history and hearing that he possibly was armed with a firearm.

Later that evening, around 6:45 pm, a bicyclist in the hills between Oakland and Moraga saw a white Chevrolet cargo van stopped on the side of the roadway. The bicyclist could see a Hispanic male, 30-40 years old, taking what appeared to be the body of a female from the van and discarding it off the side of the road. The body was later determined to be V-1. She was bleeding, moaning, and appeared unconscious. An emergency call to 911 was made, and police units from Oakland and Moraga Police approached the area from opposite directions. The Chevrolet van was observed heading back towards Oakland/Alameda County. Moraga Police, who first began following the van, allowed Oakland Police to take over the pursuit.

Three Oakland Police patrol units followed the Chevrolet van out of the hills onto the surface streets and freeways, with their emergency lights and sirens activated. The driver of the van (later identified as BARRAZA) did not yield. Instead, he continued driving into Contra Costa County. Along the way, he waved a handgun out of the driver's window twice, within view of the lead Oakland Police unit.

(Meanwhile, V-1 was taken by ambulance to a hospital in Alameda County; she was in critical condition with a gunshot wound to the head and was not expected to survive. The police units were advised that this was an "attempted homicide.")

As the Chevrolet van headed into the city of Richmond, a sheriff's helicopter began tracking it. Following their department's policy, the Oakland Police units disengaged and stopped their pursuit, turning off their emergency lights and sirens, and allowed the helicopter to monitor the van's movements. A Richmond Police Department officer was aware of the pursuit and believed that the driver of the Chevrolet van was wanted for a possible homicide. He saw BARRAZA driving the van and began to follow it, with his patrol car's emergency lights and siren already activated. BARRAZA did not yield to the Richmond Police officer, either.

In a residential area, BARRAZA slowed his van and began to make a U-turn in an intersection. The Richmond officer could see BARRAZA holding a pistol through the van's side mirror. As BARRAZA was making the U-turn, the Richmond Police officer feared that he was going to be shot. The officer fired several rounds towards the van. BARRAZA accelerated and drove about one block, where the three Oakland Police units that had previously pursued him were waiting nearby. The Oakland Police officers heard the gunshots and almost simultaneously saw

BARRAZA approaching their location. BARRAZA crossed over from his lane into the opposite lane of traffic, headed directly towards the Oakland Police units. The officers tried to get out of their patrol cars, but one officer was essentially trapped in the backseat and began firing his handgun through the windshield at BARRAZA. The van rammed into the patrol car. Another officer who had been inside seconds before the collision was unable to safely flee the area and was struck by a combination of the van and the patrol car, which launched him into the air, and then landed on the street directly by the front tire of BARRAZA's van. He tried to move out of the way, but he was badly injured and was unable to stand, walk, or run. Other Oakland Police officers, hearing the multiple gunshots, seeing the flying glass from the windshield where the trapped rear passenger officer was firing, seeing the attack on the patrol units and their fellow officer on the ground, began firing at BARRAZA. They believed that BARRAZA was shooting at them. They saw the officer trapped on the ground by BARRAZA's van. They believed that their lives were in imminent danger due to BARRAZA's actions.

The Richmond Police officer, hearing the gunshots, exited his patrol car. He pointed his firearm at the rear of the Chevrolet van and fired twice at the driver, believing that the officers were in danger of imminent death or injury. After that, the gunshots ceased. Some Oakland Police officers rushed to carry the wounded officer to a waiting patrol car, where he was taken to Highland Hospital in Oakland. Other officers commanded BARRAZA to exit the van. BARRAZA did not react. A police canine ("K9") was sent inside the van. When BARRAZA did not apparently react to the K9, other officers finally ventured into the van and removed BARRAZA. He was declared dead at the scene at that time. A semi-automatic handgun was found inside the van.

On April 17, 2020, the Contra Costa County coroner conducted an autopsy on BARRAZA, which revealed that BARRAZA had been shot twice. The toxicology reports also showed evidence of "acute cocaine intoxication."

V-1 died after some weeks on life support due to her injuries.

On September 17, 2021, the coroner's inquest was held. At the conclusion of the testimony and evidence, 11 of the 12 jurors found that BARRAZA's death occurred "at the hands of another, other than by accident." One juror found that BARRAZA's death was due to "suicide."

In applying the law and the California District Attorney's Uniform Crime Charging Standards to the present case, the use of force by Officers Joseph DeOrian, Matthew Hohn, Roberto Recendez, Benjamin Sarno, Michael Finnicum, and Kyle Gaskin was reasonable based on the totality of the circumstances. As such, no further action will be taken in this case.

## INTRODUCTION

This report is the final step in the Contra Costa County District Attorney's Office ("CCCDAO") investigation of the death of Juan Carlos Ayon BARRAZA and the Richmond and Oakland Police Departments on April 16, 2020, in Richmond, California.

The CCCDAO and every law enforcement agency in Contra Costa County follow the Law Enforcement Involved Fatal Incident Protocol ("the Protocol")[1] to investigate incidents when officers or civilians are shot, killed, or die during an encounter with law enforcement. Under the Protocol, the CCCDAO investigates all in-custody deaths in Contra Costa County for the purpose of making an independent determination of criminal liability. The sole purpose of the District Attorney investigation is to determine if there is proof beyond a reasonable doubt that an individual involved in the law enforcement involved fatality committed a crime.

Pursuant to the Protocol, immediately after a fatality, the involved law enforcement agency is required to notify the appropriate district attorney personnel. Once notified, trained, and experienced members of the District Attorney's Office respond to the scene and begin the criminal investigation. In addition, criminal investigators from the law enforcement agency involved in the incident and from the jurisdiction where the incident occurred, if different, respond to the scene as well. It is important to note that although these investigations happen simultaneously, each agency conducts its own independent investigation.

As part of the criminal investigation, law enforcement officers and civilians who witnessed the incident may be interviewed, evidence is collected at the scene and may be submitted to the county crime lab for testing and analysis, in addition to any other relevant investigative work necessary to complete the investigation. The Contra Costa County Sheriff's Office Crime Lab responds to every incident and is responsible for evidence collection of all in-custody deaths.

During the course of the criminal investigation, an officer has the right to be represented by an attorney. They may voluntarily choose to provide a statement, physical evidence, or other relevant information during the criminal and administrative investigations. Under the law, neither an officer nor civilian can be compelled to give a statement as part of a law enforcement agency administrative investigation only. (See, Public Safety Officers Procedural Bill of Rights Act, Government Code Sections 3300 et seq.). In accordance with the law, the CCCDAO does not participate in compelled administrative investigation interviews and does not review them as part of the independent criminal investigation. There are very narrow circumstances where an exception to this rule is allowed.

Independent of the CCCDAO and in accordance with the Protocol, the Coroner's Division of the Contra Costa County Sheriff's Office (CCCSO) conducts a Coroner's Inquest following most

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[1] Contra Costa County was one of the first counties in the country to adopt a fatal incident protocol between the District Attorney and the law enforcement agencies within the county. The complete LEIFI protocol document can be located on the Contra Costa County District Attorney's Office website.

deaths that involve law enforcement personnel or law enforcement operations or activities within Contra Costa County.

The Coroner's Inquest is open to the public, conducted by a hearing officer (a private attorney hired by the Coroner's Division) and is held in front of a jury of citizens randomly selected from the Contra Costa County Superior Court jury pool. During the inquest, the hearing officer questions witnesses, and additional evidence may be presented. After hearing all of the evidence, the role of the jury is to decide whether the death was by (1) natural causes, (2) suicide, (3) accident, or (4) at the hands of another person other than by accident (i.e., homicide). The jury's decision has no legal bearing on the civil or criminal investigations or liability of any person(s) involved in the incident.

## INVESTIGATION[2]

**Overview:**

Consistent with Contra Costa County Protocol, on April 16th, 2020, following the death of BARRAZA, Chief of Inspectors Paul Mulligan (CCCDAO) was notified of this incident. Chief Mulligan assembled a team comprised of the following personnel to investigate the incident: Senior Inspector Dave Mathers, Senior Inspector Darryl Holcombe, Senior Inspector Eddie Sousa, Senior Inspector John Garcia, Senior Inspector Jim Alexander, Assistant Chief of Inspectors Arnold Threets, and Deputy District Attorney Barry Grove.

When the CCCDAO investigative team arrived, the scene was being physically contained by members of RPD and OPD. The scene of the incident was cordoned off with crime scene tape to aid in the preservation of physical evidence.

After walking through the crime scene and reviewing the associated evidence, the CCCDAO investigative team went to RPD for the briefing. A joint briefing was held with RPD, OPD, and CCCDAO personnel to give an overview of the incident to ensure everyone with an active role in the investigation had the same information before further steps were taken in the investigation. Sgt. Aaron Pomeroy (RPD, Homicide Unit) led the briefing, gave an overview of the incident, played relevant portions of the body-worn camera (BWC) footage of the involved officers, viewed the aerial footage from the CCCSO helicopter, and listened to the radio traffic from RPD personnel.

After the briefing each CCCDAO senior inspector was assigned different investigative tasks. The investigative teams/assignments were as follows:

[2] The "Investigation" section of this LEIFI document is pulled from excerpts of the CCCDAO "Investigative Report" authored by Senior Inspector Dave Mathers under report number 2020-04-16

| Assignment | Investigative Personnel | Subject(s) |
|---|---|---|
| Actor Officers | Sr. Insp. Mathers – CCCDAO<br>Det. Decious – RPD<br>Sgt. Vass – OPD | Ofc. Sarno – OPD<br>Ofc. Finnicum – OPD |
| Actor Officer | Sr. Insp. Mathers - CCCDAO<br>Det. Decious – RPD<br>Sgt. Sanchez – OPD | Ofc. Recendez – OPD |
| Actor Officers | Sr. Insp. Holcombe – CCCDAO<br>Det. Sagan – RPD<br>Sgt. Sanchez – OPD | Ofc. Gaskin – OPD<br>Ofc. Hohn – OPD<br>Ofc. DeOrian – RPD |
| Witness Officer(s) | Sr. Insp. Sousa – CCCDAO<br>Det. Vilalobos – RPD | Corp. Smith – OPD<br>Ofc. Chahal – OPD<br>Ofc. Blakley – OPD<br>Ofc. Masis – OPD<br>Corp. Razmilovic – OPD |
| Medical Responders | Sr. Insp. Garcia – CCCDAO<br>Det. Canelo – RPD | Captain Rodriguez – RFD<br>Firefighter Robleto - RFD<br>Engineer Perry - RFD<br>Medic Nelson - AMR<br>Medic Murphy – AMR |
| Family / Relatives | Sr. Insp. Alexander – CCCDAO<br>Det. Andrew Barbara – RPD | W-1 and W-2 |

**Evidence Reviewed:**

The following evidence was collected and reviewed for this investigation:

- The incident scene, South 37th St from Stege Ave to Carlson Blvd, Richmond
- Oakland Police Department report 20-19547
- Richmond Police Department report 20-3707
- Vallejo Police Department report 20-4502
- Moraga Police Department report 20-259
- Contra Costa County Sheriff report 20-3846
- Contra Costa County Coroner report 20-2077
- Body worn camera footage
- Law enforcement helicopter footage
- Involved officer and witness officer interviews
- Family member interviews
- Medical report for V-1
- Evidence collected at the scene
- Coroner's autopsy report for BARRAZA
- Contra Costa County Crime Lab Reports

- 20-1800-001 Shooting scene (Richmond)
- 20-1800-002 Materials collected at BARRAZA autopsy
- 20-1800-003 Examination of OPD and RPD officers' pistols
- 20-1800-004 Examination of BARRAZA's pistol, test firing
- 20-1800-005 Examination of BARRAZA's pistol, DNA & prints
- 20-1800-007 BARRAZA's van, documentation & photography
- 20-1800-008 Analysis of bullets recovered from BARRAZA's body
- 20-1800-009 Analysis of fingerprints from BARRAZA's van
- 20-1800-010 Analysis of bullet impacts on BARRAZA's van
- 20-2000-001 Examination of scene on Canyon Rd, Moraga
- 20-2000-002 Analysis of BARRAZA van's cargo area for evidence of V-1

**BARRAZA's Relevant Criminal History:**

- In 2018, when BARRAZA was 23 years-old, he was arrested for "False Imprisonment with Violence," "Inflicting Corporal Injury on a Spouse (or cohabitant)," "Assault with a Deadly Weapon," "Child Cruelty with Injury," and "Oral Copulation with a Minor." BARRAZA was convicted and as a felon was no longer eligible to possess firearms.

**Computer Aided Dispatch (CAD) timeline:**

The Richmond Police dispatch center created an incident log for this event (ID #200416199), which is attached to this report, below is a selected portion (administrative information and patrol units added to the call have been omitted, but are reflected in the complete log):

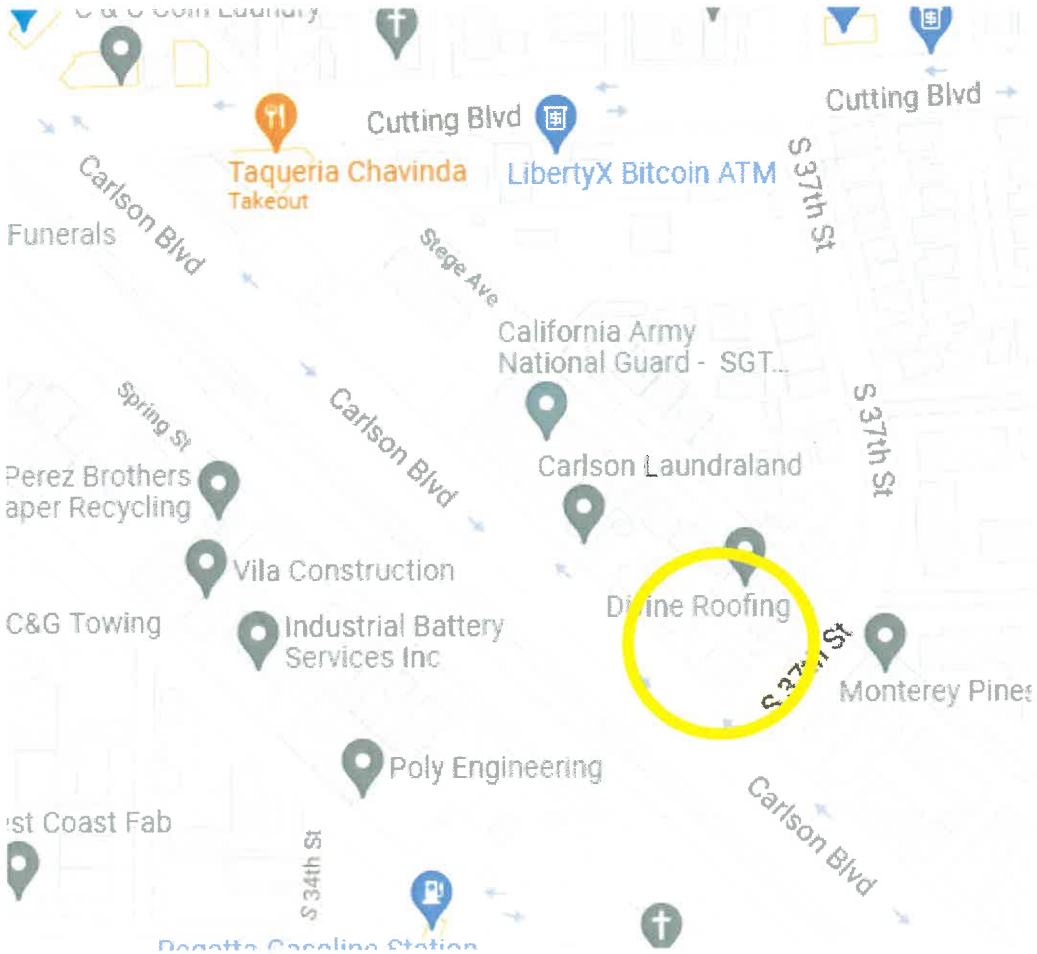
| Time stamp | Description |
|---|---|
| 19:21:49 | New incident/call created |
| 19:21:50 | Oakland PD helicopter following homicide suspect vehicle several ground units |
| 19:21:59 | White Chevrolet van |
| 19:22:33 | Suspect brandished firearm at officers and dumped a body in Oakland |
| 19:23:12 | Suspect is Hispanic male, 20 years old, blue jacket |
| 19:23:13 | CCCSO helicopter is assisting |
| 19:23:23 | On San Pablo Ave, wrong way driver |
| 19:26:27 | Turning onto MacDonald Ave |
| 19:24:11 | Southbound on 37th Street |
| 19:24:42 | 37th and Cutting Blvd |
| 19:25:07 | Handgun was pointed outside the vehicle at Oakland Police Officers |
| 19:25:15 | South 37th / Carlson |
| 19:25:19 | Making a U-turn |
| 19:25:22 | Shots fired |

**Scene Description:**

The area of the incident was a residential surface street located in the city of Richmond. The incident originally started in Vallejo with the alleged abduction of V-1, and transitioned to the hills between Moraga and Oakland, where BARRAZA discarded V-1's body. From the Oakland hills, OPD initiated a pursuit of BARRAZA, which entered highway 580, to interstate 80, and exited onto the surface streets of Richmond. The description below will be limited to the area where the police shooting occurred.

BARRAZA, once he exited the freeway onto Richmond surface streets, was travelling southbound on South 37th St, and as BARRAZA crossed over Cutting Blvd, RPD Ofc. DeOrian began following BARRAZA. Ofc. DeOrian's patrol SUV lights and siren were subsequently activated as he followed BARRAZA.

As South 37th St intersects Stege Ave, South 37th bends from a primarily north/south roadway to a north-east/south-west roadway. South 37th St then terminates into Carlson Blvd. Below is an overview of this area. The yellow oval highlights the area of the police shootings.



The first shooting occurred just north-east of the intersection of South 37th/Carlson Blvd. As BARRAZA slowed and began making a U-turn, he raised up his pistol and RPD Ofc. DeOrian fired at BARRAZA while Ofc. DeOrian was seated within his patrol SUV.

BARRAZA then continued northbound along South 37th, the short distance to the intersection of South 37th and Stege Ave. BARRAZA had crossed the roadway, traveling north bound in the south bound lane, heading straight toward the line of OPD patrol cars. BARRAZA drove the front of his van into the front of the lead OPD patrol vehicle, in the area of the southwest portion of the intersection of South 37th and Stege Ave. The second police shooting occurred as BARRAZA collided with the OPD patrol sedan and ended shortly after BARRAZA's vehicle came to rest.

The scene was documented, photographed, and laser scanned by the Contra Costa County Crime Lab.

By the time LEIFI investigative personnel arrived, BARRAZA (now deceased) was covered and lying next to the white van on the street. The two injured OPD officers had been transported to local hospitals.

**Body Worn Camera (BWC) footage:**

The BWC footage was uploaded by each agency and a link provided to the CCCDAO investigators. Each BWC file was reviewed, and the file name was updated to include the agency's initials, the wearer's name, and a start time. The BWC files were segregated into a folder for each agency.

None of the vehicles had dash mounted cameras.

**Factual Summary**

What follows is a summary of the incident, and for clarity and simplicity, will step through the events[3] in chronological order. However, some events occur simultaneously (overlap). Times, when listed and necessary, will be stated as approximations, when no log, radio communications, or BWC is available to support defining a precise time. Phrases surrounded by double quotations are verbatim, with clarifying details called out with "[", whereas, abbreviated non-verbatim quotes will be surrounded by single quotation marks. Details and officers' perspectives are taken from their individual interviews.

On April 16th, 2020, the family of V-1 contacted the VPD to report a suspicious incident involving BARRAZA and V-1.

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[3] In the context of this report, "events" will focus on details of the Officer Involved Shooting. Some background from the crimes Barraza is accused of committing will be included solely for context into Barraza's actions during the OPD and RPD pursuit.

V-1's relatives had recently seen BARRAZA with a pistol. They last saw V-1 together with BARRAZA. BARRAZA and V-1 were reportedly "hanging out" drinking together.

BARRAZA called one of V-1's family friends and stated, "shit went bad... she (V-1) freaked out." After receiving this call from BARRAZA, V-1's friends/family attempted to contact and locate BARRAZA. The family found BARRAZA in Vallejo and after briefly asking him questions, BARRAZA agreed to lead them to V-1, however, BARRAZA drove away rapidly, and the family was unable to catch-up to BARRAZA's vehicle.

VPD conducted an investigation, contacting associates of BARRAZA and checking locations BARRAZA was known to frequent. VPD used a search warrant to attempt to locate BARRAZA's cellular telephone. VPD followed up on leads in their efforts to locate V-1. A statewide Missing Persons bulletin was issued by VPD.

BARRAZA and two associates spent the day driving around searching various locations in the Bay Area to dispose of V-1's body. One of the associates, when interviewed by VPD, stated that they had asked BARRAZA to turn himself in and he responded, 'Hell no. At this point, I am going to die in a shootout with cops or go on the run. I'm not going back to jail again.'

In the early evening of April 16th, 2020, just prior to 6:45 pm, a cyclist was riding in the wilderness area of Pinehurst Rd in the unincorporated rural area east of Oakland and west of Moraga, California. This area is heavily wooded, isolated, and consists of a winding, narrow, two-lane roadway. The town of Canyon is between Oakland and Moraga. Moraga is in Contra Costa County and Oakland is in Alameda County. Cyclists frequently use this backroad wilderness area for recreation and exercise.

The cyclist observed the driver[4] of a sedan attempting to block the roadway. As the cyclist passed and proceeded further along the roadway, he observed a white Chevrolet van and a Hispanic male, age 30-40 years (BARRAZA). BARRAZA was dumping an object off the edge of the roadway. The cyclist realized the object was a woman's body. This area had very poor cellular telephone coverage and the cyclist had to ride further on the roadway to establish telephone service; at 6:45 pm, he called 9-1-1 and was connected with the OPD Dispatch Center.

The cyclist's call with OPD dispatch lasted just over nine (9) minutes and he described seeing the two vehicles, the drivers of each vehicle, and seeing the body of a woman; she was moaning as if injured. The description of the involved van was detailed and unique, a 'mid 80s Chevy work van.'

OPD dispatched officers and medical aid; OPD dispatch also notified the CCCSO as this area was very close to the border of the two counties.

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[4] The investigation into V-1's death revealed that the driver of this other vehicle was an associate of Barraza.

Multiple OPD patrol cars responded to the area, and they managed to locate BARRAZA and the van as he exited the wooded area into Oakland. OPD officers observed the van was being followed by a MPD patrol car. The OPD units turned around and began following BARRAZA.

7:04:22 pm – OPD Ofc. Sarno is the first officer to activate his BWC. Other OPD officers activated their BWCs shortly after. The OPD patrol car (with Ofc. Hohn, Ofc. Perry, and Ofc. Recendez) is in front of Ofc. Sarno's car. The lead OPD patrol car's emergency lights are activated, and sirens can be heard in the background. The MPD patrol vehicle yielded to the OPD patrol cars, and the pursuit continued with only OPD officers.

The pursuit transitioned from Oakland city streets to (7:10:05 pm) Highway 13, (7:11:27 pm) Interstate 580. At 7:12:06 pm, officers are advised that V-1 has been located and was in grave condition.

7:13:09 pm – The three officers[5] in the lead OPD car observed BARRAZA holding his hand out the driver's window while waiving a firearm. (7:15:50 pm) BARRAZA brandished the firearm again.

7:16:12 pm – BARRAZA transitioned to Interstate 80, (7:17:45 pm) CCCSO STARR-3 helicopter advised OPD they were attempting to reach the pursuit and were passing the City of Pinole.

BARRAZA merged (7:19 pm) on to Interstate 580. BARRAZA (7:20:10 pm) exited on to surface streets in Richmond.

As BARRAZA exited onto surface streets in Richmond, in the area of Interstate 580 and Bay View Ave. BARRAZA made a U-turn (7:20:48 pm) and Field Training Officer (FTO) Razmilovic and Officer Masis observed BARRAZA with the handgun as BARRAZA passed them in the opposite direction.

The pursuit continued and the helicopter from the CCCSO, reached the pursuit. OPD officers began to allow BARRAZA to gain distance; this is part of OPD's policy related to pursuits, when an aircraft is able to monitor and report the pursuit, the ground units back off.

RPD Officer DeOrian was monitoring the pursuit via his radio, and he positioned his marked patrol SUV on Cutting Blvd. at South 37th St. Ofc. DeOrian overheard the CCCSO helicopter providing a description of the white van, that the suspect (BARRAZA) was wanted for homicide, and that OPD was in pursuit.

BARRAZA turned (7:23:54 pm) from west bound MacDonald Ave. to south bound South 37th St. Ofc. DeOrian observed BARRAZA on South 37th St, traveling at a high rate of speed. BARRAZA (7:24:37 pm) crossed Cutting Blvd, continuing south on South 37th St. Ofc. DeOrian did not see any other OPD or RPD vehicles behind BARRAZA. The vehicle matched the description of the

[5] Ofc. Hohn, Ofc. Perry, and Ofc. Recendez

wanted vehicle and was in the area of the pursuit, therefore, Ofc. DeOrian began to pursue BARRAZA. Ofc. DeOrian's forward facing overhead emergency lights[6] were activated while he was still parked along the curb line, and his vehicle's siren could be heard on his body camera[7]. Ofc. DeOrian was the lead vehicle in the pursuit. BARRAZA (7:24:48 pm) slowed his vehicle and an OPD police vehicle[8] caught up to Ofc. DeOrian.

As South 37th St. bends to the right, and as the van passed Stege Ave. (7:25:02 pm) BARRAZA accelerated away. Ofc. DeOrian saw BARRAZA was holding a pistol and BARRAZA was looking at Ofc. DeOrian through the sideview mirror. BARRAZA continued on South 37th St., heading west toward its termination point with Carlson Blvd. BARRAZA began to make a left turn (7:25:08 pm), and fearing that BARRAZA was going to shoot him, Ofc. DeOrian initially fired two (2) rounds (7:25:11 pm) from his pistol at BARRAZA, directly through the front windshield of the patrol vehicle. As BARRAZA continued to make a left turn, now becoming a U-turn, Ofc. DeOrian tracked and fired seven (7) rounds at BARRAZA, now shooting through the patrol vehicle's driver side window.

BARRAZA continued driving along South 37th St, however, (7:25:14 pm) he crossed over into the on-coming lane.

BARRAZA drove (7:25:16 pm) directly into the front of the OPD patrol car (a Ford Crown Victoria sedan) driven by OPD Officer Hohn, with OPD Officer Perry in the right front passenger seat and OPD Officer Recendez in the rear seat. Ofc. Hohn and Ofc. Perry was in the process of exiting their patrol car; Ofc. Recendez was trapped in the rear as he could not unlock/open the rear door. Ofc. Perry was struck by the van (7:25:17 pm).

Ofc. Recendez feared that BARRAZA had an elevated position (higher seating in the van versus lower seating in the sedan). Ofc. Recendez saw what he believed was an exchange of gun fire between BARRAZA and the RPD Officer DeOrian, as well as BARRAZA firing from inside the van. Ofc. Recendez, from the backseat of the OPD patrol vehicle, fired his pistol[9] through the front windshield.

Moments after BARRAZA's collision with the OPD patrol car, as Officer Hohn was exiting and feeling the impact brush against his legs, Ofc. Hohn turned and saw BARRAZA reaching for something inside the van. Ofc. Hohn opined that the force of the collision might have dislodged BARRAZA's pistol and BARRAZA was now reaching for it. Ofc. Hohn[10] fired multiple times through the passenger door of the van toward BARRAZA.

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[6] The lights were visible on the helicopter footage, as Barraza passed through Cutting Blvd, while south bound on South 37th St.

[7] The BWC's audio does not start until 30 seconds after activation, so it is not possible to determine exactly when Ofc. DeOrian activated the siren. The siren was audible once the built-in mute deactivated.

[8] Ofc. Razmilovic and Ofc. Masis

[9] Ofc. Recendez fired one magazine of approximately 17 rounds.

[10] Ofc. Hohn estimated he fired 10 rounds.

Officer Sarno and Officer Finnicum were directly behind the OPD sedan (occupied by the three OPD officers) as BARRAZA's van struck the front of the sedan. Ofc. Sarno saw Ofc. Perry fly through the air; Ofc. Sarno exited his vehicle, heard shots being fired, feared that BARRAZA was, "trying to kill us," and fired[11] at BARRAZA.

After BARRAZA had crashed, Officer Finnicum saw glass flying from BARRAZA's windshield and thought that BARRAZA was actively shooting from inside the van. Ofc. Finnicum[12] fired at BARRAZA.

Ofc. DeOrian, after exiting his patrol SUV (stopped on South 37th St, between Carlson and Stege) fired (7:25:29 pm) two more rounds into the rear of BARRAZA's van, through one of the rear windows. Ofc. DeOrian was aiming toward BARRAZA's head. No other rounds were fired after Ofc. DeOrian's last two shots.

Ofc. Sarno (7:25:33 pm) noticed that Ofc. Perry, while on the ground, was at risk of being run over; Ofc. Sarno ran to the front of the patrol SUV and braced his body against the hood to stop the patrol vehicle's forward movement. Ofc. Finnicum assisted with the rescue of Ofc. Perry by dragging him from the area between the front of BARRAZA's van and the OPD patrol SUV.

The officers quickly loaded Ofc. Perry into the back of an OPD patrol SUV and two OPD officers drove Ofc. Perry directly to Highland Hospital in Oakland where he was treated for his injuries. Medical responders from the Richmond Fire Department (RFD) and American Medical Response (AMR) responded to the scene and rendered aid to the other injured OPD officer (ultimately transporting him to John Muir Hospital).

Other patrol officers from RPD and from CCCSO responded to the scene. OPD dispatched armored vehicles to the scene. The California Highway Patrol (CHP) assisted with traffic control due to the streets being sealed off.

RPD Officer Gault (8:18:25 pm) utilized his canine partner Major to jump through the shattered driver's window of BARRAZA's van. K-9 Major jumped in the window, but BARRAZA did not move, and Major did not make contact with BARRAZA. RPD Officer Vallegra deployed K-9 Ruger and K-9 Ruger made contact with BARRAZA while the arrest team removed BARRAZA from the vehicle.

RFD examined BARRAZA and observed a significant gunshot wound to BARRAZA's skull. BARRAZA did not have a pulse; he was declared deceased at the scene at 8:27 pm.

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[11] Ofc. Sarno estimated he fired 6 rounds.

[12] Ofc. Finnicum estimated he fired 7 to 10 rounds.

**Interviews of Involved Officers:**

There were eleven (11) sworn law enforcement officers involved in this incident. Of that number, six (6) were considered "Actors" under the Protocol[13] guidelines.

During the course of the criminal investigation, an officer has the right to be represented by an attorney. The officer may choose to provide a statement, physical evidence, and other relevant information. It's important to note that neither an officer or civilian can be compelled to provide a statement or any other evidence in a criminal investigation. An officer can only be compelled to provide a statement or other relevant information during an internal administrative investigation by the officer's employer[14]. In this investigation, all the involved officers provided voluntary statements to the CCCDAO, RPD, and OPD investigators with their attorney present. Each police officer was interviewed separately from the others within hours of the incident and after being subject to sequestration, with the exception of the two hospitalized officers; their interviews occurred in the days/weeks after the incident.

***Richmond Police Officer DeOrian***

Officer DeOrian was interviewed at the Richmond office of the Contra Costa County District Attorney, on April 17th, 2020, at 5:18 am. In attendance were Ofc. DeOrian, his representative Atty. Harry Stern, CCCDAO Sr. Insp. Holcombe and RPD Det. Sagan. The following information is a summary[15] of the relevant portions of Ofc. DeOrian's interview (refer to the Holcombe/Sagan reports for more details of this interview):

Ofc. DeOrian has been a peace officer with RPD for 15 years. He was working a patrol assignment, in full uniform and driving a fully marked police SUV, roof number "1113," with emergency lights and siren. He was armed with a Kimber 1911 pistol chambered in .45 ACP.

Ofc. DeOrian heard a police helicopter on RPD's radio channel (RPD does not operate its own helicopter), and the helicopter was informing RPD that OPD was in pursuit of a homicide suspect driving a white Chevy van; the van had exited onto Richmond city streets and was in the area of Carlson Blvd. He drove to the area in case OPD needed assistance.

As the van turned from San Pablo Ave, onto MacDonald Ave, passing the Target store, and onto South 37th St, Ofc. DeOrian stopped his vehicle at South 37th St and Cutting Blvd. Ofc. DeOrian activated his overhead lights to stop traffic, and he activated his BWC.

Ofc. DeOrian noticed BARRAZA's van, traveling at a high rate of speed with no OPD cars behind it. Not seeing any OPD vehicles, Ofc. DeOrian began to pursue BARRAZA while updating RPD Dispatch.

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[13] An "Actor" is a law enforcement employee whose conduct was actually or conceivably a factor in the fatality.
[14] The Public Safety Officers Procedural Bill of Rights Act, is codified in Government Code section 3300, et seq.
[15] These "summary" interviews may be organized and/or paraphrased for clarity.

As South 37th St intersects with Stege Ave, BARRAZA slowed and Ofc. DeOrian thought, "[BARRAZA] was trying to ditch[16]." Ofc. DeOrian was able to, "see through [BARRAZA's] driver's side mirror, a Hispanic male... [with] beard, goatee," "[with] a serious look on his face." Ofc. DeOrian was also able to see BARRAZA holding a black pistol.

As BARRAZA came to a full stop[17], Ofc. DeOrian took evasive action, positioning his patrol SUV more to the right so, "[BARRAZA] can't aim back at me." BARRAZA continued "inching forward," while, "looking dead at me through the mirror."

BARRAZA continued driving and at the termination of South 37th St into Carlson Blvd. BARRAZA began turning left and Ofc. DeOrian had a clear view of the left (driver's) side of BARRAZA's van. Ofc. DeOrian saw BARRAZA, "out of the window," "[BARRAZA had] the gun about window level," "and [BARRAZA's] coming up, the muzzle[18] just came up." "I was afraid [BARRAZA] was going to shoot me."

Ofc. DeOrian described firing his pistol at BARRAZA, and his description was consistent with his BWC footage.

BARRAZA accelerated and Ofc. DeOrian saw BARRAZA, "heading right towards the OPD guys." Ofc. DeOrian described reloading his empty pistol from within his patrol SUV. Ofc. DeOrian was able to stop and exit his SUV and saw OPD officers engaged with BARRAZA, from the left and right of BARRAZA's van.

Ofc. DeOrian, seeing the OPD officers still engaged with BARRAZA, fired two rounds through the rear window of BARRAZA's van. Shrapnel began striking Ofc. DeOrian, so he repositioned around the back of his vehicle and then moved up to support the OPD officers.

***Oakland Police Officer Gaskin***

Officer Gaskin was interviewed at the Richmond office of the Contra Costa County District Attorney, on April 17th, 2020, at 3:32 am. In attendance were Ofc. Gaskin, his representative Atty. Murphy, CCCDAO Sr. Insp. Holcombe, RPD Det. Sagan, and OPD Sgt. Sanchez. The following information is a summary of the relevant portions of Ofc. Gaskin's interview:

Ofc. Gaskin has been a peace officer with OPD for five years. He was working a patrol assignment, in full uniform and driving a fully marked police SUV, roof number "1461," with emergency lights and siren. He was armed with a Glock 17 pistol chambered in 9mm.

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[16] "Ditch" is a common euphemism for "fleeing from the vehicle."

[17] The helicopter video shows Barraza slowing dramatically and coming to a nearly complete stop at the intersection with Stege Ave.

[18] "Muzzle" is a common term for the front of a pistol.

Ofc. Gaskin was dispatched to the area of Pinehurst/Redwood Rd/Skyline for a "white cargo van that had been used... to dispose of [a] body." Ofc. Gaskin [was] in the area with two other OPD patrol vehicles when BARRAZA's van passed by in the opposite direction.

Ofc. Gaskin described[19] the route of the pursuit. While Ofc. Gaskin was third in-line of the OPD patrol cars, he observed BARRAZA extend his hand out the driver's window. While Ofc. Gaskin could not see the actual gun in BARRAZA's hand, Ofc. Gaskin overheard, via police radio, that another OPD officer observed a pistol in BARRAZA's hand. Ofc. Gaskin recalled hearing another radio transmission, informing the officers that V-1 had been located and was, "in critical condition," and the officers were to treat this as an "attempt 187[20]."

Once BARRAZA exited Interstate 580, in Richmond, Ofc. Gaskin observed him making a U-turn and while passing each other, "[BARRAZA was] looking at us, smiling and waving."

Since the CCCSO helicopter was overhead, the OPD officers backed off to give BARRAZA some distance. Ofc. Gaskin overheard that BARRAZA was slowing and he accelerated to catch-up. Ofc. Gaskin reached the bend of South 37th St and Stege Ave and saw BARRAZA just as BARRAZA was making a U-turn, "and then [BARRAZA] started coming directly towards us," "[Ofc. Gaskin] thought [BARRAZA] wanted to kill [the officers]" by using the van as a weapon.

Ofc. Gaskin was directly behind the OPD sedan[21] and Ofc. Gaskin saw, "rounds hitting the windshield of [Ofc.] Perry's car. I just started seeing the holes...glass... shooting up... I thought [BARRAZA] was shooting at [the OPD officers] as [BARRAZA] was driving towards them." Ofc. Gaskin exited his vehicle and circled around to the passenger side. Ofc. Gaskin, "fear[ing] for [the officers' lives], and [his own] life," fired three rounds at BARRAZA and then assessed; he did not hear any more shots nor see any glass flying so he did not shoot any more.

Ofc. Gaskin rescued Ofc. Perry by dragging him from the roadway, where Ofc. Perry was directly in front of BARRAZA's van and assisting with loading Ofc. Perry into the back of an OPD patrol SUV to be rushed to the hospital.

***Oakland Police Officer Hohn***

Officer Hohn was interviewed at the Richmond office of the Contra Costa County District Attorney, on April 17th, 2020, at 3:00 am. In attendance were Ofc. Hohn, his representative Atty. Harry Stern, CCCDAO Sr. Insp. Holcombe, RPD Det. Sagan, and OPD Sgt. Sanchez.

The following information is a summary of the relevant portions of Ofc. Hohn's interview:

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[19] The route details will be omitted when they significantly match the other officers' recollections as well as the BWC video.

[20] "187" is common police language for "homicide," it references California Penal Code § 187.

[21] This sedan included Ofc. Perry.

Ofc. Hohn has been a peace officer with OPD for almost three years. He was working a patrol assignment, in full uniform and driving a fully marked police SUV, roof number "1810"[22], with emergency lights and siren. He was armed with a Glock 34 pistol chambered in 9mm. He was in an OPD sedan with OPD Ofc. Perry and OPD Ofc. Recendez.

Ofc. Hohn described the incident he was dispatched to as a, "[white] Chevy cargo van," "dumping an unconscious female." The three officers arrived in the area and observed BARRAZA's van, matching the description, passing in the opposite direction with a Moraga PD car following the van. The OPD cars turned around and caught up with BARRAZA.

Ofc. Hohn described the route of the pursuit, and seeing BARRAZA, as he passed the Harrison Street exit from Interstate 580, extend his hand out the van's window while holding a pistol. Ofc. Hohn described BARRAZA brandishing the pistol a second time while on Interstate 80.

Once BARRAZA exited onto the surface street in Richmond, he made a U-turn maneuver and, "[Ofc. Hohn] accelerated as fast as [he] could past [BARRAZA], fearing that [BARRAZA] was slowing down to try to shoot [one of the OPD officers.]"

Since the CCCSO helicopter was overhead, the OPD units turned off their lights and sirens and "backed off." The officers were aware that BARRAZA was slowing down, so they accelerated to rejoin the pursuit. As the trio of officers, "rounded the corner," they saw, "[BARRAZA] had made a U-turn [and] was accelerating pretty fast toward [the officers]." Ofc. Recendez, seated directly behind Ofc. Hohn, said, "[BARRAZA's] shooting at us."

Ofc. Hohn exited the patrol car, fearing that, "[BARRAZA] was going to smash into [Ofc. Hohn's] driver's side door, pin[ning Ofc. Hohn] in and start... shooting directly into the car." Ofc. Hohn also feared that BARRAZA, being in a higher van, would have an elevated position to fire down upon the officers.

BARRAZA collided with their patrol car just after Ofc. Hohn exited and Ofc. Hohn felt the car brushing against his legs. Ofc. Hohn saw BARRAZA reaching for something inside the van, "presumably to grab a gun which could have gone flying during the impact." Ofc. Hohn saw Ofc. Perry on the ground and thought that Ofc. Perry might have been shot or struck by BARRAZA's van. Ofc. Hohn feared that, "[BARRAZA] could easily put the van back in drive... and Ofc. Perry could be run over," so Ofc. Hohn fired ten rounds at BARRAZA, through the van's passenger door.

Ofc. Hohn then assisted Ofc. Perry by dragging him to safety and helping to load him into another OPD SUV to be rushed to the hospital.

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[22] The vehicle's roof number was determined by video analysis, it was not asked during the interview.

***Oakland Police Officer Sarno***

Officer Sarno was interviewed at the Richmond office of the Contra Costa County District Attorney, on April 17th, 2020, at 2:55 am. In attendance were Ofc. Sarno, his representative Atty. Julia Foxx, CCCDAO Sr. Insp. Mathers, RPD Det. Decious, and OPD Sgt. Vass. The following information is a summary of the relevant portions of Ofc. Sarno's interview:

Ofc. Sarno has been a peace officer with OPD for 13 years. He was working a patrol assignment partnered with Ofc. Finnicum, in full uniform and in a fully marked police SUV, roof number "1471," with emergency lights and siren. He was armed with a Glock 17 pistol, chambered in 9mm.

Ofc. Sarno's description of the initial call and pursuit was consistent with the other involved officers. He observed BARRAZA's hand out the window of the van but could not see the pistol; he learned BARRAZA was brandishing a pistol via OPD radio traffic from another officer in the pursuit.

The helicopter joined the pursuit and Ofc. Sarno thought BARRAZA was having vehicle troubles. When BARRAZA made the U-turn, '[BARRAZA] torpedo[ed] right into the [OPD] car in front of [Ofc. Sarno]." Ofc. Sarno saw Ofc Perry, "do like 360 degrees in the air and come down right in front of [Ofc. Sarno's] car," "there was... debris impact, bullets." Ofc. Sarno exited his vehicle.

Ofc. Sarno then fired approximately six rounds at BARRAZA, because "[BARRAZA] was tryin[g] [to] kill us," "there was no mistake in [Ofc. Sarno's] mind that [BARRAZA] was tryin[g] to kill somebody," "one of [Ofc. Sarno's] partners or [Ofc. Sarno.]"

Ofc. Sarno saw that Ofc. Perry was vulnerable to being run over or shot by BARRAZA, and he also saw the OPD SUV was rolling forward, so Ofc. Sarno ran to the front of the SUV and used his body to lean against the hood to prevent it from rolling forward over Ofc. Perry.

Ofc. Sarno and Atty. Julia Foxx reviewed Ofc. Sarno's BWC but did not request to revise any of Ofc. Sarno's statement.

***Oakland Police Officer Finnicum***

Officer Finnicum was interviewed at the Richmond office of the Contra Costa County District Attorney, on April 17th, 2020, at 3:56 am. In attendance were Ofc. Finnicum, his representative Atty. Harry Stern, CCCDAO Sr. Insp. Mathers, RPD Det. Decious, and OPD Sgt. Vass. The following information is a summary of the relevant portions of Ofc. Finnicum's interview:

Ofc. Finnicum has been a peace officer with OPD for 15 years. He was working a patrol assignment partnered with Ofc. Sarno, in full uniform and in a fully marked police SUV, roof number "1471," with emergency lights and siren. He was armed with a Glock 17 pistol, chambered in 9mm.

Ofc. Finnicum's description of the initial call and pursuit was consistent with the other involved officers. He learned BARRAZA was brandishing a pistol via OPD radio traffic from another officer in the pursuit.

Once the CCCSO helicopter had a good view of the pursuit, the OPD units slowed down. Once the helicopter informed the officers that BARRAZA was slowing down, thinking that BARRAZA was going to abandon his van, they sped to catch up.

Ofc. Finnicum (with Ofc. Sarno) pulled to the side of the roadway upon seeing BARRAZA make a U-turn, "thinking that [BARRAZA] would pass us." Instead, "[BARRAZA] went head-on into the patrol car that was directly in front of us." "[BARRAZA] actually crossed over the roadway."

After the collision, Ofc. Finnicum had a clear view of the front of BARRAZA's van; Ofc. Finnicum could see, "glass... coming from inside... Like coming out toward us." "As if [BARRAZA] was... shooting out towards us. The way... the glass was flying."

Ofc. Finnicum managed to get cover behind a patrol vehicle, and "continued seeing gunshots from [BARRAZA's vehicle]... [Ofc. Finnicum's] perception was [BARRAZA was] shooting directly at [Ofc. Finnicum] and the other officers." Ofc. Finnicum fired[23] directly into the windshield of the van, aiming at BARRAZA.

Ofc. Finnicum then helped with rescuing Ofc. Perry. After loading Ofc. Perry, Ofc. Finnicum drove Ofc. Perry to Highland Hospital in Oakland.

Ofc. Finnicum and Atty. Stern reviewed Ofc. Finnicum's BWC and only revised[24] the type of patrol vehicle that Ofc. Finnicum was standing behind.

***Oakland Police Officer Recendez***

Officer Recendez was transported to the hospital and was unavailable for an immediate interview. He was admonished by OPD administration to only discuss the incident with his attorney, until after his formal interview.

Officer Recendez was interviewed at the Pleasant Hill office of law firm of Rains, Lucia, Stern, on April 22nd, 2020, at 2:15 pm. In attendance were Ofc. Recendez, his representative Atty. Murphy, CCCDAO Sr. Insp. Mathers, RPD Det. Decious, and OPD Sgt. Sanchez.

The following information is a summary of the relevant portions of Ofc. Recendez' interview:

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[23] Ofc. Finnicum estimated that he fired seven to ten rounds.

[24] It is not uncommon for a person involved in a highly stressful critical event to have differences between their recollection and the actual event.

Ofc. Recendez has been a peace officer with OPD for 7 years. He was working a Community Resource assignment partnered with Ofc. Perry and Ofc. Hohn, in full uniform[25] and in a fully marked police sedan, roof number[26] "1810," with emergency lights and siren. He was armed with a Glock 17 pistol, chambered in 9mm. Ofc. Recendez was seated in the rear of the sedan.

Ofc. Recendez' description of the initial call and pursuit was consistent with the other involved officers. Once MPD exited from the pursuit, their car became the lead police car in the pursuit. Ofc. Recendez described seeing BARRAZA, as he passed the 35th Ave exit on Interstate 580, extend his hand out the van's window while waving a pistol, "it seemed like [BARRAZA] was taunting us with [the pistol]."

Ofc. Recendez recalled the CCCSO helicopter taking the pursuit and they slowed in the 200 block of South 37th St, but within a minute, the helicopter advised that BARRAZA was slowing down so the officers sped up believing the pursuit was about to end.

Ofc. Recendez saw the RPD vehicle and then saw and heard the gunshots. It appeared to be gunshots exchanged between BARRAZA and the RPD officer. Ofc. Recendez' vehicle had stopped along the right side of the roadway when, "[BARRAZA] start[ed] driving toward us." His two partners exited the vehicle while BARRAZA was heading for a head-on collision with Ofc. Recendez' vehicle.

Ofc. Recendez knew that BARRAZA was armed, and there were, "multiple officers behind [Ofc. Recendez]," "officers were out in the open," and that, "gunfire [had been] exchanged." Ofc. Recendez began firing, from the rear seat of the sedan, through the windshield, at BARRAZA. Ofc. Recendez fired until he had emptied his magazine, he then conducted a reload and exited the patrol sedan; he did not fire again after reloading, "[Ofc. Recendez] assessed the situation... [and] at that point... didn't perceive any further threat."

Ofc. Recendez assisted with rescuing and loading Ofc. Perry for immediate transportation to the hospital via an OPD vehicle. He noticed that he was bleeding from a leg wound that he thought was caused during the collision.

Ofc. Recendez and Atty. Murphy reviewed Ofc. Recendez' BWC but did not request to revise any of Ofc. Recendez' statement.

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[25] The beginning of Ofc. Recendez' shift included assisting with a detail in plain clothes (non-uniform), however, once completed, he returned to the station and donned a standard OPD uniform.

[26] The vehicle's roof number was not asked in the interview but was determined from OPD records and helicopter video. It is included here for clarity.

## Interviews of Percipient Witness Officers

Percipient Witness[27] Officers are individuals that were involved in the incident; however, they did not have direct contact with BARRAZA (i.e., did not fire upon him) and therefore, would not be considered "Actor Officers[28]" under the Protocol. None of these witness officers discharged their weapon or used any force upon BARRAZA.

An interview team composed of CCCDAO Sr. Insp. Sousa, RPD Det. Villalobos, and an OPD investigator were tasked with interviewing the following officers[29]:

- Ofc. Perry
- Ofc. Masis
- Corporal Razmilovic
- Corporal Smith
- Ofc. Chahal
- Corporal Blakely

The interview of Ofc. Perry was delayed, due to his injuries from the BARRAZA collision.

All of the interviews of these witness officers were reviewed by this author; no discrepancy or undiscovered fact(s) was revealed during their interviews.

Only the interview of Ofc. Perry will be detailed within this report, due to his proximity and direct involvement with the incident.

### *Oakland Police Officer Perry*

Officer Perry was transported to the hospital and was unavailable for an immediate interview. He was admonished by OPD administration to only discuss the incident with his attorney, until after his formal interview.

Officer Perry was interviewed on June 10th, 2020, at 10:14 am. In attendance were Ofc. Perry, his representative Atty. Murphy, CCCDAO Sr. Insp. Sousa, RPD Det. Villalobos, and OPD Sgt. Sanchez. The following information is a summary of the relevant portions of Ofc. Perry's interview:

Ofc. Perry has been a peace officer with OPD for 6 years. He was partnered with two other officers, Ofc. Hohm[30] and Ofc. Recendez. Ofc. Perry was in full uniform and the three were

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[27] A witness who has obtained knowledge of an event directly through their senses, generally, through sight or hearing.
[28] Law Enforcement Personnel whose conduct was "actually or conceivably a factor" in a fatality.
[29] The witness officers were also assisted, as allowed under law, by a legal representative.
[30] Ofc. Hohm was the driver and Ofc. Recendez was the rear passenger.

driving a fully marked police sedan, roof number[31] "1810," with emergency lights and siren. He was armed with a Glock 17 pistol, chambered in 9mm. Ofc. Perry was seated in the right front seat of the sedan.

Ofc. Perry described the initial call and pursuit; his description was consistent with the other officers and BWC footage. During the freeway portion of the pursuit, he recalled BARRAZA brandishing a firearm at their car and described the firearm as a "black semi-automatic handgun." Ofc. Perry felt that BARRAZA was indicating, "go ahead, pull up next to me."

Once the pursuit entered the streets of Richmond and the sheriff's helicopter had a view of BARRAZA's van, the three officers "backed off" the pursuit, slowing down and deactivating their emergency lights/siren. Shortly after, Ofc. Perry heard via radio that BARRAZA's van was having mechanical issues and was slowing down. The three sped up and as they made the turn (South 37th St and Stege Ave[32]), Ofc. Perry saw the windows of the RPD patrol car being, "blow out," by, what he presumed was, "gun fire."

Ofc. Hohm parked and they exited the patrol car. Ofc. Perry managed to turn, after hearing the sound of BARRAZA's engine "revving... like full throttle." Ofc. Perry was thrown by the collision and remembered getting stuck under BARRAZA's van. Ofc. Perry could hear gunshot but could not see who was shooting.

Ofc. Perry tried to reach for his firearm but realized it became dislodged from his hand during the collision. Ofc. Perry tried to crawl from the ground, and once he was freed, the first officer he recognized was Ofc. Sarno, who was not shooting. Ofc. Perry did not recall[33] firing his pistol.

Ofc. Perry was assisted by OPD officers, into the back of an OPD patrol car, where he was driven to Highland Hospital.

**Interviews of Six Medical/Fire Responders**

The responding rescue personnel from AMR and Richmond Fire (FRD) were interviewed by the LEIFI team composed of CCCDAO Sr. Insp. Garcia and RPD Det. Canelo.

After a review of the recordings and reports, it is best to summarize these interviews; their accounting of the incident was very similar.

The American Medical Response (AMR) medics only assisted OPD Ofc. Recendez with his leg injury. The medics did not hear anything related to the incident that conflicted with the

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[31] The vehicle's roof number was not asked in the interview but was determined from OPD records and helicopter video. It is included here for clarity.
[32] Specific streets not identified by Ofc. Perry but added for clarity.
[33] There was no evidence that Ofc. Perry fired during this incident.

information provided to the investigators during the interviews of the officers. This interview mainly focused on the details related to the officer's medical treatment.

The RFD firefighter/medics overheard the sirens and monitored the RPD radio, when they heard "Officer Down," they self-dispatched. While in route, they were sent to a staging area but were called off once (Ofc. Perry) was transported by the other OPD officers. The firefighters were dispatched out a second time to assist with BARRAZA. They located BARRAZA, on the ground, in handcuffs, next to the van.

On their initial assessment of BARRAZA, they observed a head wound with exposed brain matter. BARRAZA had no pulse and was pronounced deceased at the scene by the fire personnel. There was no indication that the firefighters heard any conversations by the officers or were witness to anything conflicting with the accounts provided by the officers interviewed.

**Interviews of Civilian Witnesses**

The witnesses to BARRAZA's behavior and statements in Vallejo were interviewed by VPD.

The witnesses to BARRAZA dumping V-1 from the van were not interviewed by the Protocol team, their interviews were handled by OPD, Moraga PD, and/or CCCSO. The interviews are included in this report to illustrate or explain the events.

There were no civilian witnesses[34] to the actual shooting of BARRAZA. The BWC video and helicopter video did not reveal any person on the street at the scene of the shooting.

Two residents were contacted and asked for permission to review their exterior surveillance camera video; nothing relevant to the shooting was capture by their systems.

**Interviews of BARRAZA's Relatives**

OPD Officer Castillo was contacted at the incident scene by a relative (W-1) of BARRAZA that lives in Richmond. W-1 informed the officer that W-1 was driving on South 37th St near Stege Ave and W-1 saw BARRAZA driving in his van. W-1 observed BARRAZA slow down and that BARRAZA was staring at W-1. W-1 was driving and observed the following via W-1's rearview mirror: police lights behind BARRAZA, BARRAZA stopped and then accelerate forward and in reverse. W-1 heard multiple gunshots and saw an officer on the ground. Due to the active gunfire, W-1 drove away. W-1 parked a distance away and then walked to the scene where W-1 was contacted by Ofc. Castillo.

BARRAZA's relatives were interviewed by an investigative team composed of CCCDAO Sr. Insp. Alexander and RPD Det. Barbara.

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[34] One relative was witness to the shooting and will be included in "Family" section below.

W-1 was contacted again (after W-1's initial interview by the patrol officer on scene). W-1 had not seen or interacted with BARRAZA for about a week. W-1 knew of BARRAZA's involvement with a motorcycle club but did not know the name of the group. During the interview, W-1 identified BARRAZA's van as belonging to BARRAZA and his cousin.

W-2 recalled speaking with VPD about the disappearance of V-1. W-2 was aware that BARRAZA was a member of a, "motorcycle club." BARRAZA had recently been released from jail. W-2 knew that BARRAZA had a recent disagreement with BARRAZA's girlfriend and thought, "drugs [were] involved."

**Autopsy**

On April 17th, 2020, around 9:30 am, the Contra Costa County Coroner performed an autopsy on BARRAZA. In attendance was the pathologist, Dr. Ogan, his assistant, detectives from RPD and VPD, and CCCSO Crime Lab technicians. The autopsy was performed by Dr. Ogan, which included sending biological samples from BARRAZA to NMS Labs for examination.

Dr. Ogan, in his final report, concluded that BARRAZA's injuries were:

- Gunshot wound to head, traveling from BARRAZA's back to front. The recovered bullet was a large caliber round and was turned over to the CCCSO Lab technicians.
- Gunshot wound to the chest, traveling from BARRAZA's left to right, breaking ribs, puncturing his lung and stomach. The recovered bullet was a medium caliber round and was turned over to the CCCSO Lab technicians.
- Bite marks and scratches to the head consistent with being bitten by a canine.

Dr. Ogan also noted that BARRAZA's toxicology screen indicated cocaine use.

*The subsequent report from NMS Labs indicated that BARRAZA' blood contained, "360 ng/mL" of benzoylecgonine. Benzoylecgonine is an inactive metabolite and chemical breakdown product of cocaine; it has a half-life of six to ten hours. This value was within the range of persons study while being under the influence of cocaine. Effects following cocaine use can include euphoria, excitement, restlessness, risk taking, sleep disturbances, and aggression.*

## LEGAL PRINCIPLES

The California District Attorneys Association 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.

The applicable California Penal Code Sections are as follows:

**Section 187**: Murder is the unlawful killing of a human being or fetus with malice aforethought.

**Section 188:** Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a human being. It is implied when the killing resulted from an intentional act, the natural consequences of the act are dangerous to human life, and the act was deliberately done with knowledge of the danger to and with conscious disregard for human life.

**Section 192**: Manslaughter is the unlawful killing of a human being without malice.

**Section 196**: Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

> (a) In obedience to any judgment of a competent court.
>
> (b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

**Section 835a:** (a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, 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.

(3) That 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.

(4) That the decision by a peace officer 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.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.

(c) (1) Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

(B) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

(2) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

**Section 197:** Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person; or,

2. When committed in defense of habitation, property, person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends or endeavors, in a violent, riotous or tumultuous manner, to enter the habitation of another for the purpose of offering

violence to any person therein; or,

3. When committed in the lawful defense of such person, or of a wife or husband, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed; or

4. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

**Section 199:** The homicide appearing to be justifiable or excusable, the person indicted must, upon his trial, be fully acquitted and discharged.

Any killing of a human being at the hands of another is a homicide. A homicide may be criminal or justifiable depending upon the circumstances. It is justifiable if done while resisting a violent felony or in self-defense or in defense of another if it reasonably appears to the person claiming the right of self-defense or the defense of another that he or she actually and reasonably believed that he or she or another was in imminent danger of great bodily injury or death. (*See People v. Williams* (1977) 75 Cal. App. 3rd 731.) In protecting oneself or another, a person may use all force which he or she believes reasonably necessary, and which would appear to a reasonable person, in similar circumstances, to be necessary to prevent the injury, which appears imminent. (*See* California Criminal Jury Instruction CALCRIM 505) In order to justify killing another person in self-defense or in the defense of another, actual danger of death or great bodily injury is not necessary. (CALCRIM 505.)

**Pursuant to CALCRIM 507:**

A homicide by a peace officer is justifiable and not unlawful when:

1. The defendant was a peace officer
AND

2. The killing was committed while the defendant

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 the defendant or another person;

OR

B. Reasonably believed, based on the totality of the circumstances, that:

(1) A person was fleeing a felony;

(2) That force was necessary to arrest or detain that person;

(3) The commissioned felony threatened or resulted in death or serious bodily injury,

AND

(4) The person will cause death or serious bodily injury to another unless immediately apprehended.

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. (CALCRIM 505 and 507.) It is not a criminal defendant's burden to prove that force was necessary or reasonable. The People must prove beyond a reasonable doubt that the officer did not have an actual or reasonable belief in the need for self-defense or the defense of others. Absent direct evidence that an officer did not actually or reasonably believe in the need for force, circumstantial evidence must be used. If two reasonable conclusions can be drawn from circumstantial evidence, however, and one of those reasonable conclusions points to innocence, jurors are instructed that they must accept the one that points to innocence. (CALCRIM 224.)

The United States Supreme Court has held that a police officer's use of force should be analyzed under the reasonableness standard of the Fourth Amendment to the United States Constitution. The Supreme Court stated, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight . . . the calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 US 386, 396-397.

If the killing was not justifiable as outlined above, or excusable as in an accidental killing, only then would it be criminal. Moreover, if an act is committed by reason of a mistake of fact which disproves any criminal intent, it is not a crime. Therefore, a person is not guilty of a crime if he or she commits an act under an actual belief in the existence of certain facts and circumstances

which, if true, would make the act lawful. (*See* CALCRIM 3406.)

## LEGAL ANALYSIS

The decision by a peace officer to use for force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of the that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use of force is consistent with law and agency policies (PC 835a(a)(3).)

The legal issue to be decided by the CCCDAO is whether any of the involved law enforcement officers or civilians violated any criminal laws. The Contra Costa District Attorney's Office analyzes each fatal incident on the case specific facts and circumstances. Whether an individual is criminally liable depends on the facts of the case and whether those facts constitute a crime under the applicable laws.

**The Officers Use of Lethal Force was Reasonable Under the Totality of the Circumstances Because They Acted with an Actual and Reasonable belief that Deadly Force was Necessary to Defend Against an Imminent Threat of Death or Serious Bodily Injury to Them and/or Other Law Enforcement Officers.**

In the present case, the officers acted in lawful self-defense under the totality of the circumstances because they acted with an actual and reasonable belief that deadly force was necessary to defend against an imminent threat of death or serious bodily injury. Listed below is an individualized legal analysis, specific to each officer, supporting the conclusion that criminal charges are not warranted in this case.

**Officer DeOrian (Richmond PD):**

Officer DeOrian shot his duty weapon during two different points in time; both times, his decision to do so was necessary and reasonable under the circumstances.

First, Officer DeOrian knew that Oakland PD was pursuing suspect was wanted for a violent felony (either "homicide" or "attempted homicide"). He knew that the suspect was driving a white Chevrolet van and on the city streets of Richmond. He knew that the suspect was evading police and avoiding capture.

When Officer DeOrian spotted the van and began to follow it, he could see that the driver was continually looking at him through the mirror while manipulating a firearm. BARRAZA was not laughing or smiling; he looked serious. Once he saw BARRAZA was armed with a gun, and as BARRAZA started to make a left turn at the Carlson intersection, Officer DeOrian withdrew his duty weapon. When BARRAZA raised his gun at the window edge of the driver's side, the muzzle was up and visible to Officer DeOrian. Officer DeOrian thought that BARRAZA was going to shoot him. Officer DeOrian made the rapid – and reasonable - decision to defend himself. He

fired two rounds through his windshield, and seven rounds out through the driver's window. Under these circumstances, it was reasonable for Officer DeOrian to fire first, as he had fear of imminent death or great bodily injury under the circumstances.

Officer DeOrian recognized that BARRAZA was a continuing threat to the police officers, and needed to be stopped, after BARRAZA drove into the Oakland PD patrol car. He knew that BARRAZA was armed with both a firearm and a heavy, cargo-style van, both lethal weapons. Officer DeOrian reasonably believed that the Oakland PD officers' lives were at risk of immediate death and great bodily injury. Officer DeOrian fired two rounds into the rear of the van, towards the driver's seat headrest.

Officer DeOrian reasonably believed that BARRAZA was going to fire his handgun or continue to use the van as a deadly weapon. BARRAZA had just charged at one of the patrol cars. Officer DeOrian saw the significant force used to ram that patrol vehicle, which undeniably endangered the lives of the officers. Officer DeOrian knew that BARRAZA had resisted being detained or captured by Oakland PD. He was a suspect in a violent felony. Based on the totality of the circumstances, Officer DeOrian's use of deadly force was reasonable to defend himself and the Oakland PD officers from imminent threat of death or serious bodily injury.

**Officer Hohn (Oakland PD):**

Officer Hohn knew that BARRAZA was a suspect in an attempted homicide. The victim's medical condition was extremely grave. He was directly involved with pursuing BARRAZA out of the Oakland hills. BARRAZA had not yielded to Moraga Police's emergency lights and siren, nor did he do so after Officer Hohn took over the pursuit.

As the pursuit continued for more than 20 minutes through the hills of Oakland and onto the freeways of Alameda and Contra Costa Counties, there were two distinct occasions where Officer Hohn saw BARRAZA wave a gun out of his driver's side window. Sensibly, Officer Hohn slowed down to get more distance between his patrol car and BARRAZA, and he also warned other units that BARRAZA was armed with a handgun.

Once the CCCSO helicopter unit began tracking the van in Contra Costa County, Officer Hohn and his fellow Oakland PD officers dropped out of the pursuit but remained in Richmond. When they heard that the van was around South 37th Street and Carlson, they drove to that location so that they could be available to assist with any street arrest. As they approached the area, Officer Hohn began slowing down and pulled to the right of the street. He did not block or attempt to stop BARRAZA. Just about that time, he saw the van had slowed down as well. He saw the van making a U-turn, and the driver suddenly accelerating "pretty fast" and directly at his patrol car.

Officer Hohn had little time no react – no more than 3 seconds' worth. He stopped the patrol car and escaped from the car as fast as he could. At that moment, he believed that BARRAZA was going to smash into his driver's side door and effectively pin him inside. He feared that BARRAZA would be able to pin him inside the patrol car and then shoot him.

Officer Hohn jumped out of the patrol car, drew his weapon, and sought cover. He then saw Officer Perry, obviously injured and in pain, lying on the ground before the van's right front tire. He didn't know whether Officer Perry had been shot or run over, and he also believed that Officer Perry was in continuing danger of being shot or run over by BARRAZA. In defense of Officer Perry, Officer Hohn repeatedly shot at BARRAZA (the investigation showed that he "could have fired" as many as 15 rounds). Officer Hohn acted reasonably. Although none of Officer Hohn's rounds struck BARRAZA, the officer's use of deadly force was reasonable under the circumstances. He knew that BARRAZA was "wanted" for a violent felony, had evaded police for more than 20 minutes, was armed with a firearm, and had refused to pull over for several pursuing officers' emergency lights and sirens. Once BARRAZA used the van as a deadly weapon against his patrol car and fellow officers, Officer Hohn reasonably believed, based on the totality of the circumstances, that lethal force was necessary to try to protect the lives of Officer Perry and his other partners from BARRAZA.

**Officer Recendez (Oakland PD):**

Officer Recendez was the third passenger in the patrol car driven by Officer Hohn, along with his partner, Officer Perry. Officer Recendez was seated in the rear of the patrol car. Even before Officer Hohn drove to the area of South 37th Street and Carlson, Officer Recendez knew that BARRAZA was wanted for a serious felony (attempted homicide), he knew that BARRAZA refused to yield to Moraga, and then Oakland, Police units. He also knew that BARRAZA was armed with a handgun and that he had brazenly exhibited it twice during their pursuit while on Interstate 580 in Oakland.

When BARRAZA made the U-turn at Carlson and South 37th Street, Officer Recendez and his two partners (Hohn and Perry) were ready to be available to assist with a street arrest of the suspect. As BARRAZA made the turn, and then began driving towards their patrol unit (#1810), Officer Recendez heard gunshots. He believed that BARRAZA was firing at his partners and him. Officer Hohn stopped, put the car in park, and jumped - with Officer Perry- out of the front seat to escape what they knew was an inevitable collision by the van. Officer Recendez did not believe that he had enough time to crawl from the rear passenger side to the rear passenger side door, open the car door, and get out of the car before the van drove into him. He estimated that he had very little time to do anything, other than try to prepare for the collision. Officer Recendez knew that the Chevrolet van was a larger, hefty, cargo-style vehicle that had the potential to roll the patrol car, toss him around inside, cause some significant bodily injury (if not death). Officer Recendez also thought that BARRAZA was firing his gun, presenting an immediate and separate deadly threat to him (and fellow officers).

Officer Recendez saw the van coming straight at him, "nose to nose." He remained in the backseat of the patrol car and drew his duty weapon. He reasonably believed, based on all the circumstances, that BARRAZA posed an immediate and lethal threat to him. BARRAZA's van collided into Officer Recendez' patrol van. The officer estimated that the speed was about 40 to 45 mph. As the van was heading towards him, Officer Recendez feared that he was going to be killed or gravely injured. He shot from the rear seat at BARRAZA's direction, firing repeatedly through the windshield of the patrol car. He fired until his gun was empty, and then reloaded. He did not recall firing again after reloading his gun. (The evidence showed that Officer Recendez "could have fired" a maximum of 18 times with one magazine and 1 round when he reloaded with a new magazine.)

Officer Recendez believed that his life, and that of his fellow officers, was in immediate danger. When the van collided into the patrol car, the force caused Officer Recendez' car to spin backwards, and out of control, which also exposed other officers on the street to serious bodily harm had it struck them. Officer Recendez was aware that Officers Hohn and Perry had had very little time to get out of the patrol car and find cover. He knew that there were other officers behind his patrol car. Officer Recendez was afraid that other officers were in immediate danger, by BARRAZA using either the van, or his firearm, as a lethal weapon and to avoid arrest.

Based on the totality of the circumstances, Officer Recendez' use of deadly force was objectively reasonable and necessary to defend himself and his fellow officers.

**Officer Sarno (Oakland PD):**

Officer Sarno was one of the Oakland PD officers involved in the lengthy pursuit from the hills of Canyon/Oakland into Richmond. He was partnered with Officer Finnicum in Oakland PD patrol unit # 1471. He knew that BARRAZA was suspected of an attempted murder. He saw BARRAZA continuously failed to yield to police vehicles that were attempting to pull him over. Officer Sarno heard from his fellow officers that BARRAZA displayed a firearm twice while on the freeway in Oakland. When BARRAZA first pulled off Interstate 80 into a side street, and then made a U-turn to drive slowly past the officers who were following him, Officer Sarno described him as "having fun...not laughing, but...like he had no concern on his face at all as he drove past us like he was enjoying it, almost." The officer did not see a gun in BARRAZA's hand at that time.

When the Contra Costa County Sheriff's helicopter took over the pursuit, Officer Finnicum drove to a location in Richmond. Officer Sarno knew that they were thinking of trying to stop the van on the street. He saw the van make a U-turn at the intersection of Carlson and South 37th Street and head back towards his location. Officer Sarno was preparing to get out of his patrol car in case he was needed to help in a potential street arrest. He was concerned when he saw BARRAZA make the U-turn, because it was a narrow residential street, and he knew that BARRAZA was armed with a gun. He could see that BARRAZA was very close to the other

officers. His patrol unit was positioned behind patrol unit # 1810. Suddenly, Officer Sarno realized that BARRAZA was "torpedoing" right into the unit # 1810. Officer Sarno heard multiple rounds of gunfire and believed that BARRAZA was shooting at the officers while using his van as a deadly weapon.

Officer Sarno saw – and heard- the loud impact of the van striking Oakland PD unit # 1810, and then saw Officer Perry flying. Officer Sarno saw Officer Perry land on the ground in front of BARRAZA's van. Officer Sarno immediately got out of his car, duty weapon in hand. He could see BARRAZA in the driver's seat of the van. In self-defense, and in defense of his fellow officers, Officer Sarno immediately began shooting at the van's driver side and at BARRAZA. (The evidence showed that Officer Sarno "could have" fired a maximum of 15 rounds.)

Officer Sarno's actions were reasonable and necessary under the circumstances. When Officer Sarno saw BARRAZA ram the patrol car, and then observed Officer Perry flying in the air after the impact, he reasonably believed that BARRAZA was an immediate threat to the safety of not only Officer Perry, but of all the officers there at the scene. He knew that BARRAZA was avoiding arrest for attempted murder. He saw Officer Perry on the ground, and BARRAZA was behind the wheel of the van. Officer Sarno reasonably believed that BARRAZA would imminently kill Officer Perry with a deadly weapon, be it a gun or a motor vehicle. Officer Sarno feared for his life, and the lives of his co-workers. Based on the totality of the circumstances, Officer Sarno reasonably and lawfully used lethal force in self-defense and defense of others.

**Officer Finnicum (Oakland PD):**

Officer Finnicum was driving Oakland PD patrol #1471 with his partner, Officer Sarno. Both officers were privy to the same information as the other pursuing Oakland PD officers in patrol cars # 1810 and #1461. They were in the hills of Oakland/Canyon when they learned of the Victim's body being dumped in a blanket, and that a Hispanic male driving a white Chevrolet cargo-style van was responsible; Officer Finnicum followed Officer Hohn's and Officer Gaskin's patrol cars over the lengthy pursuit from Alameda County into Contra Costa County. Officer Finnicum heard the broadcast from patrol car #1810 that the van's driver twice brandished a handgun at them while on Interstate 580. He had been advised that the suspect was wanted for a felony, specifically, an attempted homicide.

When the Contra Costa County Sheriff's helicopter took over the pursuit, Officer Finnicum followed his fellow officers into Richmond, and ultimately, drove to South 37th Street to possibly assist in any street arrest. He heard the dispatch from the helicopter pilot that the driver was slowing down, possibly having mechanical problems. He thought that the suspect might be preparing to flee the van by foot. As Officer Finnicum pulled up to the location, he heard the first unit (#1810 with Officers Hohn, Perry, and Recendez) relay that the van was making a U-turn. Officer Finnicum saw the patrol car in front of him pull to the side (unit # 1471

with Officer Gaskin), and he followed suit. As he did so, the van crossed the street, and drove head-on directly into the patrol car unit #1810.

Officer Finnicum heard several gunshots. He could see the van to the front of him and believed that he saw glass coming out from the inside of the van towards him. He thought that BARRAZA was shooting at him from the driver's seat. Officer Finnicum immediately got out of his patrol car. The gunfire continued; Officer Finnicum's perception, based on seeing the glass flying from the van towards him, was that BARRAZA was shooting directly at his fellow officers and him. He reasonably believed that BARRAZA was a clear and immediate threat, and that the only necessary action was to shoot to stop that threat. He was standing behind a patrol car and had a good view of the van. He fired his weapon several times, aiming directly at the driver's seat. (The evidence showed that Officer Finnicum "could have" fired a maximum of 10 times.) Once Officer Finnicum realized that Officer Perry was injured on the ground, he holstered his duty weapon and assisted other officers in rescuing Officer Perry.

Under the totality of circumstances, Officer Finnicum reasonably believed that BARRAZA posed an immediate threat to his safety, and that of his fellow officers, when he fired his weapon. BARRAZA had failed to yield to pursuing officers for nearly 20 minutes; he refused to obey police commands to pull over. He had exhibited a firearm at the officers on two occasions. He was an attempted homicide suspect where he had just been seen trying to dispose of the Victim's body in a remote area. Officer Finnicum saw BARRAZA use the van as a deadly weapon against his fellow Oakland Police Officers. Further, Officer Finnicum saw and heard gunshots, which, in the immediate commotion and stress, reasonably appeared to be shots fired by BARRAZA towards his direction. Officer Finnicum and his partners were on the street, and at risk of great harm or death by either a heavy, cargo-style van and/or a firearm, both under the obvious control of BARRAZA.

Based on the totality of the circumstances, it was reasonable for Officer Finnicum to believe in the need to use lethal force to prevent imminent death or serious bodily injury to himself and his fellow officers.

**Officer Gaskin (Oakland PD):**

Officer Gaskin was driving by himself in Oakland PD patrol car # 1461. He was directly behind Officers Hohn/Perry/Recendez when they responded to the 911 call of a "body dump." He saw a white cargo-style Chevrolet van driving in the opposite lane and pulled over to yell at his fellow officers that he believed that was the suspect. He remained with the other Oakland PD officers in the pursuit. The van driver did not yield; it continued onto several highways, despite the officers' emergency lights and sirens commanding it to stop.

On the Oakland freeways, Officer Gaskin was receiving updates on the female Victim's medical condition, which was described as "grave." The Oakland PD units also were informed that it was

being treated as an attempted homicide. While on the Oakland freeway, Officer Gaskin heard one of the officers in patrol car #1810 say that the van driver had just pointed a gun at them.

Once the helicopter from Contra Costa Sheriff took over the pursuit, Officer Gaskin and the other Oakland PD units began backing away. They remained in radio contact, however, and shortly afterwards, learned that the van was slowing down in the streets of Richmond. Officer Gaskin drove to the area. Officer Gaskin saw the same van being followed by a (Richmond) patrol car. Within seconds, that van was aimed straight at the Oakland PD patrol car in front of him (unit # 1810). Officer Gaskin could see glass flying from the windshield of unit # 1810 and heard gunshots. He reasonably believed that BARRAZA was shooting while intentionally smashing into the patrol car. Officer Gaskin saw one officer exit unit # 1810, and he immediately did the same thing. He saw the van ram into unit #1810, the other patrol car, and he was afraid that the patrol car would then careen into him. Officer Gaskin was in fear for his life. He started to back up, trying to make sure that his own car wouldn't run over him. He stood for cover by the A-pillar of his unit's passenger side. From that position, he could see a "silhouette" in the driver's seat of the van. Officer Gaskin fired 3 shots at BARRAZA.

Officer Gaskin's actions were reasonable. BARRAZA was using the van as a deadly weapon against the officers in patrol unit # 1810. Officer Gaskin also believed that BARRAZA was shooting at the officers. (His mistaken belief was reasonable due to the confusion and stress - the officer did not realize that Officer Recendez remained trapped in his patrol car and had to shoot from inside, in self-defense.) Officer Gaskin knew that BARRAZA was suspected of attempted murder; he knew that BARRAZA was doing whatever he could to avoid arrest. He knew that BARRAZA was armed with a gun. Officer Gaskin reasonably believed that BARRAZA could kill or seriously injure himself and/or his fellow officers. A review of all the evidence shows that the force used by Officer Gaskin was reasonable under the totality of the circumstances.

## CONCLUSION

As the United States Supreme Court has held, "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...the calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 US 386, 396-397.

In applying the law and the California District Attorney's Uniform Crime Charging Standards to the present case, the use of force by Officers Joseph DeOrian, Matthew Hohn, Roberto Recendez, Benjamin Sarno, Michael Finnicum, and Kyle Gaskin was reasonable based on the totality of the circumstances. As such, no further action will be taken in this case.