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September 2, 2026

Chief Scott Wahl
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Sheriff Kelly Martinez
San Diego County Sheriff's Office
9621 Ridgehaven Court
San Diego, CA 92123-1636

**Re: Fatal shooting of K.W. by San Diego Police Officer Daniel Gold on January 28, 2025;
San Diego Police Department Case No. 25003999; San Diego County Sheriff's Office Case
No. 25103395; DA Special Operations Case No. 25-014PS**

Dear Chief Wahl and Sheriff Martinez:

We have reviewed the reports, videos, and other materials compiled by the San Diego Sheriff's Homicide Division concerning the circumstances leading to the fatal shooting of K.W. by San Diego Police Officer Daniel Gold on January 28, 2025. A District Attorney Investigator responded to the scene and was briefed about the incident. This case was submitted to the San Diego District Attorney's Office for review on April 11, 2025. The final Medical Examiner's report was submitted to the District Attorney's Office on September 16, 2025. A use of force expert's report was received on February 3, 2026.

Summary

On January 28, 2025, the San Diego Police Department (SDPD) received a call from a man claiming he had been assaulted by Allied Universal Security officers while on board an Amtrak train. Officer Daniel Gold and another San Diego Police officer, referred to herein as LE1, individually responded to the One America Plaza trolley station at 600 W. Broadway. LE1 arrived first but when he was unable to locate the caller, he walked across Kettner Boulevard to the Santa Fe Depot train station to continue to search for the caller. LE1 walked through the train depot and onto the train platform where he met LE2, an Amtrak police officer. At the same time, Gold arrived at the Santa Fe Depot train station and parked his car adjacent to the train depot on Kettner Boulevard behind LE1's patrol vehicle. As LE1 and LE2 discussed the call and the

identity of the caller, they heard gunshots. LE1 and LE2 turned and saw a male in a hoodie, later identified as K.W., running from the train platform toward a corridor leading to Kettner Boulevard. As this was happening, Gold was on the sidewalk outside the train depot and heard the same gunshots coming from the platform. LE1 broadcast on his radio, "I've got shots fired. Again, shots fired," which alerted Gold and other officers in the area that a shooting had occurred. Hearing both the gunshots and LE1's broadcast, Gold believed LE1 was involved, and possibly injured, in the shooting. Gold ran toward the corridor through which K.W. was running. When K.W. emerged from the corridor, he nearly collided with Gold. Gold fired two shots from his pistol, striking K.W. Gold identified himself as a San Diego Police Officer as K.W. ran a short distance and then collapsed on the sidewalk. LE1 ran onto Kettner, and found Gold positioned with his firearm pointed at K.W., who was lying on the sidewalk. LE1 requested cover and LE1 and Gold waited for additional officers to arrive. Once additional officers arrived to provide cover, medical aid was provided to K.W. While providing medical aid, officers cut away K.W.'s clothing and located a loaded pistol. It was concealed inside a pair of shorts under his pants. Paramedics transported K.W. to the hospital but he did not survive his injuries.

During the investigation of this incident, it was determined K.W. had been on the train platform prior to any shots being fired. Video footage captured K.W. walk slowly toward two young males. K.W. reached with his right hand toward his waist area and then one of the young males produced and pointed a firearm at K.W. K.W. then turned and ran toward the corridor that leads to Kettner Boulevard as shots were fired toward him but missed him. These were the initial gunshots heard by Gold, LE1, and LE2. When K.W. exited the corridor, he encountered Gold.

The Medical Examiner conducted an autopsy and determined K.W.'s cause of death was multiple gunshot wounds and classified the manner of death as homicide.

Persons Involved

K.W. was a 16-year-old resident of San Diego County. Gold had been employed by the San Diego Police Department for two years.

Statements summarized below reflect the observations and impressions of the witnesses interviewed. A use of force expert provided a written opinion. A defensive tactics instructor for the Regional Police Academy was also interviewed regarding the use of certain police codes.

Statement of Law Enforcement Officer One (LE1)

LE1 is a patrol officer with SDPD. On the evening of the shooting, he responded to a misdemeanor battery call at the trolley station located at 600 W. Broadway. When LE1 arrived in the area, he parked on the west side of Kettner Boulevard next to the train station and walked across the street to the trolley station, which is located on the east side of Kettner. LE1 could not locate the reporting party so he walked back across Kettner to the Santa Fe Depot train station. LE1 walked through the lobby of the train station and out to the train platform next to the tracks, where he contacted LE2, an Amtrak police officer. LE2 told LE1 he was familiar with the person LE1 was looking for but that the individual had left the area. LE1 did not anticipate locating the person he was looking for so he turned off his body worn camera (BWC). Although LE1 knew

Gold would be responding to assist him on the call, LE1 avoided radio contact to keep the airway clear for other officers handling a nearby priority call.

While speaking to LE2, LE1 heard three gunshots northwest of his location on the train platform but did not see who fired them. LE1 did not hear any verbal argument leading up to the shots being fired. LE1 broadcast on his radio "shots fired." At this point, he removed his gun from his holster because he saw there were 10 to 15 people in the depot and LE1 was concerned this may be an active shooter situation. As LE1 moved back toward the station ticket hall, he saw a person wearing a gray hoodie and a black backpack running east through an open corridor toward Kettner Boulevard. LE1 ran east through the station toward the doors which exit onto Kettner Boulevard. As he neared the doors, LE1 heard at least three more gunshots from near Kettner Boulevard and still believed it to be an active shooter situation. LE1 knew Gold would likely arrive on Kettner Boulevard because it was the only practical way to enter the train station.

When LE1 looked out the train depot doors, he saw Gold aiming his gun at a person on the ground, the same person LE1 had seen running from the train platform. LE1 approached, identified himself as police, and instructed the individual on the ground to place his hands behind his back. The individual, later identified as K.W., did not respond. The area was dimly lit, making it difficult for LE1 to see K.W.'s hands. Since K.W. had fled from where the initial gunshots were heard, LE1 suspected that K.W. was involved. Once other officers arrived, LE1 and Gold put handcuffs on K.W. and began to provide medical aid. LE1 saw Gold remove a Glock-style pistol from the right side of K.W.'s waistband. LE1 did not see the gun prior to Gold retrieving it. LE2 arrived to assist, and LE1 asked him to check for anyone injured nearby.

LE1 explained that after he heard the initial gunshots, he broadcast the phrase "shots fired" because they were the first words he could get out. When asked to expand on his word choice, LE1 stated the phrase "shots fired" could mean an officer was involved in a shooting. LE1 acknowledged that other officers might think he was involved in a shooting, rather than if he had used police code "11-6," which is more commonly used when shots are heard in the area.

Statement of Law Enforcement Officer Two (LE2)

LE2 is a police officer with Amtrak Police Department. On the night of the incident, LE2 was on the train platform when LE1 approached him. LE1 asked about an incident involving a man who called to report that he had been assaulted, and they discussed the earlier incident. LE2 was standing on the platform facing east, looking at LE1 when he heard four to five gunshots coming from his left. LE2 said a "Hispanic male," later identified as K.W., ran toward LE2 and LE1, and then turned east. K.W. ran through the breezeway that leads from the train platform to Kettner Boulevard. K.W. was wearing a gray or black hoodie and blue jeans. He had his right hand at his side and was carrying an unknown item and could not determine its color. When asked to describe what he saw in K.W.'s hand, LE2 stated, "If you're asking me if I saw a gun, I didn't see a gun." LE1 ran back through the train depot building while LE2 ran north toward the breezeway, where he had last seen K.W. LE2 did not know if K.W. had been involved in the

shooting and was concerned K.W. might be "lying in wait" in the breezeway. LE2 turned back and ran through the station toward the exit onto Kettner Boulevard when he heard another volley of gunshots. LE2 looked out the doors and saw LE1 and Gold with their guns drawn and pointed at K.W., who was on the ground. LE2 asked if they were okay. He did not see any blood and asked if they had shot K.W., but neither Gold nor LE1 responded. LE1 asked LE2 to check the train platform where the first shots were heard and see if anyone had been injured. LE2 returned to the platform to search for anyone injured or involved in the shooting, but other than Amtrak employees, everyone was gone. LE2 returned to assist Gold and LE1, who were providing medical aid to K.W. LE2 held a flashlight to illuminate the area. LE2 stated that it was during those life-saving efforts that he first saw a firearm on K.W.

When LE2 was later interviewed by investigators, he recalled that prior to the shooting on the platform, he had seen several young males acting rowdy, which is not unusual, but he could not describe any of them.

Statement of Officer Daniel Gold

Gold is assigned as a patrol officer with SDPD's Central Division. He volunteered to assist LE1, who had responded to a call regarding an assault at the trolley station located at 600 W. Broadway. The caller reported that they had been assaulted by members of Amtrak security. Gold arrived in the area and parked his police vehicle on Kettner Boulevard behind LE1's police vehicle, which had arrived approximately three minutes earlier. Gold got out of his car. He looked inside LE1's vehicle and found it unoccupied. Gold walked south toward the entrance of the Santa Fe Depot train station. Gold did not use the radio to contact LE1 because he wanted to keep the radio clear for other officers who were involved with an unrelated critical incident that took priority. Instead, Gold used his cell phone to call LE1, but LE1 did not answer, causing Gold to be concerned about LE1's whereabouts. As Gold's call went to voicemail, Gold heard four gunshots northwest of his location and approximately 50 to 100 feet away. Based on the sound of the shots, Gold believed they came from one gun. Gold turned toward the location he believed the shots had come from and started to move in that direction. Gold believed there might be an active threat and unholstered his pistol. Gold heard LE1 broadcast, "Shots fired, shots fired" on the radio and simultaneously heard LE1's voice coming from the same location of the shots. Gold has worked with LE1 consistently and knows him to be calm, collected, and "even keeled." Based on the sound of LE1's voice when he broadcast "shots fired," Gold believed LE1 had been injured, shot, or ambushed, and Gold believed there was a need to preserve LE1's life.

As Gold ran toward the area where he believed the gunfire originated, he saw K.W. wearing dark black pants, a gray hoodie, and a black face covering. Gold described K.W. as a Hispanic male adult. He believed K.W. was an adult because he could see facial hair. Gold perceived that K.W. was running away from gunfire. Gold noted that K.W.'s hands were not raised and his face was covered. Gold noted it was not raining and was not cold outside that night and no other people were wearing face coverings. K.W. was running from where Gold heard both gunfire and LE1's

voice. When Gold first saw K.W., Gold focused on K.W.'s right hand, which was near his right hip and waistband area. Gold cited his training and experience as a basis for knowing that suspects will often cover their faces to hide their identity from victims and witnesses; further, he noted that people who carry firearms often carry them in their waistband. Gold saw an object in K.W.'s left hand and even though he could not tell what it was, he did not perceive the object in K.W.'s left hand to be a threat. However, Gold explained that because he heard LE1's voice coming from a location where he also heard gunshots, and because K.W. was wearing a face covering and also reaching for what Gold believed to be a firearm, Gold was in fear for his life. He, therefore, fired two rounds at K.W.'s torso. As Gold fired, he announced, "Police!" K.W. yelled out and ran into Kettner Boulevard, around a police vehicle, and back onto the sidewalk, where he collapsed.

Gold explained that he feared for his life and believed K.W. had just murdered LE1. When Gold first saw K.W., he did not perceive K.W. to be a victim, because K.W. did not have his hands up, despite Gold wearing a full police uniform, with his pistol out. Gold explained his belief that most people who are victims or witnesses to gunfire often put their hands up and signal to officers where the shooting or the threat is. Because K.W. was not doing this and because K.W. appeared to Gold to be reaching for a handgun, Gold feared for his life, so he fired two shots. After he fired two shots, Gold reassessed the situation, per his training. Gold did not see a gun in K.W.'s hand. He gave several commands for K.W. to show his hands. Gold noted that K.W. appeared to be injured and asked if K.W. was okay.

Gold advised dispatch of the shooting by stating his ID and "shots fired." LE1 arrived at his location. Gold asked LE1 if K.W. was the person involved in the shooting because LE1 had given no additional details about what had happened or who was involved. Gold and LE1 held K.W. at gunpoint until additional officers arrived, at which point, Gold and LE1 handcuffed K.W. and began to provide medical aid. Gold conducted a pat down search of the left side of K.W.'s body, while another officer now on scene conducted a pat down of K.W.'s right side. No weapon was located at that time. Gold then used a pair of trauma shears to cut away K.W.'s clothing to assess his injuries. He rechecked K.W.'s right side. K.W. was wearing a backpack and gray hoodie, as well as black baggie pants over a one-piece jumpsuit. The jumpsuit zipped up the front and had side pockets at the hip that zipped closed. Gold discovered a black Glock-style handgun in the right thigh pocket of the jumpsuit. Gold rendered the gun safe and saw 9mm rounds in the gun's magazine.

When interviewed, Gold expanded on the use of the phrase "shots fired." He explained that in circumstances when gunshots are heard in the distance, officers typically use the police code "11-6." If the shots are "danger close," officers will often use the term "shots fired."

Investigation

This incident took place on the sidewalk adjacent to the Santa Fe Depot train station, located at

1050 Kettner Boulevard in downtown San Diego. Santa Fe Depot train station provides rail service for the MTS trolley, Coaster commuter train, and Amtrak trains. All officer and detectives' reports, crime scene investigators' reports, audio-recorded witness interviews, body worn camera footage, surveillance video, and police dispatch recordings were reviewed. A review of radio dispatch recordings confirmed LE1 aired, "I've got shots fired. Again, shots fired" over the police radio. That communication would have been heard by any police personnel who were monitoring that radio frequency. Gold was armed with his personally owned Staccato, 9mm semi-automatic pistol capable of holding a total of 18 rounds. Gold reported that prior to the incident, his pistol was loaded with a 17-round magazine and one additional live round in the chamber. Following the incident, a Sheriff's Field Evidence Technician (FET) collected Gold's pistol for processing. Gold's pistol was received with 16 unexpended cartridges in the firearm. Two cartridge casings that matched the ammunition in Gold's firearm were found at his shooting position. Based on this evidence, it was determined Gold fired two rounds. BWC video also confirmed Gold fired a total of two rounds.

K.W. was in possession of a 9mm semi-automatic pistol. The pistol was concealed inside the right front pocket of K.W.'s shorts, which had been zipped closed. K.W. wore a pair of denim pants over the shorts. The pistol was fitted with a barrel and a slide from a Glock 9mm pistol, while the lower receiver of the pistol was made of a polymer material. The gun was loaded with a magazine that held nine 9mm rounds. The serial number from the barrel and slide had been obliterated, making the firearm untraceable. Due to these characteristics, the firearm is considered a ghost gun.

A six-shot .38 caliber revolver was found in a trashcan along the train platform north of the initial shooting location. It contained two live rounds and four empty shell casings.

There were no independent witnesses to the shooting on Kettner, however the incident was captured both by Gold's BWC and a surveillance camera affixed to a streetlight directly above where the shooting took place. The events that preceded the shooting were captured by surveillance cameras at the Santa Fe Depot train station and from an MTS train at the station.

Santa Fe Depot Surveillance Video

Surveillance cameras facing the platform at the Santa Fe Depot train station capture video without audio. These cameras captured K.W.'s arrival at the train station, and the first shooting, which took place on the train platform.

K.W. and another young male are seen walking west from Kettner, through the corridor, also referred to in the investigation as a breezeway, and onto the train platform. The two appear to say goodbye to one another and then separate. K.W. stands on the train platform, and two other individuals, who also appear to be young males, are seen standing together approximately 20 feet from K.W., facing him. As K.W. walks slowly toward the two young males, K.W. reaches with his right hand toward his waist area and then one of the young males produces and points a firearm at K.W. K.W. then turns and runs back toward the corridor that leads to Kettner

Boulevard as the male begins shooting at him. While running east through the corridor, K.W. has his right hand at his side and it appears he is not holding anything. K.W. leaves the camera frame, and then within seconds, the shooting incident involving Gold occurs just outside of the camera's view. The shooter on the train platform and his companion flee northbound along the train platform and out of sight. The shooter makes a motion with his hands toward a trashcan as he flees.

A camera mounted on a trolley arriving at the station also captured video and audio of this shooting. The sound of four gunshots can be heard as K.W. turns and runs toward the corridor and away from his assailants. Individuals on the train appear to duck and flinch in response to the shooting.

Smart Street Light Camera Video

The City of San Diego maintains a program known as Smart Street Lights (SSL), which are a series of cameras mounted on streetlights. These cameras are utilized by law enforcement as an investigative resource to combat crime. One such camera was mounted on a streetlight on Kettner Boulevard directly above where the shooting took place and captured video of the incident. The camera recorded video but not audio of the incident.

The SSL camera footage shows LE1's arrival. LE1 parks his police vehicle at the curb near the corridor that connects Kettner Boulevard to the train platform. LE1 briefly speaks to a security officer at the curb and then he walks across Kettner Boulevard to the trolley station and out of the camera frame. Minutes later, K.W. and his companion are seen crossing Kettner Boulevard on foot. They enter the corridor leading to the train platform and then go out of view. Simultaneously, Gold parks his police vehicle behind LE1's vehicle. Gold exits his vehicle and walks south on the sidewalk, with his cell phone in his hand. Gold then turns, runs toward the corridor, and draws his pistol. As Gold nears the entrance to the corridor, K.W. runs out of the corridor, nearly colliding with him. Gold aims and fires at K.W. as K.W. runs by. K.W. runs into the street, around LE1's vehicle, and returns to the sidewalk where he collapses next to the building. Gold positions himself behind a utility box and aims his firearm at K.W. as LE1 comes into view from the train depot. Minutes later, other officers arrive, and Gold and LE1 approach K.W. and begin to provide him with medical aid.

Body Worn Camera Video

Gold was the only officer present during the shooting on Kettner Boulevard. His BWC was activated during the incident. The video recording begins as he arrives at the train station, however, due to a standard preset delay, the audio recording does not begin for two minutes. Gold parks his patrol vehicle at the curb on Kettner Boulevard behind LE1's vehicle. Gold exits and walks south on the sidewalk. He holds a cell phone in his right hand and appears to place a call. He abruptly turns around and then runs in the opposite direction, toward the corridor that leads to the train platform from Kettner Boulevard. As he runs, Gold transfers the phone to his left hand and quickens his pace. Right after the audio activates, K.W. comes into view, running

around the corner from the breezeway onto the sidewalk and toward Gold. K.W.'s right hand is at his right side near his waist area. His face does not appear to be covered with anything. Gold draws his pistol and takes a two-handed shooting position. Gold exclaims, "Whoa," and fires two shots at K.W. as K.W. runs past Gold. K.W. reacts by flinching, yelling, clutching his abdomen, and running into the street. K.W. runs around LE1's police vehicle as Gold calls out to K.W., identifying himself as "San Diego Police." K.W. continues running, returning onto the sidewalk before collapsing next to the Santa Fe Depot train station building. Gold asks K.W., "You alright?" as K.W. is lying face down and moaning.

Using his police radio, Gold relays, "Shots fired." Gold calls out to K.W., ordering him to show Gold his hands. K.W.'s right hand is empty and visible at his side. LE1 approaches and asks Gold, "Are you good?" Gold responds, "Yeah, this him? This him?" LE1 states he can see K.W.'s left hand and Gold states he can see K.W.'s right hand. LE1 and Gold hold K.W. at gunpoint. LE1 calls out to K.W. to put his hands behind his back. K.W. does not respond and is motionless.

After approximately three minutes, other police officers arrive. Gold approaches K.W. with the other officers, who handcuff K.W. Gold assists by cutting off K.W.'s clothing. K.W.'s hat is off and a balaclava is visibly covering the top of his head, with the lower portion below his chin, leaving his face exposed. Gold cuts away K.W.'s pants to reveal he is wearing gray athletic shorts under his pants. Gold unzips a pocket on the right side of the shorts and then states he found a firearm. Gold carries the firearm to a nearby police vehicle, where he renders it safe by removing the magazine and pulling back the slide. He places the pistol and magazine on the hood of the car. Another officer takes a safety statement from Gold and then directs him to wait in a vehicle.

LE1 and LE2 were also equipped with BWC on the night of the shooting. LE1's BWC captures his interaction with LE2 on the train platform at the Santa Fe Depot train station but LE1 turned his camera off when he concluded his investigation into the misdemeanor battery call. The shooting on the train platform occurred moments after LE1 turned off his camera. LE2's BWC was recording during his interaction with LE1 and continued through the shooting on the platform. However, the audio was not activated until after the first shooting occurred.

LE2's BWC shows LE1 flinch and look to his right. LE2 takes cover behind a metal fence and draws his pistol. LE2 then runs down the train platform toward the shooting location and the corridor leading out to Kettner Boulevard. LE2 then turns and runs back down the train platform and through the train station out to Kettner Boulevard.

LE2's BWC shows him exit the station doors onto Kettner and run over to LE1. LE1 and Gold have their guns pointed at K.W., who is lying on the ground. LE1 asks LE2 to go back to look for anyone who may have been injured from the first gunshots. LE1 reactivates his BWC and it resumes recording as he is helping Gold and other officers provide medical aid to K.W.

LE2 goes back to the train platform but only finds a man who tells him the people involved in the shooting ran away. He returns to the scene. After Gold discovers the firearm, LE1 is heard stating, "Be careful with that gun."

Statement of Defensive Tactics Instructor

This office interviewed a defensive tactics coordinator who has 19 years of law enforcement experience. He is a use of force expert and gives instruction to police academy recruits on defensive tactics, use of force, use of firearms and tasers, and conducting building searches. He was consulted to establish what instruction police academy recruits are given regarding the local use of the terms "shots fired" and police code "11-6." The expert explained that the police code "11-6" should be used for the report of gunshots being heard. Conversely, officers are taught at the San Diego Regional Academy that the term "shots fired" means that the officer is engaged in gunfire or is being fired upon. Officers would know that the officer response to these phrases would vary greatly. The response to a report of "11-6" could include other officers searching the area for the source of gunshots. However, officers hearing a call of "shots fired" would likely respond urgently because they would believe the officer making the broadcast is either shooting at someone or being fired upon. The expert explained that San Diego has a regional training facility and the distinction is taught regionally and would not appear in a training manual.

Statement of Use of Force Expert

This office enlisted the opinion of a subject matter expert with an extensive background in law enforcement use of force policies and procedures. He has been qualified as a subject matter expert in Superior Court proceedings for over a decade. Professionally, he has held the positions of Arrest and Control Instructor and Use of Force Instructor at both the Regional Training Academy and within his department. In forming his opinion, the expert considered the facts of this case and the specialized training officers receive. The expert had no personal knowledge of the individuals involved. Citing the United States Supreme Court case, *Graham v. Connor* ((1989) 490 U.S. 386), the expert noted that Gold's use of force must be judged from the perspective of a reasonable officer faced with the same circumstances and without the benefit of hindsight. Upon a review of the facts of this case, the expert could not definitively say Gold's use of force was objectively unreasonable. In summary the expert stated that although Gold's response did not follow traditional training protocol, or have the desired outcome, Gold's actions may be viewed as reasonable by peers faced with the same set of circumstances. While hindsight may prove another option would have been better, the expert noted that under California law, "Gold did not need to choose the best option... what matters is whether the chosen one fell within the range of reasonableness." Gold believed LE1 was involved in a shooting and K.W. was the suspect. When Gold encountered K.W. face to face, K.W.'s hand was at his waist, and Gold believed this to be a life-threatening situation.

Autopsy

The autopsy of K.W. was conducted on January 30, 2025. The Deputy Medical Examiner determined that K.W. sustained two gunshot wounds. One bullet passed through his upper right arm and entered his torso, damaging vital organs. A second bullet passed from right to left along K.W.'s abdomen, perforating the skin, subcutaneous tissue, and superficial abdominal muscle, but did not enter the abdominal cavity. K.W.'s cause of death was classified as multiple gunshot wounds and the manner of death was classified as homicide. The homicide classification by the Medical Examiner is not a legal term, but one used to describe a medical assessment. A classification is necessary for purposes of death certification. The homicide classification by the Medical Examiner does not require intent to cause death, criminal intent, or proof that death at the hands of another was a substantial factor in the death as defined under California criminal law. It simply recognizes that an action was applied against the decedent, which was considered in analyzing the circumstances that were in effect prior to death.

Legal Standard of Criminal Liability

Penal Code section 835a(b) provides that "any peace officer who has reasonable cause to believe that a 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."

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force. The law provides that "a peace officer is justified in using deadly force upon another person...when the officer reasonably believes, based on the totality of circumstances, that such force is necessary" to defend against an imminent threat of death or serious bodily injury to the officer or to another person. Penal Code section 835a(c)(1)(A).

The statute provides definitions for "deadly force," "imminent," and the "totality of circumstances" in Penal Code section 835a(e)(1) – (3).

"'Deadly force' means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm." Penal Code section 835a(e)(1).

"A threat of death or serious bodily injury is 'imminent' when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person." Penal Code section 835a(e)(2).

"An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed." Penal Code section 835a(e)(2).

"'Totality of the circumstances' means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force." Penal Code section 835a(e)(3).

“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.” Penal Code section 835a(a)(2).

“[T]he 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 the totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.” Penal Code section 835a(a)(4).

“A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section “retreat” does not mean tactical repositioning or other de-escalation tactics.” Penal Code section 835a(d).

Conclusion

The ultimate question in this inquiry is whether Gold violated the law and whether he bears criminal liability for his actions. This review does not evaluate or pose any opinion on potential civil or administrative action. The duty and responsibility of this office is to objectively evaluate the totality of the circumstances and apply the relevant law to reach a conclusion. The filing of criminal charges requires evidence that supports the ability to prove charges beyond a reasonable doubt. Where this office does not believe that the available admissible evidence would support a unanimous finding of guilt by a jury, it would be unethical to proceed with a criminal case. In analyzing whether Gold bears criminal liability and whether any potential case could be shown beyond a reasonable doubt, this office expended a significant degree of time and resources. Beyond conducting a thorough review of all case materials, the team consulted with respected experts whose knowledge and opinions would have significant weight for any finder of fact. This office referred this case review to the California Attorney General’s Office for consideration, pursuant to Assembly Bill 1506, however, the referral for review was declined. It is within the proper discretion of the Attorney General’s Office to rely on the District Attorney’s Office’s expertise in conducting a case review. The District Attorney’s Office has completed its analysis of the facts, law, and expert opinions, and we conclude that in this matter there is not a criminal charge provable beyond a reasonable doubt.

Gold’s split-second decision to use deadly force was made based on training and experience and was further influenced by multiple unexpected and rapidly developing factors. When Gold arrived at the train station, he was unable to locate LE1. Unbeknownst to Gold, at the same time, a male standing on the train platform on the other side of the train station pulled out a handgun and fired four shots at K.W. The sound of the gunshots reverberated through the building and were heard by LE1 and LE2 who were near the tracks, and Gold, who was still outside of the station. Gold correctly perceived that the shots came from nearby. K.W. fled his

assailant and sprinted through the breezeway toward Kettner Boulevard. LE1 broadcast over his police radio, "I've got shots fired. Again, shots fired."

San Diego Police officers are trained to use the phrase "shots fired" when they, or other law enforcement officers, are involved in a shooting. Alternatively, they are instructed to use the police code "11-6" when they hear suspected gunfire but are not in imminent danger. The District Attorney's Office conferred with a highly experienced police academy instructor who is well versed in the significance of the distinction between these two terms. He explained that officers hearing a call of "shots fired" would likely respond urgently because they would believe the officer making the broadcast is either shooting at someone or being fired upon. LE1 was asked during an interview after the shooting about his use of the words "shots fired" and he acknowledged that officers hearing the words might believe he was involved in a shooting. LE1's broadcast of "shots fired" alarmed Gold and influenced his belief that LE1 was involved in a violent confrontation, in imminent danger, and possibly injured. The reasonableness of Gold's belief is critical to the analysis of whether he bears criminal liability in this matter.

In his statement to investigators, Gold stated he believed LE1 had been involved in a deadly force confrontation because Gold had heard gunshots, and then almost immediately after the gunshots, LE1 broadcast "shots fired." Gold noted the emotion in LE1's voice was unusual. Expounding upon this point in his interview with investigators, Gold described LE1 as ordinarily very "even keeled." The recording of LE1's voice was preserved. Objectively, a reasonable person who does not know LE1 could agree that LE1's voice in that radio broadcast expresses stress and urgency.

Upon hearing LE1's brief emotional broadcast, Gold ran toward the corridor where he believed the gunfire had originated and where he believed he heard LE1's voice independent of the radio transmission. K.W. was unknowingly and simultaneously running through the same corridor toward Gold. Gold and K.W. were running toward one another, but each was blind to the other by the corner of the corridor through which K.W. was running. When K.W. exited the corridor and suddenly came into Gold's view, K.W. was in close proximity to Gold. K.W. was running with his right hand at his waistband. Gold's training and his experience led him to believe K.W. was reaching for a firearm. Gold did not perceive K.W. to be a victim. Instead, Gold believed he was being confronted by the person who had been involved in the shooting with LE1 and who was now trying to escape. Gold quickly observed that K.W. did not have his hands raised as one might expect of a victim. In Gold's experience, people who are victims or witnesses to gunfire often put their hands up and signal to officers where the shooting or the threat is. K.W. did not do this, but instead appeared to Gold to be reaching for a handgun. Given the limited information available at that moment, Gold believed he was in imminent danger of being shot. Gold made the nearly instantaneous decision to discharge his weapon at K.W.

In analyzing this incident, the District Attorney's Office took the additional step to consult with a use of force expert who is court qualified and did not have knowledge of or a relationship with the parties. The expert considered the totality of the circumstances in evaluating Gold's actions.

The expert pointed out several particular facts and circumstances that should be afforded attention. Among those, the expert highlighted that Gold's mindset that his partner, LE1, had been involved in an officer-involved shooting would be reasonable. Further, it would be reasonable and expected that an officer in this mindset who runs toward the sound of gunfire would draw their handgun. Gold's BWC shows K.W.'s hand near K.W.'s waistband and Gold stated K.W.'s hand was reaching toward the waistband. The expert identified that it did not appear feasible for Gold to give commands or a warning before encountering the person Gold believed had been involved in an officer-involved shooting with LE1. The expert strongly believed that unanimity on the question of objective reasonableness could not be reached, noting that under California law, "Gold did not need to choose the best option... what matters is whether the chosen one fell within the range of reasonableness." The expert further pointed out that case law on the subject recognizes that allowances must be made for the fact that officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. The expert concluded that although Gold's response and use of force did not follow the traditional training protocol or have the desired outcome, his actions may not be viewed as unreasonable by peers faced with the same set of circumstances. Here, Gold inaccurately, but not unreasonably, believed his partner was involved in a shooting and that K.W. was the suspect. When Gold encountered K.W. with his hand at his waist, Gold believed he was facing a life-threatening situation.

The law requires that when law enforcement officers apply deadly force, the analysis of whether they bear criminal liability must take into account what the officer knew and reasonably believed to be true at the time and without the benefit of hindsight. Moreover, "the decision... to use deadly 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..." PC835(a)(4) (emphasis added).

Criminal charges must be proven by the constitutionally mandated beyond a reasonable doubt standard. A finding in a civil lawsuit, on the other hand, "simply requires the trier of fact 'to believe that the existence of a fact is more probable than its nonexistence'" in order to satisfy the preponderance standard. *In re Winship*, 397 US 358 (1970). The Judicial Council of California's Criminal Jury Instructions state, "Proof 'beyond a reasonable doubt' is proof that leaves you with an abiding conviction that the charge is true. The evidence need not eliminate all possible doubt because everything in life is open to some possible or imaginary doubt." (CALCRIM No. 220.) Further, a criminal jury must unanimously vote to convict in order for them to render a guilty verdict. The duty of the prosecutor is to only file those charges we believe can be proven beyond a reasonable doubt.

The loss of this young person's life is devastating. Our extensive review of the totality of the facts and circumstances surrounding this incident leads us to the conclusion that criminal charges against Gold could not be proven beyond a reasonable doubt. We are not able to make a determination that Gold's actions were justified, rather we have determined the evidence does not demonstrate beyond a reasonable doubt that Gold's belief was unreasonable.

Chief Scott Wahl
Sheriff Kelly Martinez
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As a result, Gold bears no state criminal liability for his actions. A copy of this letter, along with materials submitted for our review will be retained in our files.

Sincerely,

A handwritten signature in cursive script that reads "Summer Stephan".

SUMMER STEPHAN
District Attorney

cc: Captain Tammy Clendenen, San Diego Police Department
Captain David LaDieu, San Diego County Sheriff's Office