



# **SAN FRANCISCO DISTRICT ATTORNEY**

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## **REPORT ON THE INVESTIGATION INTO THE OFFICER-INVOLVED SHOOTING OF SERGIO BARRIOS ON MAY 19, 2023**

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**INDEPENDENT INVESTIGATION BUREAU, April 29, 2025**



# TABLE OF CONTENTS

BACKGROUND .....	<b>3</b>
PRIVACY STATEMENT .....	<b>3</b>
INTRODUCTION .....	<b>3</b>
SUMMARY OF INCIDENT .....	<b>4</b>
INVESTIGATION .....	<b>13</b>
Overview .....	<b>13</b>
Evidence Reviewed .....	<b>14</b>
Incident Scene Description .....	<b>14</b>
Incident Scene Evidence Recovery .....	<b>16</b>
Autopsy .....	<b>20</b>
Involved Police Officers .....	<b>21</b>
Interviews of Civilian Witnesses .....	<b>24</b>
Sergio Barrios – Background .....	<b>26</b>
Applicable Legal Standards .....	<b>27</b>
LEGAL ANALYSIS .....	<b>29</b>
CONCLUSION .....	<b>30</b>



## Background

The San Francisco District Attorney's Office (SFDA) investigates, independently evaluates, and reviews all officer involved shooting (OIS) incidents resulting in serious injury or death as well as any instance where the death of an individual occurs while in the custody of any peace officer in the City and County of San Francisco. This responsibility was assigned to the SFDA in conjunction with the San Francisco Police Department (SFPD) and is codified in the Memorandum of Understanding.<sup>1</sup>

The Independent Investigation Bureau (IIB) is an independent unit within the SFDA comprised of District Attorney Investigators (DAI) with decades of experience as law enforcement officers, Assistant District Attorneys (ADA), and specialized legal assistants. The IIB investigates covered incidents wholly independently from SFPD and other outside law enforcement agencies and reports its findings directly to the elected District Attorney.

The investigation and review conducted by the IIB solely addresses whether any officers involved committed any crimes against any person against whom force was used or who died while in custody. As part of that investigation and review, the SFDA does not consider or offer opinions on issues of civil liability for any involved officers, police tactics, or police department policies and procedures.

The role of the IIB is to ensure the residents of the City and County of San Francisco that the investigation and review of qualifying events are conducted in a fair and objective manner that will serve the interests of justice to the community, the officers involved, the injured persons, and their families.

The SFDA understands how these events affect the community at large and believes the loss of life during an event involving any police or peace officer leaves everyone affected with extreme grief, questions, and concerns. It is the intention of the SFDA to do what can be done to explain what took place in the hope that the truth about the events will assist with the healing process.

## Privacy Statement

This report includes redactions of the names and other identifying information of witnesses. 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 and readability, the witnesses will be identified as follows:

- Victim-1 (V-1)- Brother-in-Law of Sergio Barrios
- Witness-1 (W-1)- Domestic Partner of Sergio Barrios

## Introduction

On May 19, 2023, SFPD Officers Gregory Buhagiar (Buhagiar), David Wakayama (Wakayama), Scott Phillips (Phillips), and Stanislav Bratchikov (Bratchikov) along with many other police

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<sup>1</sup> Memorandum of Understanding, effective April 2019.



officers, responded to a 9-1-1 call involving a residential burglary suspect who had threatened the building's resident with a gun in San Francisco's Glen Park neighborhood. Upon arrival, Buhagiar, Wakayama, Phillips, and Bratchikov joined over 40 other police officers, who waited for nearly three and a half hours as the subject, Sergio Barrios (Barrios), ignored the officers' lethal presence, danced, snorted suspected narcotics, and consumed alcohol, within feet, and at times inches, of a loaded gun. Barrios refused to surrender himself or the gun he kept close despite the many officers present, or their efforts to de-escalate the potentially dangerous encounter. The standoff between Barrios and the police came to a tragic end when Barrios, who was told multiple times, in two languages, not to touch the gun, grabbed hold of and lifted the gun. In response, Wakayama, Phillips, and Bratchikov discharged their less lethal weapons and Buhagiar his lethal rifle, killing Barrios.

The San Francisco District Attorney's IIB responded to the event, viewed the scene, and reviewed the entire investigative file as well as all evidence obtained from the scene of the event. This report is the final step in the IIB's review of the fatal OIS of Barrios and is limited to the determination of whether criminal charges should be brought against any involved officer, specifically Wakayama, Phillips, Bratchikov, or Buhagiar.

Upon thorough examination and a comprehensive review of the incident, the SFDA concludes no criminal charges will be filed against any officer involved because the evidence is insufficient to prove that any officer committed a crime, and the OIS-fatal shot fired by Buhagiar was legally justified.

***Caution: The images and information contained in this report may be graphic and disturbing to some viewers. Therefore, viewer discretion is advised, especially for young children and individuals with sensitivity to violence, guns, controlled substances (drugs), or blood.***

## Summary of Incident

On the afternoon of May 19, 2023, V-1 came to his residence at 145 Bosworth Street in San Francisco. The property at 145 Bosworth is both a commercial and residential property that housed a recently shuttered liquor store named New Bosworth Market and included a living space where V-1 would sleep. As V-1 approached the residence, he was surprised to find the door leading inside severely damaged from what appeared to be forced entry with an axe found nearby. Once inside the residence, V-1 saw the intruder who attempted to hide behind a sofa. V-1 then recognized the intruder as his brother-in-law, Sergio Barrios. Barrios then turned towards V-1 and pointed a gun directly at him. V-1 fled for safety and to call the police.

Later surveillance footage reviewed would confirm that Barrios made entry into the building with the axe V-1 described. (See Figure 1.)

V-1 called the police at 2:19 p.m. and reported the break-in to his home and that the intruder was still inside and had a gun. SFPD officers arrived and while on scene were directed to the residence by V-1, who told police the intruder was his brother-in-law and likely high on drugs. (Figure 2.) Once the police arrived, the entire incident was captured on multiple officers' body worn cameras (BWC), including the end of the encounter and the moment Barrios reached for the gun he always kept near. The following events were largely taken from the BWC footage of the event and on-site private video surveillance provided by V-1 to police. The video surveillance did not record audio.



Figure 1- This image from private surveillance captured Barrios holding axe used to gain forced entry into the 145 Bosworth Street residence.



Figure 2- Looking south at the intersection of Bosworth Street at Cuvier Street with SFPD on scene.

SFPD arrived at the location within five minutes of the emergency 9-1-1 call made by V-1.



On arrival, police immediately set up communication and tried to communicate with Barrios in the residence for an hour and fifteen minutes via a loudspeaker. For more than an hour, police asked Barrios to peacefully surrender. Barrios emerged from the home by the rear door of the residence. He wore brown shorts, a red pullover, and a knit cap, and was openly armed with a silver gun in his right hand. Police repeatedly ordered Barrios to drop the gun. Barrios partially complied and tossed the gun on the ground but always stood within reach of the gun. (Figures 3 and 4.) Some officers later told investigators that while on scene they recognized Barrios, from a 2021 SFPD arrest at this same location because of the call for service made to report Barrios had shot his pet dog filed as San Francisco Superior Court case number 21007372.



Figure 3- Private surveillance captured the gun after Barrios had tossed it and where it landed in the covered portion of the home's breezeway. Barrios's hand at the end of the tossing movement is visible in the frame.



Figure 4- From the same private surveillance video captured Barrios as he stood next to gun under the breezeway of the home. Police not visible in the frame, are positioned above Barrios.



Responding police officers set up a perimeter around the building at 145 Bosworth and extended it to the surrounding area to both protect the public and to create time and distance to talk to Barrios. Barrios, as a police tactical matter, was now considered a barricaded subject due to his refusal to surrender and police were required to engage and to do what they could to de-escalate. Police engaged all available training and resources, including their hostage negotiation team, critical incident team, and even Barrios's own family to try to convince Barrios to surrender.

Officers on scene looked for vantage points to safely watch Barrios from nearby yards and adjacent properties. A "critical incident" was declared at 3:33 p.m.<sup>2</sup> Because Barrios was armed and still refused to surrender, specially trained officers, called "specialists" arrived and positioned themselves on the rooftop of an adjacent building as a precautionary measure in the event Barrios reached for the gun and tried to fire it.<sup>3</sup> Police continued their efforts to try and deescalate the situation.

The specially trained officers who arrived included Wakayama, Phillips, and Bratchikov as less lethal officers armed with less lethal weapons. Buhagiar was the lethal cover for the less lethal officers armed with his firearm (rifle).<sup>4</sup> Each officer's activated BWC confirmed the specialists' arrival and their weapons, communication to each other, and location. Buhagiar's BWC footage showed the specialists on the rooftop that overlooked the breezeway of 145 Bosworth Street and Barrios. (Figure 5.) The less-lethal officers' purpose was to fire on Barrios in the event he reached for the gun during efforts to get him to surrender. Buhagiar's purpose was to use lethal force in the event Barrios reached for the gun and tried to use it against officers or anyone else.



Figure 5- Screen grab of Buhagiar's BWC, and positions of involved officers with weapons pointed at Barrios.<sup>5</sup>

<sup>2</sup> A "critical incident" is a life-threatening situation requiring a tactical response. A "barricaded subject incident," occurs when an armed criminal suspect takes up a defensive position not accessible to police while refusing or ignoring police orders. (For more see SFPD DGOs 8.01 and 8.02.)

<sup>3</sup> A "Specialist" is a volunteer of the rank of patrol officer specifically trained for critical incidents. Their duties include securing the inner perimeter to apprehend or neutralize any suspect(s) and assisting the entry team in accomplishing its objective.

<sup>4</sup> "Lethal cover" officers may employ deadly force to defend against a subject presenting a deadly hazard to negotiators, less lethal officers, or members of the public in critical incident situations.

<sup>5</sup> Buhagiar assumed lethal cover of breezeway from Officer Oliver Lim #2001 (depicted in Figure 5.).





Because Barrios was primarily a Spanish speaker, the SFPD Hostage Negotiation Team (HNT) attempted to engage with Barrios in Spanish, as well as English, through a loudspeaker. But Barrios did not acknowledge any pleas to surrender even from his brother whom police officers asked to speak to Barrios in Spanish and to ask Barrios to surrender over the loudspeaker.

With the handgun on the ground in Barrios's immediate reach, officers watched him for more than two hours as negotiators attempted to get him to peacefully surrender.

Throughout the hours-long standoff, Barrios seemed unaffected and alternated between using his cell phone, drinking from a glass vodka bottle, dancing around with headphones on, and snorting suspected narcotics approximately five to six separate times from a dollar bill. (Figures 6 and 7.) Barrios would also make sudden movements towards the gun nearby which escalated the tension of the encounter greatly.

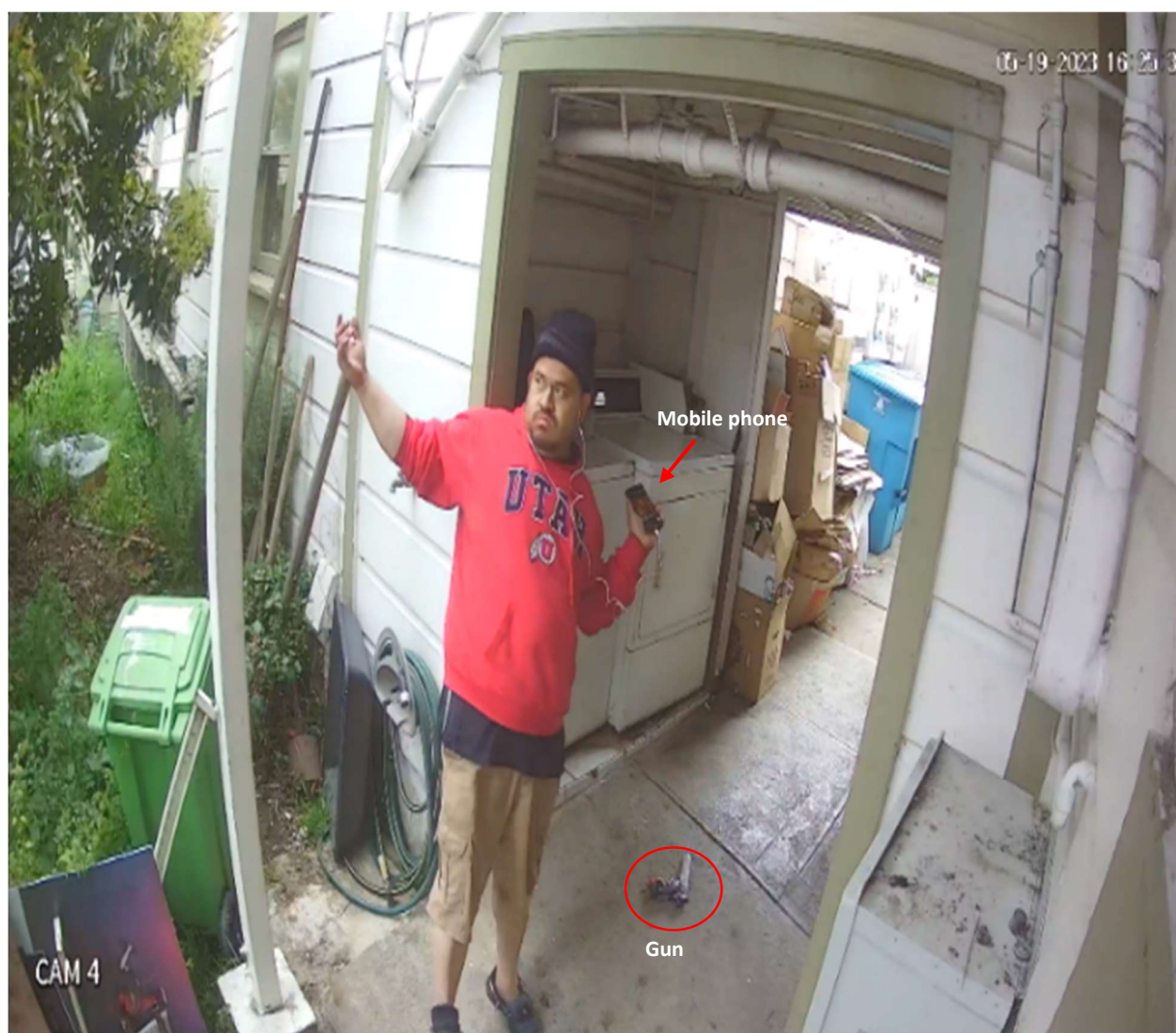


Figure 6- Barrios, visible in the private surveillance video, as he danced next to the gun, cell phone in hand.





Figure 7- Zoomed view from private surveillance video footage shows Barrios as he snorted suspected narcotics within inches of the gun.

While Barrios was continuously warned over the police loudspeaker in Spanish and English to move away from the gun and to surrender to police, the specially armed and trained SFPD officers continued to surround and watch Barrios from all directions. (See Figures 8-11.) The video footage obtained from BWC, and private surveillance showed Barrios looked in the direction of the officers who surrounded him, and at times gestured to them, indicating he was aware of their presence.



Figure 8 – SFPD outside breezeway on Cuvier Street.



Figure 9 – Buhagiar's BWC view from rooftop toward Cuvier Street (left side of image).



Figures 10 and 11 – Show Buhagiar’s BWC view of Barrios (red circle) and from rooftop over breezeway.

During the encounter, Barrios moved toward the gun multiple times without taking hold of it. Police reacted and gave multiple commands each time in Spanish and English over the loudspeaker not to touch the gun. Police also repeatedly warned Barrios what would happen if he reached for the gun.

At 5:35 p.m., Barrios, still on video, again snorted suspected narcotics. He then removed a large silver crucifix necklace from his neck, held it, appeared to kiss it, and placed it back onto his neck.

Then, at 5:49:39 p.m., with multiple weapons pointed at him, Barrios reached towards the gun for the first time, but only slowly lifted a set of keys that laid on top of the gun. (Figure 12.) The surrounding officers held their fire and yelled in unison at Barrios to move away from the gun.

Suddenly, at 5:49:42 p.m., Barrios abruptly looked toward officers and reached for the gun a second time. But this time Barrios grabbed the gun by the grip and lifted it up. (Figures 13 and 14.) Only then, and in reaction to Barrios’s completed reach for and raising of the gun, did Bratchikov, Phillips, Wakayama, and Buhagiar simultaneously fire their weapons at Barrios.

Wakayama fired three to four less-lethal pepper ball rounds from his rifle.<sup>6</sup> Bratchikov and Phillips each fired a single less-lethal foam baton round from an Extended Range Impact Weapon (ERIW) foam baton launcher.<sup>7</sup> And Buhagiar fired three live lethal rounds from an AR-15 rifle.

<sup>6</sup> A “pepper ball” is a ball or round-tipped projectile which are ultrasonically welded and designed to disperse a chemical agent contained inside similar to pepper spray, upon impact.

<sup>7</sup> An Extended Range Impact Weapon (ERIW) is a less lethal weapon that fires a bean bag or other projectile designed to temporarily subdue a subject.



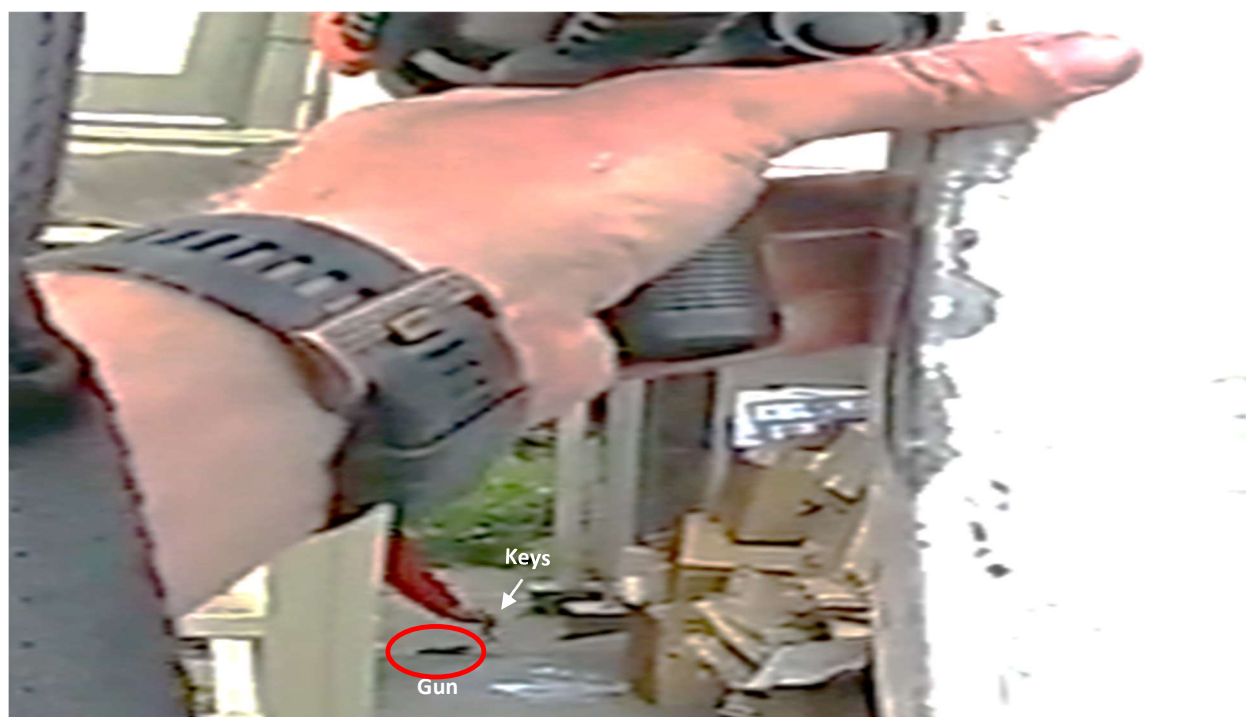


Figure 12- Screen grab from Buhagiar's BWC captured Barrios as he reached for the first time and picked up keys on top of the gun.

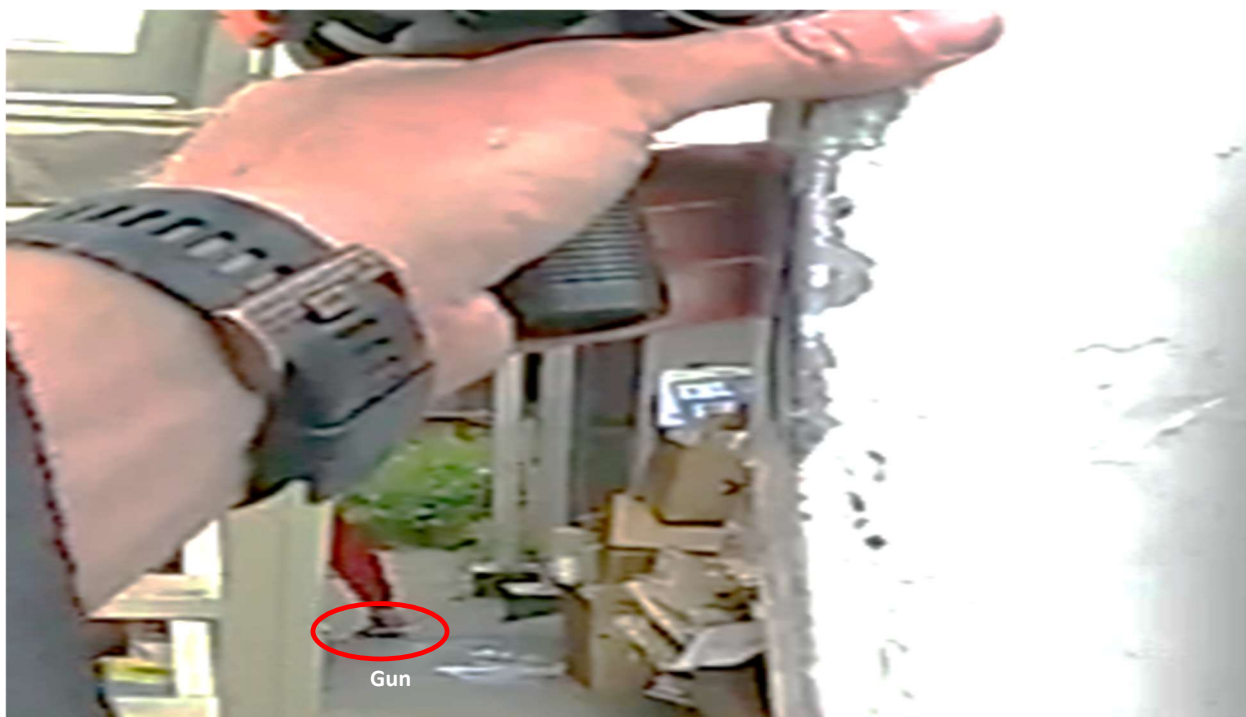


Figure 13 - Screen grab from Buhagiar's BWC captured Barrios as he reached a second time and actually picked up the gun.





Figure 14 - A still from private surveillance video footage captured the reverse angle of the moment Barrios reached for gun.

Paramedics were summoned by police and arrived quickly to transport Barrios to San Francisco General Hospital (SFGH). In effort to save Barrios's life, SFPD officers entered the breezeway where Barrios laid to give medical aid. (Figure 15.)



Figure 15- A still from private surveillance video footage captured police as they entered the breezeway to give aid and transport Barrios to the hospital. The gun Barrios reached for, visible in the image, remained on the ground.

San Francisco Fire Department (SFFD) medics immediately provided first aid to Barrios, (see Figure 16), who was then transported to San Francisco General Hospital (SFGH), and later pronounced deceased. The scene of the incident was secured and maintained for SFPD's Crime Scene Investigations Unit (CSIU) and investigators to arrive and process the scene.



Figure 16 - A still from private surveillance video footage captured the San Francisco Fire Department and paramedics providing medical aid to Barrios (out of frame).

A later examination of the .45 caliber gun found next to Barrios by crime scene investigators revealed the gun was loaded with one live round in the chamber and two live rounds in the magazine. The same examination revealed the gun's hammer was back which would have allowed the gun to be immediately fired by Barrios.

## Investigation

On May 19, 2023, at 6:10 p.m., the San Francisco District Attorney IIB investigation team ("IIB") was notified of the OIS event and at 7:07 p.m. responded to the SFPD Command Post at 101 Bosworth Street near where the OIS had taken place. When the IIB arrived, the incident scene was controlled but still guarded by SFPD officers who had blocked off the area with crime scene tape. IIB investigators met with SFPD Investigative Services Detail (ISD) investigators ("investigators") and dispatched a team to SFGH to monitor efforts to save Barrios's life.

Investigators participated in a walk-through of the incident scene and reviewed the still on scene evidence. After meeting with ISD investigators, investigative tasks were delegated and assigned. IIB investigators also reviewed BWC footage, SFPD reports, and canvassed the area for additional witnesses. Additionally, a search warrant was authored to allow the search for and recovery of additional evidence from the location.

The involved SFPD officers were separated to preserve the integrity of their forthcoming statements and were no longer at the location. Arrangements were made to interview the officers who all gave voluntary statements later.

The San Francisco District Attorney IIB investigation into the Officer-Involved Shooting of Sergio Barrios was comprehensive, thorough, and objective. Civilian and law enforcement interviews were completed, the crime scene was processed for evidence, and video for all 40+ officers who



responded was reviewed. Numerous hours of investigative review of all available evidence were conducted as were follow-up interviews with Barrios's family.

## Evidence Reviewed

- Police radio communications, Computer Aided Dispatch (CAD), and logs of the incident
- Emergency Call (9-1-1) audio recording
- BWC footage from all responding officers
- Private surveillance video from 145 Bosworth Street obtained by consent from V-1 (owner)
- Interviews of officers involved in the incident
- Translated interviews of civilian witnesses
- Office of the Chief Medical Examiner (OCME) Report #2023-0735 re Autopsy of Barrios
- Forensic extraction and review of Barrios's cellular phone
- California Department of Justice criminal history information for Barrios
- Prior SFPD police reports that involved Barrios as a shooting suspect
- Forensic examination and analysis of the gun and ammunition possessed by Barrios
- CSIU photographs of the incident scene, involved officers, and weapons
- SFPD-ISD Investigative Case File

## Incident Scene Description

The OIS occurred during daylight on a Friday afternoon. The elapsed time from when the 9-1-1 call by V-1 was placed and the shooting was 3 hours and 29 minutes. The elapsed time from when Officers Bratchikov, Phillips, Wakayama, and Buhagiar were called to report to the critical incident and the shooting was 2 hours and 16 minutes.

The structure at 145 Bosworth Street is in a primarily residential area at the southeast corner of Bosworth Street & Cuvier Street, in San Francisco. It is a two-story mixed-use, multi-unit building which had in the lower portion New Bosworth Market (now-shuttered) attached to residential units on the first and second floor. (Figure 17.)



Figure 17- Photograph of Bosworth Market with damage to front door due to SFPD forced entry.

Entrances to the residential units, located on the east side of Cuvier Street, open to a partially covered and attached breezeway area and enclosed garage located on the first floor at the south



end of the building. The breezeway, where Barrios was observed and shot, contained debris consisting of cardboard boxes and garbage cans on either side, and a makeshift work bench against the building. (Figure 18.)



Figure 18 - Aerial view of 145 Bosworth Street breezeway with Cuvier Street in the foreground.

Barrios was observed and shot in the covered area of the breezeway next to the back entrance door to 145 Bosworth Street. (Figures 19-20.) When the shooting took place, Barrios while squatted faced west. Police were positioned to the southwest of Barrios on the rooftop above him.

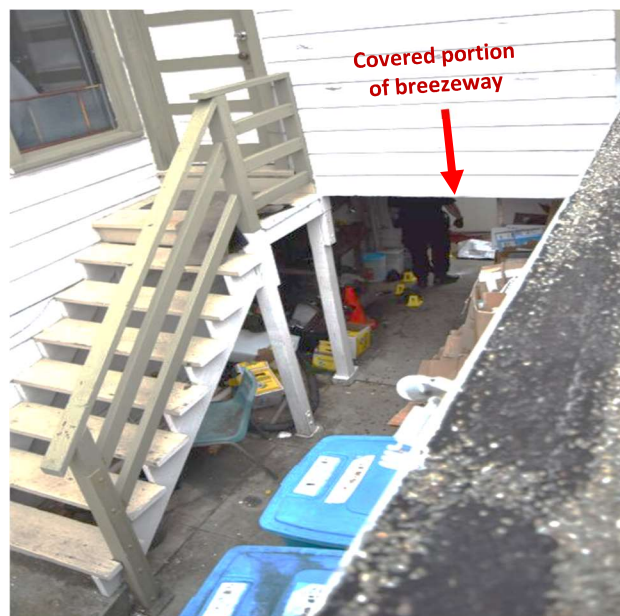


Figure 19- Covered part breezeway.



Figure 20- Location of Barrios at time of OIS.



## Incident Scene Evidence Recovery

All physical evidence at the scenes was photographed, processed, and recovered by the San Francisco Police Department's CSIU. A total of 12 items of evidence were taken from the scene depicted in CSIU's crime scene diagram of the location. (Figures 21-22.)

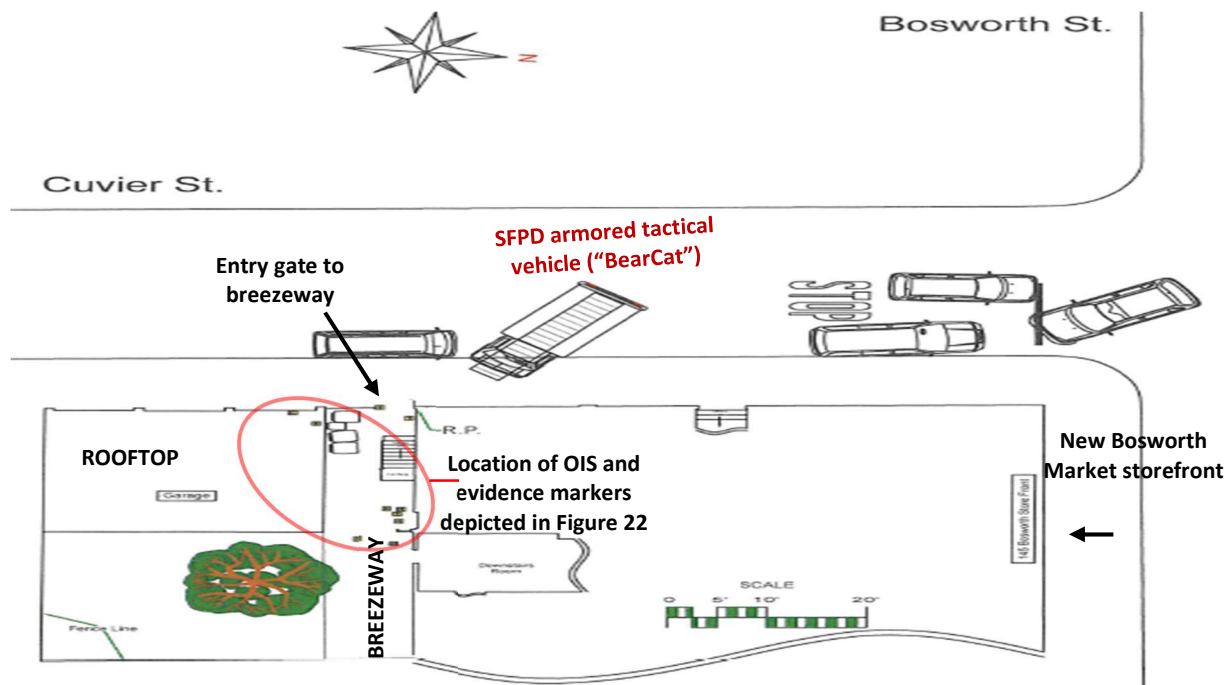


Figure 21- CSIU diagram of scene of OIS.

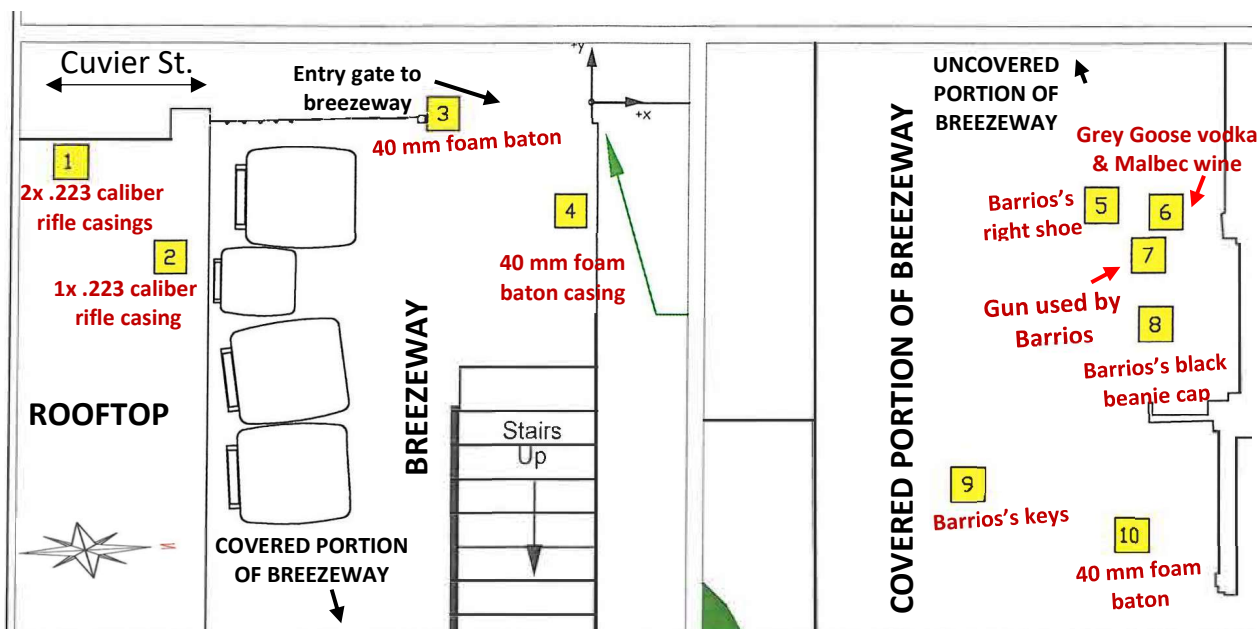


Figure 22- Close-up CSIU diagram depicting evidence markers at shooting location.



## Weapons and Other Objects

Barrios's .45 caliber gun was loaded with three live rounds. Also found and preserved for DNA testing, fingerprinting and sampling, was the set of keys Barrios touched, the Grey Goose vodka bottle Barrios drank from, and the suspected narcotics Barrios used. (Figure 23.) SFPD officers and crime lab technicians collected and booked all evidence shown in Figure 22.



Figure 23- CSIU photograph of Barrios's property marked at shooting scene.

Investigators inspected the recovered gun used by Barrios. The gun was an Arcadia Machine and Tool (AMT) brand "Hardballer," .45 caliber, 1911-style, stainless-steel, semi-automatic gun (serial number A05770). (Figure 24.) The gun had a five-inch barrel and was loaded with three live ammunition rounds (bullets) from different manufacturers. (Figure 25.) One round was in the chamber, two rounds in the magazine, while the hammer was in the ready-to-be-fired position. The gun's safety mechanism was determined to be in poor condition.



Figure 24- Photograph of recovered gun.



Figure 25- Three live bullets from Barrios's gun.





Records for the gun Barrios had from the federal Department of Alcohol, Tobacco, Firearms, and Explosives indicated that the gun was purchased in 1978 in Arizona by someone other than Barrios. Of note, Barrios was ordered to not possess any firearms as a condition for his release by the San Francisco Superior Court in case number 21007372.

### Ballistics Evidence

Three .223 caliber rifle casings determined to be from Buhagiar's duty AR-15 rifle were recovered from the garage roof where Buhagiar was positioned. (Figure 26.)



Figure 26- CSIU photograph of three recovered rifle casings from Buhagiar's rifle located on rooftop.

A total of two foam batons from Phillips's and Bratchikov's duty-issued ERIW launchers were recovered; one from the sidewalk, adjacent to the entrance gate to the breezeway, and one on the ground where Barrios fell in the covered portion of the breezeway. (Figures 27-28.) The pepper ball rounds Wakayama fired from his less lethal duty rifle disintegrated on impact and were not recoverable.



Figure 27- Foam baton found near gate.

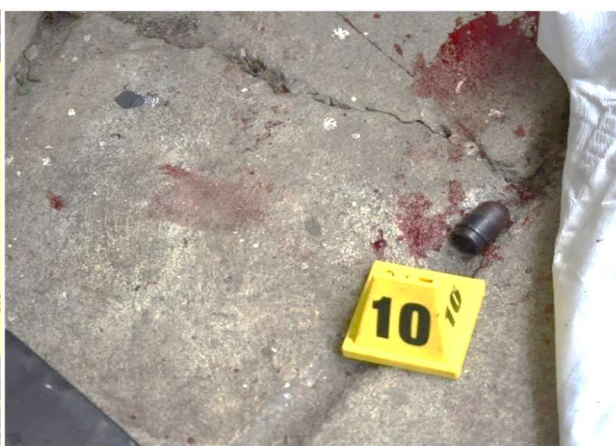


Figure 28- Foam baton found under covered breezeway.

Barrios was struck by two of the three fired .223 caliber bullets from Buhagiar's rifle. Only one of the rifle bullets was recovered at autopsy from Barrios's body.



## **Stationary Surveillance Video and Body-Worn Camera Footage (BWC)**

### **BWC**

All officers' present had BWC activated at the time of the incident and recorded the HNT negotiation efforts as officers surrounded Barrios in the breezeway.

The BWC footage captured officers at the scene and over the breezeway area where Barrios remained during the critical incident. The BWC reviewed confirmed that Barrios ignored SFPD negotiation efforts but remained within arms-reach of the gun during the entire time of the standoff.

And Barrios, shown clearly on BWC footage, slowly reached the first time towards the keys on top of the gun, and then made his second and final movement to grab the gun as officers opened fire.

### **Stationary Surveillance Video**

Footage from a single stationary surveillance camera positioned above the breezeway door recorded without sound. The camera faced downward toward where Barrios remained throughout the standoff with SFPD and also captured footage relevant to the incident<sup>8</sup>:

- At 11:35:02 a.m. Barrios walked in the breezeway with an axe towards the rear door of 145 Bosworth Street.
- At 3:49:05 p.m. Barrios tossed a gun to the ground near a washing machine in the breezeway.
- At 3:49:40 p.m. Barrios walked over to the gun on the ground in the covered portion of the breezeway.
- Between 3:49:40 pm. and 5:48:21 p.m., Barrios gestured, danced, sat, stood, made sudden movements, tossed items in the air, drank alcohol from the two bottles found, and snorted suspected narcotics continuously from a distance as times as close as within one foot of the gun.
- At 5:48:21 p.m.<sup>9</sup>, Barrios reached towards the gun with his left hand and then appeared as if he was suddenly thrown backward.
- At 5:48:37 p.m., SFPD officers entered the breezeway (and the camera field). The gun Barrios had was still visible on the ground.
- At 5:48:58 p.m., SFPD medics administered aid to Barrios on scene.

### **Photographs**

On May 19, 2023, after the OIS, the investigators photographed the entire scene of the OIS, all items of evidence found, and the involved officers.

### **Communications**

Investigators obtained a copy of the emergency call for assistance placed by V-1 and the Computer

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<sup>8</sup> All times listed here are from the surveillance footage, which displayed 1 minute, 21 seconds faster than the SFPD BWC footage.

<sup>9</sup> BWC footage recorded the time as 5:49:42 p.m.



Aided Dispatch (CAD) associated with this incident. The CAD report provided additional time stamps for the 9-1-1 call, the relay to officers, and officer communications once on scene. All times were corroborated by BWC video as well as statements from witnesses.

## Autopsy

After the OIS, Barrios, age 40, was treated on scene and transported by SFFD Medic 83 to SFGH for emergency medical treatment. Barrios did not survive his injury, was pronounced deceased at 6:11 p.m. on May 19, 2023, and later transported to the Medical Examiner's Office by OCME Investigators.

On May 22, 2023, OCME Dr. Guan, a forensic pathologist performed an autopsy of Barrios and identified the fatal injury to Barrios's head and (non-fatal) injury to Barrios's right hand.

A postmortem toxicology study of Barrios's blood revealed the presence of methamphetamine (950 ng/mL) and its metabolites and support that Barrios was under the influence of the drug when he was shot. A urine toxicology study of Barrios's urine confirmed the presence of methamphetamine (>50 ng/mL) and its metabolites which also supports that Barrios ingested the drugs and corroborated on-scene police observations. (Figure 29.)


City and County of San Francisco		Office of the Chief Medical Examiner			
<b>FORENSIC LABORATORY DIVISION</b>					
<b>REPORT OF FORENSIC TOXICOLOGY ANALYSES</b>					
Name:	BARRIOS, Sergio	SFOCME Case No.: 2023-0735			
Submitter:	Guan, Jun, MD	Submission Date & Time: 05/23/2023 0810 hrs			
Sub. Ref. No.:	N/A	Date of Report: 06/15/2023			
<b>SPECIMENS ACCESSIONED</b>					
SPECIMEN TYPE	SPECIMEN ID	VOL (mL)	COLLECTED	DESCRIPTOR(S)	PROTOCOLS
Blood (Peripheral)	381178	10	05/22/2023 1046 hrs		GCET, LCQB <sup>1</sup> , LCQC
Urine	381179	10	05/22/2023 1046 hrs		LCQB, LCQC
Vitreous Humor	381180	2	05/22/2023 1046 hrs	Brown, cloudy.	
<b>ANALYTICAL RESULTS</b>					
SPECIMEN TYPE	SPECIMEN ID	COMPONENTS DETECTED	PROTOCOL PERFORMED		
Blood (Peripheral)	381178	No Volatiles Detected	GCET/GCET		
Blood (Peripheral)	381178	Methamphetamine	950 ±230	ng/mL	LCQB
Blood (Peripheral)	381178	Amphetamine	66 ±13	ng/mL	LCQB
Urine	381179	Methamphetamine	≥ 50	ng/mL	LCQB
Urine	381179	Amphetamine	≥ 50	ng/mL	LCQB
Urine	381179	Ephedrine/Pseudoephedrine	≥ 10	ng/mL	LCQB
Urine	381179	Norephedrine/Norpseudoephedrine	≥ 10	ng/mL	LCQB

Figure 29 - Barrios's Toxicology results completed by OCME.





## Involved Police Officers

Buhagiar, assigned as cover for the three less-lethal officers who also fired, was the only officer to discharge a lethal firearm during the incident. The voluntary statement of each officer was audio recorded and is summarized in this report.<sup>10</sup>

### Statement of Officer Gregory Buhagiar

Buhagiar agreed to provide a voluntary statement and was interviewed twice by investigators from the IIB and the SFPD Investigative Services Detail (ISD) (“investigators”). Both interviews were conducted with Buhagiar’s attorney present.

Buhagiar, an officer with SFPD for over 22 years, was assigned as a patrol officer with the Northern Station division. Buhagiar, a designated marksman (sniper), is typically brought into a critical incident because the circumstances may require a precise lethal shot from a long range (distance), or a concealed/hard-to-reach location. Buhagiar has been a part of the Specialist Team since 2003.

On arrival to the scene of the critical incident that involved Barrios, Buhagiar had an AR-15 rifle and was briefed on what had already taken place. Buhagiar was informed that Barrios had committed at least two violent felonies that day which consisted of a “hot prowl” burglary of the residential portion of the location, and an aggravated assault when Barrios pointed the gun at V-1.<sup>11</sup> Buhagiar was designated to an “overwatch” (lethal cover) position, tactically located on the garage roof of the property on Bosworth closest to Cuvier Street. Buhagiar was positioned next to Wakayama who was designated as a less-lethal specialist. When briefed about the potential danger Barrios presented, Buhagiar was also told that Barrios had previously shot his own dog.

Buhagiar told investigators that he recalled seeing Barrios on the ground in a breezeway, sitting on an overturned bucket with a handgun close to him on the ground. Buhagiar estimated the gun was two to three feet away from Barrios throughout the incident. He noted that Barrios appeared intoxicated from alcohol and/or drugs, but was also agitated, and at times would make sudden or aggressive movements which in Buhagiar’s opinion made Barrios unpredictable and dangerous. Buhagiar told investigators he was told by other officers that they saw Barrios drink from a vodka bottle and snort either cocaine or methamphetamine (a white powder) with a dollar bill.

Buhagiar described in detail why he believed Barrios was a potentially deadly threat to those around him. Acutely, Buhagiar based his opinion on Barrios’s proximity to the handgun on the ground, Barrios’s behavior he personally witnessed on scene, as well as the history that Barrios shot a dog and the reported armed break-in and assault. Buhagiar added how he assessed Barrios’s presentation at the time and noted that Barrios’s appeared visibly agitated, displayed erratic behavior, and seemed to lack any fear even though 15 or more armed police officers surrounded him with weapons trained on him. Buhagiar decided Barrios was a deadly threat and

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<sup>10</sup> Only involved officer statements are included in this report.

<sup>11</sup> A “hot prowl” burglary is an informal term for a first-degree residential burglary committed when the occupant of the home is present because of the unique danger that event poses. (Pen. Code, §§ 459, 460.) It is considered a violent felony under California law. (Pen Code, § 667.5, subd. (c)(21).) Use of a firearm in the commission of a residential burglary, additionally, rendered Barrios’s conduct a violent felony. (See Pen. Code, §§ 667.5, subd.(c)(22), 12022.53, subd. (b).)



watched each action taken by Barrios carefully for clues about what he might do next.

Buhagiar watched Barrios as he removed a rosary from around his neck, held it, kissed it and then placed it back on his neck. Buhagiar, who was raised Catholic, saw the gesture as meaningful and insightful to what Barrios might do next. Buhagiar interpreted the actions as if Barrios was, “prepping himself... to give up or ... to do something he shouldn’t.” Either way, Buhagiar told investigators the actions as observed, supported that Barrios was an unpredictable potential danger while the gun was in arm’s reach.

Buhagiar also told investigators he was “100%” sure that Barrios knew he was surrounded by police officers. He based this belief on his observations of the negotiators over loudspeaker repeatedly announcing, “Police Department!” loudly in two languages. Additionally, all officers who surrounded Barrios wore uniforms marked “Police,” had weapons pointed at Barrios and would be visible from where Barrios remained under the breezeway. This statement was corroborated when investigators stood where Barrios had been observed and noted that Barrios would have seen the many officers above and around him.

Buhagiar told investigators his primary concern and focus was to watch Barrios and to prevent anyone from being shot by Barrios as police sought a peaceful resolution and Barrios’s surrender. Buhagiar told investigators he watched Barrios get up and stand over the handgun and then look over at the officers who surrounded him. Buhagiar felt Barrios was trying to communicate to the officers on scene that he (Barrios) could grab the gun if he wanted. Buhagiar also saw Barrios “snort” something unknown and walk back over to the handgun. Buhagiar watched as Barrios quickly reached down to the gun but then grabbed a set of keys that were on top of the weapon. Buhagiar grew more concerned and in response to what he witnessed, switched the safety on his rifle to the “off” position just in case. Buhagiar told investigators he believed Barrios’s next reach might be to grab the gun and start shooting the officers present. Buhagiar said:

“I believe [Barrios] was looking at all of us, all the officers . . . My main concern was looking at the officers at the gate, because that’s a wooden fence and any rounds that were to be fired at them, would probably go right through that and shoot the officers.”

Buhagiar observed that after grabbing the keys, Barrios walked away from the gun a few steps, but then suddenly reached down this time to grab the gun. Buhagiar told investigators that he felt he had few options at that point and stated:

“I just saw [Barrios’s] hand. [Barrios] was the only individual in that hallway [breezeway]. It was his hand that reached down to grab the gun, and the minute I saw him reach down and grab that gun is when I believed at that moment he was going to shoot and kill the cops.”

Buhagiar described the education he has received to assess a subject’s present ability to kill others, and described “the threat triangle” principle police are trained on to assess a deadly threat.<sup>12</sup>

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<sup>12</sup> The “threat triangle” is a term used with a visual aid of a triangle to train police officers how to assess if there is an imminent danger made evident by an individual who demonstrates they have the (1) ability to injure, the (2) opportunity to injure, and the apparent, as demonstrated, (3) intent to injure another. The deadly force triangle is a decision model designed to enhance an officer's ability to respond to a deadly force encounter while remaining within legal and policy parameters. The three sides of an equilateral triangle



Buhagiar also explained his internal thought process and threat-assessment training and stated:

“You know, as a police officer, . . . our main goal is to preserve life. It’s just at that moment with that threat triangle and what I believed [Barrios] was going to do was shoot those cops, in my overwatch position, I had to protect the officers on scene.”

Buhagiar stated that once Barrios put his hand on the gun, gripped it, and lifted it, Buhagiar fired a total of two to three rounds from his duty AR-15 rifle. The rifle only fires in semi-automatic mode, or one round per trigger pull. As soon as Buhagiar saw he hit Barrios, he put his rifle’s safety back to the “on” position and discontinued shooting.

### **Statement of Officer David Wakayama**

Wakayama agreed to provide a voluntary statement and was interviewed by SFPD and IIB investigators with his attorney present.

Wakayama, a police officer with SFPD for over 21 years and a part of the SFPD Specialist Team since 2008, was primarily assigned to patrol with the Northern Station division. Officer Wakayama reported to the incident involving Barrios on May 19, 2023, as an on-duty specialist. On arrival, Wakayama was assigned to use the less lethal pepper-ball rifle.

Wakayama described to investigators the critical moments that occurred when Barrios stood over the gun and then when Barrios quickly grabbed the set of keys on the handgun. These actions by Barrios surprised and concerned Wakayama. But then a few seconds later, Barrios reached down again but this time he grabbed the gun. Wakayama reacted by firing his pepper ball rifle to try to force Barrios away from the handgun and prevent any harm to the many officers present.

Wakayama told investigators he believed if Barrios had succeeded in picking up the handgun, he or another officer would have been shot. Wakayama explained to investigators that Wakayama was potentially exposed to the danger of being shot because of where he was on the roof. Wakayama believed that Barrios had the means, opportunity, and intent to kill or seriously injure one of the officers on scene.

### **Statement of Officer Scott Phillips**

Phillips agreed to provide a voluntary statement and was interviewed by SFPD and IIB investigators with his attorney present.

Phillips, a police officer with SFPD for approximately eight years, had finished training with the Specialist Team two weeks prior to the incident and was primarily assigned to patrol at Northern Station.

Phillips told investigators he responded to the critical incident and was told Barrios was an armed burglary subject with a gun still on scene. Phillips was assigned a less lethal 40mm foam baton

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represent three factors: ability, opportunity, and jeopardy (intent). Law enforcement is trained that all three factors must be present to justify deadly force. Source: *FBI Law Enforcement Bulletin*, Vol. 67, February 1998; *Improving Deadly Force Decision Making*; Author D. T. Olsen; NCJ No. 172999. U.S. DOJ, OJP, NCJRS Virtual Library; see also Pen. Code, § 835a, subd. (e)(2).





launcher.

While on scene, Phillips told investigators that his concern increased when he saw Barrios take his rosary necklace off and then hold it. Phillips believed this gesture meant Barrios was saying a final prayer or making “amends with God.” Phillips also noted that as Barrios ingested what looked like drugs, Barrios’s moved more rapidly. Phillips also thought Barrios appeared “focused” on the officers around him. Phillips told investigators when he saw Barrios reach down towards the gun, it seemed like Barrios was trying to “push the envelope” and provoke a reaction from the officers that surrounded him.

At investigators’ request, Phillips elaborated on this moment, and stated he watched as Barrios reached down and picked up keys that were on a cord on the handgun. Then Phillips described Barrios making a second “very intentional, sudden grab at the gun,” which caused Phillips to fire his 40mm less lethal foam baton one time. Phillips noted the short distance between the officers to the subject, and told investigators he believed, “if [Barrios] got ahold of the gun, he could—at that range...spray off however many rounds, and one of them is probably going to hit an officer or somebody else.” Phillips told investigators he fired his weapon to prevent Barrios from completing his grab of the weapon and harming the officers at the scene.

### **Statement of Officer Stanislav Bratchikov**

Bratchikov agreed to provide a voluntary statement and was interviewed by SFPD and IIB investigators with his attorney present.

Bratchikov, a police officer with SFPD for over 14 years and a member of the Specialist Team for three years, was assigned as a patrol officer with Park Police Station.

Bratchikov arrived at the critical incident and was told Barrios was an armed burglary suspect and was still on scene. Bratchikov was also assigned the less lethal 40mm foam baton launcher.

Key moments for Bratchikov that he shared with investigators to explain why he fired his less lethal were the moments when Barrios picked up the keys, paused, but then reached down again suddenly and picked up the gun that was always within reach. Someone shouted, “Red light!” and Bratchikov fired one 40mm foam baton at the subject’s lower waist area to try to prevent Barrios from completely picking up the gun.<sup>13</sup> Bratchikov told investigators it was then that he heard another officer fire a 40mm baton, and then a third officer fire a rifle.

Bratchikov told investigators he believed Barrios intended the situation to end badly because he chose to grab the gun with police officers all around him and never demonstrated any desire to surrender peacefully.

## **Interviews of Civilian Witnesses**

### **Interview of V-1**

V-1 was interviewed by investigators with the assistance of a certified Spanish-language interpreter. On May 19, 2023, V-1 came home from work, parked his truck in the garage, and entered his residence via the back door. V-1 was surprised to find lights on that he recalled he

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<sup>13</sup> “Red light” is a warning SFPD uses to warn nearby officers that a less lethal weapon is about to be fired.



turned off prior to leaving for work. Upon further inspection, V-1 noticed a broken door lock and surmised that someone had been inside the residence and adjoining empty storefront. V-1 searched the residence and “saw a guy” hiding behind a sofa. He recognized the guy as “Milton,” his brother-in-law and tenant who rents a unit in an adjacent building on Cuvier Street.<sup>14</sup> V-1 said Milton (aka Barrios) appeared “high on drugs” and pointed a handgun at V-1. V-1 ran from the residence in fear. V-1 was on the phone with his wife (Barrios’s sister) during the incident, who told him to call the police. V-1 told the responding officers that Barrios was armed with a handgun and had broken into the residence. V-1 also told investigators that he was afraid of Barrios whom he described as “crazy” from drug use and as having an uncontrolled temper. V-1 also stated that he believed Barrios was capable of shooting him.

V-1 told investigators the officers tried to get Barrios to give up “many, many times” in Spanish during the standoff portion of the incident. V-1 stated the police “nicely” told Barrios to “come out . . . [to] throw the gun and just come out.” V-1 told investigators he heard the gunshots and that [police] “shoot to make sure that you and I are also safe ... police are safe ... neighbors are safe.”

V-1 mentioned that a week prior to the officer-involved shooting, V-1 had pulled up to his garage in his car and was surprised to find the garage open. As V-1 talked to his wife by phone regarding the garage door, Barrios emerged from the garage, walked in front of the car, and pulled a gun out while chambering a round in front of V-1. Barrios also produced a knife that he knocked against V-1’s vehicle several times. V-1, afraid for his life, locked his car door but did not call the police. V-1 later discovered that Barrios had stolen his sunglasses and a guitar from the garage, which were never recovered.

V-1 stated it was not uncommon for Barrios to consume narcotics, and everyone in the family was aware that Barrios had a drug habit. V-1 did not know if Barrios had mental health issues and did not believe Barrios had a history of suicidality or self-harm.

### **Interview of W-1**

W-1 was interviewed by investigators with the assistance of a certified Spanish-language interpreter. W-1 told investigators she lived with and was in a romantic relationship with Barrios for approximately 10 years. They do not have any children together. W-1 stated that Barrios had a drinking problem and may have gone downstairs from their apartment to the shuttered store portion of the building next door in search of alcohol. W-1 was also aware that Barrios used narcotics but was unsure what type. W-1 told investigators that when Barrios used drugs or alcohol, he would become more agitated. W-1 discussed with investigators that Barrios shot his pet dog in 2021. She described a change in Barrios’s behavior after he killed the dog, noting that he became sad after the incident.

When asked if Barrios had displayed any mental health symptoms, W-1 was unaware if Barrios had any mental health issues or recent arguments with anyone, or if he had ever tried to commit suicide. Investigators noted that W-1 stated she recently had asked Barrios if he was contemplating suicide, which W-1 told investigators Barrios denied. W-1 told investigators that Barrios was not working and was unemployed since February 2023.

W-1 told investigators that she tried to contact Barrios via his cellphone throughout the day of the shooting incident, but he did not answer her calls or texts.

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<sup>14</sup> While V-1 was aware Barrios also had the name “Sergio”, he referred to him as “Milton”.



## **Sergio Milton Barrios Aleman – Background**

Sergio Milton Barrios Aleman, born on May 10, 1983, had just recently turned 40 years old. At the time of the incident, he was approximately 5 foot and 8 inches, and 221 pounds. Barrios resided with W-1 on Cuvier Street in San Francisco at the time of the incident in an apartment immediately adjacent to, but separate from, 145 Bosworth Street. Barrios's landlord for the Cuvier Street residence was V-1, who was also his brother-in-law.

On July 26, 2021, Barrios was arrested by SFPD for an incident where he allegedly shot and killed his pet dog. Barrios was charged with criminal felony violations of Animal Cruelty (Pen. Code, § 597, subd. (a)), Discharge of a Gun in Public (Pen. Code, § 246.3, subd. (a)), Carrying a Loaded Gun in Public (Pen. Code, § 25850, subd. (a)), Possession of Controlled Substance (drugs) while Armed with a Gun (Health & Safety Code, § 11370.1, subd. (a)), and misdemeanor Possession of a Controlled Substance (drugs) (Health & Safety Code, § 11377, subd. (a)). After he killed the dog, Barrios reportedly placed his unregistered handgun on the ground next to the deceased animal and walked into his residence nearby. Police were called and when SFPD officers arrested him at the front door of his home, Barrios was in possession of two bindles of methamphetamine.



Figure 30- Barrios's California Driver's License photo

The 2021 animal cruelty incident was documented in SFPD Report #210-472-643 and charged under San Francisco Superior Court case number 21007372. The court case was still pending at the time of Barrios's death. After the arrest for the incident, Barrios was released July 28, 2021, on condition he not possess firearms. This Court order was still in effect on the date of the OIS of May 19, 2023. Barrios also had prior arrests for California Vehicle Code violations and warrants for failing to appear on those violations.

## **Applicable Legal Standards**

Per the California Commission on Peace Officer Standards and Training (P.O.S.T.) Use of Force





Guidelines (2021), and California Penal Code section 835a, a use of force by a police officer must be for a lawful objective. The authority to use force 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. Officers may use force, which includes deadly force, to meet legitimate law enforcement objectives including:

- I. To effect a lawful arrest, detention, or search;
- II. To overcome resistance or to prevent escape;
- III. To prevent the commission of a public offense;
- IV. In defense of others or in self-defense;
- V. To gain compliance with a lawful order;
- VI. To prevent harm to the officer or another person during intervention in a suicide or other attempt to self-inflict injury.

### **Justifiable Homicide Based on an Officer's Reasonable Belief that the Use of Deadly Force Is Necessary**

Homicide is justified and lawful if committed in self-defense. Self-defense is a complete defense to a homicide charge, and if found, the killing is not criminal. (*People v. Sotelo-Urena* (2016) 4 Cal.App.5th 732, 744.) When a person is charged with a homicide-related crime and claims self-defense, the prosecution must prove beyond a reasonable doubt that the homicide was not committed in self-defense. (*People v. Winkler* (2020) 56 Cal.App.5th 1102, 1151.) The same is true for killings that are committed because of a perception that deadly force is needed to save others (defense of others) who will be seriously harmed or killed if not for the use of deadly force. (See *People v. Uriarte* (1990) 223 Cal.App.3d 192, 197.)

Penal Code sections 196 et. seq. sets forth the law of self-defense in homicide cases. Specifically, Penal Code section 197 lists the circumstances where homicide is justifiable, which includes self-defense or the defense of others. (Pen. Code, § 197, subd (1).)

Self-defense arises when a person actually and reasonably believed in the necessity of defending themselves against imminent danger of death or great bodily injury. (*People v. Randle* (2005) 35 Cal.4th 987, 994, overruled in part on other grounds in *People v. Schuller* (2023) 15 Cal. 5th 237, 311.) There is both a subjective and objective component to a self-defense claim. (*People v. Humphrey* (1996) 13 Cal.4th 1073, 1082.)

The subjective element of self-defense requires that a person actually believes in the need to defend against imminent peril or great bodily injury. (*People v. Viramontes* (2001) 93 Cal.App.4th 1256, 1262.) The objective element requires that the person's belief be objectively reasonable. (*People v. Horn* (2021) 63 Cal.App.5th 672, 682.) In assessing the objective element, the trier of fact must consider what would appear to be necessary to a reasonable person in a similar situation with similar knowledge by assuming the point of view of a reasonable person in the position of the accused. (*People v. Brady* (2018) 22 Cal.App.5th 1008, 1014, citing *People v. Humphrey*, supra, 13 Cal.4th at pp. 1082-1083.)

When considering the objective reasonableness of a person's belief, it is worth noting that reasonableness is assessed in terms of a person of ordinary and normal mental capacity. (*People v. Horn*, supra, 63 Cal.App.5th at 685-687.) A person's individual background is not the standpoint from where reasonableness is considered. (*People v. Brady*, supra, 22 Cal.App.5th at pp. 1014-1015.) However, a jury may consider the knowledge that a person had which might increase his or her ability to accurately predict the risk of impending violence. (*Id.* at p. 1017.) For



example, knowledge of another person's prior threatening or violent conduct, or reputation for dangerousness may provide evidence to support reasonable belief in imminent harm. (*People v. Bates* (2019) 35 Cal.App.5th 1, 9-10.)

Another aspect of self-defense is the assessment of whether danger was imminent. Mere fear that a danger will become imminent is not sufficient. (*People v. Lopez* (2011) 199 Cal.App.4th 1297, 1305.) Fear of future harm, regardless of how great the fear or the likelihood of the harm, will not suffice. (*In re Christian S.* (1994) 7 Cal.4th 768, 783.) Imminent peril has been defined as appearing to a person as, "immediate and present and not prospective or even in the near future." An imminent peril is one, "that from appearances, must instantly be dealt with." (*People v. Lopez*, supra, 199 Cal.App.4th at p. 1306, quoting *People v. Aris* (1989) 215 Cal.App.3d 1178, 1187.)

The amount of force used by a person is also something that must be found to be objectively reasonable. "[O]nly that force which is necessary to repel an attack may be used in self-defense; force which exceeds the necessity is not justified." (*People v. Hardin* (2000) 85 Cal.App.4th 625, 629, quoting *People v. Clark* (1982) 130 Cal.App.3d 371, 380.) In a related vein, "deadly force or force likely to cause great bodily injury may be used only to repel an attack which is in itself deadly or likely to cause great bodily injury." (*Id.* at 629-630.) Even if an individual was in actual and reasonable belief of imminent danger, the use of force may not exceed what is reasonably necessary to repel the attack. (*Ibid.*)

Penal Code section 196 provides a justification for homicide committed by a peace officer when the use of force complies with Penal Code section 835a. (Pen. Code, § 196, subd. (b).) Effective January 1, 2022, Penal Code section 835a was amended to further refine when an officer's deadly use of force is justified. (Pen. Code, § 835a.) Under section 835a, subdivision (a)(2), peace officers may lawfully use deadly force "only when necessary, in defense of human life." To determine 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." (Pen. Code, § 835a, subd. (a)(2).) Tactical conduct and decisions preceding the use of deadly force are relevant, as part of the totality of circumstances, when determining whether the use of deadly force was reasonable. (*Hayes v. County of San Diego* (2013) 57 Cal.4th 622, 637-639; *Koussaya v. City of Stockton* (2020) 54 Cal.App.5th 909, 935.)

When an officer's use of force is evaluated, it must be considered "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." (Pen. Code, § 835a, subd. (a)(4).)

An officer may use deadly force only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary when: (1) defending against an imminent threat of death or great bodily injury to the officer or another person or (2) to apprehend a fleeing person who has committed a felony that threatened or resulted in death or great bodily injury and the officer reasonably believes the person will cause death or great bodily injury if not immediately apprehended. (Pen. Code, § 835a, subds. (c)(1)(A), (B).)

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

“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.” (*Graham v. Connor* (1989) 490 U.S. 386, 396.) “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” (*Id.* at pp. 396-397.) “[T]he question is whether the officers’ actions were ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” (*Id.* at p. 397.)

The People have the burden of proving beyond a reasonable doubt that a killing was not justified. 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. (*People v. Frye* (1992) 7 Cal.App.4th 1148, 1158; *People v. Banks* (1976) 67 Cal.App.3d 379.)

## Legal Analysis

The SFDA has completed an independent investigation and review of the facts and circumstances that led to the death of Sergio Barrios. This analysis is informed by the comprehensive evaluation of all the available evidence provided to the SFDA-IIB by the SFPD and IIB’s own investigation, which in this matter included video evidence from BWC footage and stationary surveillance video footage, the police reports, all witness statements, forensic evidence, the OCME report, and later-obtained documents such as criminal history information for Barrios.

The question is whether a reasonable officer in Buhagiar’s position from both an objective and subjective perspective would have believed that the use of lethal force was necessary to defend self or others. In evaluating the objective reasonableness of Buhagiar’s use of deadly force, California law requires consideration of the totality of circumstances presented by the incident and through a subjective lens what was known, believed, or personally witnessed by Buhagiar to inform him regarding the question of whether Barrios posed an imminent deadly threat.

Throughout the entire encounter with Barrios, a semi-automatic gun was within Barrios’s immediate reach, corroborated by video evidence as well as in-person observation by the many law enforcement officers present that day. The location of the gun, a lethal weapon that can be deployed instantly and from a distance, was clearly depicted near Barrios in the stationary surveillance video that captured Barrios’s actions during the encounter as well as the BWC footage from officers on scene. The gun was always immediately accessible to Barrios as observed by multiple officers on scene, and most relevantly, the four officers interviewed who fired their weapons did so only in reaction to Barrios’s decision to reach for the gun a second time.

In addition to the danger of proximity of the gun was Barrios’s behavior. The fact that Barrios was ingesting apparent drugs and alcohol over the three hours period leading up to the OIS increased the danger to everyone including Barrios. All witnesses corroborated Buhagiar’s stated observations that Barrios exhibited an erratic, unpredictable, and non-compliant demeanor. Eyewitness accounts from officers interviewed regarding the incident add context to the footage and justify the fear the officers felt from the firearm that remained in control of Barrios as he exhibited irrational and unpredictable behavior, used drugs, drank alcohol and gave no indication





to end the incident peacefully.

Buhagiar's individual knowledge and state of mind going into the incident must also be considered. Buhagiar credibly described in detail how Barrios's hand grabbed onto the gun, and how based on all that had taken place it was his informed belief that Barrios would kill any officer present. Of particular concern to Buhagiar were the officers stationed at the gate in front of Barrios, as he felt any gunfire from Barrios would penetrate the wood gate. Buhagiar expressed that when he fired his firearm, he felt no other option existed other than to do so to protect the lives of the others around him. In formulating this belief, Buhagiar directly referenced information he received when he arrived at the incident that Barrios had shot and killed his dog at the same location in 2021. Buhagiar was also made aware that the original emergency call by V-1 to 9-1-1 involved Barrios pointing a gun at V-1 (a family member) after Barrios had broken into V-1's home.

Buhagiar's sentiment was echoed by Wakayama, Phillips, and Bratchikov, who all similarly noted the heightened danger created by the proximity of the officers to Barrios and the gun. It was the danger of this situation that compelled their decision to use their less lethal weapons at the same time as Buhagiar. They, too, felt that if Barrios was allowed to fire the gun others would be harmed. The statements of the three less-lethal officers were also corroborated by surveillance and BWC, which captured Barrios on camera at the moment he grabbed hold of the gun.

Buhagiar's "split second judgment" in a "tense, uncertain, and rapidly evolving" scenario was self-evident in the OIS as it occurred as the entire incident occurred on film. (*Graham v. Connor*, *supra*, 490 U.S. at 397.) Applying the United States Supreme Court's guidance to evaluate the reasonableness of the use of deadly force without the benefit of hindsight and giving appropriate deference to the officer's need to make a quick evaluation of an apparently lethal situation, the prosecution would not be able to prove that Buhagiar's decision to shoot was neither objectively nor subjectively reasonable. By extension the like-minded decisions to exercise self-defense and/or defense of others made by Wakayama, Phillips, and Bratchikov when they discharged their less lethal weapons could not be disproven by the prosecution beyond a reasonable doubt.

## Conclusion

For more than three hours, the police negotiated with Barrios, used time and distance, and tried to convince Barrios to surrender. During that time police fired no weapons. Barrios was only shot because he grabbed the gun and changed the ability of officers to exercise restraint.

The law is clear that an officer's actions should be viewed as they appeared to the officer at the time, considering that officers may be forced to make quick judgments about using deadly force. Here, decisions made by Buhagiar were made in the context of his duty to protect others from serious injury or death during an incident where the likelihood of a violent confrontation was extremely high. There is no evidence for a prosecutor to establish that Buhagiar did not reasonably or actually believe he and others were in imminent danger at the moment he discharged his weapon. The totality of the evidence supports Buhagiar's choices and actions. Barrios's lack of relinquishment of the gun combined with his disregard for law enforcement's commands to stay away from the gun, ingestion of narcotics and then fatally, Barrios's act of grabbing and lifting the gun in the presence of the officers, corroborate the claim that Buhagiar killed Barrios in self-defense or defense of others. (Pen. Code, § 835a, subd. (e)(3).)

For the reasons outlined above, the San Francisco District Attorney concludes that SFPD Officers Buhagiar, Wakayama, Phillips, and Bratchikov were legally justified to discharge both lethal and less-lethal weapons at Barrios as he reached down and grabbed the loaded .45 caliber semi-



automatic handgun on the ground in their presence. The officers' actions were done in self-defense and defense of others, and for the reasons outlined above, the District Attorney concludes there is insufficient evidence to file any criminal charges against any involved officers. Therefore, the District Attorney declines to file any criminal charges in this matter.