

**BEFORE A MEMBER OF THE POLICE BOARD  
OF THE CITY OF CHICAGO**

<b>IN THE MATTER OF THE</b>	)	
<b>RECOMMENDATIONS FOR DISCIPLINE OF</b>	)	
	)	
<b>POLICE OFFICER EVAN SOLANO,</b>	)	<b>No. 22 RR 07</b>
<b>STAR No. 12874, DEPARTMENT OF POLICE,</b>	)	
<b>CITY OF CHICAGO, AND</b>	)	
	)	
<b>POLICE OFFICER SAMMY ENCARNACION,</b>	)	<b>No. 22 RR 08</b>
<b>STAR No. 11790, DEPARTMENT OF POLICE,</b>	)	
<b>CITY OF CHICAGO.</b>	)	
	)	
	)	<b>(CR No. 2021-0001161)</b>

**REQUEST FOR REVIEW**

On May 23, 2022, the Office of the Police Board of the City of Chicago received from the Chief Administrator of the Civilian Office of Police Accountability (“COPA”) a request for review of the Chief Administrator’s recommendation for discipline of Police Officer Evan Solano, Star No. 12874, and Police Officer Sammy Encarnacion, Star No. 11790, arising out of the investigation of Complaint Register No. 2021-0001161 (“Request for Review”).

The Chief Administrator recommended that six allegations against Officer Solano be *Sustained*.<sup>1</sup> The Superintendent agreed with the Chief Administrator’s recommendation as to three of those allegations:

Allegation No. 1: At approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Solano failed to comply with the Body Worn Camera Special Order (S03-14) by failing to timely activate his body-worn camera.

Allegation No. 2: At approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Solano failed to properly load his firearm in violation of the

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<sup>1</sup> Based upon the findings of COPA’s investigation, Officer Solano was *Exonerated* of Allegation No. 3, which alleged he had detained and/or seized Anthony Alvarez without justification. COPA determined that Allegation No. 5 against Officer Solano was *Unfounded*. Allegation No. 5 alleged Officer Solano failed to remain separate from and avoid any contact or communication with Officer Encarnacion in violation of General Order G03-06(VII)(A)(2).

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Uniform and Property directive (U04-02(II)(H)).

Allegation No. 8: At approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Solano acted inconsistently with his training under the Foot Pursuit Training Bulletin (ETB 18-01) by failing to make required notification to the Office of Emergency Management and Communications (“OEMC”).

The Chief Administrator also recommended that the following allegation against Officer Solano be *Sustained*:

Allegation No. 4: At approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Solano discharged his firearm at or in the direction of Anthony Alvarez in violation of General Order G03-02.

Allegation No. 6: At approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Solano acted inconsistently with his training under the Foot Pursuit Training Bulletin (ETB 18-01) when deciding to engage in a foot pursuit.

Allegation No. 7: At approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Solano acted inconsistently with his training under the Foot Pursuit Training Bulletin (ETB 18-01) when deciding to continue in a foot pursuit.

The Superintendent objected to the Chief Administrator’s recommendation, finding that the evidence presented by COPA was legally insufficient to sustain Allegation Nos. 4, 6, and 7. The Chief Administrator recommended that Officer Solano be separated from the Chicago Police Department (“CPD”), and the Superintendent recommended that he be suspended for a period of twenty-days.

The Chief Administrator also recommended that five allegations against Officer Encarnacion be *Sustained*.<sup>2</sup> The Superintendent agreed with the Chief Administrator’s recommendation as to three of those allegations:

Allegation No. 1: At approximately 00:18 a.m., on or about March 31, 2021, at or near

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<sup>2</sup> Based upon the findings of COPA’s investigation, Officer Encarnacion was *Exonerated* of Allegation No. 3, which alleged he had detained and/or seized Anthony Alvarez without justification. COPA determined that Allegation Nos. 4 and 5 against Officer Encarnacion were *Unfounded*. Allegation No. 4 alleged Officer Encarnacion was inattentive to duty by not knowing whether or not he had discharged his firearm in the aftermath of the shooting. Allegation No. 5 alleged Officer Encarnacion failed to remain separate from and avoid any contact or communication with Officer Solano in violation of General Order G03-06(VII)(A)(2).

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5202 W. Eddy Street, Officer Encarnacion failed to comply with Body Worn Camera Special Order (S03-14) by failing to timely activate his body-worn camera.

Allegation No. 2: At approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Encarnacion failed to properly load his firearm in violation of the Uniform and Property directive (U04-02(II)(H)).

Allegation No. 8: At approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Encarnacion acted inconsistently with his training under the Foot Pursuit Training Bulletin (ETB 18-01) by failing to make required notification to OEMC.

The Chief Administrator also recommended that the following allegations against Officer Encarnacion be *Sustained*:

Allegation No. 6: At approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Encarnacion acted inconsistently with his training under the Foot Pursuit Training Bulletin (ETB 18-01) when deciding to engage in a foot pursuit.

Allegation No. 7: At approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Encarnacion acted inconsistently with his training under the Foot Pursuit Training Bulletin (ETB 18-01) when deciding to continue in a foot pursuit.

The Superintendent objected to the Chief Administrator's recommendation, finding that the evidence presented by COPA was legally insufficient to sustain Allegation Nos. 6 and 7. The Chief Administrator recommended that Officer Encarnacion be suspended for a substantial period of time up to and including Separation from CPD, and the Superintendent recommended that he be suspended for a period of twenty-days.

According to the Certificate submitted by the Chief Administrator: (1) the Chief Administrator issued the recommendation for discipline on January 20, 2022; (2) the Chief Administrator received the Superintendent's written response on April 25, 2022; (3) the Chief Administrator's designees met with the Superintendent's designees via telephone and discussed this matter on May 17, 2022; and (4) the Request for Review was sent via email to the Executive Director of the Police Board on May 23, 2022.

The Executive Director of the Police Board prepared and forwarded the Request for Review file to Steven A. Block, the member of the Police Board who was selected on a random basis, pursuant to Article VI of the Police Board's Rules of Procedure ("Reviewing Member"). The Reviewing Member considered the Request for Review pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago and Article VI of the Police Board's Rules of Procedure. Following his initial review of this matter on June 6, 2022, the Reviewing Member requested, received, and reviewed multiple items from the investigation file, including body-worn camera ("BWC") videos, surveillance videos, CPD's Foot Pursuit Training Bulletin, and Officer Solano's and Officer Encarnacion's statements to COPA.

#### **SUMMARY OF OPINION**

After reviewing the available evidence and respective recommendations of the Chief Administrator and the Superintendent, the Reviewing Member finds Officer Solano and Officer Encarnacion's decision to commence, and continue, pursuing Anthony Alvarez on foot and Officer Solano's ultimate use of force against Mr. Alvarez were objectively reasonable based on the totality of the circumstances as the officers reasonably perceived them on March 31, 2021. Accordingly, the Reviewing Member agrees with the Superintendent that the evidence presented by COPA was legally insufficient to Sustain Allegation No. 4 as to Officer Solano and Allegation Nos. 6 and 7 as to Officers Solano and Encarnacion.

The Reviewing Member then assessed the Chief Administrator and Superintendent's proposed disposition of Allegation Nos. 1, 2, and 8. Based on the nature of the alleged misconduct and information contained in the Request for Review file, the Reviewing Member finds that the Superintendent's proposed disposition of a twenty-day employment suspension is more reasonable and appropriate than the Chief Administrator's recommendation of Separation for Officer Solano

and of a substantial employment suspension up to and including Separation for Officer Encarnacion. Pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago, the Superintendent's response shall be implemented.

## **ANALYSIS**

### **I. Factual Background**

While on a routine patrol on the night of March 29, 2021, Officers Solano and Encarnacion observed a white Jeep without a front license plate parked at a BP gas station on Laramie Avenue (near Addison Street). The officers recognized the vehicle's driver, twenty-two year old Anthony Alvarez, and they made a U-turn to further investigate. While driving southbound behind the Jeep, the officers noticed a temporary license plate on the back of the car. The officers ran the temporary license plate number and determined that Mr. Alvarez was driving with a suspended driver's license. Mr. Alvarez ultimately sped up and drove away from the officers, who decided not to pursue him. Instead, with Mr. Alvarez's driver's license number and address in hand, Officers Solano and Encarnacion drove past his residence on W. Eddy Street in an effort to locate him (to no avail).

This interaction on March 29, 2021 was not the first time either Officer Solano or Officer Encarnacion had encountered Mr. Alvarez. Both officers recognized Mr. Alvarez that evening because, the previous April, they had responded to a domestic call involving Mr. Alvarez and the mother of his child. This encounter ultimately resulted in Officer Solano engaging in a foot pursuit of Mr. Alvarez, who was detained without incident. On another occasion, Officer Encarnacion conducted a traffic stop of known gang members, and Mr. Alvarez was in the vehicle. Mr. Alvarez was not arrested during this encounter. Officer Solano also participated in a traffic stop where Mr.

Alvarez was a passenger in a vehicle with a person of interest in a shooting. This stop occurred on Laramie Avenue approximately eight months earlier.<sup>3</sup>

Shortly after midnight on March 31, 2021—just over twenty-four hours after determining Mr. Alvarez was driving with a suspended license—Officers Solano and Encarnacion observed Mr. Alvarez once again during a routine patrol. The officers were driving southbound on Laramie Avenue in an unmarked SUV; Mr. Alvarez was walking northbound on the same street with a Styrofoam cup in one hand and a white bag (possibly containing food) in the other. Recognizing Mr. Alvarez, the officers decided they would attempt to conduct an investigatory stop based on their knowledge of the suspended license. Officer Solano, who was driving the SUV, made a U-turn and began driving northbound on Laramie Avenue. The officers observed Mr. Alvarez walking northwest into the parking lot of a Shell gas station located on the corner of Laramie Avenue and Addison Street. At approximately 12:17:08 a.m., the officers pulled into the Shell gas station parking lot behind Mr. Alvarez.

When Mr. Alvarez looked behind him and saw the officers, he began to walk faster through the Shell gas station parking lot. The officers activated their vehicle's blue emergency lights, at which time Mr. Alvarez threw his cup and the white bag to the ground, grabbed the front waistband area of his jeans, and began to run through the parking lot towards Addison Street. When Mr. Alvarez reached Addison Street, he began to run westbound on the sidewalk, still holding his waistband with his right hand. In COPA interviews, both officers stated that, based on their training and previous encounters with individuals holding their waistbands in a similar manner, they believed Mr. Alvarez's actions indicated he had a firearm.

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<sup>3</sup> It is not clear from COPA's Summary Report of Investigation ("SRI") whether the prior traffic stops described by Officer Solano and Officer Encarnacion were separate incidents.

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Officers Solano and Encarnacion travelled parallel to Mr. Alvarez, driving west on Addison Street, until they saw him run south through a gangway between two residential buildings. Officer Solano slowed the squad car in front of 5237 W. Addison Street; Officer Encarnacion, who was in the passenger's seat, exited the vehicle first (opening the door to the squad car at approximately 12:17:25 a.m.) and began pursuing Mr. Alvarez on foot.<sup>4</sup> Officer Encarnacion reported to COPA that, as he ran towards Mr. Alvarez in the gangway, he yelled, "Alvarez, Alvarez. Stop. Stop."<sup>5</sup> After stopping the squad car (at 12:17:30 a.m.), Officer Solano joined the pursuit.

When he reached the end of the gangway, Mr. Alvarez began to run eastbound down an alley. Both officers followed Mr. Alvarez through the alley; as they approached Laramie Avenue, Officer Solano overtook Officer Encarnacion, who had been running ahead of him up to this point. Moments later, at 12:17:56 a.m., Officer Solano activated his BWC.<sup>6</sup> While running through the alley, Mr. Alvarez continued to hold the right side of his waistband. Officer Encarnacion told COPA that he yelled more commands at Mr. Alvarez during this portion of the pursuit. Officer Solano recalls hearing Officer Encarnacion yelling, "Alvarez, stop!"

When Mr. Alvarez reached Laramie Avenue, he turned out of the alley and began to run southbound on the sidewalk. The officers continued to follow, with Officer Solano in the lead.

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<sup>4</sup> During their interviews with COPA, both officers acknowledged that they had reviewed the Foot Pursuit Training Bulletin (ETB 18-01) prior to March 31, 2021. Officer Solano reviewed the training bulletin on May 14, 2020 (and acknowledged re-reading it approximately one month prior to this incident), and Officer Encarnacion reviewed the training bulleting on May 28, 2020.

<sup>5</sup> Because Officer Encarnacion did not activate his BWC until after Mr. Alvarez had been shot, footage of the foot pursuit was captured by his BWC while it was in buffering mode. Consequently, the pre-shooting portion of the video lacks audio. *See infra* note 8. In the absence of disputed evidence, the Reviewing Member credits the officers' consistent testimony regarding commands directed at Mr. Alvarez during the foot pursuit.

<sup>6</sup> In his first COPA interview, Officer Solano admitted that he should not have waited to activate his BWC until after the incident began. This served as the basis for Allegation No. 1, which both the Chief Administrator and the Superintendent agree was *Sustained*.

Mr. Alvarez ran southbound for one block and then turned west on W. Eddy Street, running across a residential lawn. Mr. Alvarez looked over his shoulder as he rounded the corner, and was briefly out of Officer Solano's sight. During this time, he fell twice—he first fell to the ground while running across the front lawn of 5200 W. Eddy Street, and then stumbled as he attempted to get back to his feet. As Officer Solano rounded the corner and Mr. Alvarez came back into sight (at approximately 12:18:06 a.m.), he saw Mr. Alvarez nearby and on the ground with a firearm in his right hand. Not realizing that Mr. Alvarez had fallen while rounding the corner, Officer Solano believed that Mr. Alvarez was positioning himself to shoot at the officers.

At this point, Mr. Alvarez got back to his feet and continued to run westbound across the lawn. A lit cell phone was visible in his left hand, and a firearm was visible in his right hand. Officer Solano yelled, “Hey! Drop the gun! Drop the gun!” Mr. Alvarez did not respond or comply, but he looked over his right shoulder at Officer Solano. As Mr. Alvarez approached the front steps of 5202 W. Eddy Street, he appeared to angle his body in a southwest direction (over his left shoulder). At that point (approximately 12:18:08 a.m.), Officer Solano fired a total of five shots in rapid succession.<sup>7</sup> Officer Solano later told COPA that, when Mr. Alvarez changed his direction, he believed he was turning around in order to shoot the officers. Video surveillance footage from 5202 W. Eddy Street shows that, at the time the first shot was fired, Mr. Alvarez's right hand—which was holding the gun—and arm were in front of him. Following the fifth shot

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<sup>7</sup> Following the shooting, Officer Solano's firearm was recovered, cleared, and found to be loaded with eight rounds in the magazine. Taking the five shots Officer Solano fired on March 31, 2021 into account, it was determined that his weapon was underloaded by two rounds. Officer Encarnacion did not fire his weapon on March 31, 2021, but he too was underloaded (by one round). Both officers admitted to failing to properly load their firearms, in violation of Uniform and Property directive 04-02. That failure served as the basis for Allegation No. 2, which both the Chief Administrator and the Superintendent agree was *Sustained*.

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(at approximately 12:18:10 a.m.), Mr. Alvarez collapsed within the walkway of 5202 W. Eddy Street, simultaneously dropping a loaded firearm, which landed nearby.

Hearing Officer Solano yell “gun” and the gunshots that followed, Officer Encarnacion drew his service weapon as he rounded the corner onto W. Eddy Street. While approaching Mr. Alvarez, who was laying on the ground, Officer Encarnacion activated his body-worn camera (at approximately 12:18:14 a.m.).<sup>8</sup> As the officers approached, Mr. Alvarez asked, “Why are you shooting me?” On the BWC video, Officer Solano can be heard responding, “You had a gun!”

Moments later, at approximately 12:18:22 a.m., Officers Solano and Encarnacion each independently contacted OEMC to inform them that shots had been fired and to request Emergency Medical Services (“EMS”). These were the first calls either officer made to OEMC.<sup>9</sup> The officers then worked together to render medical aid. Officer Encarnacion applied a tourniquet to Mr. Alvarez’s right leg (not realizing it was in fact his left leg that had been shot). The officers prepared chest seals (both of which were applied by Officer Solano), and they each gave Mr. Alvarez chest compressions.

Mr. Alvarez was ultimately transported via ambulance to Illinois Masonic Hospital, where he was pronounced dead at 1:13 a.m. His cause of death was determined to be two gunshot wounds: one to the right side of his back (which exited the right side of his chest), and another to the lateral aspect of his left thigh (which exited toward the medial aspect of his left thigh).

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<sup>8</sup> During his first COPA interview, Officer Encarnacion admitted to committing misconduct by failing to activate his BWC in a timely manner. That failure served as the basis for Allegation No. 1, which both the Chief Administrator and the Superintendent agree was *Sustained*.

<sup>9</sup> Each officer’s failure to contact OEMC when the foot pursuit was initiated served as the basis for Allegation No. 8, which both the Chief Administrator and the Superintendent agree was *Sustained*.

## **II. Applicable Standards**

### **A. Superintendent's Burden**

In cases where the Chief Administrator and the Superintendent cannot agree upon recommended discipline for one or more CPD officers, Section 2-78-130(a)(iii) of the Chicago Municipal Code assigns responsibility for resolving the disagreement to a member of the Police Board. In order to determine whether the Superintendent has met his burden of overcoming the Chief Administrator's recommendation for discipline, the Reviewing Member "shall consider and determine whether the Superintendent's proposed disposition is *more reasonable and appropriate* than the Chief Administrator's recommendation based on the nature of the misconduct alleged and the information contained in the Request for Review file." POLICE BD. R. P. VI.E (emphasis added). "If, in the opinion of the Reviewing Member, the Superintendent has met his burden, the Superintendent's response shall be implemented." CHI. MUN. CODE § 2-78-130(a)(iii); *see also* POLICE BD. R. P. VI.E.

### **B. COPA's Investigation of Officer-Involved Shootings**

Per the Chicago Municipal Code, COPA's jurisdiction extends to "investigations into incidents . . . where a person dies . . . while detained or in police custody, or as a result of police actions, such as during attempts to apprehend a suspect[.]" CHI. MUN. CODE § 2-78-120(f). Officer-involved shooting investigations fall within this class of cases.

COPA's Rules and Regulations provide that all officer-involved shooting investigations must be evaluated "based upon the totality of the circumstances, in accordance with Department directives and all applicable municipal, state and federal law." COPA R. & REG. § 4.1.1. The ultimate goal of COPA's investigation is "to determine if, based on the totality of the

circumstances, the officer's use of deadly force was objectively reasonable and within policy as defined by the Department's orders and directives governing the Use of Force." *Id.*

COPA's investigation into an officer-involved shooting incident can result in one of four findings: Sustained, Exonerated, Not Sustained, or Unfounded. The first two findings (Sustained and Exonerated) are most relevant to this case. For an allegation of officer misconduct related to the use of deadly force to be Sustained, there must be "a preponderance of evidence showing that the officer's conduct was objectively *unreasonable* based on the totality of the circumstances, and therefore, not within Department policy." *Id.* (emphasis in original). If "[t]here is a preponderance of evidence showing that the officer's conduct was objectively *reasonable* based on the totality of the circumstances, and therefore, within Department policy[,]” the officer shall be Exonerated of the misconduct allegations. *Id.* (emphasis in original). In other words, if the evidence indicates it is more likely than not that the officer's conduct was objectively reasonable based on the totality of the circumstances, a finding of Exonerated is appropriate.

### ***C. Excessive Force***

#### **1. COPA Guidance**

COPA's Rules and Regulations also lay out the procedures and standards to be used in investigating cases in which a civilian has died or sustained serious bodily injury during an interaction with a CPD member. COPA R. & REG. § 3.10.3 (describing such cases as "Major Case Incidents"). With respect to investigating allegations involving the use of excessive force, COPA's Rules and Regulations cite *Graham v. Connor*, 490 U.S. 386 (1989). COPA R. & REG. § 3.10.5. In that case, the U.S. Supreme Court held that "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 benefit of 20/20 hindsight." COPA R. & REG. § 3.10.3.5; *see Graham*, 490 U.S. at 396. In accordance with

*Graham*, COPA must assess the reasonableness of a particular use of force “based on the totality of the circumstances related to the incident.” COPA R. & REG. § 3.10.3.5. COPA’s Rules and Regulations go on to recognize that “these determinations must allow for the fact that police officers are often forced to make split second decisions in circumstances that are tense, uncertain and rapidly evolving.” *Id.*; *see Graham*, 490 U.S. at 396–97.

## **2. CPD Guidance**

COPA’s standard for reviewing a use of force after the fact is mirrored in the guidance provided to members of CPD. The version of General Order 03-02 (“Force Options”) in effect at the time of Mr. Alvarez’s death provided that “Department members may only use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to ensure the safety of a member or a third person, stop an attack, make an arrest, control a subject, or prevent escape.” G03-02(III)(B) (eff. Feb. 28, 2020). The General Order goes on to explain that “[t]he main issue in evaluating every use of force is whether the amount of force used by the member was objectively reasonable in light of the totality of the circumstances faced by the member on the scene.” G03-02(III)(B)(1). Since reasonableness is “not capable of precise definition or mechanical application,” the General Order lays out three factors for all members to consider: (1) “whether the subject is posing an imminent threat to the member or others”; (2) the risk of harm, level of threat or resistance presented by the subject”; and (3) the subject’s proximity or access to weapons.” *Id.*

General Order 03-02 includes more specific guidance with respect to uses of deadly force. Department members are instructed that “[t]he use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person.” G03-02(III)(C)(3). Consistent with this guidance, deadly force

may not be used “on a fleeing person unless the subject poses an imminent threat[.]” G03-02(III)(C)(4). When it is objectively reasonable for an officer to believe that (1) “the subject’s actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken;” (2) “the subject has the means or instruments to cause death or great bodily harm;” and (3) “the subject has the opportunity and ability to cause death or great bodily harm[.]” the threat may be considered “imminent.” G03-02(III)(C)(2).

#### *D. Foot Pursuits Training Bulletin*

As of March 31, 2021, CPD did not have a specific policy in place regarding the circumstances in which a Department member may engage in a foot pursuit.<sup>10</sup> All that officers could refer to was a five-page Foot Pursuits Training Bulletin (ETB 18-01), which provided guidance on the risks and factors to be considered in the course of a foot pursuit. As recognized in COPA’s SRI, Training Bulletins are not policies themselves. They are issued by the Department to “1. explain, clarify, or restate Department policy and procedure; 2. bring items of special interest to the attention of Department members; and 3. aid members in achieving the mission and goals of the Department.” SRI at 34; *see also* Special Order S09-05-02(II)(A), Department Publications (eff. Aug. 14, 2003) (“Training bulletins . . . will **not** be used to initiate Department-wide policy or procedures and shall **not** be considered a written directive.” (emphasis in original)).

The revised version of the Foot Pursuit Training Bulletin available at the time of Mr. Alvarez’s death<sup>11</sup> provided that “Department members will engage in a foot pursuit only when

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<sup>10</sup> A final version of CPD’s first formal foot pursuit policy (G03-07) was released on June 21, 2022—over fourteen months after Mr. Alvarez’s death. As of the preparation of this Request for Review, the formal foot pursuit policy has not gone into effect. A temporary foot pursuit policy released in May 2021 (also after the death of Mr. Alvarez) remains in place. The actions of Officer Solano and Officer Encarnacion cannot be judged under either the temporary or formal foot pursuit policy because neither were in place when they initiated the foot pursuit on March 31, 2021.

<sup>11</sup> The Foot Pursuits Training Bulletin was initially released in January 2018. A revised version—which

they have reasonable articulable suspicion to conduct an investigatory stop or probable cause to arrest.” ETB 18-01 at 1. The Training Bulletin emphasized that “[f]oot pursuits present potential risks of physical injury to members of the public, Department members, and the fleeing subject.” *Id.* In light of that reality, the Training Bulletin instructed that, “[w]hen engaging in a foot pursuit, Department members will assess the risks to the public, to themselves, and to the fleeing subject, in relation to law enforcement’s duty to enforce the law and apprehend the subject.” *Id.* Among other risks, the Training Bulletin warned that, if officers lose sight of the subject, he “may take the opportunity to lie in wait for the officer.” *Id.* The Training Bulletin also emphasized that “[o]fficers should not separate from their partner absent exigent circumstances,” and defined “separation” as “any situation in which one officer is unable to immediately render aid or otherwise assist the other officer in the apprehension of the subject.” *Id.*

The Foot Pursuits Training Bulletin goes on to provide a number of “[f]actors that may be part of an officer’s decision to engage in, not engage in, or discontinue a foot pursuit once engaged[.]” *Id.* at 2. Those factors may include “whether the subject is believed or known to be armed,” “the seriousness and nature of the offense committed by the subject,” and “the physical characteristics of the pursuit location,” such as the nature of the area (residential, commercial, etc.), environmental factors (weather, lighting, time of day), and the officer’s familiarity with the area, among other factors.<sup>12</sup> *Id.*

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both Officer Solano and Officer Encarnacion reviewed, *see supra* note 4—was released in February 2020.

<sup>12</sup> The Foot Pursuits Training Bulletin further breaks down “immediate factors” to be considered when making the decision to pursue a subject, namely (1) the nature of the offense, (2) whether the subject’s identity has been established, and (3) where the subject is running. ETB 18-01 at 3. In enumerating these factors, the Training Bulletin recognized that “[o]nce a subject flees, officers need to make a quick decision as to their most prudent course of action.” *Id.*

The main takeaway of the Foot Pursuits Training Bulletin is that, “[w]hen making the decision to pursue, or to continue to pursue, the safety of the public, Department members, and the fleeing subject should be the foremost considerations.” *Id.* at 3. “Due to the rapidly evolving and individualistic nature of foot pursuits,” the Training Bulletin recommends that Department members “continuously assess the circumstances of the pursuit and determine the appropriate response to effectively apprehend the subject and safely conclude the pursuit.”<sup>13</sup> *Id.*

### **III. Analysis of Events**

#### **A. Officer Solano—Use of Force**

In light of the totality of the circumstances faced by Officer Solano on the scene, the force he used against Mr. Alvarez was objectively reasonable, necessary, and proportional in order to ensure his own safety and the safety of his partner, Officer Encarnacion. G03-02(III)(B).

##### **1. Totality of the Circumstances**

Contrary to its Rules and Regulations, COPA does not appear to have assessed the reasonableness of Officer Solano’s use of force “based on the totality of the circumstances related to the incident.” COPA R. & REG. § 3.10.3.5; *see also id.* § 4.1.1. In determining that it was not objectively reasonable for Officer Solano to use deadly force against Mr. Alvarez, COPA emphasized that “[t]he only act [Mr. Alvarez] took that suggested he might threaten Officer Solano was to look over his right shoulder at the officer.” SRI at 40. By Officer Solano’s own admission during his COPA interviews, the final two instances in which Mr. Alvarez looked over his shoulder—first as he rounded the corner onto W. Eddy Street, and again just before he began

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<sup>13</sup> In accordance with General Order G03-02, the Foot Pursuits Training Bulletin also advises that “[d]eadly force may not be used on a fleeing subject unless the subject poses an imminent threat of death or great bodily harm to the officer or another person.” ETB 18-01 at 5. “Force used on a person who is fleeing, or who is being or has been apprehended, must, as in all use of force, be objectively reasonable, necessary, and proportional.” *Id.*

shifting his body in a southwest direction—did contribute to his belief that his life, and the life of his partner, were in imminent danger. But the two instances in which Mr. Alvarez looked over his shoulder were just one part of the totality of the circumstances.

To truly determine if Officer Solano’s use of deadly force was objectively reasonable and consistent with General Order G03-02, there are a number of other circumstances the Reviewing Member must take into account, including:

- This was not Officer Solano’s first interaction with Mr. Alvarez. In fact, he had engaged in a foot pursuit of Mr. Alvarez approximately eleven months earlier. Based on one of his other prior encounters with Mr. Alvarez, Officer Solano knew him to be associated with known gang members (namely, a person of interest in a shooting).
- Mr. Alvarez first grabbed the waistband of his jeans, indicating he had a firearm, when he began to run away from the officers in the Shell gas station parking lot. He continued to hold his waistband as he ran down Addison Street and the alley.
- When Officer Solano rounded the corner onto W. Eddy Street, he observed Mr. Alvarez on the ground with a firearm in his right hand, meaning he had removed the firearm from his waistband. From Officer Solano’s perspective, Mr. Alvarez appeared to be positioning himself to ambush the officers or to put himself in a better position to shoot them.<sup>14</sup>
- Mr. Alvarez did not put the firearm back in his waistband, but instead maintained possession of the firearm in his right hand as he got back to his feet. Officer Solano

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<sup>14</sup> As noted above, the Foot Pursuits Training Bulletin specifically warned that, if officers lose sight of the subject of a foot pursuit, he “may take the opportunity to lie in wait for the officer.” ETB 18-01 at 1.

instructed him to drop the gun twice. Mr. Alvarez did not comply with Officer Solano's instructions; instead, he continued to flee with the firearm visible in his right hand.

- Just before Officer Solano fired the first shot, Mr. Alvarez moved in such a way that it appeared that he was turning over his left shoulder towards the officers.
- Video surveillance footage from 5202 W. Eddy Street shows that, when Officer Solano fired the first shot, Mr. Alvarez's right hand (which was holding the gun) and arm were in front of him.<sup>15</sup>

To truly put oneself in Officer Solano's shoes at the moment he decided to use deadly force, the Reviewing Member also must consider the amount of time the officer had to internalize and consider these circumstances. The total length of time that elapsed between (1) Officer Solano pulling the unmarked SUV into the Shell gas station parking lot (at approximately 12:17:08 a.m.) and (2) the first of the five shots Officer Solano fired (at approximately 12:18:08 a.m.) was exactly one minute. Of that minute, only about two seconds elapsed between (1) the moment Officer Solano rounded the corner onto W. Eddy Street and saw Mr. Alvarez, who appeared to Officer Solano to be preparing to shoot him (at approximately 12:17:06 a.m.), and (2) the moment Officer Solano fired his first shot (at approximately 12:17:08 a.m.). This case is the epitome of a scenario where a police officer was "forced to make split second decisions in circumstances that [were] tense, uncertain and rapidly evolving." COPA R. & REG. § 3.10.3.5; *see also Graham v. Connor*,

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<sup>15</sup> In determining that Officer Solano's use of deadly force was not objectively reasonable, COPA stated that, as Mr. Alvarez changed directions, "the firearm was not pointed or moving towards Officer Solano." SRI at 39. This statement is inconsistent with the report's earlier description of the video surveillance footage from 5202 W. Eddy Street, which "depicts Alvarez's right hand and arm in front of him at the time the first shot is fired." *Id.* at 17. Moreover, COPA cites no requirement that an officer must wait for a subject to directly point a loaded firearm at an officer or another person before concluding that the subject presents an imminent threat of death or great bodily harm. Because an armed offender could change the position of a weapon and fire shots in a fraction of a second, such a requirement would present grave safety concerns to officers and the public and make it virtually impossible for officers to pursue armed subjects.

490 U.S. 386, 396–97 (1989) (“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.”).

In retrospect, and with the benefit of viewing events that unfolded in mere seconds in a slow-motion BWC video, it may appear that, when he turned towards Officer Solano, Mr. Alvarez was merely shifting his body to avoid the front steps of 5202 W. Eddy Street (as COPA has argued). Alternatively, it may appear that Mr. Alvarez was moving to take cover under the steps of 5202 W. Eddy Street, or was changing direction in order to reach his white Jeep, which was parked in front of the home. Were Officer Solano able to view the slow-motion video surveillance footage from 5202 W. Eddy Street prior to pulling the trigger, he also would have realized that Mr. Alvarez had fallen to the ground moments earlier, and was attempting to regain his footing—he was not positioning himself to take a shot at the officers as they rounded the corner. But that is not the standard the Reviewing Member must apply to determine whether Officer Solano’s use of force was “objectively reasonable, necessary, and proportional, under the totality of the circumstances.” G03-02(III)(B). “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*, 490 U.S. at 396; *see also* COPA R. & REG. § 3.10.3.5.

## **2. Compliance with Department Directives and the Fourth Amendment**

With the totality of the circumstances in mind, it was COPA’s responsibility to determine whether Officer Solano acted “in accordance with Department directives and all applicable municipal, state and federal law.” COPA R. & REG. § 4.1.1. Per General Order G03-02, Officer Solano was only permitted to use deadly force if his actions were “necessary to protect against an

imminent threat to life or to prevent great bodily harm to the member or another person.” G03-02(III)(C)(3); *see also Cooper v. Sheehan*, 735 F.3d 153, 159 (4th Cir. 2013) (“[T]he mere possession of a firearm by a suspect is not enough to permit the use of deadly force. Thus, an officer does not possess the unfettered authority to shoot a member of the public simply because the person is carrying a weapon. Instead, deadly force may only be used by a police officer when, based on a reasonable assessment, the officer or another person is *threatened* with the weapon.” (emphasis in original)).<sup>16</sup>

In determining whether the threat Mr. Alvarez posed to Officer Solano and Officer Encarnacion may be considered imminent, the Reviewing Member took three factors into account. *See* G03-02(III)(C)(2). *First*, the Reviewing Member considered whether it was “objectively reasonable” for Officer Solano “to believe that . . . [Mr. Alvarez’s] actions [were] immediately likely to cause death or great bodily harm to [Officer Solano] or others unless action [was] taken[.]” G03-02(III)(C)(2)(a). Based on the totality of the circumstances laid out in the preceding section, the Reviewing Member finds that it was objectively reasonable for Officer Solano to believe he

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<sup>16</sup> COPA’s reliance on *Cooper v. Sheehan* to support its decision to sustain Allegation No. 4 against Officer Solano is misplaced. The plaintiff in *Cooper* was a North Carolina citizen who was shot several times by police officers under very different circumstances. Unlike Mr. Alvarez, who knew he was being pursued by the police from the moment they pulled into the Shell gas station parking lot, Mr. Cooper emerged from his mobile home after hearing the sound of unknown persons outside. *Cooper v. Sheehan*, 735 F.3d 153, 155 (4th Cir. 2013). Neither officer had activated their blue lights or sirens as they approached his house and, even though Mr. Cooper called out for the intruder(s) in his yard to identify themselves, neither responded. *Id.* Also unlike Mr. Alvarez, who was shifting his body with his right hand (holding the gun) and arm in front of him when Officer Solano discharged his weapon, Mr. Cooper was standing on his porch “[w]ith the butt of the firearm in his right hand and its muzzle pointed toward the ground” when officers opened fire. *Id.* at 155–56. Mr. Cooper did not make any sudden moves or otherwise threaten the approaching officers (who, unlike Officer Solano, had no other available information to suggest Mr. Cooper might harm them). In addition, upon seeing plaintiff with a shotgun, the officers in *Cooper* “commenced firing without warning.” *Id.* at 156. On the other hand, as soon as Officer Solano saw the gun in Mr. Alvarez’s right hand, he warned him to drop it twice. Officer Solano only discharged his weapon after Mr. Alvarez had ignored his commands, continued to flee, and made a movement that led Officer Solano to believe he was about to be shot. *See id.* at 157 (noting that, if Mr. Cooper had “stepped onto a dark porch armed despite knowing law enforcement officers were approaching his door, that certainly could affect a reasonable officer’s apprehension of dangerousness” (quotation and citation omitted)); *id.* at 159 (explaining that, if the officers had identified themselves, “they might have been safe in the assumption that a man who greets law enforcement with a firearm is likely to pose a deadly threat” (citation omitted)).

faced an immediate threat of death or great bodily harm. From the moment Mr. Alvarez clutched his waistband as the pursuit began in the Shell gas station parking lot, Officer Solano had good reason to believe that he had a firearm in his possession. That belief was confirmed as Officer Solano rounded the corner onto W. Eddy Street and saw Mr. Alvarez with a gun in his right hand. Based on his stance on the ground, it appeared that Mr. Alvarez was trying to put himself in the best position possible to shoot the officers. In the next two seconds, Mr. Alvarez disobeyed Officer Solano's commands to drop the gun and then moved over his left shoulder with his gun-wielding right hand and arm in front of him. At that moment, it was objectively reasonable for Officer Solano to believe the subject was changing his position in order to shoot. In this rapidly evolving situation, such action would have caused death or great bodily harm to Officer Solano or his partner, Officer Encarnacion.

*Second*, the Reviewing Member considered whether it was “objectively reasonable” for Officer Solano “to believe that . . . [Mr. Alvarez] [had] the means or instruments to cause death or great bodily harm[.]” G03-02(III)(C)(2)(b). There is no doubt that this element has been met in this case—at the time Officer Solano used deadly force, Mr. Alvarez had a loaded firearm in his right hand.<sup>17</sup>

*Finally*, the Reviewing Member considered whether it was “objectively reasonable” for Officer Solano “to believe that . . . [Mr. Alvarez] [had] the opportunity and ability to cause death or great bodily harm[.]” G03-02(III)(C)(2)(c). Again, when Officer Solano discharged his weapon, Mr. Alvarez's gun was visible and in his right hand. It would have been feasible, even easy, for Mr. Alvarez to open fire on Officer Solano and his partner—the weapon was ready and

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<sup>17</sup> Immediately after the shooting, Officer Solano told Mr. Alvarez that he fired his weapon because Mr. Alvarez “had a gun.” But Officer Solano stated during his COPA interview that the presence of the firearm was not the sole reason he shot at Mr. Alvarez; he instead evaluated all of the circumstances known to him.

available for his use. Furthermore, there would have been nothing blocking Mr. Alvarez from taking such a shot. Officer Solano was standing nearby, and there were no obstructions on the expanse of grass that separated them.

Having met all three of these factors, the Reviewing Member finds that the use of deadly force against Mr. Alvarez was “permissible . . . to protect against an imminent threat to life or to prevent great bodily harm to [Officer Solano] or another person.” G03-02(III)(C)(3).

### **3. De-Escalation Techniques**

COPA also determined that the use of deadly force was not a necessary last resort because Officer Solano failed to use de-escalation techniques. General Order G03-02 does state that “[m]embers will use de-escalation techniques to prevent or reduce the need for force”—but it cabins that requirement to situations where “it is safe and feasible to do so based on the totality of the circumstances.” G03-02(III)(B)(4).

COPA’s conclusion fails to account for the efforts that *were* made to de-escalate what the Superintendent appropriately described as a “tense, rapidly evolving situation.” Over the course of the short minute in which this encounter unfolded, both officers attempted to minimize the confrontation with Mr. Alvarez by using “continual communication.” After activating his body-worn camera, Officer Solano can be heard yelling, “Hey! Drop the gun! Drop the gun!” Further communication prior to firing his weapon would not have been feasible for Officer Solano—the confrontation on W. Eddy Street escalated over the course of approximately two seconds, and any warning that Officer Solano was going to shoot could have prompted Mr. Alvarez to pull the trigger first.

COPA’s determination that Officer Solano failed to use de-escalation techniques also fails to account for the limited available means of de-escalating the situation in the setting of the pursuit.

In retrospect, there are certainly additional measures Officer Solano could have taken to de-escalate his encounter with Mr. Alvarez on March 31, 2021. As COPA suggested, he could have rounded the corner from Laramie Avenue to W. Eddy Street more slowly.<sup>18</sup> Knowing that Mr. Alvarez could present a flight risk (in light of the foot pursuit in April 2020, and the officers' encounter with him on March 29, 2021), Officers Solano and Encarnacion also could have considered calling for backup before they pulled into the Shell gas station parking lot. The Chief Administrator's other recommendations were far less feasible. Approximately two seconds elapsed between the moment Officer Solano rounded the corner onto W. Eddy Street and the moment he fired the first shot. In those two seconds, Officer Solano did not have the opportunity to choose between "continu[ing] a headlong chase after Alvarez" and finding cover, as the Chief Administrator seems to suggest. *See* SRI at 41. Even if he had, there were not plentiful places for Officer Solano to take cover—he found himself on a city street with nothing separating him and Mr. Alvarez apart from several feet of grass. The staircase in front of 5200 W. Eddy Street—which the Chief Administrator suggests Officer Solano "could have sought cover behind"—was freestanding. Even if Officer Solano could have changed his direction and sought cover there in two short seconds, the staircase would have provided minimal (if any) protection.

Again, "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 benefit of 20/20 hindsight." COPA R. & REG. § 3.10.3.5. Based on the totality of the circumstances, the Reviewing Member finds that Officer Solano's use of de-escalation techniques—no matter how limited—was objectively

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<sup>18</sup> However, the Foot Pursuit Training Bulletin does not *require* such action. Instead, it merely recommends that officers "should use caution when going over obstacles/barriers, rounding corners, or at the end of fences, especially when following the same path as the subject." ETB 18-01 at 1; *see also infra* Section II.B.1 (explaining the considerations laid out in the Foot Pursuit Training Bulletin are far from absolute guidance).

reasonable. It would have been neither safe nor feasible for him to take any further de-escalating action after the foot pursuit was initiated. *See* G03-02(III)(B)(4).

#### **4. Facts Are Legally Insufficient to Sustain Allegation No. 4**

In light of this analysis, the Reviewing Member finds that there is a preponderance of the evidence showing Officer Solano's use of force was objectively reasonable based on the totality of the circumstances.<sup>19</sup> Officer Solano's actions fell within the bounds of CPD policy (specifically G03-02), and the facts presented by COPA are legally insufficient to sustain Allegation No. 4.

#### ***B. Officer Solano and Officer Encarnacion—Foot Pursuit***

In light of the totality of the circumstances faced by Officer Solano and Officer Encarnacion early on the morning of March 31, 2021, their decision to engage and continue in a foot pursuit was not inconsistent with their training under the Foot Pursuit Training Bulletin (ETB 18-01).

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<sup>19</sup> The factors laid out in Section 3.10.3.5 of COPA's Rules and Regulations—which governs the legal standard to be applied in excessive force cases—also weigh in favor of this conclusion. Taken together, (1) the seriousness of the suspected offense (at the time deadly force was used, Mr. Alvarez had an unconcealed firearm in his hand that he was refusing to drop); (2) level of threat or resistance presented by Mr. Alvarez (who was actively resisting arrest with a firearm in hand); (3) immediacy of the threat Mr. Alvarez (who was wielding a loaded gun) was posing to the officers and the community; (4) potential for injury to the officers and citizens (who were sleeping in their homes on W. Eddy Street); (5) the attempt by the subject to escape (Mr. Alvarez began running as soon as he saw the officers activate their emergency lights, and he did not stop until he had been shot); (6) Mr. Alvarez's conduct when he was confronted, as reasonably perceived by Officer Solano at the time (*i.e.*, continuing to run, refusing to drop his gun, and potentially positioning himself to shoot the officers); (7) the potential that the officer's conduct could have increased the risk that Mr. Alvarez would engage in violent or aggressive behavior (as both had guns in hand); (8) the time available to Officer Solano to make a decision (about two seconds from the time Officer Solano rounded the corner onto W. Eddy Street and Mr. Alvarez began to shift his body in a southwest direction, prompting the first shot); (9) the availability of other resources (Officer Encarnacion was the only other officer on scene); (10) Officer Solano's nearly six years of training and experience; (11) Mr. Alvarez's access to a weapon (*i.e.*, the gun in his right hand); (11) the characteristics of Officer Solano relative to Mr. Alvarez (whose age, size, relative strength, and level of exhaustion were not dissimilar); and (12) environmental factors and/or other exigent circumstances, weigh in favor of finding that Officer Solano's use of force was reasonable.

**1. Decision to Engage in a Foot Pursuit**

The limited foot pursuit-related guidance available to Officers Solano and Encarnacion at the time of their encounter with Mr. Alvarez provided that, as an initial matter, “Department members will engage in a foot pursuit only when they have reasonable articulable suspicion to conduct an investigatory stop or probable cause to arrest.” ETB 18-01 at 1. Both the Chief Administrator and the Superintendent seem to agree that this training-imposed requirement was met in this case—in fact, the officers had both a reasonable suspicion to conduct an investigatory stop at the Shell gas station (based on their knowledge that Mr. Alvarez had been driving on March 29, 2021 with a suspended license, a Class A misdemeanor) *and* probable cause to arrest Mr. Alvarez (based on both his suspended license and his move to hold his waistband as he fled, which reasonably led the officers to believe he was illegally concealing a firearm)<sup>20</sup> when they initially engaged in the foot pursuit. *See* SRI at 38–39, 42.

The Superintendent takes the position that, in and of itself, this warrants a finding that the facts are insufficient to sustain Allegation Nos. 6 and 7. However, the Foot Pursuit Training Bulletin also provides that, “[w]hen engaging in a foot pursuit, Department members will assess the risks to the public, to themselves, and to the fleeing subject, in relation to law enforcement’s duty to enforce the law and apprehend the subject.” ETB 18-01 at 1. Based on the totality of the circumstances, the Reviewing Member finds that Officer Solano and Officer Encarnacion’s assessment of the risks relative to their duty to enforce the law did not run afoul of the Foot Pursuit Training Bulletin—even if it had the authority of a CPD policy, which it does not. *See supra* Section II.D.

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<sup>20</sup> *See* 720 ILCS 5/24-1(a)(10) (“A person commits the offense of unlawful use of weapons when he knowingly . . . [c]arries or possesses on or about his or her person, upon any public street, . . . any pistol, revolver, stun gun, or taser or other firearm[.]”).

The time that elapsed between the officers' attempt to conduct an investigatory stop (when they pulled into the Shell gas station parking lot at approximately 12:17:08 a.m.) and the decision to engage in the foot pursuit as Mr. Alvarez fled down the gangway was only about eighteen seconds.<sup>21</sup> In that incredibly short period of time, the officers might have considered the following factors, which favored the foot pursuit:

- Having been stationed in the 16th District, both Officer Solano and Officer Encarnacion were familiar with the area in which the foot pursuit took place.
- Neither officer engaged in the foot pursuit alone. The number of officers (two) outnumbered the number of suspects (one).
- The chase began after midnight, and the streets were quiet. There were few civilians in the area, and the number of driving vehicles was limited.
- The area in which the chase occurred was well-lit with artificial light. In the BWC video, street lights can be seen on Addison Street, in the alley between Addison Street and W. Eddy Street, on Laramie Avenue, and on W. Eddy Street. The entire route of the foot chase was also illuminated with light from various residential buildings.
- March 31, 2021 was a clear night. There does not appear to have been any snow or ice on the ground that could have endangered the officers during the foot pursuit.
- Based on the location of the foot pursuit, the officers would not have reasonably foreseen any physical obstacles they might need to overcome. The chase occurred entirely on paved areas—first a gangway, then an alley, and then a City sidewalk.

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<sup>21</sup> Officer Encarnacion opened the passenger-side door to the squad car at approximately 12:17:25 a.m., and Officer Solano opened the driver's-side door at about 12:17:30 a.m.

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- Mr. Alvarez was a known flight risk. He evaded the officers on foot in April 2020 and, about 24 hours before the foot pursuit, he sped away from them in his vehicle. Since he did not show up at his place of residence the night of March 29, 2021, the officers could not be assured that they would be able to track Mr. Alvarez down in the near future. By that point, he might have disposed of the firearm the officers suspected was tucked into the waistband of his jeans.
- Officer Solano had engaged in a foot pursuit with Mr. Alvarez once before, and it ended without incident.

As will be true of any foot chase, there were certainly considerations that weighed against pursuing Mr. Alvarez on foot—but a reasonable officer in their position would not have “the benefit of 20/20 hindsight.” COPA R. & REG. § 3.10.3.5. The initial offense they intended to stop Mr. Alvarez for—driving with a suspended license—was a minor, non-violent traffic crime. The officers also could have decided to hold back because they already knew the identity of the subject, and ostensibly where he lived (though Mr. Alvarez did not appear to return to that location on the evening of March 29, 2021 when the officers surveilled the property). Though this factor could cut both ways, the fact that Mr. Alvarez appeared to be armed when the foot pursuit began could have weighed against the decision to engage with him.<sup>22</sup> On the whole though, given the number of factors that weighed in favor of the foot pursuit, and the short amount of time in which the officers had to decide whether they would engage in such action, the Reviewing Member finds

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<sup>22</sup> The Superintendent argues that, because Officers Solano and Encarnacion had reason to believe Mr. Alvarez had a gun in his possession, there was an indication that a delay in arrest would risk harm to life or damage to property.

that the evidence is not legally sufficient to sustain Allegation No. 6 against Officer Solano and Officer Encarnacion.

The Chief Administrator has emphasized that the officers acted inconsistently with their training “by not properly applying the balancing test.”<sup>23</sup> SRI at 42. But as the Superintendent correctly noted, the Foot Pursuit Training Bulletin does not contain a strict balancing test. In fact, the words “balance” and “balancing” are nowhere to be found within the Training Bulletin. At most, the training materials provide factors to be considered by officers when assessing “the safety of the public, Department members, and the fleeing subject”—which “should be the foremost considerations” when deciding “to pursue, or to continue to pursue[.]” ETB 18-01 at 3. Even those factors were far from absolute; rather than listing concrete steps to be taken when deciding to engage (and continue) in a foot pursuit, the Training Bulletin includes “[f]actors that *may* be part of an officer’s decision,” tactics “officers should *try* to use,” and other alternatives the officers “should *consider*.” *Id.* at 2–3 (emphases added). Rather than reading requirements into the Foot Pursuit Training Bulletin that are not there, COPA would have better served the public by identifying such weaknesses and recommending more stringent training and policies. *See* CHI. MUN. CODE § 2-78-120(m) (providing COPA and the Chief Administrator with the power to recommend to the Superintendent “revisions to the Police Department’s policies, practices, collective bargaining agreements, programs, and training in order to improve the accountability, effectiveness, integrity, and transparency of the Police Department”); COPA R. & REG. § 4.4 (reiterating COPA’s authority to make policy recommendations).

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<sup>23</sup> Notably, COPA was not even aware of the Foot Pursuit Training Bulletin when it initially interviewed Officer Solano and Officer Encarnacion on April 13, 2021. SRI at 12 n.70.

## **2. Decision to Continue in a Foot Pursuit**

COPA also found that Officer Solano and Officer Encarnacion acted inconsistently with their training when they decided to continue the foot pursuit, arguing that “several circumstances changed.” SRI at 44. COPA focuses on two specific changes: (1) “Officer Solano was separated from Officer Encarnacion when he turned corners ahead of Encarnacion” and (2) “Officer Solano saw that Mr. Alvarez was known to be armed after Mr. Alvarez displayed a firearm.” *Id.*

With respect to the first argument, the Reviewing Member disagrees that there was any period of time in which Officer Solano and Officer Encarnacion were “separated.” The Foot Pursuit Training Bulletin does not require officers to run side by side during a foot pursuit. Instead, it defines “separation” as “any situation in which one officer is unable to immediately render aid or otherwise assist the other officer in the apprehension of the subject.” ETB 18-01 at 1. The events that unfolded just after Officer Solano fired the first shot prove this was never the case. When Officer Solano ran past Officer Encarnacion in the alley, he was possibly “a couple garage lengths” ahead of him. SRI at 9. Officer Encarnacion rounded the corner onto W. Eddy Street at about 12:18:09 a.m.—three seconds after Officer Solano rounded the corner, and just one second after the first shot was fired. As the BWC footage shows, this minimal gap of time did not inhibit Officer Encarnacion from immediately drawing his weapon (should he need to use it to assist his partner), approaching Mr. Alvarez (who fell to the ground one second after Officer Encarnacion rounded the corner), and rendering medical aid.

Based on the totality of the circumstances, the Reviewing Member also does not find that, in the two seconds that elapsed between (1) Officer Solano’s first glimpse of the gun (at approximately 12:17:06 a.m.), and (2) the moment the first shot was fired (at approximately 12:17:08 a.m.), either officer could have realistically terminated the foot pursuit. Officer Solano

found himself standing on the lawn of 5200 W. Eddy Street with barely any time to assess and react to Mr. Alvarez’s movements—let alone time to retreat. Officer Encarnacion had even *less* time to terminate the foot pursuit—he rounded the corner one second after Officer Solano had fired the first shot. Two seconds (or less) is also a wholly insufficient amount of time for a reasonable officer to “consider[,]” much less implement, “other potential responses including obtaining backup or establishing a perimeter,” as COPA seems to suggest. SRI at 44. What’s more, it is not even clear to the Reviewing Member that the presence of a firearm was cause to terminate the foot under the Foot Pursuits Training Bulletin in place at the time. Though Mr. Alvarez’s possession of a firearm increased the risks to the officers, it also increased the need to enforce the law and apprehend the subject, who, if not detained, could pose a threat of harm to others in the community. The totality of all of these circumstances indicates it would have been objectively unreasonable—if not impossible—for the officers to terminate the foot pursuit after Mr. Alvarez was seen with the gun in his right hand.

As previously stated, this case truly was one in which officers were “forced to make split second decisions in circumstances that are tense, uncertain and rapidly evolving.” COPA R. & REG. § 3.10.3.5. In light of that reality, the evidence is not legally sufficient to sustain Allegation No. 7 against Officer Solano and Officer Encarnacion.

### **3. Facts Are Legally Insufficient to Sustain Allegation Nos. 6 and 7**

The preponderance of the evidence shows that Officer Solano’s conduct and Officer Encarnacion’s conduct was objectively reasonable based on the totality of the circumstances, and therefore not inconsistent with their training under the Foot Pursuit Training Bulletin.

### CONCLUSION

The Superintendent has met the burden of overcoming the Chief Administrator's recommendations for discipline. The Reviewing Member finds Officer Solano and Officer Encarnacion's decision to pursue Anthony Alvarez on foot, and Officer Solano's ultimate use of force against Mr. Alvarez, were reasonable based on the totality of the circumstances as they were perceived by the officers early on the morning of March 31, 2021.

With regard to the Sustained charges for Allegation Nos. 1, 2, and 8 (*i.e.*, failure to comply with applicable rules regarding the activation of body-worn cameras, the proper loading of firearms, and required notifications to OEMC), the Superintendent's proposed twenty-day employment suspension is more reasonable than COPA's recommendation of Separation for Officer Solano, and a substantial suspension up to and including Separation for Officer Encarnacion.

Pursuant to Section 2-78-130(a)(iii) of the Municipal Code of Chicago, the Superintendent's response shall be implemented: the evidence is legally insufficient to sustain Allegation Nos. 4, 6 and 7 against Officer Solano and Allegation Nos. 6 and 7 against Officer Encarnacion but, in light of their Sustained violations (Allegation Nos. 1, 2, and 8), Officer Solano and Officer Encarnacion shall each serve a twenty-day employment suspension.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 20th DAY OF JULY, 2022.

/s/ STEVEN A. BLOCK  
Member  
Police Board

Nos. 22 RR 07, 22 RR 08  
Police Officers Evan Solano and Sammy Encarnacion  
Request for Review and Opinion

Attested by:

/s/ MAX A. CAPRONI  
Executive Director  
Police Board