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August 14, 2023

Chief Scott Campbell
South San Francisco Police Department
1 Chestnut Avenue
South San Francisco, CA 94080

Sheriff Christina Corpus
San Mateo County Sheriff's Office
400 County Center, 3rd Floor
Redwood City, CA 94063

RE: In Custody Death of Maycarla Sulapas, January 7, 2023

Dear Chief Campbell and Sheriff Corpus:

The San Mateo County District Attorney's Office has completed our investigation into and the legal review of the facts surrounding the in-custody death of Maycarla Sulapas on January 7, 2023.

The investigation conducted by my office, led by Inspector Jamie Draper with the assistance of other members of my Bureau of Investigation, included interviews with all the involved, relevant law enforcement witnesses from both of your agencies; civilian witnesses who were with Ms. Sulapas prior to and during the initial contact by South San Francisco Police Officers; medical personnel who evaluated and/or treated Ms. Sulapas on January 7; and with the lead forensic pathologist assigned to this case. Our investigation also included a review of extensive amounts of video taken that day from the many involved officers' body worn cameras and from the cameras inside the Maguire County Jail. We reviewed reports prepared by the San Mateo County Coroner's Office including toxicology reports, consulted with an expert chemist and evaluated the appropriate and lawful use of force standards that exist in California.

Factual Summary

In January 2023, Maycarla Sulapas lived in a room in a converted garage with family members at 3820 Callan Boulevard, South San Francisco. On January 7, witness Nicole Santos, a relative who identified herself as a "step-cousin" to Ms. Sulapas, reported that as early as 0830 hours Ms. Sulapas was causing a disturbance in her room at the house. At 1000 hours, Ms. Santos and another cousin, Myrell Fernando, who said Ms. Sulapas was "acting weird" and believed she was "on something," noticed that Ms. Sulapas was no longer yelling in the room, which caused them to look outside, where they saw Ms. Sulapas standing naked in the street. When they looked again ten minutes later, they saw Ms. Sulapas, now clothed, standing next to Ms. Santos's car which had a newly broken window, holding a crowbar and moving items from a shopping cart into the car.

Ms. Santos went outside to confront Ms. Sulapas about breaking her car window. When she approached, Ms. Sulapas grabbed Ms. Santos by the hair, dragged her to the ground and punched her repeatedly in the face, causing swelling and redness around her right eye. After being treated at the hospital for her injuries, Ms. Santos signed a citizen's arrest form and requested an Emergency Protective Order prohibiting Ms. Sulapas from contacting her.

Several additional witnesses who had been either walking or driving in the area witnessed Ms. Sulapas's erratic, violent behavior and saw her "pummeling" Ms. Santos in the middle of the road in what one witness described as "probably the most vicious physical fight" he had ever seen. Further, the investigation revealed that similar conduct occurred the night prior when South San Francisco police officers were called to the house regarding a reported domestic dispute Ms. Sulapas was having with her boyfriend. When officers arrived, the boyfriend was not present and they observed Ms. Sulapas acting erratically. However, they believed she did not meet the criteria for a seventy-two-hour mental health hold under Welfare and Institutions Code Section 5150. Finally, due to a prior arrest in 2022, when Ms. Sulapas had brandished a pair of scissors when causing a disturbance inside a store, there is a three-officer response recommendation by the department for any call involving Ms. Sulapas due to her prior history of drug use and violence.

After the arrest of Ms. Sulapas at the Callan Boulevard house, family members told officers they located two baggies in Ms. Sulapas's room. One of the baggies was empty and the other contained what was later determined to be methamphetamine.

Sergeant Daniel Brown, SSFPD

Sergeant Brown is a ten-plus year veteran of the department currently assigned as the day shift Sergeant, supervising patrol teams from 0630 to 1900 hours. At the start of his shift on January 7, he learned of the domestic dispute involving Ms. Sulapas from the night before and later heard that officers were again being dispatched to the Callan address regarding an in-progress vandalism. He heard that three officers, Officers Lomeli, Wong and Pyi Phyo, were dispatched to the house and continued to hear updates over the radio, including that a partially clothed female assaulted another female.

Sergeant Brown heard Officer Wong broadcast that one person was detained and requested medical personnel respond to the scene. Sergeant Brown was requested to bring a WRAP device to the scene, something that is kept only by the on-duty patrol Sergeant. When he arrived, he saw Ms. Sulapas on the ground next to Ms. Santos's car with broken out windows. He saw Ms. Sulapas on her stomach, with her hands handcuffed behind her, with Officer Pyi Phyo straddling her legs to prevent her from kicking and Officer Wong holding her left arm to the ground. He attempted to speak with her in order to calm her down, but she told him that she would continue to try to kick the officers, so he decided to place her in the WRAP device to protect her and the officers on scene.

Once Ms. Sulapas was in the WRAP device, Sergeant Brown noticed she alternated between being calm and thrashing about in the device while yelling obscenities. He noticed that a "spit mask" was placed over her head and that there was some blood on it which she appeared to be attempting to lick off the mask. He was present on scene when paramedics arrived and he told them that victim Nicole Santos needed to be transported due to her injuries from Ms. Sulapas's assault, that Officer Wong also needed to be transported due to an injury he received while detaining Ms. Sulapas and that, finally, she needed to be taken to Seton Medical Center to be evaluated and cleared for booking.

Officer Min Pyi Phyo, SSFPD

Before January 7, Officer Pyi Phyo was familiar with Ms. Sulapas and had at least two prior contacts with her, including a November 2022 incident where she was acting erratic inside a store while armed with a weapon and a December 2022 incident where she was acting erratically at her house and Officer Pyi Phyo responded to find her naked, under the influence of a controlled substance and placed on a WIC 5150 hold for seventy-two hours.

On January 7, he heard a dispatch for an in-progress vandalism at Ms. Sulapas's house, which was updated to include the assault against Ms. Santos. When he arrived there, he saw Ms. Sulapas outside, partially naked and carrying a large, cylindrical object in her hand. He saw her standing next to a car with broken windows and believed she had caused the damage. Exiting his vehicle, he removed his baton and ordered her to get on the ground multiple times, which she did not do. As he moved to detain her, he replaced his baton back into its ring and attempted to grab her right hand, which she yanked away from him. He then grabbed her left arm which she also yanked back.

Officer Pyi Phyo then grabbed onto one of Ms. Santos's legs and was able to get her onto the ground on her back. He said he was struck several times on his head while struggling with Ms. Sulapas on the ground. During this struggle, Officer Wong had arrived and was attempting to handcuff Ms. Sulapas while she was kicking both officers. During this struggle, Officer Wong held a Taser device in his hand while commanding Ms. Sulapas to get on her stomach or she would be tased. Officer Pyi Phyo then saw Officer Wong "drive stun" Ms. Sulapas in the stomach area while a third officer, Alfonso Lomeli, also was attempting to get control over her. Officers were then able to move Ms. Sulapas onto her stomach and handcuff her, after which she began rambling and screaming at the officers.

Officer Pyi Phyo and others moved Ms. Sulapas to a seated position, and she continued to act irrationally despite efforts to calm her and she made repeated incoherent statements. Officer Pyi Phyo then called for the WRAP device, which Sergeant Brown brought to the scene. After officers placed Ms. Sulapas in the WRAP, she began spitting at them, so they placed a "spit mask" over her head. Officer Pyi Phyo assisted paramedics in placing Ms. Sulapas on a gurney and rode with them to Seton Medical Center. At the hospital, officers informed medical staff that Ms. Sulapas had been physically restrained and tased and was likely under the influence of a controlled substance. Ms. Sulapas remained in the WRAP device while she was evaluated by medical personnel and then was cleared for booking into the county jail. Officer Pyi Phyo obtained the medical release paperwork from the hospital and transported Ms. Sulapas to the county jail, accompanied by Officer Bortolin. She remained combative during transport.

After arriving at the jail, Officers Pyi Phyo and Bortolin were met by three San Mateo County Sheriff's Office Correctional Officers and one Deputy who removed Ms. Sulapas from the patrol car and removed the WRAP device. While he was inside the booking area, Officer Pyi Phyo could hear Ms. Sulapas yelling, now at the Correctional Officers and Deputy. He provided the nursing staff with the medical clearance paperwork from Seton Hospital.

Officer Alfonso Lomeli, SSFPD

When starting his shift, the morning of January 7, Officer Lomeli was also informed of the prior shift's response to 3820 Callan regarding a disturbance by Ms. Sulapas, including her prior history of resisting arrest and acting erratically. He and Officer Wong responded to the Callan address after the initial vandalism call, which was upgraded to include a victim having been assaulted and he initiated lights and siren en route to the house. Upon arrival, he noted Ms. Sulapas holding an object in her hand and saw that she raised her hand as if she was going to strike Officer Pyi Phyo before he was able to detain her on the ground.

Officer Lomeli noted that Ms. Sulapas was placed into the WRAP device in a manner consistent with department policy by placing the ankle restraint to prevent her from slipping out of the control and completed a check to ensure the WRAP was not too tight nor restrict any chest expansion or compression. He noted the fire department evaluated Ms. Sulapas shortly after being placed in the WRAP.

Officer Miguel Wong, SSFPD

Officer Wong had a prior contact with Ms. Sulapas approximately three months earlier, when he was dispatched as a cover officer to an incident at a Walgreens store. There, he saw a fellow officer, Officer Martin Corona, in the process of attempting to handcuff Ms. Sulapas when she became argumentative and physically started to resist while yelling profanity and racial slurs at them. On January 7, he was in the station when he heard the dispatch about an in-progress vandalism at 3820 Callan and he responded with Officers Lomeli and Pyi Phyo.

Officer Wong saw that Officer Pyi Phyo was the first to arrive and said Ms. Sulapas raised her arm toward Officer Pyi Phyo and, it appeared to him, struck Officer Pyi Phyo in the head. He and Officer Lomeli attempted unsuccessfully to control her movements as she

continued resisting by kicking, punching and pushing them. The officers gave Ms. Sulapas numerous commands to stop resisting efforts to detain her, all of which she refused. Officer Wong then decided to draw his taser when he saw her start to grab onto his and other officers' duty belts, where they wore their firearms, and patrol equipment.

Officer Wong gave a command to Ms. Sulapas to stop resisting and to get onto her stomach or he would tase her. She did not comply, and Officer Wong applied a "drive stun" of one to two seconds to her exposed abdomen. Ms. Sulapas was able to push the taser away and continued resisting and grabbing at their equipment which caused Officer Wong to apply a second "drive stun" to her lower back. It was only then that officers were able to gain control of Ms. Sulapas and place her in handcuffs. Officer Pyi Phyo controlled her legs and ankles by holding onto them to prevent her from kicking and Officer Wong prevented her from rolling over by applying pressure to her left elbow. Officer Wong then requested medical personnel to evaluate and aid Ms. Sulapas.

After Sergeant Brown arrived with the WRAP device and Officer Wong assisted in placing Ms. Sulapas in it, he realized he had suffered an injury to his foot during the struggle. He later learned he sustained a fractured bone in his foot, had to wear a cast on his left foot and use crutches to walk.

Transport from Seton Medical Center to Maguire Correctional Facility

After medical personnel at Seton Medical Center evaluated and cleared Ms. Sulapas for booking in the county jail, the process of transferring her from the hospital bed to the rear compartment of the patrol vehicle appeared to occur without issue, as she did not hit her body or head on any surfaces, as confirmed by the video from the patrol car. Officers used the seat belt to secure her and began driving when, after about seven minutes, Ms. Sulapas unbuckled her seat belt and leaned against the passenger door and swung her head and body around the rear seat area. Officer Pyi Phyo noticed she had removed her seat belt, stopped the car and he and Officer Bortolin re-secured her, where she remained for the duration of the drive.

During the drive, Ms. Sulapas continued to sway her head erratically, but did not appear to hit her head forcefully against anything. She continued to talk to herself in an irrational manner. At one point, she started screaming and moving her body aggressively in the seat, then became calm. She consistently moved her head and body erratically and struck the handcuffs against the hard, plastic seat. When they arrived at the Maguire facility, Ms. Sulapas's movements became more aggressive and erratic, banging her handcuffs against the seat, making a loud, growling sound and trying to free herself.

Inside the Maguire Correctional Facility

Sergeant Geoffrey Hoffman, SMSO

Sergeant Hoffman is assigned to the Sheriff's Office Corrections Division and supervises a team of deputies and correctional officers. He was advised by intake staff that the South San Francisco Police Department was bringing in a person in a WRAP device for booking. He and a team of intake staff members went to the secure parking area outside of the booking/intake area to meet the SSFPD officers. He noticed Ms. Sulapas was "making a lot of noise, kicking, screaming" and wearing a spit mask. Staff removed her from the patrol car, placed her on the ground and removed the WRAP device. He said she was brought to a search cell where she began to bang her head on the wall and floor, causing him to decide to place her in a restraint chair to prevent her from injuring herself.

Once secured in the chair, Ms. Sulapas was placed in a safety cell where an observation log was started, and periodic checks were conducted by intake staff. Sergeant Hoffman performed his mandated checks at the one- and two-hour points of Ms. Sulapas being restrained. After the two-hour point, staff was preparing to "exercise" her limbs by releasing them one at a time to safely mobilize them, but she was resistive. At that same time, Correctional Health staff came into the cell to complete a medical assessment of Ms. Sulapas and they determined she needed to be transported to the hospital. Sergeant Hoffman requested medics "Code 3," meaning emergency response with lights and siren. When medics arrived, Ms. Sulapas was removed from the restraint chair, placed on a gurney and transported to the hospital.

Sergeant Hoffman said that near the time when Ms. Sulapas first arrived at intake, she was taken into a search cell to attempt a full search and to dress her out in jail clothing, both of which are standard procedure for arrestees. But he recalled that she was resistant to changing into jail clothing which hindered the staff's ability to do a full cavity search of an arrestee, which in turn creates safety risks for the inmate, the jail staff and other inmates at the jail. Sergeant Hoffman described he made numerous attempts to de-escalate the situation and to convince Ms. Sulapas to cooperate with the booking process, which resulted in brief periods of calmness and cooperation followed by periods of non-compliance and resistance.

He described Ms. Sulapas's behavior as being "erratic" and "screaming at some points, kicking at some points and yelling unintelligible things." He recalled she was "headbutting" the wall of the search cell and may have also hit her head on the ground. Sergeant Hoffman made numerous attempts to de-escalate the situation with Ms. Sulapas and to convince her to cooperate with the booking process with only momentary success followed by further non-compliance. He noted they could not place her in a safety cell without restraints since with her history of erratic behavior, she could have injured herself or purposefully harmed herself, which he could not allow as she was in their custody.

Sergeant Hoffman described using a restraint chair when the inmate is a danger to themselves, to staff or when they are at risk of destroying property. While Ms. Sulapas met the criteria for using the restraint chair early on in her contact with law enforcement, he did not restrain her at the start as he wanted to give her the chance to comply and complete the booking

process. He said he spoke with Nurse Armenta-Partida about whether Ms. Sulapas was under the influence of methamphetamine as a possible explanation for her erratic, violent behavior. Nurse Armenta-Partida related that Ms. Sulapas's pupil reaction was consistent with use of a controlled substance and Sergeant Hoffman noted one of her arrest charges was for being under the influence of a controlled substance.

Correctional Officer David Garcia, SMSO

Officer Garcia was working at the release desk in the booking area when he heard an announcement that the South San Francisco Police Department was bringing an inmate who was uncooperative or combative. He saw jail staff escort Ms. Sulapas into the booking area using control holds, which meant she had not complied with their instructions. He waited outside the search cell while female staff members attempted to search Ms. Sulapas and heard staff tell her numerous times to not "resist" and heard one staff member say she was banging her head into the concrete wall during the process. At that point, Officer Garcia realized Ms. Sulapas would need to be restrained in a chair so that she could not fight with staff nor injure herself.

Before placing her into the chair, Officer Garcia held her in a rear-bent-wrist-lock control hold while the nursing staff attempted to obtain vital signs from Ms. Sulapas. During this process, Officer Garcia noted she continued struggling, describing her as, "She was really, really strong. She kept trying to buck off and was sweating profusely." He assisted other officers in placing her in the restraint chair but described it as, "Kind of a struggle to get (Sulapas) in the chair" as she continued fidgeting and moving, pushing back against him with her leg and was, "unnaturally strong for her size." He and other officers were successful in placing her in the restraint chair and knew that jail staff would need assistance "exercising" her every two hours while she was restrained. He noted that a full body cavity search cannot be conducted with a combative inmate and would have to be completed once they were compliant.

Correctional Officer Carol Barragan, SMSO

Correctional Officer Barragan has been an officer for five years, is a Jail Training Officer and a member of the Emergency Response Team. She was working in the intake area of the jail when Ms. Sulapas arrived and went to the sallyport to assist. She saw Ms. Sulapas still in a WRAP and was informed she had been arrested for felonies and had been medically cleared from the hospital before arriving at the jail.

Officer Barragan and others removed Ms. Sulapas from the car and placed her on the ground in order to remove the WRAP device. Officer Barragan described Ms. Sulapas as "squirmy," speaking both English and another language and speaking to someone whom neither she nor her partners could see, which led Officer Barragan to believe she was under the influence of a controlled substance. She and others removed the WRAP and moved Ms. Sulapas to a search cell where Officer Barragan was able to get her to calm down and cooperate for a few minutes before she started to bang her head on the concrete wall, hard enough that Officer

Barragan no longer felt comfortable trying to change Ms. Sulapas's clothing. Officer Barragan then called out to utilize the restraint chair due to her concerns for Ms. Sulapas's safety.

As officers tried to get her dressed, Ms. Sulapas continued to resist, moving and kicking and exhibiting erratic behavior. They managed to place Ms. Sulapas in the restraint chair but were not able to complete a thorough search of her. Officer Barragan described that even after they secured Ms. Sulapas in the chair, she continued to bang her head on the back of the chair, requiring officers to place extra padding behind her head. Officer Barragan described the process by which medical and/or jail staff monitored Ms. Sulapas, exercising each limb, checking tightness of the handcuffs and restraints and visually monitoring her two times every thirty minutes.

After Ms. Sulapas was in the chair for two hours, several officers were exercising her limbs when they noticed she "tensed up a little bit" and "her color is not normal." Officer Barragan and Nurse Armenta-Partida decided she needed to be transported to the hospital and an ambulance was called. Officer Barragan accompanied Ms. Sulapas to the hospital where she removed the ankle and belly chains so that hospital staff could treat her. During her contact with Ms. Sulapas, Officer Barragan believed she was under the influence of methamphetamine but because Ms. Sulapas was so strong when she was physically resisting, she believed she might have used PCP.

Other Corrections Staff

Several other correctional staff were interviewed, including Officer Mitchell Giampaoli, Officer Eduardo Medina, Officer Titania Trujillo and Officer Diana Betanzo all noted similar observations about Ms. Sulapas, that she was violent, resistive, combative, incoherent and under the influence of some type of stimulant. All reported that steps were taken to prevent Ms. Sulapas from injuring herself, such as when she slammed her head against the wall of the search cell and staff moved her to the ground, and consistently speaking with Ms. Sulapas in an attempt to calm her down. All also noted Ms. Sulapas's resistance and what they described as her extreme strength. They described the use of a restraint chair as a last resort to prevent the inmate from harming herself or injuring staff members.

Correctional Health Personnel

Nurse Alicia Armenta-Partida

Nurse Armenta-Partida described Ms. Sulapas as "awake and agitated" when she first saw her in the intake area and non-responsive to questions. She attempted several times to get a blood pressure reading but due to Ms. Sulapas's resisting, one was not obtained; but she did obtain a radial pulse. Nurse Armenta-Partida had been told by correctional officers that Ms. Sulapas was cleared for booking by Seton Medical Center. She additionally called Dr. Shrestha, who had issued the medical clearance, who also confirmed to her that while Ms. Sulapas was agitated, she was sufficiently stable for booking.

After one hour, Nurse Armenta-Partida checked on Ms. Sulapas and noted she was swinging her head and neck back and forth which caused staff to place towels behind her head to prevent injury. She also checked Ms. Sulapas's pulse and noted she was still very agitated but less intensely than before. At the two-hour mark, when Nurse Armenta-Partida was aware staff would attempt to exercise Ms. Sulapas's limbs, she checked on her again. She was able to obtain a blood pressure reading of 146 over 90 or 140 over 96 but could not observe the pupils as Ms. Sulapas forced her eyes closed. She also did not answer questions and made only grunting sounds. As the nurse needed to obtain verbal responses to her questions, staff obtained an ammonia inhalant, which is used to attempt to get a response from an unresponsive person but did not use it. When the nurse asked Ms. Sulapas if she was okay, Ms. Sulapas gasped, and her breathing changed. Nursing staff then asked correctional staff to call 911 and decided to place Ms. Sulapas on oxygen, placing the mask onto her while she was still in the restraint chair. Staff continued to monitor Ms. Sulapas until emergency medical personnel arrived.

When paramedics arrived, staff removed Ms. Sulapas from the restraint chair and placed her in shackles. She was transported to Kaiser Hospital in Redwood City at approximately 1525 hours and upon arrival she was in cardiac arrest. Medical staff revived her several times but she was declared deceased at approximately 1821 hours.

Training Records for Involved Staff

Training records were obtained for involved officers from the South San Francisco Police Department and the San Mateo County Sheriff's Office for both Deputies and Correctional Officers. All officers involved in this incident have some combination of CIT training (Crisis Intervention Training), training in the Use of Force and the WRAP device, Force Options/Use of Force/De-Escalation techniques, Jail Mental Health, Narcotics in Custody, Defensive Tactics and Arrest Control, Behavior Health Training, and Emergency Response Team training.

Use of the Axon Taser X26P

The department issued taser of Officer Miguel Wong was examined and determined to have been used in a "drive stun" method where the device is pressed against the target to deliver a current, without the use of probes three times during the interaction with Ms. Sulapas, each lasting five seconds. However, those five seconds only reflect the amount of time the electric charge was in use and does not represent the duration of time the taser may have been applied to Ms. Sulapas. A review of Body Worn Camera (BWC), in fact, showed the device was not in constant contact with Ms. Sulapas during the three activations. The first activation did not make contact with her; the second made contact for one second and it was not clear whether the third activation made any contact with her.

Death Investigation and Autopsy Reports

Dr. Vivian Snyder performed the post-mortem examination and listed the cause of death for Ms. Sulapas as due to the toxic effects of methamphetamine, MDMA and cocaine with the physiological stress of restraint contributing to the process of dying. She documented a mild enlargement of the heart, bruises, scrapes and skin tears of the head, face, torso and extremities. Dr. Snyder noted that the illicit drugs detected in Ms. Sulapas's blood alone could have resulted in a fatal cardiac arrhythmia and the stress of the various altercations and restraint over the course of several hours, with recent use of multiple stimulants, very likely placed further strain on her heart. The Coroner's Office reflected the manner of death as a homicide.

At autopsy, Dr. Snyder located and recovered a baggie containing methamphetamine inside Ms. Sulapas's vaginal cavity. Dr. Snyder believes she may have breached the baggie with her scalpel in the process of trying to recover the baggie from the cavity. The toxicology report for Ms. Sulapas's blood taken at Kaiser Hospital after she had been taken from the jail intake indicated the presence of cocaine metabolite (312 ng/mL), MDMA (263 ng/mL), amphetamine (23 ng/mL) and methamphetamine (4940 ng/mL).

Dr. Snyder noted that the finding of the manner of death as a homicide did not, in her view, suggest that any of the involved law enforcement officers did anything wrong. She explained that the classification as a homicide is used by the Coroner's Office, and adopted by her, to note the role that restraint may have played in the death of Ms. Sulapas. Dr. Snyder said that Ms. Sulapas was clearly fighting against the restraints during her time in custody, so the use of the word "restraint" did not indicate the use of force by a law enforcement officer but that she was restrained while in custody.

She further noted that it was possible, even likely, that Ms. Sulapas ingested methamphetamine from the contents of the bag secreted in her vagina, but because she believed she had cut the bag with her scalpel during autopsy, she could not definitively know whether the bag had been previously compromised to then have leeched methamphetamine into her vagina. She said she was struck by the high levels of methamphetamine in Ms. Sulapas's blood sample and believed that the drugs in her system were certainly sufficient to have caused her death.

Due to the extremely elevated level of methamphetamine detected, our office contacted Donald MacNeil, a chemist and Director of Ascertain Forensics. Mr. MacNeil indicated the level of methamphetamine in Ms. Sulapas's blood was in the moderate to moderately severe range and that a baseline level of 1200 ng/mL is typically the level where he sees potentially fatal results from the ingestion of methamphetamine. He said that the low level of amphetamine in the blood sample indicated that her death occurred close in time to the point of the peak absorption/consumption of the methamphetamine. He further indicated that since Ms. Sulapas had been in a custodial status and restrained for approximately five hours prior to arriving at Kaiser, he believed it was likely the methamphetamine leeched from the baggie and into her system through the vagina. This would explain why the high levels of non-metabolized methamphetamine in her system at the time of death compared to the low levels of amphetamine indicates consumption close in time to death, before sufficient time has passed for her system to metabolize more of the methamphetamine into amphetamine.

Law Relating to Use of Force

Penal Code § 196, as amended effective January 1, 2020, provides that a homicide committed by a peace officer is justified, "When the homicide results from a peace officer's use of force that is in compliance with § 835a."

Penal Code § 835a(c)(1), also amended effective January 1, 2020, provides that "... a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary ...(A) To defend against an imminent threat of death or serious bodily injury to the officer or another person."

Penal Code § 835a(e) defines a threat as "imminent" when "based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed."

The "totality of the circumstances" refers to "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."

In amending section 835a, the Legislature made the following findings and declarations bearing on the use of deadly force:

> (1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.
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> (2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.
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> (3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

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

Precedent of the United States Supreme Court defines the use of deadly force by the police. In *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the High Court made clear that a police officer is entitled to use deadly force when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."

The Court makes clear 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 20/20 vision of hindsight." *Graham v. Connor* (1989) 490 U.S. 386 "With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' violates the Fourth Amendment. 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 396-7. An objective standard is applied: "the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Ibid.*

California law is in accord. As noted above, Penal Code § 835a(a)(1) requires evaluation from the perspective of the reasonable officer in the same situation with the information known to or perceived by the officer at that time rather than with the benefit of hindsight and with a recognition that officers may be forced to make quick judgments about using force.

Conclusion

First, as the Sheriff's Office classifies use of the restraint chair as use of force, and there was physical contact to restrain or subdue Ms. Sulapas before she was placed in the chair, we evaluate the conduct of those Correctional Officers under the law set out above under Penal Code Section 835(a).

I note that all members of law enforcement who had contact with Ms. Sulapas on January 7, 2023, performed their duties according to the rules and procedures established by their departments for the use of force, including at the time of arrest by the South San Francisco Police Department and the subsequent custodial contact by member of the San Mateo County Sheriff's Office, under extremely challenging circumstances. From the outset of their contact with Ms. Sulapas, she presented as volatile, combative, aggressive, assaultive, incoherent and continued to present a threat to the safety of law enforcement officers and herself from her conduct. Specifically, those members in the Sheriff's Office who were responsible for removing Ms. Sulapas from the patrol vehicle and processing her into the jail were all aware of the appropriate standards applicable to the use of force that results from resorting to the use of the restraint chair, including the requirements for near constant monitoring, periodic medical evaluation and repeated release and exercising of her limbs.

There was an extended period of time when multiple staff members attempted to calm Ms. Sulapas down, to engage with her to gain compliance and to use the least restrictive means to ensure her and their safety. In their interviews, all staff members agreed that the use of the restraint chair was the only reasonable option due to the persistently aggressive, violent conduct by Ms. Sulapas and the likelihood that she would continue to harm herself, as evidenced by her repeatedly slamming her own head into the concrete wall or floor. I find this decision to be both a reasonable application of force under the circumstances and justified by the need to protect Ms. Sulapas and law enforcement from further harm.

However, I do not believe the evidence proves that the use of the restraint chair caused the death of Ms. Sulapas. The pathologist found that Ms. Sulapas had ingested what turned out to be a fatal amount of illicit narcotics, including cocaine, MDMA and an especially high level of methamphetamine, and found the cause of death to be from the toxic effects of those drugs. It is clear that without those drugs in her system, Ms. Sulapas would not have died from any effects of being in a restraint chair for two hours and that, conversely, she was very likely to have died from the ingestion of those drugs even if unrestrained. The level of methamphetamine detected was over four times greater than the level typically seen causing death, strongly suggesting the methamphetamine that had been in the baggie inside her vagina leeched out during her time in custody. This explains both her violent, aggressive conduct, described by several as inordinately strong, due to the stimulative nature of the drug, and her ultimate death. Further, the fact that such a comparatively small amount of methamphetamine had been metabolized into amphetamine strongly suggests the extraordinarily high amount of methamphetamine had not been ingested prior to Ms. Sulapas being taken into custody.

Also, since the restraint chair is a use of force, and the Coroner's Office found the manner of death to be homicide, I examined these facts and applied them to the law on involuntary manslaughter. That crime requires a lawful act done in an unlawful manner, with criminal negligence, and the act caused the death of another person. Criminal negligence is more than ordinary inattention or mistake in judgment. It requires a person act in a reckless way that creates a high risk of death or great bodily injury, and a reasonable person would have realized that risk. It amounts to a disregard for human life or an indifference to the consequences of the act.

First, evidence establishes that the use of a restraint chair in these circumstances caused the death of Ms. Sulapas. Next, I find that the use of the chair was a reasonable use of force under the specific circumstances presented by Ms. Sulapas while in custody, that all law enforcement members who utilized it had appropriate training and followed the required rules and guidelines for its use. Thus, I find the use to have been a lawful, and necessary, act executed in a lawful manner. Finally, the use of the restraint chair was not done in a reckless manner that would cause any reasonable person to believe there was a high risk of death or great bodily injury from its use. To the contrary, all staff members were, or became, aware that Ms. Sulapas had been evaluated by medical staff at Seton Hospital and approved for booking which meant a medical professional decided that, though she was likely under the influence of a narcotic, she was sufficiently stable to be booked into custody. This medical clearance would cause any reasonable person to believe there was no threat to Ms. Sulapas from the use of the restraint chair.

In conclusion, I note that all South San Francisco Police Officers and San Mateo County Sheriff's Office personnel involved in this incident fully cooperated with the investigation and all provided complete and detailed statements narrating what they saw, did, heard or said. They answered all questions posed to them by my investigators and the Departments complied fully with the County-wide Officer Involved Critical Incident Protocol, which greatly contributed to our ability to have a comprehensive understanding of these events. I find that officers, deputies, and personnel who contacted and were responsible for arresting and booking Ms. Sulapas did so lawfully based on the totality of the circumstances and all acted reasonably within the meaning of Penal Code Section 835a.

As is the practice of this District Attorney's Office, in an effort to provide transparency in all that we do, our complete investigative report, other than materials which are legally protected and not subject to disclosure, will be made available to the public after you have received this letter. If you have any questions regarding our investigation or my conclusions, please do not hesitate to call me.

Very truly yours,

Stephen M. Wagstaffe

STEPHEN M. WAGSTAFFE, DISTRICT ATTORNEY