



April 19, 2024

Mr. Max A. Caproni  
Executive Director, Chicago Police Board  
30 North LaSalle Street, Suite 1220  
Chicago, Illinois 60602

Via Email

RE: Request for Review, Log #2020-0004833, PO Roberto Gomez #11353

Dear Mr. Caproni,

Pursuant to the Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedure Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent of the Chicago Police Department (CPD) in Log # 2020-0004833.<sup>1</sup>

As set forth in detail in COPA's Summary Report of Investigation dated March 1, 2023 (FSR), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation of separation of Police Officer Roberto Gomez #11353. COPA recommended Officer Gomez be discharged from CPD based on findings that he (1) discharged his firearm at [REDACTED] without justification, and (2) failed to timely activate his Body Worn Camera (BWC) during a law enforcement activity.

## I. BACKGROUND

### A. Relevant Factual Background<sup>2</sup>

On October 23, 2020, Officers Gomez and Casimir Janus, were patrolling near 24th Street and Hamlin Avenue when they heard gunshots, followed by a ShotSpotter notification of shots fired in the area. Seconds after hearing the shots, their attention was drawn to a silver Ford Focus that was driving from the area of the shots fired. The officers activated their emergency equipment and followed the Ford Focus south toward 26th Street in the alley between Ridgeway and Hamlin Avenues. The Ford Focus struck a truck and crashed into a pole at the mouth of that alley on the south side of 26th Street. The driver of the Ford Focus, [REDACTED] exited the car with a revolver in his hand and ran east on the south sidewalk of 26th Street.

Officer Gomez ran after [REDACTED] and fired three shots. [REDACTED] fell to the ground and dropped a revolver into the street. [REDACTED] was transported to the hospital, where he died. The post-mortem examination revealed that [REDACTED] had suffered two gunshot wounds: one to the back of his right arm and one to his upper left buttock.

<sup>1</sup> As required by the Police Board Rules of Procedure, enclosed are copies of COPA's final summary report (FSR), the Department's non-concurrence letter, and the certificate of meeting.

<sup>2</sup> A more detailed factual summary can be found in the FSR.

## **A. Disputed Findings and Recommendations**

The Interim Superintendent disputed COPA's findings for Allegation #1, that Officer Gomez used deadly force without justification. The Interim Superintendent further disagreed with the recommended penalty of Separation. The Interim Superintendent concurred with the Sustained finding against Officer Gomez for Allegation #2, that he failed to timely activate his BWC, and recommended a 3-day suspension for that violation.<sup>3</sup>

## **B. Applicable CPD Policy**

### **1. Use of Deadly Force**

CPD policy dictates that use of deadly force is subject to heightened standards and is permitted only as a "last resort" when "necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person."<sup>4</sup> A threat is considered imminent "when it is objectively reasonable to believe that:

- a. the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; **and**
- b. the subject has the means or instruments to cause death or great bodily harm; **and**
- c. the subject has the opportunity and ability to cause death or great bodily harm."<sup>5</sup>

In addition, CPD policy prohibits the use of deadly force "on a fleeing person unless the subject poses an imminent threat.

## **II. ARGUMENT**

### **A. The Interim Superintendent failed to meet the affirmative burden of showing that COPA's recommendation is unreasonable where he merely argues for a different interpretation of the facts and disregards CPD's use of deadly force policy.**

The Interim Superintendent argued that Officer Gomez's use of deadly force complied with CPD policy. COPA disagrees. The objective evidence, including video footage of the incident, shows that [REDACTED] posed no imminent threat to Officer Gomez or anyone else when Officer Gomez shot him twice in the back. The Interim Superintendent nevertheless believed that [REDACTED] posed an imminent threat and Officer Gomez's use of deadly force was justified. The Interim Superintendent hypothesized that [REDACTED] could have used the gun against bystanders or the officers. No evidence supports this argument. The Interim Superintendent ignored CPD policy's requirement that [REDACTED] pose an immediate threat of death or great bodily harm to justify Officer Gomez's use of deadly force. A hypothetical threat is not imminent, and a pre-emptive strike is not justified under CPD policy or Illinois law.<sup>6</sup> Here, [REDACTED] was in headlong flight. Although he held a revolver while he ran, the totality of the circumstances indicates that he posed no imminent threat as he was attempting to escape the police.

For these reasons, COPA maintains the Interim Superintendent has failed to meet the affirmative burden of showing that COPA's recommendations in this case are unreasonable. Ultimately, the parties' disagreement over the application of CPD's use of deadly force policy to Officer Gomez's firearm discharge should be resolved by expert testimony presented at a full evidentiary hearing.

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<sup>3</sup> For the avoidance of doubt, COPA disagrees with the Interim Superintendent's recommended penalty.

<sup>4</sup> G03-02.III.C.3

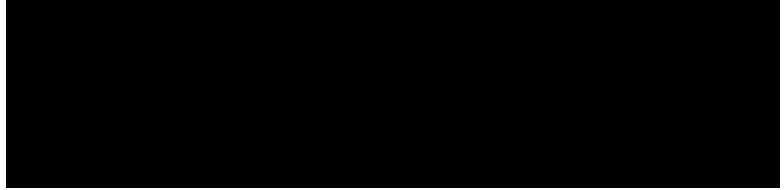
<sup>5</sup> G03-02.III.C.2 (emphasis added)

<sup>6</sup> 720 ILCS 5/7-5 ("An imminent harm is not merely a fear of future harm, no matter how great the fear and not matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.")

### **III. CONCLUSION**

For these reasons, COPA maintains that the Interim Superintendent has failed to meet his affirmative burden of showing COPA's recommendations in this case are unreasonable. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Interim Superintendent's non-concurrence in this matter and accept COPA's finding that Officer Gomez committed misconduct.

Respectfully,



Andrea Kersten  
Chief Administrator  
Civilian Office of Police Accountability