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June 21, 2019

Chief Paul Pazen  
Chief of Police  
Denver Police Department  
1331 Cherokee Street  
Denver, CO 80204

Re: Investigation of the shooting of Juan Sanchez-Jimenez, DOB: 10/07/1991, DPD GO# 2019-97442, on February 12, 2019, involving Denver Police Department Officers Jesus Galvan (Badge #15080) and Richard Estelle (Badge #14080), at 13941 E. Randolph Place, Denver, Colorado.

Dear Chief Pazen:

The investigation and legal analysis of the non-lethal shooting of Juan Sanchez-Jimenez by Denver Police Department Officers Jesus Galvan and Richard Estelle has been completed. I conclude that under applicable Colorado law no criminal charges are fileable against these officers. My decision, based on criminal law standards, does not limit administrative action by the Denver Police Department, in which non-criminal issues can be reviewed or civil actions where less-stringent laws, rules and legal levels of proof apply.

### STATEMENT OF FACTS

On February 12, 2019, at approximately 8:09 p.m., members of the Denver Police Department responded to 13941 E. Randolph Place, Denver, Colorado on a call of domestic violence in progress involving a male suspect with a gun. At that time, B.R.<sup>1</sup> called 911 to report that her husband, Juan Sanchez-Jimenez, “found out [she] was cheating on him” with her ex-husband. B.R. reported to the dispatcher that Mr. Sanchez-Jimenez threatened to “take [her] life” and that he had a gun and he hit her in the face with the gun. B.R. also reported that Mr. Sanchez-Jimenez took her cellphone away from her but that she was able to separate from him

<sup>1</sup> I use initials to maintain the privacy of citizen witnesses.

by going to the bathroom to call 911 with another phone. During this time, B.R. told the dispatcher that Mr. Sanchez-Jimenez was out in the living room with her four young children and her mother A.C. B.R. reported to the dispatcher that Mr. Sanchez-Jimenez also took A.C.'s phone.

Later, during an interview with Denver Police detectives, B.R. elaborated that Mr. Sanchez-Jimenez confronted her about cheating on him after her ex-husband sent him a number of explicit text messages confirming the affair. After the initial confrontation, Mr. Sanchez-Jimenez took her to their bedroom where he retrieved a handgun from the closet, loaded it and struck her in the forehead with it. Mr. Sanchez-Jimenez then threatened to kill her and her children if she did not tell him where her ex-husband lived. B.R.'s mother A.C. arrived home and Mr. Sanchez-Jimenez told A.C. that she needed to watch the children because they were leaving. It was at this point that Mr. Sanchez-Jimenez took both B.R. and A.C.'s cellphones so they could not make any calls. B.R. stated that she was able to call 911 because she had another cellphone, which she brought into the bathroom and used to call 911 to report the incident.

In response to B.R.'s 911 call, several Denver police officers went to the area near B.R.'s home on East Randolph Place. Police Officers Matthew Van Pelt, Daniel Veith, Javier Reyes and Richard Estelle were initially assigned to the call as the E. Randolph Place address was in their precinct within Denver Police District 5. When Officers Christina King and Jesus Galvan, in a two-person patrol car, heard the call involved the use of a weapon they decided to respond to the location to back up the primary officers.

All of the responding officers stated that prior to arriving at the location, they learned from dispatch that the call involved domestic violence in progress, and that a female caller reported that a male suspect had "pistol whipped" her and threatened to kill her. All of the officers believed that the male suspect was armed with a firearm.

Officers King and Galvan were the first officers to arrive in the area of 13941 E. Randolph Place, where they parked their marked patrol car to the east of the house and waited for the other uniformed officers to arrive. Officers Reyes, Van Pelt and Estelle arrived shortly after and parked to the west of 13941 E. Randolph Place. Officer Veith who was the last officer to arrive parked to the east of the house.

Once all of the responding officers were in the area of 13941 E. Randolph Place, they started walking toward the house. Officers King, Galvan and Veith approached from the east as Officers Reyes, Van Pelt and Estelle approached the house from the west and took cover at the corner of the house directly to the east. From about 10 to 15 yards away, Officer King could see a door off the driveway ("the side door") to 13491 E Randolph Place. The side door was "cracked open" and a male wearing a black hooded sweatshirt was standing just outside the door. Officer King aired the description of the male to the other officers, after which she saw a female exit the house from the side door, and then both the male and female go back into the house.



*(The side door is on the east side of the house, by the car in the driveway)*

At this point, the officers moved toward the house, positioning themselves in tactical vantage points covering both the front door and the side door of 13941 E. Randolph Place. All of the officers had their firearms out and in the ready position as they approached the house.<sup>2</sup> Officers Veith and Van Pelt took positions near the front door of the house, while Officers King, Estelle and Reyes positioned themselves alongside the house to the left of the side door, and Officer Galvan positioned himself behind a vehicle parked in the driveway.

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<sup>2</sup> Officer Estelle initially planned to use a less lethal pepper ball device, but after considering the nature of the call involving domestic violence with a gun, he switched to his handgun.



*(The side door)*

Officer King was closest to the door with Officers Estelle and Reyes “stacked up” directly behind her. Officer King knocked on the side door and she and Officers Galvan and Estelle shouted a number of commands to the occupants of the house, including “Police”, “Come out of the house” and “Show your hands”. Shortly after Officer King knocked on the door, the door opened. While none of the other officers could see inside the house or who opened the door, Officer Galvan rushed toward the opened door continuing to shout “show me your hands.” When Officer Galvan reached the threshold of the door, the other officers heard a number of gunshots from inside the doorway. Although none of other officers could see who fired the shots, Officer Reyes saw Officer Galvan drop to a knee, leading him to believe that Officer Galvan had been shot. Officer Reyes then saw Officer Estelle shoot into the open doorway, though he still could not see inside the house. As soon as the gunshots stopped, Officer Van Pelt assisted Officer Galvan to the sidewalk in front of the house, where Officer King took over providing aid. There, Officer Galvan told her that his ear was injured by the loud gunfire.

Only Officers Galvan and Estelle fired their weapons during this incident.

Regarding firing his weapon, Officer Galvan stated in his subsequent interview with Denver Police Department Sergeant Brock Ellerman:

Officer King knocks on the door. The door opens and a female wearing a green top - sweatshirt or a sweater, maybe a hoody - opens the door.

Officer King provides commands. "Show me your hands. Denver Police Department."

I can see the female looking at me. There's a male (later identified as Juan Sanchez-Jimenez) standing behind the female (later identified as B.R.) wearing a black hoody. I believe he had a Raiders logo on the front. So there's a female standing by the front door and there's a male standing behind her.

The male looks at me, he looks at the female, runs back into the kitchen area. From what I could see, it was a kitchen - from what I could see through the door was a kitchen area. He runs out of my sight. The male just disappears from where he was at into the kitchen. The female, she's just looking at us.

So I start moving from the rear tire of the passenger side of the car toward the door and stop behind the door to try to get a visual on the male.

As I'm moving toward the door, the male comes back into my line of sight. He's holding a pistol. He's screaming something. The female looks at him. She crouches down by the - by the main door, and there's a staircase to my left inside the house, and she crouches down, takes one step down on the staircase, she crouches down, she screams, "No! No! No!"

The male rushes the female and myself. He's holding a pistol with his hand and he's screaming something. By that point, he was way too close to her. He's pointing the gun at her. As he's pointing the gun at her, I'm also in the line of fire, his fire. I fired two rounds, hit the wall cover, and then as I tried to reacquire target, I heard a ringing in my ear, just a loud ringing, pain. I was in pain, disoriented, confused. I didn't know what was going on.

Later, to specific questions by Sgt. Ellerman regarding why he fired his weapon, Officer Galvan stated:

ELLERMAN: You see the male and he runs back into the kitchen, is that correct?

GALVAN: Yeah, he was standing behind the female about - I want to say three, four feet behind the female. He looks at me, he looks at her, and he disappears, he runs back into the kitchen area.

ELLERMAN: Okay.

GALVAN: I can only see from the door - if you can picture the door - I can see just through the door. I can't see anything else past that.

ELLERMAN: Okay, and could you tell if he was armed at that point or not?

GALVAN: No, I couldn't tell.

ELLERMAN: Okay, and then she crouches down in the stairway?

GALVAN: No, she stands there. I don't recall if she said anything. I'm trying to keep an eye on the male as I see him run back in the kitchen. It's just odd - why is he running back into the kitchen when he sees a police officer?

So as I start behind the door and I start moving outside of my coverage - my cover area toward the door - Officer King arrives there, so I don't know if Officer King can see the female or not - as I start behind toward the door and start moving toward the door, that's

when he starts rushing us, rushing the female with a pistol in his hand, and that's when she screams, "No!" and then she crouches down at the same time, takes a step down into the stairway. She crouches down and she's fully crouched down with her back facing the suspect, head down, and I can see the male coming in pointing the gun at her but I'm still in his line of fire -

ELLERMAN: Okay.

GALVAN: And that's when I shot twice.

Regarding firing his weapon, Officer Estelle stated in his subsequent interview with Denver Police Sergeant Ellerman:

So at that point the officer standing in front of me knocked on the door and the door opened, and that officer and the officer that had the angle by the car yelled, "Show me your hands!"

And then I yelled - the best of my recollection - I don't remember which sequence - I said, "Denver Police! Show us your hands! Come out!" or, "Denver Police!" or, "Show us your hands! Denver Police! Come out!" someone - I can't quite recall the order - said - gave an order.

I'm on the side of the house so all I could tell was that the door was open and that they were yelling at somebody. And at that point Officer Galvan who was standing over by the SUV ran toward the door, and the officer in front of me was making a quick movement toward the door as well, and so I knew that we were going to go into this house where there was an active domestic violence with a gun threat and that just a big adrenalin dump, just like, here we go, this is what we're going to do. I think big adrenalin had been building up to that point but it was like at that point like the decision was made, we're going to - we know the guy's going to jail.

So then Jesus entered the door and I heard two gun shots, and I thought that Jesus had just been shot.

At that point I stepped out into the door and engaged the target, and then very, very quickly Jesus was in front of me blocking my shot, and then he moved from in front of me over to my left, and he left, and I could - I just remember hearing him making a noise like a groan.

And I reengaged the target and the target was in a doorway and he fell out of my view, and as he's falling, I remember seeing a gun, a black handgun fall - I don't - just fall on the ground, and I stopped shooting because the gun, I could see it, and the - the suspect was falling away from the gun, and I perceived the threat was over, and I stopped right there.

Later, to specific questions by Sgt. Ellerman, Officer Galvan stated:

ELLERMAN: Okay, and just to go step by step, Officer Galvan moves toward the door and then fires two rounds, is that - or fires, is that what you remember?

ESTELLE: He was inside the door -

ELLERMAN: Okay.

ESTELLE: Inside the house and I was standing with the wall right here - it was like the gap of the door - and I heard two gun shots.

ELLERMAN: Could you still see him at that point?

ESTELLE: Hmm, I don't know.

ELLERMAN: Okay.

ESTELLE: I really don't know.

ELLERMAN: Okay, and that's fine. So when you hear two gun shots, then what?

ESTELLE: At that point I - I was in the door right behind him and I engaged the target. I started shooting my gun.

ELLERMAN: What did you see when you got to the doorway?

ESTELLE: I - I don't know.

ELLERMAN: Okay.

ESTELLE: I - I remember - I remember following Galvan in and hearing the gun shots.

ELLERMAN: Okay. Did you know who had fired those gun shots?

ESTELLE: I thought the suspect was firing the gun shots.

ELLERMAN: Okay. What was your concern at that moment?

ESTELLE: I thought that Jesus was getting shot.

ELLERMAN: Okay. Do you know - so you began firing?

ESTELLE: I did.

After both Officers Galvan and Estelle ceased firing their weapons, Officers Reyes, looking into the side door, and past the landing saw Mr. Sanchez-Jimenez down on the kitchen floor and a handgun on the floor near where Mr. Sanchez-Jimenez was down. At this point, he and the Officer Estelle shouted commands at Mr. Sanchez-Jimenez to stay on the ground. Officers Van Pelt and Veith entered the house through the unlocked front door of the house and joined Officers Reyes and Estelle in the kitchen with Mr. Sanchez-Jimenez. Officer Estelle assisted Mr. Sanchez-Jimenez into a prone position and handcuffed him. Officer Reyes also saw B.R. down a stairwell just inside the side door. B.R. identified herself to the officers as the person who called 911. The officers told B.R. to stay there until they could make sure the scene was safe for her to come up the stairs.



*(View of the side door from the kitchen and the area that Mr. Sanchez-Jimenez fell)*

Meanwhile, Officer King also entered the house through the front door and saw A.C. and at least one small child in the living room of the home. At this point, Officer King could not see into the kitchen area where Mr. Sanchez-Jimenez was.

B.R. and A.C. were interviewed at the Denver Police headquarters following the shooting incident. There, B.R. said that after she was able to call 911 from the bathroom she went back out to the kitchen and saw Mr. Sanchez-Jimenez with the gun in his waistband. While she and Mr. Sanchez-Jimenez were in the kitchen she heard a knock at the side door and she opened it. B.R. said that when she opened the side door she heard a police officer say "Come out with your hands up!" B.R. turned and looked back at Mr. Sanchez-Jimenez and saw that he was pointing the gun at her. B.R. said she dropped or threw herself down on the ground and then she heard gunshots. B.R. then took cover down a set of stairs just inside the side door. She then heard Mr. Sanchez-Jimenez say that he had been shot.





*(View into the side door, including the area that Mr. Sanchez-Jimenez fell, his firearm and the stairs that B.R. went down after the shooting started)*

A.C. told police detectives that before this incident, she had never seen Mr. Sanchez-Jimenez with a gun but that B.R. had told her that he had a gun. During this incident, Mr. Sanchez-Jimenez told A.C. that he wanted to kill B.R. or B.R.'s ex-husband. A.C. said that when she asked Mr. Sanchez-Jimenez not to kill B.R. or her ex-husband, he took her cell phone away from her. Later, A.C. said she heard pounding at the side door and heard voices. She saw Mr. Sanchez-Jimenez go into the kitchen and she followed him. There, after A.C. saw B.R. go toward the side door she saw Mr. Sanchez-Jimenez reach for a gun from his back waistband area. She then saw Mr. Sanchez-Jimenez's arm out with the gun in his hand and he pointed the gun. A.C. was not sure what direction he pointed the gun, but she thought it was in B.R.'s direction. A.C. heard the officers say "Put the gun down, put the gun down." According to A.C., Mr. Sanchez-Jimenez fired his gun two times. A.C. clarified that she thought Mr. Sanchez-Jimenez fired his gun because she saw his "hand pull the trigger". Once the gunshots started, A.C. saw Mr. Sanchez-Jimenez fall and throw the gun after the officers shot him. She yelled, "He's down, he's down". A.C. said she didn't think the officers knew he threw the gun so she yelled at them that "He threw the gun down, stop shooting."

After the incident, Mr. Sanchez-Jimenez was transported to Denver Health Medical Center where he was treated for gunshot wounds to the abdomen and both legs. When Mr. Sanchez-Jimenez was released from the hospital he was taken into custody and charged with Second Degree Assault, two counts of Menacing (with a deadly weapon), two counts of Obstruction of Phone Service and False Imprisonment.

The search of the crime scene, and a subsequent forensic analysis by the Denver Crime Laboratory, revealed the following:

- a loaded black and silver 9mm Taurus handgun was recovered from the kitchen area just past the side door landing where the shooting incident took place, and near where Mr. Sanchez-Jimenez fell after being shot and wounded by the police officers;
- the 9mm Taurus handgun had one live round in the chamber and 9 additional rounds in the magazine;
- although the Taurus was loaded and functional, there was no evidence to indicate that Mr. Sanchez-Jimenez fired the Taurus during the incident;
- both Officers' Galvan and Estelle firearms were functional, and all spent cartridge casings recovered from the scene came from one of the two officers' firearms;
- Officer Galvan fired his weapon 2 times, Officer Estelle fired his weapon 6 times;
- Mr. Sanchez-Jimenez suffered a gunshot wound to his lower left abdomen and both his left and right legs. There was no determination made as to which officer struck Mr. Sanchez-Jimenez in the abdomen or either leg.

### **LEGAL ANALYSIS**

Criminal liability is established in Colorado only if it is proved beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute, and it is proved beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as assault or homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force or deadly physical force by a peace officer is justified. The evidence establishes that Juan Sanchez-Jimenez's injuries resulted from shots fired by Officers Guzman and Estelle, so the determination of whether their conduct was criminal is primarily a question of legal justification.

C.R.S. § 18-1-707 defines the circumstances under which a peace officer can justifiably use physical force and deadly physical force in Colorado. In pertinent part, the statute reads as follows:

- (1) Except as provided in subsection (2) of this section, a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:
  - a. To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
  - b. To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.

(2) A peace officer is justified in using deadly physical force<sup>3</sup> upon another person ... only when he reasonably believes that it is necessary:

- a. To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force;  
or
- b. To effect the arrest or to prevent the escape from custody of a person whom he reasonably believes:
  - i. Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
  - ii. Is attempting to escape by the use of a deadly weapon; or
  - iii. Otherwise indicates, except through a motor vehicle violation, that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

Officers are entitled to rely on the doctrine of “apparent necessity” so long as the conditions and circumstances are such that a person would reasonably believe, erroneously or not, that action was necessary. *See People v. La Voie*, 155 Colo. 551, 395 P.2d 1001 (1964), *People v. Silva*, 987 P.2d 909 (Colo. App. 1999). It is immaterial whether the suspect was actually trying to injure the officers or another, so long as a reasonable person, under like conditions and circumstances, would believe the appearances were sufficient to require the action taken.

It is fundamental that the law of self-defense, which is emphatically a law of necessity, involves the question of one’s right to act upon appearances, even though such appearances may prove to have been deceptive; also the question of whether the danger is actual or only apparent, and as well the fact that danger is not necessary, in order to justify one in acting in self-defense. Apparent necessity, if well grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity. *Young v. People*, 107 P. 274 (Colo. 1910).

The issues are, therefore: whether at the time the officers used deadly force they reasonably believed that they were being subjected to or were about to be subjected to the imminent use of unlawful physical force against themselves or another person, and whether their actions were objectively reasonable. Also, were the officers legally justified in using deadly force to arrest a person who had committed a felony involving the use of a deadly weapon? Alternatively phrased, the question is whether reasonable officers, confronted with the same facts and circumstances as the officers in this incident, could have concluded that it was necessary to use deadly force to defend themselves or another. Accordingly, is there enough evidence of criminal conduct that a jury could find beyond a reasonable doubt that Officers Galvan and Estelle acted without lawful justification?

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<sup>3</sup> Colorado law defines “deadly physical force” as force that actually causes death, section 18-1-901(2)(d),(e), CRS. Since Mr. Sanchez-Jimenez survived his wounds in this case, deadly force was not used with respect to him. However, because I conclude that the officers were justified in using deadly physical force, I also conclude that they were justified in using non-deadly physical force, which involves a lower standard.

## CONCLUSION

I find that Officers Galvan and Estelle were authorized to use deadly physical force under Colorado law in the situation with which they were confronted on February 12, 2019.

C.R.S. section 18-1-707(2)(b) provides that an officer may use deadly physical force where he or she reasonably believes that it is necessary to effect the arrest of a person whom the officer reasonably believes: has either committed or attempted to commit a felony involving the use or threatened use of a deadly weapon, or is attempting to escape by the use of a deadly weapon, or otherwise indicates that .... he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

Even prior to making contact with Mr. Sanchez-Jimenez at 13941 E. Randolph Place, the officers believed that there was a domestic violence incident in progress and that the suspect was armed with a pistol and that he had threatened to kill another person in that house. When Officer Galvan first observed Mr. Sanchez-Jimenez he disappeared for seconds and then returned with a pistol in his hand and he was pointing the firearm at B.R. Officer Galvan said that Mr. Sanchez-Jimenez's firearm was also pointed in his direction as B.R. was in between him and Mr. Sanchez-Jimenez. Officer Galvan fired his weapon because he thought Mr. Sanchez-Jimenez was about to shoot B.R. Officer Estelle fired his handgun at Mr. Sanchez-Jimenez only after he heard gunshots and saw Officer Galvan go down and appear to be injured. Officer Estelle fired because he believed Officer Galvan was being fired upon – ceasing his fire when he saw Mr. Sanchez-Jimenez drop his gun.

Therefore, Officers Galvan and Estelle were legally justified in using deadly force in this incident because the use of deadly force was reasonably necessary to prevent Mr. Sanchez-Jimenez from shooting B.R. or any of the responding officers. They were also legally justified in using deadly force to effect arrest of Mr. Sanchez-Jimenez for what they believed to be a felony assault and menacing with a gun against B.R.

In examining the reasonableness of the use of deadly physical force, I consider the totality of the circumstances and the facts known to the officers at the time of the incident. When Officer Galvan discharged his firearm, he saw Mr. Sanchez-Jimenez raise his firearm toward B.R. and he reasonably believed Mr. Sanchez-Jimenez was about to shoot B.R. When Officer Estelle discharged his firearm, he thought that Mr. Sanchez-Jimenez had just shot Officer Galvan, and that Mr. Sanchez-Jimenez was still armed and that he and the other officers were in danger of the use of deadly physical force against them.

Prior to resorting to deadly physical force, Officer Galvan, as the first officer to see Mr. Sanchez-Jimenez, attempted to contact him through safer methods, namely, verbal commands ordering him to come out of the house with his hands visible, and later to drop the gun. Mr. Sanchez-Jimenez failed to comply with the officer's verbal commands and continued to point his gun at B.R. indicating to Officer Galvan and then Officer Estelle that Mr. Sanchez-Jimenez was going to inflict serious bodily injury to B.R., and possibly themselves and the other officers.

In short, Officers Galvan and Estelle were legally justified in using deadly force under C.R.S. 18-1-707(2)(a), in defense of B.R. and themselves, as well as in effecting the arrest of Mr.

Sanchez-Jimenez for armed, felony conduct. None of the evidence collected in this case contradicts the officers' assertions.

To the contrary, the video footage from the officers' body worn cameras, the statements of B.R. and A.C., the crime scene investigation, the information provided by B.R. to the 911 dispatcher and subsequent forensic examination of the evidence corroborates the officers' accounts, making their actions reasonable under the circumstances.

As the United States Supreme Court has instructed regarding assessing the reasonableness of an officer's beliefs when using physical force:

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. *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

Thus, it is my conclusion that the officers did not use deadly physical force without lawful justification under Colorado law.

This letter and the officer-involved shooting protocol followed during this investigation will be posted on our website.

Sincerely,



Beth McCann  
Denver District Attorney

cc: Chief Paul Pazen; Barb Archer, Deputy Chief of Police; Commander Mark Chuck, Major Crimes; Commander Marcus Fountain, District 5; Lieutenant Matthew Clark, Major Crimes; Sgt. Scott Murphy; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Bruce Gibbs; Detective Eric Bueno; Troy Riggs, Executive Director of Department of Public Safety; Kristin Bronson, City Attorney; Assistant District Attorney Ryan Brackley; Danny Foster, Attorney for Richard Estelle; John Davis, Attorney for Jesus Guzman; and Nicholas E. Mitchell, Office of the Independent Monitor.