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Second Judicial District



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Kendra M. Wynn
Resident Agent in Charge
DHS – U.S. Immigration and Customs Enforcement
Office of Professional Responsibility/Denver
9195 E. Mineral Ave., Suite 375
Centennial, CO 80112

RE: Investigation of the shooting of Hector Santana-Arreola DOB 11/26/74, by Immigration and Customs Enforcement Deportation Officer Rueben Coray (badge #8914) on June 9 2017, at the intersection of Louisiana Ave. and Inca St., in Denver, Colorado.

Dear Ms. Wynn,

The investigation and legal analysis of the non-lethal shooting of Hector Santana-Arreola, by Immigration and Customs Enforcement Deportation Officer Rueben Coray, has been completed. I conclude that under applicable Colorado law no criminal charges are warranted against this officer. The facts demonstrate that the officer's use of physical force was legally justified and not unlawful pursuant to Colorado law. My decision, based on standards of criminal law, does not limit administrative action by the Department of Homeland Security or Immigration and Customs Enforcement, where tactical issues may be reviewed, or civil actions where less-stringent laws, rules and legal levels of proof apply. This letter will be posted on the Denver District Attorney website, and our file will be available for interested citizens to review.

STATEMENT OF FACTS

In March 2017, Immigration and Customs Enforcement (ICE) Deportation Officer Jerimee Joyner received information relating to Hector Santana-Arreola, who was a previously deported felon living in the State of Colorado. Officer Joyner began to investigate whether Mr. Santana-Arreola should be investigated for removal. He learned that Mr. Santana-Arreola had two felony warrants¹ as well as a criminal history within Colorado. During the course of his investigation,

¹ In Elbert County case 16CR112, the defendant had failed to appear for court on March 9, 2017 and a bench warrant issued on that date. In Weld County case 17CR504, the defendant had failed to appear for court on April 13, 2017 and another warrant issued on that date.

Officer Joyner learned that Mr. Santana-Arreola lived with his brother at an address in Aurora. He also learned the make and model of a truck that Mr. Santana-Arreola drove – a red Dodge pick-up truck.

On June 6, 2017, Officer Joyner arrived at Mr. Santana-Arreola's address in Aurora at approximately 4:30 a.m. He saw Mr. Santana-Arreola's pickup truck parked outside. At approximately 7:45 a.m., Officers Bret Talbot and Rueben Coray arrived to assist Officer Joyner in arresting Mr. Santana-Arreola. They intended to wait for Mr. Santana-Arreola to leave the area and then conduct a traffic stop.

At approximately 8:00 a.m., Mr. Santana-Arreola left his apartment, got into his red truck, and drove away. The Officers followed in two separate vehicles, which were unmarked but equipped with lights and sirens. Mr. Santana-Arreola traveled down Peoria to I-70 (westbound) to I-25 (southbound), a route too dangerous for a traffic stop. Mr. Santana-Arreola exited I-25 at the southbound Santa Fe exit then turned to the right along South Platte River Drive. The officers determined that this area was an appropriate place to conduct the traffic stop, and Officer Joyner activated his lights and siren. Officer Talbot activated his lights. Because they were not familiar with the area, they were unable to describe exactly where they activated their lights and siren, but they observed Mr. Santana-Arreola looking over his shoulder and continuing to drive despite the command to stop. Mr. Santana-Arreola turned right onto Huron, heading northbound.

At approximately 8:45 a.m., Mr. Santana-Arreola stopped at the T-intersection of S. Huron St. and W. Louisiana Ave. and immediately got out of his truck. Officer Joyner parked at the front end of the red truck, and Officer Talbot, who was driving a silver Dodge Durango, parked behind it. Officer Coray was a passenger in that Durango.

When Mr. Santana-Arreola got out of his truck, he threw his hands up, gesturing as if to say "what's wrong with you?" The officers also got out of their vehicles. They were dressed in a way that identified them as law enforcement. Officer Coray saw that Mr. Santana-Arreola had something in his hand, but at that point, could not see what it was. As Officer Talbot verbally identified himself, Mr. Santana-Arreola ran away, westbound on Louisiana.



The location of the traffic stop at Louisiana and Huron

The officers gave chase, yelling commands to stop. Officers Coray and Talbot were behind Mr. Santana-Arreola, with Joyner about fifteen yards behind his fellow officers. As they arrived at the intersection of W. Louisiana and S. Inca St., Officers Coray and Talbot were within reaching distance of Mr. Santana-Arreola. Officer Coray then heard the click of a knife being opened and swerved away. Practically simultaneously, Mr. Santana-Arreola turned and faced the officers, and Officer Coray could see a knife in his hand. Fearing for the safety of himself and of his fellow officers, Officer Coray yelled “knife!,” drew his handgun and fired once. Mr. Santana-Arreola immediately dropped to the ground, landing a few feet from an open utility knife. As he was taken into custody, officers noted a grazing wound on Mr. Santana-Arreola’s forehead, described as “a little bit of blood on one of his eyebrows.”



The view facing eastbound down Louisiana Ave. Witness W.H. was standing behind the fence in the distance.

Pursuant to protocol, the Denver and Aurora Police Departments responded to the scene. There, they located a single spent shell casing as well as a bullet strike on a nearby building consistent with the path of travel taken by the bullet fired by Officer Coray. Officers noted an open utility knife on the ground near a small amount of blood in the roadway. They also located surveillance videos from nearby businesses. Aurora and Denver detectives conducted interviews of the witnesses, both civilian and law enforcement.

In his interview, Officer Coray stated that after Mr. Santana-Arreola emerged from his truck:

I could see that he had some kind of something in one of his hands. Couldn't tell if it was a cell phone or a tool or what it was.

I heard the other officers giving him commands, "Let me see your hands. Keep your hands where I can see them" – the whole time. The subject [Santana-Arreola] was, you know, just verbally protesting, not really listening, and just a couple seconds after that, he took off running I guess would be – I'm not sure what direction it was at that point, but maybe west.

All the officers pursued on foot. Agent Joyner, Bret [Talbot], and myself. The subject [Santana-Arreola] lost his shoes maybe like ten yards into the pursuit. Continued running at a full sprint for maybe about a block. At that point, myself

and Bret Talbot were I guess fairly side by side within maybe almost an arm's reach of the subject.

When we started getting closer, I think he could hear our footsteps and he started kind of looking back and weaving, just kind of gauge how close we were. At that point, we saw him with – I saw him look down at his hand, and then – I heard the – the flick, like a pocketknife opening – that kind of click – and then the subject kind of like started slowing up and then turned around and faced us, and you could see that he had the knife kind of like in a ready position like he was getting ready to attack.

I yelled “knife” because I wasn't sure if my partner had seen it and we were so close, and the [inaudible] was pretty much going to guarantee that we were going to come in contact with this guy. I felt like he was setting up to attack us because he knew he was running out of energy, he couldn't continue running.

Pretty much as soon as I yelled “knife,” I pulled out my handgun and fired a shot from pretty close to hip level. At that point, the subject almost immediately went down to the ground and I saw the knife kind of fall away from him, and myself, and Officer Joyner provided cover for Talbot while he put handcuffs on the subject.

(Coray interview: 5-42 to 5-43).

Officer Talbot was also interviewed. He stated that these events happened very quickly:

[I]t was almost simultaneous. When he turned and I heard the shot happen, I identified “hey, he's got a blade in his hand” ... and to me, I thought it was just a small knife, until he was on the ground. Once he was on the ground, and we had him cuffed, I looked over and noticed it was a box cutter.

(Talbot interview at 17:03; transcript at pp. 18-19).



The location where Mr. Santana-Arreola confronted the officers. The utility knife is in the road to the left of the photograph.

Officer Talbot stated that he was afraid when he saw the knife in Mr. Santana-Arreola's hand, and when Mr. Santana-Arreola displayed his knife, he drew his own handgun. He stated that he drew his weapon because Mr. Santana-Arreola was very close to them and had a blade; he thought he was about to be engaged in a fight with a knife:

[The knife] was open. When he was grabbing it, I mean he was grabbing it full fist. The blade was straight up and down. Um, he had a posture of "I'm not giving up" My perception, based on how I was reading his body language, was: "We're in for a fight. We need to get him on the ground. We need to get him cuffed up." Um, but you know at the same time we have this blade to deal with.... When I noticed the blade and his posture, that's what caused me to draw my weapon, um because I thought, you know, "we're – we're pretty close to this guy" and I know that it doesn't take a whole lot of distance for somebody to do a lot of damage with a blade.

(Talbot interview starting at 18:05; transcript at pp. 20-21).



The suspect's blood in the foreground and the utility knife in the background.

When asked whether it were possible that Mr. Santana-Arreola might intend to throw the knife to the ground, rather than fight, Officer Talbot replied that Mr. Santana-Arreola's posture was consistent with someone readying for a fist fight. Officer Talbot stated that he is a defensive tactics instructor and has experience with martial arts, and knows when someone is about to fight.



The utility knife as it was found at the scene.

Officer Joyner, who is assigned to a different unit than Officers Coray and Talbot, was also interviewed. He indicated that he was about fifteen yards behind the other two Officers during the foot pursuit, and a little bit to the right. He saw the other Officers closing the gap with Mr. Santana-Arreola, and:

[T]he officers were in grabbing distance, were in arm's length. Um, I don't – like I said, I don't know if someone kind of made a motion to maybe grab him or tackle him, take him to the ground, or if I'm just assuming, because they were in arm's length, that's what they were going to do. Um, so right before, right before I assume that would take place, I saw the suspect turn towards my officers, turn towards the officers, um within arm's length, arm's distance, and that's when I heard a gunshot.

(Joyner interview starting at 25:25; transcript at pp. 33-34).

Due to Officer Joyner's position behind the group, he did not see Mr. Santana-Arreola's hands when he turned to face the other officers. He heard the gunshot then Mr. Santana-Arreola get down on the ground. He later learned that it was Officer Coray who had discharged his weapon.

After Mr. Santana-Arreola had been taken into custody, Officer Joyner saw a gash on Mr. Santana-Arreola's forehead and called 911. He then went back to his car and moved it closer to the scene in case it was needed.

Civilian eyewitness W.H.² was interviewed. He stated that he was at work at the corner of Louisiana and Huron. W.H. stated that he heard a siren and looked southbound down Huron St. He saw a gold Explorer block the path of a red Dodge Ram. The officer got out of his Explorer and the driver of the red truck got out of his truck with his hands in the air. He looked at the officer, and looked at the vehicle that was behind his truck, then “took off running.” (Holloway 7:05). A total of three officers pursued the driver of the Ram. W.H. indicated that he knew they were ICE Officers based upon their attire. At the point of the traffic stop, W.H. was approximately 40 feet away and they then ran further away from him.

W.H. stated that, a few yards down the street, he saw the man who got out of the Ram (Mr. Santana-Arreola) lose his shoes. When the group arrived at Inca St., the officers circled him and “he freaked out” and lunged at the officer from the gold Explorer and then tried to do a “Reggie Moss [sic] type of football spin” (Holloway 8:30), trying to dart between the other two officers. At that point, he heard what at first sounded like a Taser³, but he later learned was a gunshot. The officers continued to draw down on the man from the Dodge Ram, then the officer from the Ford Explorer ran back to his car and moved it in order to block off the area. Other officers arrived and W.H provided a written statement; he was then brought to Denver Police headquarters to be formally interviewed. W.H. used his cellular phone to record the events. It shows officers running down the street and records one gunshot, however the phone is not pointed at the officers when the shot is fired.

Other witnesses provided written statements. They varied as to the number of officers and suspects, as well as the number of shots fired.

Mr. Santana-Arreola was interviewed approximately six hours after the incident and denied being in any physical or mental distress. He was assisted by a Spanish language interpreter because he spoke very little English. He was advised of his rights pursuant to the *Miranda* decision and made a statement. He stated that he had previously been deported twice. The most recent removal from the United States had been in approximately November 2016, and he returned to the United States about five months later. He knew that he had two warrants in addition to being in the country illegally. He stated that with “regular police,” he had never done anything wrong, but that he was afraid of ICE because of the deportation proceedings.

He stated that he left for work at approximately 8:00 am. When he was at about Mississippi and Santa Fe, the officers pulled him over. He knew they were ICE officers because that is how they verbally identified themselves when Mr. Santana-Arreola got out of his truck. He said that he ran because he did not want to get caught. He stated that he stopped running when he became tired, and that he stopped and put his hands up. He stated that one officer, whom he described as Caucasian, ordered him to retrieve the knife from his pocket. As he did so, someone either hit or kicked it out of his hand. As he turned to look at who had hit him, he was shot by the African-American officer.⁴ He stated that once he was placed in handcuffs, one officer told the other that

² I use initials to maintain the privacy of the citizen-witnesses.

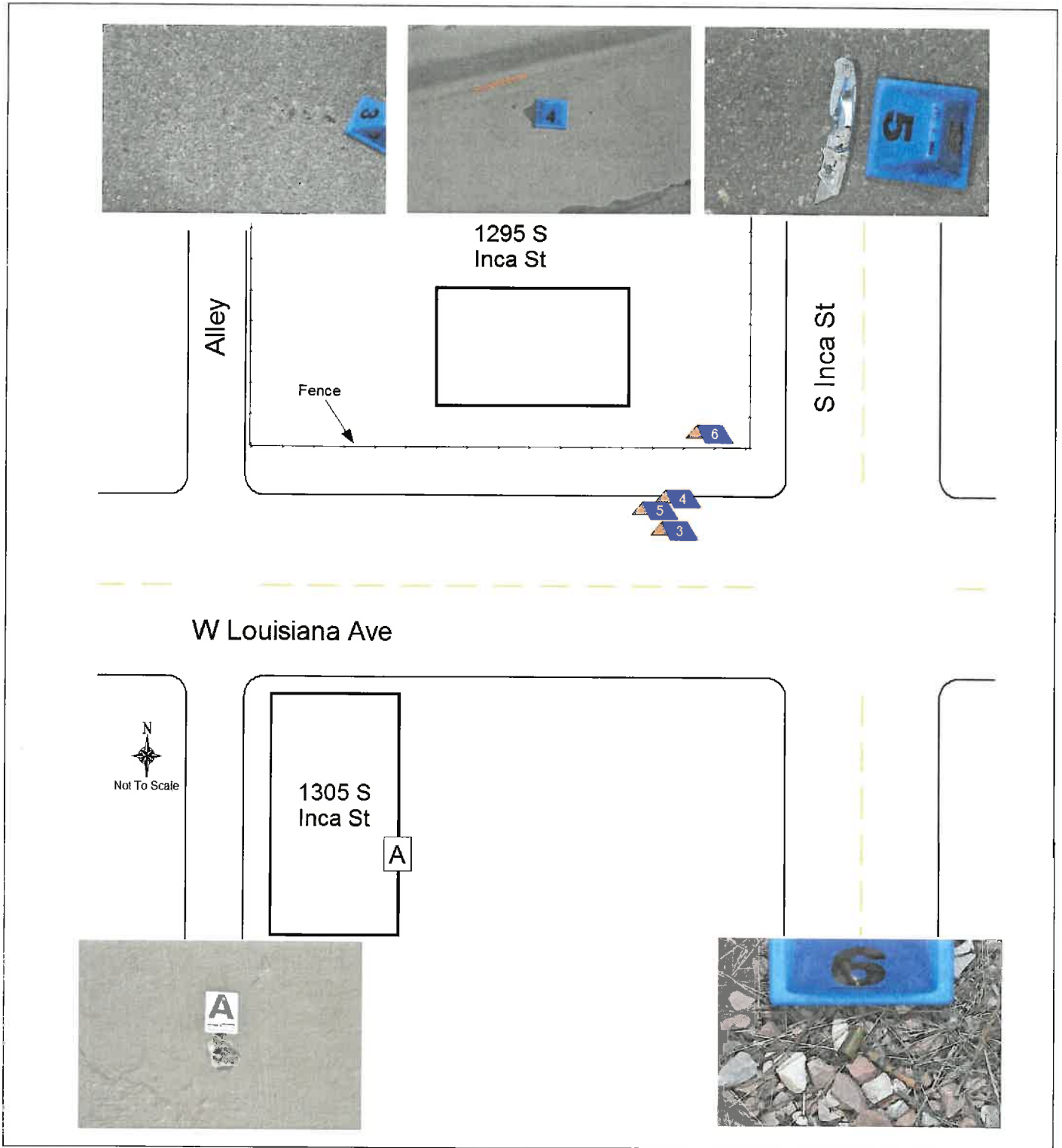
³ These ICE agents were armed with handguns. They do not carry Tasers.

⁴ Officer Coray is Caucasian; Officer Joyner is African-American

Santana-Arreola was going to attack him. The other officer disagreed, saying that he was going to throw it. Santana-Arreola claimed that he understood this conversation even though it occurred in English. He was unable to understand the same words when they were repeated to him in English during his interview. He stated that the utility knife in his hand was closed and that it opened on its own either when the knife landed on the ground or when it was kicked out of his hand. The utility knife has a lever that locks it into place.

Surveillance footage from the corner of S. Jason and W. Louisiana was recovered. It shows a view from approximately one block away and shows the very end of the pursuit. The video shows the officers in very close proximity to Mr. Santana-Arreola when he turns around. One of the officers veers away and then Mr. Santana-Arreola drops to the ground. Unfortunately, the distance and the angle of the camera do not afford a better view of the event.

Surveillance footage from a building to the south of the traffic stop shows the red Dodge Ram traveling northbound, with a gold Explorer pulling in front of it, blocking it while another vehicle pulls up behind it. Mr. Santana-Arreola, the driver of the Dodge Ram exits his vehicle, gestures to the officers for approximately two seconds, and then runs westbound, with the officers giving chase. The camera does not capture the shooting.



Scene diagram with markers. Markers 3 and 4 refer to blood drops; marker 5 refers to the utility knife and marker 6 refers to a spent shell casing. Marker A shows where the single bullet struck a building across the street.

LEGAL ANALYSIS

Criminal liability is established only if it is proved beyond a reasonable doubt that all of the elements of an offense defined by a statute have been committed and it is proved that the offense was committed without legal justification as set forth in Colorado statutes.

The justification for a peace officer's use of physical force while attempting to make an arrest is described in C.R.S. § 18-1-707. As pertinent to this case, C.R.S. § 18-1-707 (1) states:

... 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 ... 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

This justification is an "affirmative defense." This means that a person accused of a crime for using force does not need to prove that he or she was justified in using the force. Instead, the prosecution must prove, to a unanimous jury, that the force was *not* justified. Accordingly, I must consider the following question: **Is there enough evidence of criminal conduct that a jury could find, beyond a reasonable doubt, that Officer Coray acted without lawful justification?**

Because deadly force is defined in Colorado as force that actually results in death in C.R.S. § 18-1-901(3)(d), the question of justification is based on the use of physical force, not deadly physical force.

CONCLUSION

The question presented in this case is whether, at the instant Officer Coray fired his weapon, he acted without legal justification for using physical force as set forth in C.R.S. § 18-1-707(1). I conclude that the evidence demonstrates that the officer was justified in his use of physical force pursuant to the statute. The officers were aware that the defendant had two felony warrants for his arrest; additionally, they were aware that Mr. Santana-Arreola had previously been removed from the United States and had illegally returned. Thus, these officers were obligated to arrest Mr. Santana-Arreola. As the suspect fled, Officer Coray knew that the suspect had an item in his hand. As he heard the "click" of the knife opening and the suspect turning around, Officer Coray immediately became aware of the possibility of deadly physical force being used against him and his fellow officers. The suspect was within arm's reach of Officers Coray and Talbot; he turned and faced the officers holding the knife. Due to the proximity of Mr. Santana-Arreola to the officers, as well as the suspect's aggressive actions toward the officers, Officer Coray indicated that he feared for his safety and the safety of Officer Talbot. He limited the discharge of his weapon to a single shot, which grazed the eyebrow of Mr. Santana-Arreola, causing minor injury. Although the knife was a utility knife, a great deal of damage can be done by a person wielding the blade of a utility knife, including possible deadly damage.

The physical evidence supports the statements of the officers and contradicts Mr. Santana-Arreola's statement. Based on the video footage, the suspect did not have the time to dig into his

pocket to retrieve any potential weapons while he was running so fast that he lost his shoes, such that he must have had the knife in his hand at the time he fled from the car. The surveillance video that captures these moments supports the officers' statements in that it shows Officer Coray changing his path of travel, Mr. Santana-Arreola turning around a short distance from the officers then a moment later, Mr. Santana-Arreola dropping to the ground. There does not appear to be time for the officers to give commands and for Mr. Santana-Arreola to retrieve a knife from his pocket. The knife was found in the open position on the ground. The actions of Mr. Santana-Arreola caused Officer Talbot also to draw his handgun a moment after Officer Coray drew his own. That two officers reacted in nearly identical ways supports the conclusion that they feared for their safety.

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 (1989) at pp. 396-397.

Under these circumstances, Officer Coray made a split-second judgment, and his decision to shoot at Mr. Santana-Arreola in self-defense and in defense of others was not unjustified under Colorado law.

Sincerely,



Beth McCann
Denver District Attorney

cc: Jesse Atchley, Senior Special Agent, DHS Immigration & Customs Enforcement; Robert White, Chief of Police, Denver Police Department; David Quinones, Deputy Chief of Police Operations; Barb Archer, Commander of Investigative Support; Lieutenant Matthew Clark, Major Crimes; Lieutenant Adam Hernandez, Major Crimes Division; Nicholas Mitchell, Independent Monitor; Ryan Brackley Assistant District Attorney.