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

Re: Investigation of the shooting of Steven Lee Nguyen, DOB: 08/09/1994 and Rafael Landeros Jr., DOB: 05/25/1994, DPD GO# 2018-185603, on March 19, 2018, involving Denver Police Department Officers William Bohm (Badge #13070), Austin Barela (Badge #14085) and Susan Mercado (Badge #08004), in the area of the 4100 block of Albion Street, Denver, Colorado.

Dear Chief Pazen:

The investigation and legal analysis of the lethal shooting of Steven Lee Nguyen and non-lethal shooting of Rafael Landeros Jr. by Denver Police Department Officers William Bohm, Austin Barela, and Susan Mercado 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 Monday, March 19, 2018, at approximately 6:34 a.m., Mauricio Venzor-Gonzales escaped from the custody of two Denver Sheriff's Deputies who had just transported him from the Denver County Jail to Denver Health Medical Center for a previously scheduled medical

appointment. Prior to his escape, Venzor-Gonzales was in custody for the Attempted First Degree Murder of a Denver Police Officer.¹

Immediately after his escape from the Denver Sheriff's Deputies on March 19, 2018, members of the Denver Police Department, including the department's Fugitive Unit, immediately began attempting to locate and arrest Venzor-Gonzales. One of the efforts undertaken was surveillance of the home of Samantha Davis in the area of East 19th Ave. and North Boston St. in Aurora, Colorado. Ms. Davis was believed to be Venzor-Gonzales' girlfriend at the time of his escape.²

At approximately 6:20 p.m. on March 19, 2018, detectives from the Fugitive Unit, assisted by members of Aurora Police Department's Strategic Response & Tactics Unit (SRT) observed a GMC Acadia SUV (hereinafter referred to as "the suspect vehicle"), which was occupied by two men, circle the area of Ms. Davis' home several times. Based on the circular route and other observations of the suspect vehicle, the detectives believed that the occupants of the suspect vehicle were attempting to locate and avoid police surveillance. The passenger in the front seat of the suspect vehicle had the hood of his sweatshirt pulled up over his head in what was believed to be an attempt to obscure his identity. Nevertheless, two different detectives from the Fugitive Unit surveillance team believed that the passenger was Mauricio Venzor-Gonzales.

At approximately 6:45 p.m. the suspect vehicle parked near Ms. Adams' home, and directly behind a Subaru station wagon that detectives knew belonged to Ms. Adams. Shortly after, Ms. Adams came out of her home and got into the Subaru. As she drove away, so did the suspect vehicle, which further led the Fugitive Unit detectives to believe that Venzor-Gonzales was the front seat passenger of the suspect vehicle.

As the Denver Detectives and officers from the Aurora Police Department's Strategic Response & Tactics Unit began following the suspect vehicle, it made additional trips around the block and through an adjacent alley. The Aurora officers decided to stop the suspect vehicle, which by then had traveled into Denver. As the police vehicles approached, the suspect vehicle fled from the Aurora Police Officers into the North East Park Hill neighborhood in Denver. There, a number of marked DPD patrol vehicles sought to join the pursuit after hearing about it via police dispatch radio transmissions.

When the chase began, Denver Police Officers William Bohm (Badge #13070) and Austin Barela (Badge #14085) were inside the District 2 station house. When the officers heard the details of the chase transmitted by the police dispatchers they decided to join the pursuit of the suspect vehicle. Officer Barela recalled hearing that the Fugitive Unit was in pursuit of a GMC Acadia and that the detectives from the Fugitive Unit "100 percent positively identified the passenger [of the suspect vehicle] as the homicide suspect." Earlier that day, Officer Barela learned during roll call that a homicide suspect had escaped from Denver General Hospital. He didn't know any other details about the homicide or the escaped suspect.

¹ In that incident, on November 25, 2017, Venzor-Gonzales fired shots at Denver Police Officer Mark Hillers (Badge #5025) with a 9mm handgun. Officer Hillers was chasing Venzor-Gonzalez on foot after Venzor-Gonzalez and another male crashed a vehicle while attempting to elude Officer Hillers and his partner. Although Officer Hillers shot Venzor-Gonzalez three times during the foot chase, he was not apprehended until three days later.

² An investigation later revealed that Samantha Adams assisted Mauricio Venzor-Gonzalez in his escape from Denver Sheriff Custody on March 19, 2018. She was charged in Denver District Court with one count of Aiding Escape, a class 3 felony. As of the date of this letter, that case is still pending.

Officer Bohm also heard the radio transmission that a homicide suspect that had escaped from a hospital that morning was being pursued by the Fugitive Unit. Prior to hearing that transmission Officer Bohm was aware that the suspect believed to be in the fleeing vehicle was known as being “armed and very, very violent and dangerous.”

Officers Bohm and Barela retrieved their body worn cameras and responded to the general area of 38th Avenue and Newport in a two-officer marked DPD patrol vehicle. There, they observed the suspect vehicle coming toward them on 38th Avenue. In an effort to stop the suspect vehicle, Officer Bohm drove his patrol vehicle toward the suspect vehicle, but the suspect vehicle swerved off the road and onto the front lawns of a several residential properties on the west side of the road before continuing northbound on Newport Street.



(Video from Officer Barela’s body worn camera of the suspect vehicle evading the marked patrol car on 38th Avenue)

As required by departmental policy, the officers had authorization to pursue the fleeing suspect vehicle. Officer Barela, the passenger, began transmitting the details of their location, changes in speed, the traffic, density, and other conditions of the pursuit.

Officer Bohm made a U-turn on 38th Avenue and pursued the suspect vehicle through 39th Avenue to Smith Road. On Smith Road, the suspect vehicle headed westbound, still driving at a high rate of speed. In the vicinity of North Kearney Street near the intersection of Smith Road and Holly Street, Officer Barela observed the passenger of the suspect vehicle throw a black object out of the front passenger window. Officer Barela believed that the object was a handgun. Officer Barela continued to transmit the locations and details of the pursuit over the radio, including his observation of the passenger throwing what he believed to be a handgun out the window.

Denver Police Department Officer Susan Mercado (Badge #08004) was in the area west of Colorado Boulevard in a marked DPD patrol vehicle when she heard the radio transmissions

advising of the ongoing pursuit. Officer Mercado recalled learning the Denver officers were pursuing a “homicide suspect from District 4” and that the Aurora Fugitive Unit was also involved. Officer Mercado did not recall any other details about the alleged homicide from District 4, the homicide suspect, or about any of the occupants of the fleeing suspect vehicle. After hearing on the radio that the suspect vehicle was then traveling at a high rate of speed on Smith Road and that cars were needed to respond to that area, Officer Mercado turned on her body worn camera and went to the intersection of Smith Road and North Holly Street. As she arrived at that location and heard Officer Barela say over the radio that something was thrown from the suspect vehicle, the vehicle sped past her on Smith Road. Officer Mercado estimated that the suspect vehicle was speeding over 100 miles per hour. After the suspect vehicle passed her location, Officer Mercado turned westbound on Smith Road, getting behind Officers Bohm and Barela in pursuit of the suspect vehicle.

With Officers Bohm, Barela and Mercado in pursuit, the suspect vehicle continued westbound on Smith Road, through Dahlia Street, and toward Albion Street at a high rate of speed. Both Officers Bohm and Barela knew that there was a significant curve past Smith Road at the intersection of 40th Avenue and Albion Street, and they prepared for the possibility that the suspect vehicle would be forced to slow down or stop at the curve. At the 4100 block of Albion Street, the suspect vehicle failed to slow enough to navigate the sharp curve and went off the right side of the road, crossed the sidewalk, and struck a low concrete wall and safety fence, causing extensive damage to the right front of the vehicle. The suspect vehicle came to rest facing west and toward a storm drainage ditch, which was at the bottom of a moderately steep hill. Both Officers Bohm and Barela saw the suspect vehicle leave the road and stop. Officer Bohm steered his police vehicle toward the suspect vehicle and made moderate contact with the rear of the suspect vehicle using his front bumper. Both vehicles came to a stop on the top of an embankment, with the patrol vehicle touching the rear bumper of the suspect vehicle.



(View from Officer Bohm’s body worn camera as he alights from the patrol car)

Both officers exited their patrol car, drew their weapons, and began yelling for the occupants to show them their hands. Neither occupant complied with the officers’ commands. Officer Bohm

approached the driver's door of the suspect vehicle and saw the driver reaching down toward the center of the console. Officer Barela believed he saw the passenger door open a small crack and he believed the passenger to be a homicide suspect who had just thrown a handgun out of the window and was now reaching around the vehicle. Officer Barela believed that the passenger was going to get out and shoot at him. Officer Barela began firing his handgun at the passenger side of the vehicle. As Officer Barela began firing, the suspect vehicle started moving down the hill toward the ditch.



(View of Officer Barela and the suspect vehicle, at right, from Officer Mercado's body worn camera)

Regarding firing his weapon, Officer Barela stated in his subsequent interview with Denver Police Department Sergeant Joseph Engelbert:

At that same time, I could see into the vehicle and I could see the – both passengers were making furtive movements towards the central console, reaching around. At that moment, like I said, I drew my weapon. I started making commands, show me your hands. Show me your hands. And at that point, I had a concern that there were additional weapons in the vehicle, given he was a homicide suspect and I just observed him throw a firearm out the window. So again, my primary target is the passenger. I continue to give him commands, show me your hands. Show me your hands. And then I see the door move slightly ajar. At that moment, I start firing my weapon towards the passenger side of the vehicle. I continue to fire until I perceived that the threat stopped. There doesn't seem to be any more movement in the car. I start giving commands again, show me your hands. Show me your hands. At that moment, I can still see the passenger. He's continuing to move around. It doesn't appear that the threat is gone. The vehicle starts to accelerate, and I can hear the tires burning on the rocks; I can smell it. So again, the threat was still there with the deadly force. I feared that he was going to get out with a weapon and either kill me or kill [Officer] Bohm or any other officer responding on scene, so I fired my weapon

into the passenger side of the vehicle again. Continued to fire. And then once the passenger stopped moving completely, I stopped firing. I started giving commands again, show me your hands. Show me your hands. This time, I tried to move to use better cover behind the back of my police vehicle, and then at that time, I held it at gunpoint the vehicle – until officers – other officers showed up.

Later in his interview, Officer Barela stated:

So like I said, the totality of the circumstances -- the concern I had is he's reaching around the vehicle, and the concern is that there's additional weapons. We observed a weapon get thrown out of the car. This guy is wanted for a homicide. We see him reaching around, and my -- my concern is that he's -- he's going to grab an additional weapon and come out of the car and start firing at me and Bohm.

Officer Bohm, who couldn't see Officer Barela, heard gunshots and believed that he and Officer Barela were being fired on, so he too fired his handgun. Regarding firing his weapon, Officer Bohm stated in his subsequent interview with Sergeant Engelbert:

At that time, I exited the vehicle, along with [Officer Barela] – on both sides – and that's where I lost a visual of him at that point. I could see the driver, and I drew my weapon and challenged him, told him to show me his hands. He looked at me, said something – I can't recall if – what he said – I couldn't make it out. But then he proceeded to bend over towards the center console area. At that point, I don't know where I heard the shots come from, but I did hear gunshots. I don't know if there was anything coming back at me or not at that point. I do recall the back window – seeing a hole appear there, and that's when I discharged my firearm. I believe I fired seven or eight times, maybe nine times. At that point, then the driver appeared to put the vehicle in – I don't know if it was still in drive or if he was manipulating it at that point still, but the vehicle then proceeded to continue to move down that embankment, slight – I guess it's slightly west. I repositioned a little bit and gave another command to show me your hands. Show me your hands. I took that moment to reload my magazine, and still not getting compliance, and then I fired two more rounds. And at that point, there was [sic] many, many cops around me.

Officer Mercado arrived at the scene and stopped to the south of the suspect vehicle and Officer Bohm's marked patrol car. Denver Police Officer Robert Price arrived at the scene immediately after Officers Bohm and Barela, and ahead of Officer Mercado. As Officer Price exited his marked patrol vehicle, he heard gunshots and saw the suspect vehicle moving down the embankment. Officer Price took cover behind his vehicle but did not fire his weapon. As Officer Mercado was exiting her vehicle, she saw the suspect vehicle moving down into the drainage ditch and believed that the driver was continuing to flee, so she too fired her weapon. In her subsequent interview with Sergeant Engelbert, Officer Mercado stated:

So when I approached, when I got on scene, I jumped out of my vehicle. I saw the vehicle down in the ravine. The suspect that was attempting – what from I believed – he was attempting to still flee the scene because he had the car in drive and was attempting to drive away. I got out of my patrol car, made myself

perpendicular to his vehicle and fired my weapon, in order to prevent him from fleeing the scene.

And further:

... it was my perception that being that he was already involved in a homicide, if he had made it towards that bike path/walkway to the train station, it would have put the public at that train station in danger.



(View from Officer Mercado's body worn camera as she fires her weapon)

Officers Barela, Bohm, and Mercado each stated during subsequent interviews with Sergeant Engelbert that they continued to fire their weapons until they perceived the threat of deadly force and/or the continued flight of a homicide suspect to be over. By the time the officers stopped firing their weapons, the suspect vehicle had come to rest in the drainage ditch. By this time, a number of additional officers from the Denver and Aurora Police Departments had arrived at the scene. Once the scene was determined to be safe, officers approached the suspect vehicle. It was not until this moment that officers discovered that Mauricio Venzor-Gonzales was not in the vehicle, despite their belief during the pursuit that Venzor-Gonzales was the front seat passenger of the suspect vehicle.³

Instead, the front-seat passenger of the suspect vehicle was identified as Rafael Landeros Jr. (DOB: 05/25/1994). Landeros was removed from the suspect vehicle by officers and transported to Denver Health Medical Center. There, he was treated for a slight abrasion to his lower abdomen caused during the shooting incident. When Landeros was released from the hospital, he was taken into custody on a number of misdemeanor and felony warrants.

³ Venzor-Gonzales was apprehended on August 24, 2018 in Thornton, Colorado by Agents from the Federal Bureau of Investigation and was returned to the custody of the Denver County Jail.

The driver of the suspect vehicle was identified as Steven Lee Nguyen (DOB: 08/09/1994)⁴. Nguyen was also transported to Denver Health Medical Center where he was pronounced dead. Nguyen's autopsy revealed the cause and manner of his death to be multiple gunshot wounds to the head, trunk and right upper extremity. Bullets recovered during his autopsy matched the ammunition of both Officers Barela and Bohm, with each officer causing potentially fatal wounds. Toxicological testing of the postmortem peripheral blood was positive for methamphetamine, amphetamine, and a cannabinoid.

Other officers responded to the vicinity of Smith Road and North Holly Street where Officer Barela had seen the passenger of the suspect vehicle throw an object which he believed to be a gun from the vehicle during the pursuit. They located a black box marked "Honeywell" and suspected methamphetamine at that location.

The search of the crime scenes, and a subsequent forensic analysis by the Denver Crime Laboratory of physical evidence from the scene and the autopsy of Steven Nguyen, revealed the following:

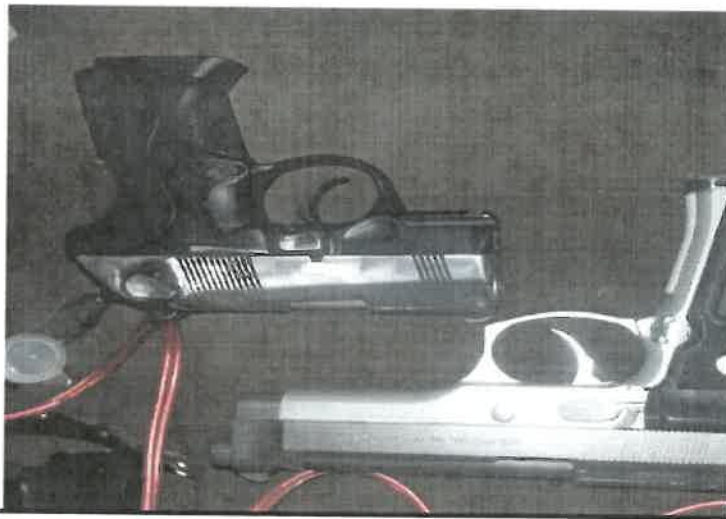
- a loaded 9mm Beretta handgun was recovered from inside the suspect vehicle between the front passenger's seat and the passenger door, where Landeros had been seated;
- a fingerprint analysis on the Beretta revealed one latent fingerprint belonging to Landeros;
- a DNA analysis on the Beretta and its magazine revealed a mixture of at least four people – neither Nguyen nor Landeros could be included or excluded from contributing to that DNA mixture;
- although the Beretta was functional, there was no evidence to indicate that either Nguyen or Landeros fired the Beretta during the incident;
- all three officers' firearms were functional, and all spent cartridge casings recovered from the scene came from one of the three officers' firearms;
- Officer Barela fired his weapon 34 times, Officer Bohm fired his weapon 12 times, and Officer Mercado fired her weapon 2 times;
- Nguyen was struck by two rounds from Officer Bohm's weapon (recovered from Nguyen's right arm and left brain) and one round from Officer Barela's weapon (recovered from Nguyen's right lung);
- a fingerprint analysis of the black "Honeywell" box found in the vicinity of Smith Road and North Holly Street revealed a latent fingerprint on the outside of the box belonging to Landeros;
- a chemical test of the contents of the black "Honeywell" box revealed that the box contained approximately 5.5 grams of methamphetamine

⁴ At the time of the incident, Nguyen was wanted on a felony drug and weapons warrant and a felony warrant relating to a burglary case.



(9mm Beretta handgun found in the suspect vehicle)

In addition to the Beretta handgun, Steven Nguyen's cell phone was found in the suspect vehicle. The police obtained a search warrant to conduct a forensic examination of the cell phone and found a photograph that Nguyen had taken of what appears to be the same Beretta handgun that was found in the suspect vehicle.



(Photo of the Beretta in Nguyen's cell phone)

In addition, the examination of the phone revealed a March 10, 2018, text exchange between Nguyen and the mother of his child, in which she asked Nguyen to leave a particular location because the police had been called. He replied, "I'll be waiting tell em to bring the swat u dumb ass twat." He then added, "I got 2 full clips for em bitch," "U dont even deserve one of my bullets bitch," "Make sure u tell em im armed n dangerous aigt ho." She replied, "What the hell ..." to which he replied, "I put that on my grandmas grave im ready to die today."

On March 22, 2018, Rafael Landeros was read his Miranda warnings and agreed to be interviewed by Denver Police Department Detective Daniel Andrews. Although Landeros admitted to knowing Mauricio Venzor-Gonzales, he denied that he and Nguyen were in the area of Samantha Adams' Aurora apartment to aid Venzor-Gonzales in his escape. Instead, he said that Nguyen was in the area trying to retrieve a cell phone from a woman and that they were circling the block when they began noticing what they believed to be numerous undercover police officers in the area. Because they both had outstanding warrants and were driving a stolen car they decided to leave the area rather than risk getting stopped by the police.

During his interview with Detective Andrews, Landeros admitted that he stole the suspect vehicle⁵ and that he did throw an object out the front passenger side window during the pursuit. Landeros stated that the object was a box containing methamphetamine. Regarding the 9 mm Beretta handgun that was found in the front passenger area of the suspect vehicle, Landeros said the Beretta belonged to Nguyen and that Nguyen handed him the handgun after the pursuit began. Specifically, Landeros stated:

Well, [Nguyen] was driving like with one hand on the gun and the other one on the steering wheel, and fucking I told him like --

...He's like -- when it got serious, like was serious, he's like here, foo. Fucking hold onto this. And he fucking gave it. He's like here, hold onto this. And fucking grabbed it. And I grabbed it and I fucking stuck it on the side of the door right away. And, yeah, but he had like two magazines and stuff like that.

... [Nguyen had the gun because] He felt like he couldn't trust no one.

... I don't know where he got it from, but I know it's nice. But it's like I seen it before and I'm like, oh, shit. It's a nice, foo.

Landeros denied firing the gun or pointing it at anyone⁶, telling Detective Andrews that once the suspect vehicle crashed by the drainage ditch he was going to run but he couldn't get the door open. At this point, he said, Nguyen tried to climb across him to get out the passenger side door, but he couldn't get the door open either. When Nguyen went back to the driver's side, the shots started. He got down near the floor board and continued to move around the front passenger area while the shooting continued. At some point before the shooting ended, Landeros heard Nguyen say: "Foo, they fucking shot me."

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

⁵ The Acadia was stolen on March 17, 2018 in Federal Heights, Adams County. The owner of the Acadia reported to the police that the person who they suspected to have stolen her car was Rafael Landeros.

⁶ Based on Landeros' criminal history, his statement that he handled the Beretta 9mm handgun found in the suspect vehicle and the fingerprint evidence connecting him to the handgun, he was charged by the United States Attorney for the District of Colorado for Possession of a Firearm by a Prohibited Person, Title 18 USC 922(g).

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 Rafael Landeros' injuries and Steven Lee Nguyen's death resulted from shots fired by Officers Barela and Bohm and potentially Officer Mercado, 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 force⁷ 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

⁷ Colorado law defines "deadly physical force" as force that actually causes death, section 18-1-901(2)(d),(e), CRS. Since Rafael Landeros 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.

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 United States Supreme Court has held that it is not unreasonable for police officers to continue to pursue a fleeing vehicle, even where doing puts the occupants at risk of serious injury or even death⁸:

[W]e are loath to lay down a rule requiring the police to allow fleeing suspects to get away whenever they drive *so recklessly* that they put other people's lives in danger. It is obvious the perverse incentives such a rule would create: Every fleeing motorist would know that escape is within his grasp, if only he accelerates to 90 miles per hour, crosses the double-yellow line a few times, and runs a few red lights. The Constitution assuredly does not impose this invitation to impunity-earned-by-recklessness. *Scott v. Harris*, 550 U.S. 372 (2007).

The issues are, therefore: whether at the time 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 while attempting to affect an arrest or prevent an escape, and furthermore, that their actions in defending against that force were objectively reasonable. Furthermore, 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, could have concluded that it was necessary to use deadly force to defend themselves or another and stop the threat that the suspect vehicle and its occupants presented. Accordingly: Is there enough evidence of criminal conduct that a jury could find beyond a reasonable doubt that Officers Bohm, Barela and/or Mercado acted without lawful justification?

CONCLUSION

In this case, while all three involved officers fired their weapons, only Officers Barela and Bohm used deadly physical force. Nevertheless, the actions of each of the three officers are legally justified under Colorado law, as the officers were authorized to use deadly physical force by C.R.S. section 18-1-707(2)(b). That subsection provides that an officer may use deadly physical

⁸ The Supreme Court was interpreting "reasonableness" for purposes of the Fourth Amendment and police conduct during searches and seizures, not for purposes of examining the legal justifications for use of deadly physical force. However, the Court's rationale is still instructive in this context.

force where he or she reasonably believes that it is necessary to effect the arrest of a person whom the officer reasonably believes: has 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, 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. In addition, Officers Barela and Bohm believed they were in danger of the imminent use of deadly physical force.

Prior to making contact with Steven Lee Nguyen and Rafael Landeros, the officers all had believed that the passenger in the suspect vehicle had been positively identified by fellow officers from the Denver Police Department as a homicide suspect. Officer Bohm, the driver of the primary pursuit vehicle, believed that that the passenger of the suspect vehicle was wanted for the attempted murder of a Denver police officer and was known as being “armed and very, very violent and dangerous”. Therefore, they were legally justified in using deadly force so long as use of deadly force was reasonably necessary to effect the arrest of a person who they believed had committed a felony with the use of a deadly weapon.

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 Officers Barela and Bohm discharged their firearms, they had pursued the suspect vehicle at a high rate of speed through the streets of northeast Denver. During the pursuit, the suspect vehicle had driven in a manner that posed a risk of danger to vehicles and pedestrians, including driving at high speeds and driving on the front lawns of private residential properties to evade capture. Officer Mercado joined the pursuit after watching the suspect vehicle pass her location at speeds she estimated to be over 100 mph. The officers believed that at least one of the occupants of the suspect vehicle was very dangerous, had previously shot a Denver police officer, and had thrown what appeared to be a firearm from the window of the fleeing vehicle.

Prior to resorting to deadly physical force, Officers Bohm and Barela, as the first officers to engage Nguyen and Landeros, attempted to effect the arrest with safer methods, namely, when they first encountered the suspect vehicle they activated their lights and sirens in an attempt to pull the vehicle over, later – after the suspect vehicle fled – Officer Bohm performed a low speed hit maneuver to its rear bumper. After the officers took positions on either side of the suspect vehicle, they attempted to contact Nguyen and Landeros with verbal commands ordering them to show their hands and exit the vehicle. Nguyen and Landeros failed to comply with the officers’ verbal commands. Instead both remained in the suspect vehicle, both attempted to exit the vehicle from the front passenger side door, and both were observed making a number of furtive movements that the officers could not fully see. In addition, both Nguyen and Landeros showed a willingness to escape the police at any cost when they drove away from the officers and into a ditch, even after the officers engaged them with verbal commands, then gun fire.

The suspect vehicle’s continued efforts to escape from the police demonstrated a brazenness that justified the officers’ fears that both occupants of the vehicle – and the fleeing vehicle itself – posed a significant risk of danger not only to the officers, but to the public at large. When Officer Mercado exited her patrol vehicle and observed the suspect vehicle accelerating away from Officers Bohm and Barela toward the drainage ditch, she was concerned about the vehicle making its way to an adjacent bike path and the walkway to a train station. Under these circumstances, the officers’ actions were also legally justified by C.R.S. section 18-1-707(2)(b)(iii), insofar as the manner of the suspect vehicle’s efforts to flee, and the officers’

belief that one of its occupants was a homicide suspect, indicated to the officers that the suspects were likely to endanger human life or to inflict serious bodily injury to another unless they were apprehended without delay.

Moreover, Officers Bohm and Barela were also legally justified to use deadly force under C.R.S. 18-1-707(2)(a), in defense of themselves or a third person. Officer Barela was the first officer to fire his weapon. At the time he started firing, in addition to the other circumstances related to the pursuit and attempt to apprehend a homicide suspect, Officer Barela saw Rafael Landeros open the front passenger door of the suspect vehicle. At this moment he reasonably feared that Landeros was going to get out of the vehicle with a weapon and either kill him, Officer Bohm, or any other officers responding to the scene.

Prior to firing his weapon, Officer Bohm saw Steven Nguyen bending over and reaching towards the center console in the suspect vehicle, then heard gun shots and a hole open up in a rear window of the suspect vehicle. He believed that the occupants of the suspect vehicle were now firing at the officers, and he returned fire in defense of himself and Officer Bohm. He continued to fire when he saw the suspect vehicle start to accelerate away from him and Officer Bohm. Both Officers Barela and Bohm fired their weapons to defend themselves from what they reasonably believed to be the imminent use of deadly physical force. None of the evidence collected in this case contradicts the officers' assertions.⁹

To the contrary, the video footage from the officers' body worn cameras, the statement of Rafael Landeros, the crime scene investigation, and subsequent forensic examination of the evidence corroborate the officers' assertions, 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. However, I expect the Denver Police Department will take a close look in the administrative review as to whether the response was in accordance with policy with respect to a moving vehicle and the number of shots fired, particularly by Officer Barela. Officer Mercado's shots likely did not hit either of the suspects, but her use of deadly force without taking close stock of the situation once she arrived at the scene, should be examined carefully by the Denver Police Department, particularly in light of the fact that Officer Price did not fire his weapon.

⁹ Investigating detectives spoke to a number of residents from an apartment complex located directly across the street from the scene of the shooting. Each resident stated that after hearing either the chase or the subsequent crash they looked out over the scene to see the uniformed officers shooting at the suspect vehicle as it continued into the drainage ditch. None of the residents were able to see the actions of the occupants of the suspect vehicle or hear any of the commands of the officers before, during or after the shooting.

Records related to this case will be made available upon request of the Denver District Attorney's Office. Any interested party may seek judicial review of my decision under C.R.S. §16-5-209.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth McCann", with a long horizontal flourish extending to the right.

Beth McCann
Denver District Attorney

cc: Chief Paul Pazen, Barb Archer, Deputy Chief of Police; Commander Mark Chuck, Major Crimes; Commander Kathy Bancroft, District Two; Lieutenant Matthew Clark, Major Crimes; Sgt. Joseph Engelbert; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Daniel Andrews; Kristin Bronson, City Attorney; Assistant District Attorney Ryan Brackley; John Davis, Attorney for Officers Bohn, Barela and Mercado; and Nicholas E. Mitchell, Office of the Independent Monitor.