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June 12, 2018

Robert White  
Chief of Police  
Denver Police Department  
1331 Cherokee Street  
Denver, CO 80204

RE: Investigation of the shooting death of Alex Duran DOB 10/29/88, in which Denver Police Corporal John Albergotti, Badge 98-027, fired shots on February 6, 2018, in the area of 1873 S. Alcott Street, Denver, Colorado.

Dear Chief White,

The investigation and legal analysis of the shooting of Alex Duran, in which shots were fired by Denver Police Corporal John Albergotti, has been completed. I conclude that under applicable Colorado law no criminal charges are warranted against this officer. My decision, based on standards of criminal law, does not limit administrative action by the Denver Police Department, where tactical issues may be reviewed, or civil actions where less-stringent laws, rules and legal levels of proof apply.

#### STATEMENT OF FACTS

On February 6, 2018, at approximately 5:29 p.m., B.M.<sup>1</sup> called the police to report: “my son's high on some kind of drug and he's locking himself in the room and I don't know what to do. He's threatening to kill himself.” She reported that she was getting scared of him and she wanted to go to the neighbor’s house. “I don’t want him to know that I am calling you ... because he might hurt me.” When asked whether her son had any history of mental illness, she responded in the negative. When asked for further information, B.M. indicated that she was afraid that if her son, Alex Duran, saw that the police were outside her home, “he might try to do something, that's why I'm scared....If he sees the police, he might try to lock the doors and lock me in here with him.” A short time later, the 911 call taker heard Mr. Duran in the background, and B.M. say

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<sup>1</sup> I use initials to protect the privacy of civilian witnesses.

“Put that knife away. Give me that knife.” When the 911 call taker asked if he had a knife, B.M. replied “Yes. Oh God.” When the 911 call taker again inquired whether her son had a history of mental illness or developmental delay, she replied:

B.M.: No.

911 DISPATCHER: Okay.

B.M.: He's high on -- he's high on something. I can tell. I know my son. He went out Friday night, and then after that, that's when he started acting all weird. And it's getting worse and worse and worse every day.

911 DISPATCHER: Okay.

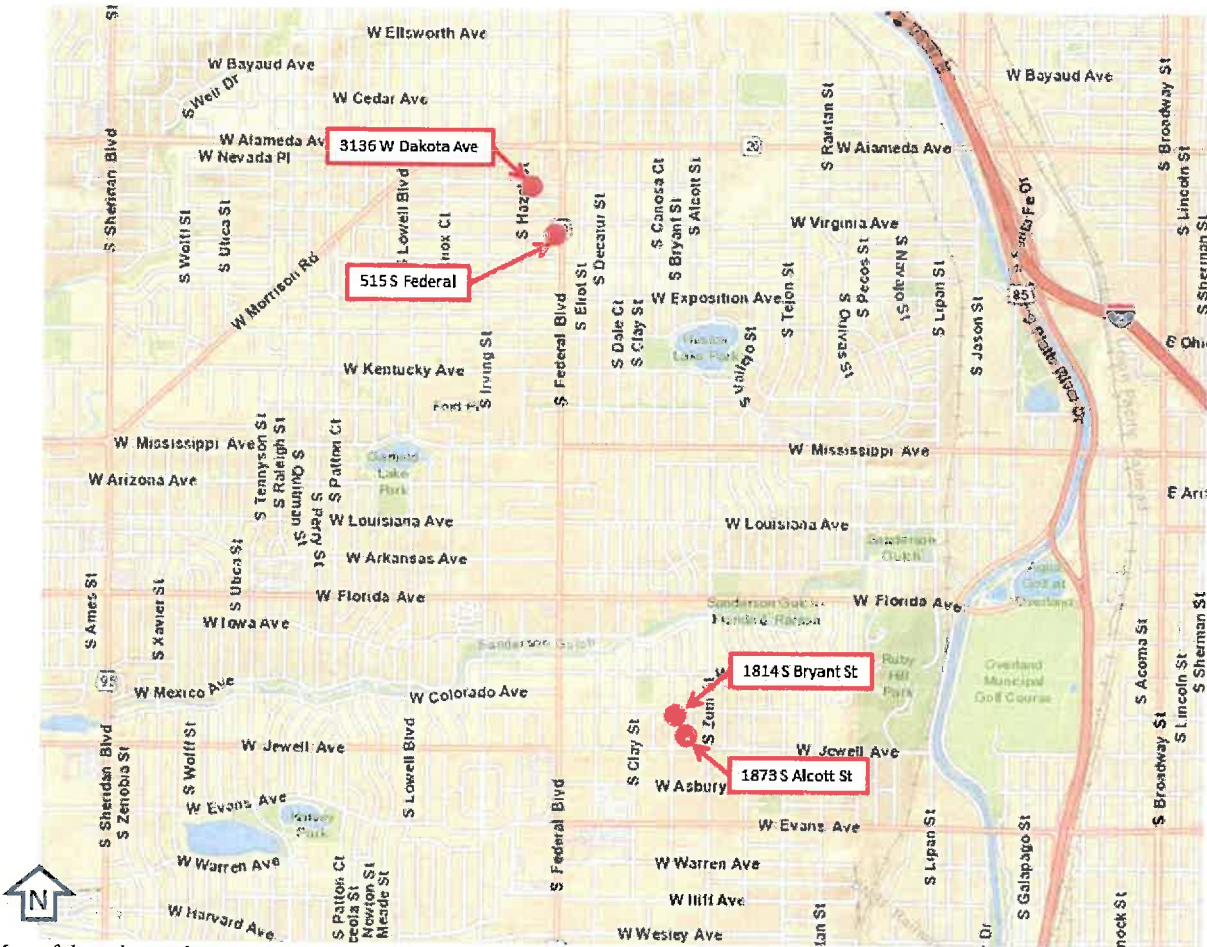
MARTINEZ: And today it's just like off the hook.

As can be heard on the 911 call, B.M.'s son came in to the room again, and B.M. again begged her son to put down the knife. She then reported to the police dispatcher that her son had left the residence, and that she was locking the doors. She refused to leave her home, stating that her son had a large knife and she feared he was outside.

At 5:55 p.m., D.C. called the police to report a carjacking. She indicated that she and her boyfriend had just had their white Pontiac G5 taken from them at knifepoint. The suspect matched the physical and clothing description given by B.M. The carjacking occurred at 515 S. Federal Boulevard. The aggravated robbery was less than four blocks away from the home of B.M.

At approximately the same time, T.J. called the police, reporting that a white Pontiac G5 had just hit her trash can. The driver of that vehicle had abandoned the car, leaving it running at 1814 S. Bryant St. This location was less than three miles from B.M.'s home and from the location of the aggravated robbery.

Also at approximately the same time, K.M. called the police to report that a man had broken into his home, located at 1873 S. Alcott St. This location is one street west of where the suspect abandoned the vehicle taken in the aggravated robbery. The young family living in that home fled the residence, and were contacted by police outside the home.



Map of the relevant locations

Officers Albergotti, Juarez, Martinez, Medero, Padia and Quintanilla responded to the report of the burglary in progress. The first officers to respond were Corporal Padia and Officer Quintanilla. They were soon followed by Corporal Greg Juarez and Recruit Officer Medero. Officer James Martinez and Corporal Albergotti were the last officers to respond into the residence. Other officers were staged outside. At the time that officers first made entry into the residence, they knew only of the burglary in progress. Later it was discovered that the aforementioned crimes had been committed by the same suspect, Alex Duran.

Officer Victor Quintanilla was staged in the middle of the living room, with a limited view of the doors in the hallway. When interviewed by Detective Torgeson, he stated that upon entry, he was able to communicate briefly with Mr. Duran who was in a room to the north of his position. Officer Quintanilla, who had drawn his handgun, was present while Officer Medero began negotiations with Mr. Duran, hoping to coax him from the bedroom where he was hiding. Suddenly, Mr. Duran darted from one room to another, later determined to be a bathroom. From Officer Quintanilla's position, he was unable to see the end of the hallway, or Mr. Duran's movement to the bathroom, but he heard his fellow officers yell "drop the knife! Drop the knife!" In his subsequent video interview<sup>2</sup>, Officer Quintanilla reported that a short time later,

<sup>2</sup> He was not permitted to speak with other witnesses prior to his interview, nor did he watch any body worn camera footage.

“...that door just shot open. He came out and something to the effect of like, ‘get ready to die’ or ‘you’re going to die.’ And just came out so quick.” Officer Quintanilla’s finger was on the trigger of his firearm, and he was about to shoot, when he heard a shot nearby. Officer Quintanilla further explained:

TORGESON: Okay. And then he -- at some point in time, he eventually comes out of the bathroom; is that correct?

QUINTANILLA: Very quickly.

TORGESON: And when he does so, does he have anything in his hands?

QUINTANILLA: I couldn’t see at that point because I could just see the slight piece of the door, but it just flung open. He was coming out screaming, ‘[inaudible] ready to die.’ And then he came out in more of my view -- and just so fast -- and that’s when I heard the shot to my left.

TORGESON: And when you say, “so fast”, what was he doing?

QUINTANILLA: I -- I don’t know if he --

TORGESON: Was he running away from you guys?

QUINTANILLA: No. Toward us.

TORGESON: He was running towards you?

QUINTANILLA: Running -- I don’t know if it was more of a like lunge, but came out very quickly.

TORGESON: Okay.

QUINTANILLA: It was split second.

After the shots were fired, Officer Quintanilla saw Mr. Duran on the ground, with a knife on his left thigh. Some officers secured the knife while others cleared the residence for other suspects. Officer Quintanilla was then escorted to Denver Police headquarters to be interviewed.

Officer James Martinez was positioned on the couch, armed with a rifle at the time that Corporal Albergotti discharged his weapon. When interviewed<sup>3</sup>, he described the following as Mr. Duran came out of the bathroom:

he came out and opened the door -- whipped around the corner and he had a knife in his hand. He was holding it by the handle and just screaming -- I don’t know what he was screaming, just a bunch of nonsense or just, ahhhhhh, and had his feet -- I remember he’d like stomp in his feet and then he just started coming forward at the same time. I mean there was a -- the distance is very -- very short distance between the bathroom to where we were at.

Officer Martinez described the weapon in Mr. Duran’s hand as “a big-ass knife,” one that “was really long, like about 12 inches down to a point.”

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<sup>3</sup> Officer Martinez likewise was not permitted to speak with other witnesses prior to his interview, nor did he watch any body worn camera footage.



*A photo of the knife possessed by Alex Duran*

Recruit Officer Medero was still in training when this incident occurred. Despite his relative lack of experience, he was able to establish what all of the officers in the room believed to be a rapport with Mr. Duran. For example, Recruit Officer Medero convinced Mr. Duran to tell the officer his name. He repeatedly told Mr. Duran that no one was there to hurt him, and that if he followed officers' commands, he would not be injured. Officer Medero's body worn camera reflects that the officer spent almost 30 minutes asking Mr. Duran to come out and show his hands. When Mr. Duran emerged from the bathroom and ran at the officers, Recruit Officer Medero, who had been kneeling, fell back in reaction to the attack and did not see the shooting.<sup>4</sup>

Corporal Greg Juarez was training Recruit Officer Medero that evening. Corporal Juarez was on the porch while Recruit Officer Medero was inside, pleading with Mr. Duran to surrender. Corporal Juarez did not have line of sight on the north bedroom where Mr. Duran was barricaded, but he was able to communicate with officers both inside and outside of the home. Toward the end of the altercation, Corporal Juarez said:

It was pretty intense at that point, with him coming out with the knife. He seemed a little bit more agitated. I could hear his voice getting louder, I just couldn't make out what he was saying but we knew he had a weapon. We weren't sure if he had a gun. He kept saying he had a gun. Like I said, the basement wasn't cleared yet, so the homeowner said there was a rifle inside of the home, so it's a pretty intense situation.

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<sup>4</sup> His body-worn camera likewise did not capture the shooting. When he was interviewed, Recruit Officer Medero had not watched any body-worn camera footage, nor he had been permitted to speak with other witnesses.



Corporal Juarez also stated:

Several more minutes had elapsed, and I was on the -- on the patio portion at this time, kind of directing other officers where to start securing -- securing the outer perimeter, when I heard -- I heard a whole bunch of pounding and I kind of turned around and I -- I don't know exactly what was said. I can't remember at that point what was said, just "let us see your hands. Drop the knife. Drop the knife." And I heard one gunshot. Saw the subject fall. And then I saw another gunshot.

Corporal Albergotti was interviewed by Lieutenant Matthew Clark two days after the incident. Corporal Albergotti stated that he arrived at the home on S. Alcott after other officers had already arrived and begun attempting contact with Mr. Duran. Due to the nature of the call, Corporal Albergotti retrieved the shotgun from his trunk while Officer James Martinez retrieved his rifle. These two officers joined the others in the living room and kitchen area of the house. Mr. Duran was in the bedroom at the north end of the same hallway. Recruit Officer Medero was at the south end of the hallway, kneeling and trying to negotiate a peaceful ending to this incident. He was armed with a Taser. Corporal Albergotti was standing just above Recruit Officer Medero, holding his shotgun. Corporal Albergotti stated that when he entered the residence, Mr. Duran was yelling, threatening to kill the officers: "he was yelling during everything. Why are you here, and eff-you. I'm going to kill you. It was loud. It's -- just continued over and over again." Corporal Albergotti estimated that the standoff in the north bedroom lasted approximately thirty minutes. Corporal Albergotti reported the following sudden events:

ALBERGOTTI: He comes out real quick and just stands there for a second. [Officers yell] "Drop the knife, drop the knife." Boom. Runs right about two to three feet into that bathroom very quickly. He's in that bathroom for probably, I don't know, three minutes at the most, and all the sudden I hear this -- I don't know if you've ever heard of a "war cry?" War cry?

CLARK: Sure. I know.

ALBERGOTTI: All right. So that's what we heard. And it just got louder and louder and louder. "I'm going to kill you." He comes out and he started to advance and advancing. And I thought, you know, this is -- this is it. This is -- this is probably -- I don't know. I've done military stuff. This was -- it was -- it was scary. You know? And I thought we were put in a place of serious -- dangerous situation. So I ended up shooting twice and got the, you know, stopped the threat and it was over.

When Corporal Albergotti was asked about the knife in Mr. Duran's hand, he described it as bloody, with approximately a ten-inch blade. The blood appeared to have come from a cut on Mr. Duran's neck. Lieutenant Clark then asked: "Okay. And during this entire time, is he directing threats that he is going to kill you or is he making suicidal statements also?" Corporal Albergotti replied "No, he didn't make any suicidal statements that I heard. None." Lieutenant Clark asked "when he comes out, what specifically do you see right in front of you down the

hallway?" Corporal Albergotti said "I see him holding a knife in the right hand coming at us... And, you know, with the knife -- the handle here and the blade out."

CLARK: And he's advancing towards you?

ALBERGOTTI: Yes.

CLARK: Okay.

ALBERGOTTI: Well, not only me, to everybody.

CLARK: Okay.

ALBERGOTTI: All the officers that were in that room.

CLARK: How quickly is he advancing?

ALBERGOTTI: Too fast for me. It's -- he was fast.

Albergotti continued:

ALBERGOTTI: I just know Medero is below me and we were -- we were probably, you know, right there on that wall and, you know, too close for comfort.

CLARK: Okay. How -- how close was he when you discharged your first round?

ALBERGOTTI: I don't know. I mean maybe six feet.

CLARK: Okay.

ALBERGOTTI: Six, eight feet at the most.

CLARK: Is he stopped or is he still advancing as you're discharging?

ALBERGOTTI: He's still advancing.

CLARK: Do you know where your round strikes him or if it does strike him?

ALBERGOTTI: No, I did not.

CLARK: Okay. Did it seem to have any impact or stopping ability?

ALBERGOTTI: It's -- no. No. I -- I didn't realize even if I hit him. I thought, you know, because I'm thinking, *what's going on here? Why is he not down?* And then, you know, I racked again, threat was still coming so I shot the second round.

CLARK: Okay. When you -- can you specifically tell me what your specific concern is when you pulled the trigger the first time?

ALBERGOTTI: The potential danger to the officers and me.

CLARK: Okay.

ALBERGOTTI: Death.

When asked exactly what he was thinking when he fired the first round, Corporal Albergotti responded: "Well, we're in imminent danger and he's either going to kill Medero, who was below me; or one of the -- me; or one of the other officers if we don't stop this threat." When asked about the fact that Mr. Duran was armed with a knife, rather than a firearm, Corporal Albergotti replied: "knives are very lethal, I mean more lethal ... than a handgun or a pistol." When asked in what way, Corporal Albergotti said "Oh, they can do serious damage to your torso and your organs." Corporal Albergotti was asked how quickly a person can move six feet, especially when he is already moving. He replied "they can be on you in a second or less."

Corporal Albergotti was asked why he discharged his shotgun a second time: “So after the first round, I shot one round and I remember him still being up.” When asked why he stopped firing after discharging two rounds, Corporal Albergotti replied “Because it stopped the threat.”<sup>5</sup>

When asked for any final statements he wanted to make, Corporal Albergotti said the following about the shooting: “it was the last thing on our mind -- I wanted this guy to come out and cooperate, lay down, cuff him up and be done. You know, so this was a last resort of discharging and then what happened to him. I didn't want that at all.”

The day after the shooting, personnel from the Office of the Medical Examiner conducted an autopsy. Mr. Duran’s blood tested positive for methamphetamines, amphetamines, and cannabinoids. The medical examiners concluded that Mr. Duran died as a result of gunshot wounds to the head and left leg.

### 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 of using physical force in self-defense is described in C.R.S. § 18-1-704. As pertinent to this case, C.R.S. § 18-1-704 (1) states:

... a person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

The use of deadly physical force “may be used only if a person reasonably believes a lesser degree of force is inadequate and the actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.” C.R.S. § 18-1-704(2)(a).

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

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<sup>5</sup> Both Recruit Officer Medero and Officer Quintanilla confirm that Mr. Duran was still moving when on the ground after the shots were fired.



(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 ....

C.R.S. § 18-1-707(2) states that:

[a] peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section 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 an arrest, or to prevent the escape from custody, or 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...

(III) otherwise indicates ... that he is likely to endanger human life or to inflict serious bodily injury to another unless apprehended without delay.

These justifications are “affirmative defenses.” 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, the question I must consider is: **Is there enough evidence of criminal conduct that a jury would find, beyond a reasonable doubt, that Corporal Albergotti acted without lawful justification?**

After a thorough review of the evidence, I conclude that a jury would find that this officer had lawful justification to fire at Mr. Duran in self-defense and in defense of his fellow officers. Mr. Duran made statements regarding his intent to kill officers, negotiations had continued for more than thirty minutes, and Mr. Duran swung open the bathroom door with a war cry and lunged toward the officers with a knife in his hand. At this point in time, Corporal Albergotti reasonably believed that he and his fellow officers faced imminent serious bodily injury or death. Corporal Albergotti discharged his weapon when Mr. Duran was approximately six feet away from him and Recruit Officer Medero, and while Mr. Duran was rapidly approaching them. Corporal Albergotti knew that within a second to a second and a half, Mr. Duran would be upon them, with a very large knife, which has the potential to cause very serious injury or death. When faced with this lethal threat, Corporal Albergotti reasonably believed that no lesser amount of force could be used to defend himself and his fellow officers. Furthermore, at the moment that Mr. Duran illegally entered this home, armed with a deadly weapon, Corporal Albergotti had ample probable cause to arrest Mr. Duran, and he was justified in using deadly physical force to attempt to effect that arrest.

Numerous courts have declined to force officers to determine (and then use) the least amount of force necessary to stop the threat an officer faces. Illinois v. Lafayette, 462 U.S. 640 (1983). As stated in Scott v. Henrich, 39 F.3d 912 (9<sup>th</sup> Cir. 1994):

[r]equiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission ... and choose that option and that option only. Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the court in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment. *Id.* at 915.

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 dangerous circumstances, Corporal Albergotti was forced to make a split-second judgment, and his decision to shoot Mr. Duran in self-defense and in defense of others was justified under Colorado law.

Sincerely,



Beth McCann  
Denver District Attorney

CC: Corporal John Albergotti; Kristin Bronson, Denver City Attorney; Troy Riggs, Executive Director, Department of Safety; David Quinones, Deputy Chief of Police; Matthew Murray, Deputy Chief of Police; Barb Archer, Commander of Major Crimes Division; Mark Fleecs, Commander of District Four; Joe Montoya, Commander of Internal Affairs; Lt. Matthew Clark, Major Crimes Division; Sgt. Joseph Engelbert; Sgt. Thomas Rowe; Sgt. Brock Ellerman; Detective Michael Martinez, Homicide; and Nicholas E. Mitchell, Office of the Independent Monitor.