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

RE: Investigation of the shooting death of Duane Manzanares, DOB 10/26/90, in which Denver Police Officers Samuel Bailey (badge number 18034), Ryan Nelson (badge number 19071), and Steven Whiteman (badge number 19074) fired shots on June 13, 2021 at 8890 E. Colfax Ave. in Denver, Colorado.

Dear Chief Pazen,

The investigation and legal analysis of the shooting death of Duane Manzanares, in which shots were fired by Denver Police Department Officers Samuel Bailey, Ryan Nelson, and Stephen Whiteman, has been completed. I conclude that under applicable Colorado law, no criminal charges are warranted against these officers. 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 June 13, 2021, the Denver Police Department received a 911 call relating that there was a man in the 1500 block of N. Ulster St. who was firing a handgun at a white Mercedes. The 911 caller, J.B.<sup>1</sup>, stated that after firing the handgun, the shooter walked eastbound on E. Colfax Ave. Officer Chase responded to the scene where the Mercedes had been hit by gunfire. He confirmed over the police radio that there were indeed spent cartridge cases at the scene, as well as bullet defects to the Mercedes. Officer Chase also contacted J.B. at the scene and interviewed him. Based upon that interview, Officer Chase aired a description of the man who had been shooting at the car. He also confirmed that the suspect, later identified as Duane Manzanares, was last seen walking eastbound on E. Colfax Ave.

<sup>1</sup> For civilian witnesses, I use initials to protect their privacy.

Officers Ryan Nelson and Christine Abrams were in the same marked patrol car and made their way to the area where Mr. Manzanares had last been seen. They were traveling westbound on E. Colfax Ave. when they saw Mr. Manzanares walking eastbound on the south side of the street. Officer Abrams observed the grip of a handgun tucked into Mr. Manzanares's rear waistband. She told her partner, Officer Nelson, what she had seen, and she aired this information to other officers.<sup>2</sup>

Officers Samuel Bailey and Steven Whiteman were also responding to the area. As they were traveling westbound on E. Colfax Avenue, they made a U turn when they saw the suspect and both officers noted the presence of a large handgun tucked into the small of Mr. Manzanares's back. They communicated this fact to each other.

All of the officers turned to drive eastbound on E. Colfax with the intent to contact Mr. Manzanares, who fit the physical and clothing description of the suspect. Additionally, he was traveling in the same area and direction as the suspect, and he had a large gun visible in the small of his back. When the officers first contacted Mr. Manzanares, he was standing on the sidewalk. Behind him was a parking lot associated with a restaurant, Tacos Acapulco.<sup>3</sup> As the officers made contact with him, Mr. Manzanares questioned why he was being stopped by the police. One officer observed to him that it was because he had a gun. Mr. Manzanares did not dispute this. He was agitated and argumentative with the officers and refused to comply with commands that he put his hands up.

Mr. Manzanares had a small plastic bottle of alcohol in his right hand. He threw the bottle down then reached toward the small of his back where officers had previously observed the weapon. At that point, Officers Bailey, Nelson and Whiteman discharged their weapons. Mr. Manzanares was struck by these bullets and fell to the ground. Officers then approached him, removed the gun from his right waistband area, then rendered medical aid. An ambulance was called, and Mr. Manzanares was transported to the hospital, where unfortunately he was pronounced deceased.

A multijurisdictional team comprising the Denver Police Department homicide unit, Aurora Police Department major crimes unit, and the Denver District Attorney's Office responded to conduct the investigation. The involved officers were separated and taken to DPD headquarters separately. Investigators determined that Officer Abrams did not fire her weapon. Officer Bailey discharged his weapon four times. Officer Nelson discharged his weapon twice. Officer Whiteman discharged his weapon five times.<sup>4</sup>

Forensic pathologist Dr. Meredith Frank conducted the autopsy of Mr. Manzanares on June 14, 2021. She noted the presence of two tourniquets associated with the decedent. She observed six gunshot wounds to Mr. Manzanares: to the top right shoulder; to the upper right chest; to the upper right arm; to the upper left chest; to the lower abdomen; and to the lower right thigh. This last entrance wound was to the back of the thigh and the exit wound was to the front right thigh. Dr. Frank opined that, assuming Mr. Manzanares was facing the officers, the bullet may have

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<sup>2</sup> Officer Nelson had also observed this handgun in Mr. Manzanares's back waistband.

<sup>3</sup> Many of the witnesses called this restaurant "Pupusas".

<sup>4</sup> This number is consistent with the number of spent cartridge casings located at the scene; investigators recovered 11.

entered the back part of the thigh as he was falling to the ground with his knees bent. Dr. Frank concluded that Mr. Manzanares's death was caused by multiple gunshot wounds.

### **STATEMENTS OF CIVILIAN WITNESSES**

Witness H.M. agreed to be interviewed the evening of the incident. He said that he was driving near the Domino's at the northwest corner of E. Colfax and N. Ulster. H.M. saw that there was a man in a nearby parked car, a white Mercedes. Both front doors were wide open. As H.M. passed the car, he saw that the man in the driver's seat was nervously looking around and holding a black gun in his right hand in his lap. He went inside the Domino's and informed the manager of what he had seen. H.M. did not see or hear any shots.

Civilian witness J.B. was the 911 caller. He agreed to be interviewed the evening of this incident. He stated that he was in the area of E. Colfax and N. Ulster when he heard a gunshot. He saw a man with a gun pointing it directly at the driver's side window of a white Mercedes. The man then made his way to the passenger side of that car and fired again. Afraid that this man had just shot someone, J.B. called 911. He remained on scene and watched as the man put the gun in his right-side waistband and then entered a nearby liquor store. The man stayed in the liquor store for some time then made his way eastbound on E. Colfax Ave. When asked to describe the gun, J.B. opined that it was a higher caliber weapon. J.B. added that the man appeared to be angry about something.

Witness D.B. was interviewed the evening of the incident. He said he was at the stop sign at E. Colfax and N. Ulster, facing north. He heard a shot, so D.B. looked across Colfax. He saw a man standing next to a white sedan. He was on the driver's side of the car and shot a "couple of shots." The man then walked around to the passenger side and fired several more shots. The man put his gun in his waistband, then saw D.B. looking at him, so the man lifted his shirt, displaying his gun at D.B. He made direct eye contact with D.B. D.B. thought to himself that he needed to leave the area. He "peeled out" onto eastbound E. Colfax, then turned left into a parking lot to go westbound on E. Colfax. D.B. saw that same male walking eastbound on E. Colfax and they made eye contact with each other again. D.B. then drove quickly past the man. D.B. said he was very afraid during this incident.

Witness F.B.-C. was interviewed the evening of this incident. He was at the restaurant where the officers discharged their weapons. He said that he was in the passenger seat of a car, with F.C. in the driver's seat. They were in the parking lot and about to get out of their car when he heard shouts and saw officers with guns drawn. They were giving a man verbal commands, which the man was ignoring. The man had a gun either in his pocket or in his waistband, on the man's right side. He saw the man gesture with his right hand as if he were throwing something. At that point, he heard gunshots at the same time that he ducked down. Because he had ducked down in the car, he did not see who shot. F.B.-C. expressed concern that the officers shot as he was afraid for the people in their line of fire. He said he heard eight to ten rounds then saw officers approach the man and render medical aid.

Witness F.C. was in the car with F.B.-C., sitting in the driver's seat. They had parked at the restaurant but F.B.-C. told her to stay in the car because there was a commotion going on outside

and to their left. She saw about six police officers giving commands to a man. They told him many times to put his hands up, but he did not. She saw the man reach with his right hand and pull something from his pocket. She saw the man throw that item, and immediately after, she heard about ten gunshots. She opined that the officers should not have shot him because he hadn't reached for a gun. After the shots were fired, she saw officers approach the man and render first aid. She saw them remove a gun from his person; this was the first time that she saw the gun. After the incident, an officer told her that her front driver's side tire had been shot.

Witness B.C. was interviewed the evening of this incident. She said that she had just finished working at the restaurant, Tacos Acapulco, and was leaving at the end of her shift. She was walking out the door and headed to her car when she heard "hands up!". She heard that command several times. When she heard this, she turned and saw that it was the police with guns drawn. She knew they were the police because of their patrol cars and their uniforms. They were engaging a man who was gesturing wildly with his hands as the officers spoke with him. He was being told to put his hands up, but he did not comply. She was afraid and she ran back into the restaurant to tell her co-workers that there were officers pointing their guns at someone. From inside the restaurant, she was able to watch the subsequent events from a surveillance camera and from a window. She was worried because the guns were pointed in the direction of the restaurant. She then heard eight to ten gunshots and she yelled at the occupants of the restaurant to get on the ground. She said these events unfolded very quickly. She did not see the actual shooting and did not see any weapons in the man's hands. After the shooting, she saw the officers approach the man on the ground, but she did not stay to watch, as she was looking for her brother who had been waiting for her outside.

Witness J.C. is B.C.'s brother. He also agreed to be interviewed the night of this incident. He stated that he was outside the restaurant in the parking lot when he saw officers yelling at someone. It seemed that they were telling him to put his hands up.<sup>5</sup> The man was arguing with the police. J.C. believed that the reason they were telling him to put his hands up was because the man had a firearm. He believed this because the officers were telling him to put his hands up, but he was not complying. The man moved his right hand to his right side and pulled something out; this is when officers shot at least four times. J.C. did not see what the man pulled out due to the angle from which J.C. was observing these events. He was walking to the restaurant when he heard the gunshots. He ducked and then saw the man on the ground. He did not see a firearm associated with that man.

Witness I.G. was interviewed the evening of the incident. He was at Tacos Acapulco in his truck waiting for his food to arrive. He was with his wife, C.M.-B., and parked about four spaces away from the incident. He saw two police cars arrive with officers who had their guns drawn. He saw that the person that they shot was gesturing with his hands then stepped back. When the man stepped back, I.G. was no longer able to see him because another car was blocking his view. He then saw officers shoot; he heard approximately six shots. He got out of his car and saw that the man was on the ground. The officers approached that man and rolled him on his side. They retrieved a first aid kit and removed the man's clothes to administer aid. I.G. did not see a firearm associated with this man. When the incident was over, I.G.'s wife was shivering, so officers called for an ambulance to assist her.

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<sup>5</sup> J.C. is primarily Spanish-speaking, but he understood that the officers were telling the man to put his hands up.

Witness C.M.-B. was likewise interviewed that evening. She stated that she was in the passenger seat in a truck with her husband during this incident. They were parked in the parking lot of the restaurant, having ordered their food and waiting for it to be brought to them. Her husband alerted her to the presence of police officers. They were contacting a young man who appeared to her to be drunk or under the influence of drugs. They were speaking to each other, but she did not make out what they were saying. The man was gesturing with his hands. She saw the man reach for something in his pocket. She believed it was a black plastic bag. He threw that item to the ground and then she heard eight to ten gunshots. She said that she never saw any weapons in the man's hands. Immediately after the shots were fired, the police approached him rapidly and cut off his shirt and pants and applied something white to his chest. She said that she was in shock in the moments after the shooting and did not process well what was happening.

Witness A.L. was interviewed the evening of this incident. He said that he was in his car at Colfax and Xenia, facing southbound at the intersection. He saw a group of officers draw their guns. They were shouting but he could not hear what they were saying. A.L. believed that he saw the other man with his hands up, but he was not sure because there was a lot of traffic blocking his view. He heard several gunshots. A.L. was curious about what had happened, so circled around and drove past the scene and saw the individual on the ground. Officers were "trying to help him out." He could hear the siren of an ambulance approaching and was impressed with the rapid response. He was about half a block away from the scene when he saw this. A.L. estimated that from the time that he first saw officers until he heard gunshots, about 40 seconds passed.

Witness K.L.-M. was interviewed several hours after this incident. She said that she was with her boyfriend and her three children, in the parking lot of the restaurant Tacos Acapulco. They were waiting for the food to come to their car. She saw a man walking and then saw police lights. She could hear police officers yell "stop!" numerous times. The man did not listen to those commands. The officers had their guns drawn so she told her children to duck down. She then heard gunshots but did not see who shot. She saw the man on the ground, bleeding, and she heard officers say that he had a pulse. She saw the officers pull a gun from that man, and an officer put that gun on one of the police cars.

The afternoon of the incident, witness A.A. was interviewed at the scene and at police headquarters. She said that she was driving eastbound with her family on E. Colfax Ave. when she was stuck behind a police car that had pulled up to a man on the sidewalk. The man had his hands up and had a "shooter" of liquor in his right hand. Officers had their guns pointed at him. She said she heard no verbal commands from officers. The man threw the shooter on the ground, and then about 10 seconds later, she heard roughly 12 shots. The man's body jerked, and he fell. Officers went up to him and they turned him over and handcuffed him, then rendered first aid. A.A. estimated that from the time that she pulled up until the shots were fired, about two minutes passed.

Witness S.S. was interviewed the evening of the incident. She said that she was in the back seat of a car with her mother, traveling on E. Colfax. Her aunt was also in the car. They were stopped behind a police car and had to change lanes. She saw officers engaged with a man who had something in his left hand that he threw to the ground. It appeared to her that it was a piece of trash. A second later, she saw two officers shoot and the man fell to the ground. S.S.'s mother,

who was driving, then pulled into the other lane and drove past. She said he had his hands up when he was shot by the police.<sup>6</sup> She said the entire incident was “really silent,” although her aunt told her that the officers had ordered the man to the ground. S.S. then saw the officers kneeling around him and it appeared to her that they were checking him for injuries.

Witness D. T. was interviewed the evening of the incident. He said he was in the Auto Zone parking lot across the street from the incident on the north side of Colfax Ave. when he saw a police officer pull up and park. Several officers in separate patrol cars arrived. An officer got out of his car and was standing in the “vee” of his open door. He had his gun drawn and then he heard about 12 shots in six groupings.<sup>7</sup> After the incident, D.T. saw the man on the ground and officers were giving him chest compressions. D.T. explained, “they tried to save that person’s life, from what I saw.” D.T. never saw the man prior to being shot. He did not hear any commands but acknowledged that he was not entirely focused on the incident prior to the shots being fired.

### OTHER EVIDENCE

All of the involved officers activated their body-worn cameras prior to encountering Mr. Manzanares. The videos are of very good quality and display the events as perceived by the officers. Additionally, there is surveillance video of good quality and from different angles.



*Figure 1. Four .45-caliber shell casings were recovered from the 1500 block of N. Ulster. Bullet strikes were noted on the car.*

<sup>6</sup> This is inconsistent with the video of the incident as well as the statements of other witnesses.

<sup>7</sup> The body-worn video shows that the shots were not individually grouped but rather a constant volley.



Figure 2. Still from surveillance video from nearby business.



Figure 3. A still from the HALO camera at Colfax and Yosemite shows the gun in Mr. Manzanares's waistband

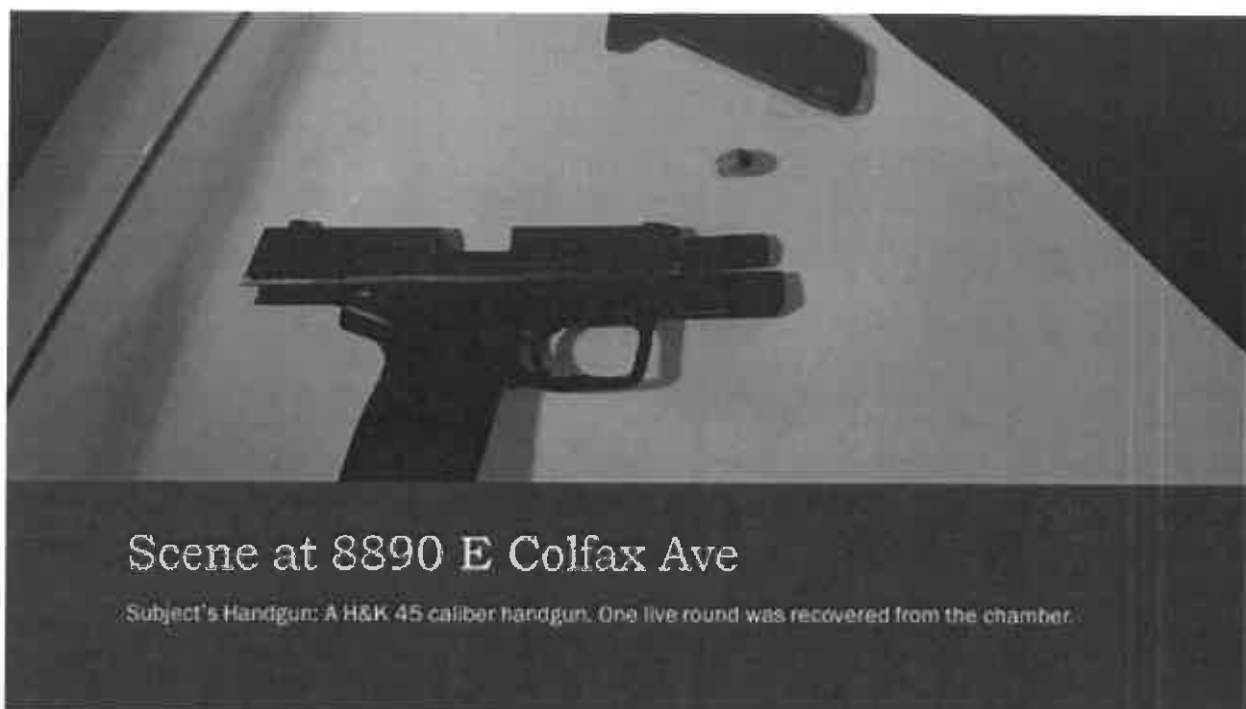


*Figure 4. Still from Officer Nelson's body worn camera*



*Figure 5. A still from Officer Abrams's body worn camera*





*Figure 6. Photo of handgun at scene*

The firearm recovered from Mr. Manzanares was placed into property. Additionally, four spent shell casings were recovered at the scene of the shots fired at the white Mercedes.

## **OFFICERS' STATEMENTS**

### **Officer Abrams**

Officer Christine Abrams was interviewed the evening of this incident. When asked whether she had reviewed any video prior to the interview, she said that she had not. When asked whether she had spoken with other witnesses prior to the interview, she likewise stated that she had not.

Officer Abrams stated that she was working a partner car with Officer Nelson. They heard over the air a call of a male shooting at a white Mercedes sedan. The suspect had left that scene and was walking eastbound on E. Colfax. Officer Chase went to the location of the shots fired; he confirmed to them that there were shell casings and bullet strikes in the white sedan.

Officers Abrams and Nelson made their way to Colfax and Yosemite and saw a man who matched the description of the shooter on the south side of E. Colfax. He was later identified as Duane Manzanares. Officer Abrams noted that he was staring at them and she observed that he was "sagging really hard on the right side" of his pants; "his pants were sagging really low." The officers were driving westbound on Colfax, and as they made a U-turn to contact Mr. Manzanares, he turned to look at them. With his twisting motion, the right side of his shirt lifted, and Officer Abrams saw a black gun on his right hip toward Mr. Manzanares's back, in his waistband. She specifically saw the handle and magazine of the gun, and she immediately

recognized it to be a real handgun. She reported that she told this to Officer Nelson, and she believed that she aired it to other officers.<sup>8</sup>

Officer Nelson pulled their patrol vehicle up to face Mr. Manzanares. Officer Abrams noted that Officers Bailey and Whiteman pulled up immediately after. After they exited their patrol cars, Officer Nelson issued verbal commands to Mr. Manzanares. Officer Abrams explained that she did not, because too many officers giving too many commands can confuse the situation. Mr. Manzanares “was flailing his arms around,” questioning why he was being contacted. Officer Abrams reported that one of the officers said “we know you have a gun. Put your hands on your head.” He replied, “oh if you know I have a gun, can I reach for it?” The officers replied “no. Do *not* reach for the gun. Put your hands up. Put your hands on your head.” Officer Abrams specified that he never put his hands up.

Officer Abrams then explained that she was facing almost completely to Mr. Manzanares’s left side. She could see his back. Mr. Manzanares had a bottle of Fireball whiskey in his right hand. She does not know what he did with that bottle because she was watching his left hand, which she perceived was reaching for the handgun: he moved his left hand to his waistband and behind his body, and officers then shot.

When asked how much time passed between Mr. Manzanares reaching behind him and when the shots were fired, she replied, “My *guess* would be that once his hand was completely covered from their point of view by his body is when they shot. But like I said from my angle, I don’t know how much of his body was covering his hand at the time, because from my angle I could still see his hand completely and ... So, I don’t know if his body ... but that would be my guess. The second his hand was gone, they couldn’t see it – it was behind the body – is when they shot.” It was her belief that the concealing of his hand is what caused the other officers to shoot.

When asked why she did not shoot, she said “from my angle and what my focus was, I was watching his left hand. I kind of like tunnel-visioned on it... And so from where *I* was, I could see that his hand wasn’t close to where I knew the gun to be... Had it been like two seconds and he kept moving his hand to the back, I would have.”

After the shots were fired, Mr. Manzanares was on the ground. One officer called for an ambulance. Officer Bailey recovered a trauma kit from his patrol vehicle. Officer Abrams put on gloves to take him into custody. She said that another officer secured his right arm and removed the gun from his right back hip. They then rendered first aid. She gave her tourniquet to Officer Whiteman, who applied it to Mr. Manzanares’s leg. Officers also placed a tourniquet on his upper arm. They applied gauze and pressure to the other wounds and waited for the ambulance to arrive.

When asked whether there were civilians in the area, Officer Abrams answered in the affirmative. Prior to the shooting, there was a man with a bicycle walking on the south side of Colfax toward Mr. Manzanares, and there were others on the street corner.

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<sup>8</sup> The computer aided dispatch records show that she did indeed air this information.

## Officer Bailey

Officer Bailey agreed to be interviewed on June 14, 2021. During this interview, he stated that he had not seen any video footage of the event, and he had not spoken with other witnesses about the incident.

He said that he was working with a partner, Officer Whiteman, that day. They were at the District 2 station when they heard a call of a man shooting into a car. Officer Bailey drove to the area, with Officer Whiteman in the passenger seat. They proceeded to the intersection of Colfax and Yosemite to look for the suspect, who had last been seen walking eastbound on E. Colfax. When the officers arrived at that intersection, they saw a man matching the description of the suspect who had been shooting into a car; that man was later identified as Duane Manzanares. He was walking eastbound on Colfax and was “very animated.” Officer Bailey described him as “looking dead at us. He’s kind of bowed up, acting a little erratic and like just staring right at us.”

Officer Bailey said that they were traveling westbound on Colfax, two or three cars behind Officers Nelson and Abrams, “and as we pass him, you can see a large handgun<sup>9</sup> in his back waistband and then his shirt is tucked into it so that the gun is fully exposed... So my partner makes sure that I see that as well, and you know, we kind of crosstalk on the fact that we see the gun.” Officer Bailey said that he saw Officers Nelson and Abrams make a U-turn and he followed them. They pulled up to Mr. Manzanares when he was in the driveway of the parking lot of Tacos Acapulco.

The four officers emerged from their patrol vehicles with guns drawn. Officer Bailey issued verbal commands, including an order to put his hands up, which Mr. Manzanares ignored. Instead, Officer Bailey saw that Mr. Manzanares had a liquor bottle in his right hand. Mr. Manzanares “pounded” that drink. Officer Bailey described what happened next:

*when he slams the drink, I saw his right elbow bend and his arm go directly behind his back. And so when – as his hand went to here [gesturing to his right waistband], that was the position that I had seen his handgun at, so at this motion right here, now he’s taking an offensive action. He’s going to retrieve his weapon. And I fully believed that either a) he was going to engage us, so I was worried for my life; or my bigger fear, honestly, is he was going to turn – we had that restaurant right behind us, it’s always full of people, and I was worried he was going to turn and start shooting either into that restaurant or that parking lot. So, I was more concerned for the safety of the citizens that were there.<sup>10</sup> And then it was at that point that I engaged him.*

Officer Bailey believed that he fired two shots, from 12 to 15 feet away. Within 10 to 15 seconds after the shots ended, officers approached Mr. Manzanares, who had fallen to the ground. They wanted to secure the weapon and render aid to Mr. Manzanares. Another officer recovered Mr. Manzanares’s handgun, and Officer Bailey used his feet to move the gun further away from Mr.

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<sup>9</sup> In a different portion of the interview, Officer Bailey described it as a “freaking hand cannon.”

<sup>10</sup> In a different part of the interview, Officer Bailey described the greater area as “always packed” with people.

Manzanares.<sup>11</sup> He said, “I cut his shirt off as Officer Whiteman is pulling his pants down trying to find wounds.” He retrieved a trauma kit from his patrol car and saw Officers Abrams and Whiteman place a tourniquet on Mr. Manzanares’s leg. Officer Bailey placed gauze on an abdominal wound until Officer Abrams took over applying pressure while Officer Bailey and Officer Nelson applied a tourniquet to Mr. Manzanares’s upper arm. Once the ambulance arrived, Officer Bailey made contact with the citizens in the area, ensuring that everyone was safe.

After the shooting, he separated himself from the other officers and sat in a patrol vehicle until he was transported downtown. The Denver Crime Lab personnel collected his weapon and he was segregated from all witnesses while at headquarters. When asked why he stopped shooting, Officer Bailey said he stopped when Mr. Manzanares was “no longer making an – he’s not reaching for the gun at that point”. When asked whether he announced his intention to shoot his weapon, Officer Bailey said, “I did not... I had tried to back off from giving verbal commands. Again, in my experience and training, sometimes you show up on scenes and we make it worse by everybody yelling.” Officer Bailey was asked whether he considered employing less lethal force. He replied that he did not, because Mr. Manzanares had a lethal weapon on him: “if the standoff had continued for a long period of time and he had not shown any intent to go with that and we had more cover officers come, then at that point it may be a time to deploy less lethal, but with four officers and then him with – with the lethal weapon, there was no call for that”.

### Officer Nelson

Officer Nelson was interviewed on June 14, 2021. Prior to this interview, he did not watch any video of the incident, nor did he speak with involved officers.

He stated that he and Officer Abrams were at the District 2 station when they heard a call that a man was shooting into a car at Colfax and Ulster. Officer Chase responded to that location and confirmed over the police radio that there were spent casings and multiple bullet holes in the car. A witness provided a description and direction of travel, which Officer Chase also communicated to other officers. Officer Nelson turned westbound on E. Colfax and saw a man matching the description on the south side of the street. This man was later identified as Mr. Manzanares. Because the man appeared to be the suspect, Officer Nelson made a U-turn on Colfax and drove up behind him. The man was looking over his shoulder toward the officers, and Officer Nelson saw “a firearm in the back of his jeans. His shirt was tucked into the butt of the gun, so it was completely visible to us that he did have a firearm back there.”. There was “no doubt” that it was a firearm. He “immediately recognized it to be the magazine and handle of a firearm.” Given the size of the butt of the gun, he could tell it was “pretty large.” Officer Abrams told Officer Nelson that he had a gun and he believed that Officer Abrams aired that information over police radio.

Officer Nelson pulled up and Officers Bailey and Whiteman pulled alongside of them. They had their guns drawn and were ordering him to put his hands in the air. Mr. Manzanares ignored all commands and was confrontational with them. During the encounter, Mr. Manzanares pulled out a small bottle of Fireball whiskey and drank it. Officers continued to order him to put his hands

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<sup>11</sup> He later secured this weapon on the hood of his vehicle after determining that there was a round in the chamber.

in the air. Officer Nelson described what happened next: “at one point he dropped his hand behind his back – his left hand... When I was driving up behind him, I saw that there was nothing else on his back, on the back of his person. So, to me, the only thing that he was reaching for with that left hand would have been that firearm. And I fired two shots.”

When asked why he discharged his weapon, he said, “when his left hand went out of my view, and driving up behind him and being able to see his whole back, the only thing I saw back there was that firearm. So, when he put his left hand behind him, I believed that this guy was going for that gun, and with his actions, and what he had done previously, he was a danger to myself, to my co-workers, and the citizens of Denver and Aurora just being down the street. That he’s already fired this gun in the past 10, 15 minutes.... When he put his hand behind his back, I believed that he was going to grab that firearm.”

After the shots, Mr. Manzanares fell to the ground. Officers moved forward and Officer Nelson removed the firearm from Mr. Manzanares. He placed the weapon on the ground next to him.<sup>12</sup> Officer Bailey retrieved a trauma kit from his patrol car, and Officer Nelson assisted with applying a tourniquet to Mr. Manzanares’s upper right arm at the shoulder. Additionally, he held a gauze pad to the chest wound, watched as other officers placed a tourniquet on Mr. Manzanares’s right leg. They continued to render aid as they waited for medics to arrive; they did so within about “a minute and a half,” according to Officer Nelson. Once Mr. Manzanares was placed into the ambulance, Officer Nelson was separated from the other officers and transported downtown to police headquarters, where he turned over his duty weapon to investigators.

When asked about his backdrop, Officer Nelson said that it was the wall of the restaurant; he did not see anyone there that would have been in his line of fire. He about 10 to 15 feet from Mr. Manzanares when he shot. He stopped firing because Mr. Manzanares fell backwards and “did not appear to be a threat anymore.” When asked whether Officer Nelson told Mr. Manzanares of his intent to discharge his weapon, Officer Nelson replied, “No. I did not. With how quickly it evolved and with his actions, there was never a safe time to try and tell him that.” He had not decided to fire his weapon until “that hand disappeared.” And then “it was too fast” to announce his intent. Likewise, Officer Nelson determined that using less lethal force was unsafe because Mr. Manzanares had shown that he was not afraid to fire his handgun only minutes before.

### **Officer Whiteman**

Officer Whiteman agreed to be interviewed on June 14, 2021. Prior to the interview, he did not watch any video footage, nor did he speak with the other involved officers.

Officer Whiteman stated that he was working with his partner, Officer Bailey, on the date of this incident. They were at the police station when they heard a call come out over the radio; a man was seen shooting into a white Mercedes then left the scene heading eastbound on E. Colfax. The two officers made their way to the intersection of Colfax and Yosemite and saw a man matching the suspect description on the south side of Colfax. Officer Whiteman said, “when he – when

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<sup>12</sup> Officer Nelson does not know who then retrieved the firearm from that scene. He later saw Officer Cao next to the firearm, which was on the hood of a patrol vehicle.

Officer Nelson and Abrams did a U-turn right there at Xenia Street, we did a U-turn behind them. And at that point in the turn, the subject – I could – his back was to us and I could plainly see a firearm in his – it was in his waistband over his right hip, closer to his – over his – his right buttock. The handle was sticking out. That’s what I saw. I remember it was a very thick handle.”

Officer Bailey parked their patrol vehicle next to that of Officers Nelson and Abrams. They got out of their patrol car with their guns drawn, approaching this suspect, later identified as Duane Manzanares. Officer Whiteman described Mr. Manzanares’s hands as “kind of flailing in several different ways down by his side. I made a mental note that due to where I had seen a firearm, I needed to watch that right hand, that right arm, because that’s where I had last seen the firearm.”

He saw Mr. Manzanares with a bottle of Fireball whiskey. Officer Whiteman ordered Mr. Manzanares to put his arms up in the air, a command Mr. Manzanares ignored. Officer Whiteman said: “I remember telling him ‘I see your gun. If you motion to that gun, I’m going to shoot you.’ And then I pled with him, you know, ‘keep your hands up. I don’t want to shoot you.’” When asked why he said this, Officer Whiteman said: “my intent is to kind of put everything out on the table. ‘I already know you have a gun. I don’t want you to reach for it.’ I’m – it’s – I’m hoping to discourage him from reaching for it. Letting him know, ‘hey we – we know that you have a gun. Don’t reach for it.’ It – I’m hoping to discourage him.” Officer Whiteman described that Mr. Manzanares “completely finished the bottle, and then with the bottle still in his hand, he kind of let his hand drop. The bottle fell out of his hand<sup>13</sup> and there was a distinct bend in his elbow. His – his right arm began to move up. And knowing that the gun was – was inches away, and that’s when I fired.”

Officer Whiteman could not recall how many times he fired. He estimated that he was 10 to 15 feet from Mr. Manzanares when he shot. When asked why he fired his weapon, he said, “knowing that gun is – is inches from him, I absolutely feared for myself and my officers. And at that time of day, Colfax is – is super busy with all this foot traffic.” When asked why he stopped firing he said “I observed him begin to fall... As he was falling, I didn’t feel the threat anymore when he hit the ground. I – I didn’t perceive a threat from him anymore.” After the shots were fired, he saw Mr. Manzanares on the ground: “our consensus was we need to render aid as soon as we could.” Officer Whiteman approached Mr. Manzanares and pulled down Mr. Manzanares’s pants to assess what aid needed to be administered. He applied a tourniquet to Mr. Manzanares’s leg. He placed gauze on a wound to the lower stomach and maintained pressure on that injury until the ambulance arrived, which was soon after; Mr. Manzanares was then transported to the hospital.

Officer Whiteman removed himself from the scene and was contacted by a sergeant who transported him downtown, where he turned over his weapon to the crime lab personnel. When asked why he did not attempt to deploy less lethal force, Officer Whiteman said he was aware that Mr. Manzanares had just fired a real weapon into the Mercedes, because other officers had confirmed the presence of shell casings and bullet fragments at that scene. “So that led me to believe that this subject had a legitimate real firearm and I didn’t think it a Taser was appropriate... It’s a deadly force encounter with a gun.”

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<sup>13</sup> The body worn video shows that this action was closer to a throwing motion than a dropping motion.

## 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 or defense of others 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.

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 states:

(1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of serious bodily injury or death to the peace officer or another person.

(2) When physical force is used, a peace officer shall:

- (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
- (b) Use only a degree of force consistent with the minimization of injury to others;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
- (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:

- (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
- (b) The suspect poses an immediate threat to the peace officer or another person;
- (c) The force employed does not create a substantial risk of injury to other persons.

(4) A peace officer shall identify himself or herself as a peace officer and give a clear verbal warning of his or her intent to use firearms or other deadly physical force, with sufficient time for the warning to be observed, unless to do so would unduly place peace officers at risk of injury or would create a risk of death or injury to other persons.

(4.5) Notwithstanding any other provision in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

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, beyond a reasonable doubt 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 these officers acted without lawful justification?**

After a thorough review of the evidence, I conclude that a jury would find that these officers had lawful justification to fire at Mr. Manzanares in defense of their fellow officers, members of the public and in self-defense, pursuant to C.R.S. § 18-1-704. Furthermore, it is my belief that the People cannot disprove beyond a reasonable doubt the circumstances outlined in C.R.S. §§ 18-1-707(4.5).

At the moment they discharged their firearms, the officers reasonably believed that they were in danger of being killed or receiving serious bodily injury. It was also reasonable for them to fear for the safety of citizens who were present at this busy intersection in the early evening. When they contacted Mr. Manzanares, they were aware that he had just discharged his firearm at a vehicle. This fact was confirmed at the scene of that shooting, the 1500 block of N. Ulster, by Officer Chase, who aired that he had located the Mercedes and that there were shell casings next to the car; he also observed bullet strikes in the vehicle. Furthermore, the four officers who initially observed Mr. Manzanares on E. Colfax saw that he had a large handgun tucked into the waistband on the right side of the back. They knew it was a real handgun because of the confirmed incident in the 1500 block of N. Ulster. They approached Mr. Manzanares and issued a simple command: to put his hands in the air. Officer Whiteman specifically told Mr. Manzanares that they knew he had a weapon and that he was not to reach for the gun. Officer Whiteman told Mr. Manzanares that he would shoot if Mr. Manzanares reached for the weapon. Instead of complying with these commands, Mr. Manzanares reached to the right side of his waistband. From the perspective of Officers Bailey, Nelson and Whiteman, he was reaching for the only item that was tucked in that waistband: the handgun. They reasonably believed that he was reaching for that weapon when they discharged their weapons. I therefore conclude that a jury would find that the actions taken by Officers Bailey, Nelson and Whiteman were reasonable and necessary in light of the totality of the circumstances and that we cannot disprove the circumstances in C.R.S. § 18-1-704 and C.R.S. § 18-1-707(4.5) beyond a reasonable doubt to a unanimous jury.

I further find that the officers complied with the requirements of C.R.S. § 18-1-707. They were clearly identifiable as law enforcement officers. Indeed, not only did every civilian witness state that they knew these were police officers due to their uniforms and marked patrol vehicles, but Mr. Manzanares specifically challenged why he was being stopped by police. Although not every officer announced their intent to shoot, Mr. Manzanares was warned not to reach for the



handgun, or they would deploy their weapons. Although the front tire of one vehicle was struck by gunfire, the officers' actions did not injure any nearby citizens. Finally, officers immediately rendered medical aid to Mr. Manzanares, which unfortunately was not successful. Finally, it is not reasonable to expect that, under these circumstances, these officers deploy less lethal force. They believed they were facing the imminent use of lethal force by Mr. Manzanares and thus were justified in using lethal force in response to that threat. Finally, Mr. Manzanares's family was notified within a reasonable amount of time, within hours of his identification at the postmortem.

The Supreme Court of the United States 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, Officers Bailey, Nelson and Whiteman were forced to make split-second assessments of their situation, and their decision to shoot Mr. Manzanares in self-defense and in defense of others was justified pursuant to Colorado law at C.R.S. §§ 18-1-704 and 707.

Sincerely,



Beth McCann  
Denver District Attorney

cc: Deputy Chief Barb Archer; Division Chief Joe Montoya; Commander Matt Clark; Lieutenant Joe Bell; Detective Adam Golden; Detective Neil Baker; Officer Samuel Bailey; Officer Ryan Nelson; Officer Steven Whiteman; John Davis, Esq., Attorney for Officers; Denver City Attorney Kristin Bronson; and Interim Director of the Office of Independent Monitor Gregg Crittenden.