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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 Adam Martinez, DOB 08/12/1983, in which Denver Police Officers Ismael Lopez (badge number 13079), Vincent Vasquez (badge number 14095), and John Allred (badge number 16022), fired shots on October 21, 2019, in the area of W. 8th Avenue under I-25 in Denver, Colorado.

Dear Chief Pazen,

The investigation and legal analysis of the shooting of Adam Martinez, in which shots were fired by Denver Police Officers Ismael Lopez, Vincent Vasquez, and John Allred, 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 October 21, 2019, Officers Ana Munoz and Duane Parton responded to the car wash located at 6th and Santa Fe after a citizen reported an attempted carjacking at knifepoint.¹ As Officer Munoz arrived in the area of the 600 block of Kalamath, she saw Officer Parton walking behind the suspect. Officer Munoz got out of her patrol vehicle to help contact the suspect, later identified as Adam Martinez. At that time, Mr. Martinez began rapidly to approach Officer

¹ Victim A.M. reported to the police that he was cleaning the passenger side of his car when Mr. Martinez entered the driver's side and demanded the victim's keys. He was holding a box-cutter knife. The victim was able to escape with the keys, and ultimately the carjacking was unsuccessful.

Munoz; he was drinking from a small bottle of alcohol and saying something to the effect of “that gun is mine.” At about this same moment, Officer Parton deployed his Taser, but it does not seem to have had an effect on Mr. Martinez, who jumped into Officer Munoz’s car. Officer Munoz then felt for her belt buckle, where she usually keeps her patrol vehicle’s keys, and realized that the keys were still in the car. According to Officer Munoz, Mr. Martinez drove directly at Officer Parton, then left the area, heading westbound on 6th Avenue. Officer Munoz advised over the radio that her patrol vehicle had been stolen and that her department-issued AR-15 rifle, which she carries only with the safety on,² was in the front passenger seat of the vehicle. The AR-15 was in a soft case, which contained three magazines, each carrying thirty rounds of ammunition.



Surveillance footage of Mr. Martinez as he begins his attempt to carjack the victim at the car wash at 6th and Santa Fe.

Mr. Martinez drove the stolen patrol vehicle on 6th Avenue from Kalamath to Federal Blvd., where he stopped at the top of the on-ramp from 6th Avenue to Federal. Officers Wesley Keelan and Vincent Vasquez were at that intersection preventing civilian traffic from entering the area while the incident was active. Officer Keelan saw the stolen patrol vehicle on the on-ramp from 6th Avenue to Federal. Officer Keelan noted that the lights of the patrol vehicle were on, and that the driver pointed an AR-15 rifle at him through the driver’s side window. There is HALO video evidence which shows Officer Keelan reacting when he saw the rifle by moving back behind his car and then getting in his car to give chase. Mr. Martinez then drove northbound on Federal

² When the safety is on, the AR is not ready to fire. The safety physically must be switched to “fire” in order to discharge its rounds.

from 6th Avenue. Officer Keelan followed the stolen patrol vehicle, as did an RTD security vehicle driven by Officer Ismael Lopez.

There were two civilian drivers who later gave statements to the police. One woman was in the far right lane on the ramp leading from 6th Avenue to Federal. She stated there was a police car (actually driven by Adam Martinez) with lights on “frantically” trying to get past her car. She was stuck in traffic and could not get out of the way. He ultimately pulled past the cars by driving on the shoulder and she noticed he was not wearing a uniform which struck her as odd. She saw him pull a rifle out, wave it around and point it southbound (where officers Vasquez and Lopez were controlling traffic). Another lay witness describes seeing a rifle being waved around although she thought the man was outside of the police car.

Mr. Martinez turned from Federal onto 8th Avenue, now headed eastbound. At this time, Officer Keelan received orders to “PIT”³ the stolen patrol car. He made a first attempt to “PIT” the vehicle, which failed. During that first attempt, Officer Keelan could see something moving in the window and believed it was the rifle he had seen in Mr. Martinez’s hands minutes before. Officer Keelan attempted another “PIT” maneuver, which again failed. Officer Keelan could again see what he believed to be the rifle moving in the window of the stolen car. Near Zuni St., Officer Keelan was able to successfully “PIT” the police car being driven by Mr. Martinez. As a result of that successful PIT maneuver, Officer Keelan’s vehicle ended up facing somewhat north. The stolen patrol car driven by Mr. Martinez faced somewhat west. Both patrol cars were very close to each other, and Officer Keelan was pinned in his car, so he emerged from it through the passenger-side window just as he heard shots fired. He took cover until he determined it was safe to emerge; by that time, Mr. Martinez had been pulled out of the stolen car and the AR-15 rifle was moved to a safe location away from the reach of Mr. Martinez. He remained on scene while paramedics arrived to treat Mr. Martinez. Unfortunately, they pronounced him deceased at the scene. Officer Keelan remained with sergeants at the scene until he was transported to police headquarters, where he provided an interview. Officer Keelan did not fire his weapon during this incident.

Officer Vincent Vasquez was not far from 6th and Federal when he heard on the police radio that a patrol vehicle had been stolen and was headed westbound on 6th Avenue. At the intersection at Federal, Officer Vasquez assisted Officer Keelan with blocking traffic. He then became aware that a patrol vehicle had exited 6th Avenue and was stopped at Federal Blvd. Initially, Officer Vasquez believed that this was another officer controlling traffic at the intersection. However, when he saw the driver raise an AR-15 rifle, he realized that this was the stolen police vehicle. He watched as the driver, Mr. Martinez, aimed the rifle at both himself and Officer Keelan. Officer Vasquez, at this time, was himself armed with his department-issued AR rifle. He aimed it at Mr. Martinez but did not shoot due to safety concerns; the shot involved approximately 75 yards, and there was a significant civilian presence surrounding the scene.

Instead, Officer Vasquez took cover, then ran for his own patrol vehicle. He drove northbound on Federal, following the stolen police car. He was the fourth or fifth car in the pursuit when he

³ A PIT, or Precision Immobilization Technique, maneuver is used by police to stop a moving car by making contact with the rear bumper of a vehicle. A successful PIT maneuver often results in the suspect vehicle being boxed in by police cars.

saw another officer "PIT" the stolen car. Officer Vasquez stopped his car and ran toward the stolen vehicle. He saw the driver of the stolen vehicle holding the AR rifle, waving it around and pointing it at the officers who were approaching the car. Nearly simultaneously with other officers, Officer Vasquez shot at Mr. Martinez, who was still holding the rifle. He fired 8 rounds and stopped when he saw that Mr. Martinez was slumped in the seat of the stolen car. While Mr. Martinez was still holding the rifle in his lap, Officer Vasquez stopped firing because he determined that Mr. Martinez was no longer an immediate threat. One officer grabbed for Mr. Martinez's AR while Officer Vasquez and another officer pulled Mr. Martinez out of the stolen car and handcuffed him for officer safety. Officer Vasquez was then sequestered from other officers until he provided a statement at Denver Police headquarters three days later.

At the time of the theft of the patrol vehicle, Officer Lopez was working off-duty for the Regional Transportation District (RTD) in a uniform capacity. He was driving a Ford Explorer marked with the words "Transit Police"; the car also had emergency equipment and clearly appeared to be a vehicle associated with law enforcement. He was wearing a Denver police uniform. At the time of the theft of the patrol vehicle, Officer Lopez was at 19th and Federal. When he heard that the stolen car was at the intersection of 6th and Federal, he traveled southbound with the intent to control traffic while other officers took the suspect into custody. As he did so, he encountered the stolen police car, which was driving northbound; he made eye contact with the driver of that car, noted that the driver was not in uniform, and concluded that this was the suspect who had stolen the patrol car.

Officer Lopez turned left onto 8th Avenue to follow the stolen car, and observed another officer attempt several PIT maneuvers. During these moments, Officer Lopez saw the suspect stick a rifle out of the window and point it in the direction of the pursuing police vehicles. He aired this information over the police radio. As soon as Officer Keelan successfully "pitted" the stolen police car, Officer Lopez drove his own car forward, blocking the vehicle Mr. Martinez was driving to prevent him from fleeing. Officer Lopez jumped from his car and approached the suspect's passenger side while yelling at him to show his hands. Officer Lopez watched as Mr. Martinez raised the AR to his left, towards other approaching police officers. In response to that threat, Officer Lopez fired his handgun at Mr. Martinez. He fired 16 rounds through the passenger side window and into the passenger compartment of the stolen police car. He heard other shots being fired from nearby. He stopped shooting when he saw that the rifle had fallen out of Mr. Martinez's hands. As other officers approached the driver's side, Officer Lopez opened the passenger side door, reached over and placed the vehicle in park and removed the keys. Other officers removed the rifle and Mr. Martinez from the car. As soon as the scene was made safe, Officer Lopez was sequestered from other officers until he gave his formal interview at the Denver police headquarters.

Officer Allred was not in the immediate vicinity of the attempted carjacking, but he heard that information air over the police radio. When he learned that the stolen car was headed westbound on 6th Avenue, however, he traveled to that intersection to control civilian traffic. While at the intersection, he saw a patrol vehicle stopped. Because it was being driven by a person in a white shirt, Officer Allred deduced that this driver was not in fact a police officer. The driver was holding an AR-15. When Officer Allred observed this, he ran to his patrol vehicle to pursue the suspect. He was the third or fourth patrol car in the pursuit when the stolen car turned right

(eastbound) onto 8th Avenue. He saw attempts to PIT the stolen police car, and when he saw a successful PIT maneuver, Officer Allred jumped out of his car and ran toward the suspect vehicle. He saw that the officer who “pitted” the stolen car was pinned with his driver’s side door blocked. At the same time, he saw Mr. Martinez lift up an AR. Officer Allred was concerned that the officer who was pinned in his patrol car was in harm’s way. He was also afraid for his own life and the lives of other officers who were approaching that stolen police car. At that time, he discharged his weapon 13 times. He stopped firing when he saw Mr. Martinez collapse inside the stolen car. At gunpoint, Officer Allred ran to the driver’s side door and grabbed the AR that was in Mr. Martinez’s hands and lap. For officer safety, he threw the rifle approximately ten feet from the driver’s side door of the stolen police car. He was then immediately contacted by a police sergeant, who segregated Officer Allred from all other officers. Officer Allred was taken downtown to police headquarters where he agreed to make a statement.

Homicide detectives from the Denver and Aurora Police Departments, as well as members of the Denver District Attorney’s Office, were called out to conduct this investigation. Detectives located Officer Munoz’s AR magazine, loaded with thirty cartridges, under the driver’s pedals of the stolen police car. Since this is not where Officer Munoz stored her magazines, one can deduce that Mr. Martinez had retrieved the magazine from the case where the AR was kept. Additionally, an investigator with the coroner’s office located a box cutter knife in Mr. Martinez’s right front jeans pocket. Forensic testing revealed the presence of Mr. Martinez’s DNA on the rifle.



The AR-15 rifle recovered at the scene of the shooting. The safety is in the “fire” position,” suggesting that Mr. Martinez made the rifle ready to fire.



A closer view of the safety of the AR-15.



Officer Munoz's magazine under the pedals of the stolen police car.



The knife recovered from Mr. Martinez's pocket. This box cutter corroborates the statement by the victim of the attempted carjacking.

Chief Medical Examiner Dr. James Caruso, along with a pathology fellow, conducted the autopsy of Adam Martinez. The pathologists concluded that Mr. Martinez sustained 15 gunshot wounds, which were located on the head, neck, arm, chest, back, torso. Dr. Caruso concluded that Mr. Martinez died as a result of multiple gunshot wounds. Toxicological testing revealed the presence of methamphetamine, amphetamine and alcohol in Mr. Martinez's blood.

OFFICERS' STATEMENTS

As stated before, the three officers who discharged their weapons consented to be interviewed by homicide detectives. Each of them stated that, as they approached the stolen police car after it had been "pitted," they knew that the driver was armed with an AR-15. Officers Vasquez and Allred had seen Mr. Martinez point the rifle out of his window when he was stopped at 6th and Federal. Officer Lopez had seen the driver of the stolen police car display the rifle while they were traveling eastbound on 8th Avenue. Each of the officers stated that they feared for their own safety as well as the safety of others when they discharged their weapons. They each stated that this incident unfolded very quickly.

Officer Vasquez stated that as he ran toward the stolen vehicle and saw the AR in Mr. Martinez's hands:

My thoughts at this point, and it all stemmed from on – when I was on top of the bridge [at 6th and Federal]: he had pointed the AR to me, and in my mind, I was wondering why he didn't fire at me, or my partner, or anybody that was parked up there – and when he took off. And, of course, when the PIT happened, in my mind, I didn't want him to – you know, fire at my partners. So at this time, I am trying to protect my partners, of course, a third person, if we're seeing some ... because he was – I couldn't make out if he was pointing it at me or not but, of course, but my partners is what I was worried about at this time.

Officer Lopez stated:

I saw him raise the rifle towards the left side where the other police officers were. At that point, I fired my duty weapon at the suspect... I thought he was going to kill somebody, so I fired my duty weapon.... I was afraid that he was going to shoot somebody with that rifle.

Officer Allred said:

I think probably twenty yards from the car, I see [Mr. Martinez] grab an AR-15. And he leveled it. And at that point, I had produced my gun and I fired on him. I, you know, I thought – my main thought was I – I'm pretty sure at that point it was Keelan that – that pitted him, and he [Keelan] was right there next to him. And I thought he's going to – he's point-blank with Officer Keelan, and he's drew down with an AR-15. And in fear for my – one of my good friend's lives and fear for the other officers' lives and my life, I fired on him until he – I could – until he was no longer a threat.

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.

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
- (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)
- (c) 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...
 - (II) 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 Officers Lopez, Vasquez, and Allred 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. Martinez in self-defense and in defense of their fellow officers. Furthermore, Mr. Martinez was wanted not only for the theft of the Denver police vehicle, but also for an attempted carjacking of a civilian at knifepoint – a felony involving the use of a

deadly weapon. At the moment that Mr. Martinez attempted to rob A.M. with a knife, officers had ample probable cause to arrest him, and were legally justified in using deadly physical force to attempt to effect that arrest.

In addition, the three officers had actual knowledge that Mr. Martinez was armed with an AR-15 rifle at the moment the stolen vehicle was "pitted". When the stolen patrol vehicle came to a stop, each of the three officers saw Mr. Martinez level the weapon and point it in the direction of oncoming police officers. Officer Keelan was pinned inside his own patrol vehicle at that time (he got out of the passenger side after he heard shots fired), and Officer Allred was specifically concerned that Mr. Martinez could shoot Officer Keelan at point-blank range. When faced with this lethal threat, each officer reasonably believed that no lesser amount of force could be used to defend himself or his fellow officers.

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 (9th 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, Officers Lopez, Vasquez and Allred were forced to make split-second judgments, and their decision to shoot Mr. Martinez in self-defense and in defense of others was justified under Colorado law.

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: Deputy Chief Barb Archer; Commander Mark Chuck, Major Crimes; Commander Jeff Martinez District 1; Lieutenant Matthew Clark, Major Crimes; Sgt. Scott Murphy; Sgt. Brock Ellerman; Sgt. Scott Hagan; Detective Lou Estrada; Detective Joey Trujillo; John Davis, attorney for Officers Lopez, Vasquez & Allred; Officer Ismael Lopez; Officer Vincent Vasquez; Officer John Allred; Kristin Bronson, City Attorney, and Nicholas E. Mitchell, Office of the Independent Monitor.