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PUBLIC STATEMENT OF THE MANAGER OF SAFETY REGARDING AN OFFICER INVOLVED SHOOTING BY OFFICER MICHAEL OESTMANN AND TECHNICIAN CHRISTOPHER WILCOX RESULTING IN THE DEATH OF HECTOR ESPARZA ON JULY 2, 2009

I. FACTUAL SYNOPSIS

On July 2, 2009, Hector Esparza was four days away from his 26th birthday. It was a birthday which he had told his girlfriend and his brother would be his last day alive. Just two weeks before, on June 16, 2009, Mr. Esparza had tried to commit suicide by overdosing on numerous prescription medications. These medications were prescribed to treat multiple mental health issues, including bi-polar disorder and depression. On that day Mr. Esparza's sister, GG[1], became concerned because her brother did not answer the phone. Her decision to call Denver 911 resulted in the discovery of Hector Esparza before he died from an overdose and, ultimately, prevented him from carrying out his suicidal intention[2]. Members of the Denver Police Department and Denver Health paramedics, responded to the emergency call, located Mr. Esparza and transported him to the hospital, thus saving his life. Mr. Esparza's family reported that he had also previously attempted to commit suicide by hanging.

According to Mr. Esparza's family, he had experienced significant mental problems since his youth – in part, they believed, because of his history of "huffing" [3] for three years when he was a teenager. He also, according to some family members, had problems with authority, didn't like the police and had said in the past that he was going to "fuck up" the police. By July 2, 2009, Hector Esparza had compiled an extensive criminal history. Family members also reported that Hector was experiencing significant depression resulting from his inability to find a job because of his felony convictions and mental issues and because of financial pressure from the mother of his two children, MW, from whom he was separated.

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[1] For the purposes of this public statement, civilian witnesses are identified by initials only. The full identities of these witnesses are contained in the Denver Police Department files related to this case.

[2] Although Mr. Esparza's family and friends suggest that GG was on scene and found her brother after he ingested the pills, law enforcement records establish that GG was not physically present before her brother was found by the police. GG had called police to request a welfare check on Mr. Esparza because he was suicidal and she could not reach him by telephone. GG confirmed with the police that she was not on scene.

[3] As described by the National Drug Intelligence Center, abusers who engage in "huffing" inhale chemical vapors from a variety of substances, many of which are common household products. Chronic inhalant abuse or "huffing" can result in irreversible damage to the user's brain which can cause personality changes and diminished cognitive function, among other harmful effects.

In the early evening hours of July 2, 2009, Mr. Esparza's mother, AE, was home on a break between the two jobs which she worked to support her family. When she arrived home, at approximately 6:00 p.m., Hector Esparza told his mother that he was not feeling well, that he was dizzy. He also said that he had taken six pills that morning but had not eaten. AE's husband NM understood Hector to say that he took six pills of each of his many medications. AE said Hector was visibly shaking, and seemed "excited" - like "his mind wasn't right". She made him a milkshake with bananas to calm him down. A short time later Hector told his mother he was going to drive over to see his girlfriend. When AE told her son that she was afraid he would get into an accident, Hector told her, "I don't care, I don't want to live." Hector then said, "Mommy, I love you," got up and took a shower. Around 8:00 p.m. Hector's mother and her husband, NM, left for her second job, but before they did, Hector said that he felt better.

Around 8:30 p.m., Hector's brother, BG, who also lived in AE's home, came home from work. BG said that Hector had also been talking about killing himself and saying that he would not be around for his birthday on July 6th. When BG arrived home, Hector was there and "looked like he had been crying". Hector told BG that he didn't feel right. BG thought that Hector may have been having hallucinations. Hector needed to go pick up his girlfriend, JT, and JT's daughter because Hector had JT's car. Like his mother, BG did not think Hector should drive in his condition so BG drove. It was about 9:00 p.m. when they left. Once they had given her back her car, JT took Hector, and his brother, BG, right back to their mother's home at 4503 Fillmore Street. JT explained that Hector "was being mean".

After getting off work from her second job, Hector's mother, AE, and her husband, NM, returned to the residence at 4503 Fillmore Street. It was close to 11:00 in the evening. Hector was watching television and told his mother he felt better. He then asked his stepfather, NM, to use his cell phone. NM gave Hector his phone, then NM and Hector's mother went upstairs to bed[4]. It was about this time that JT began getting phone calls from Hector. As she explained it:

> So next thing I knew is Hector was calling me, telling me crazy things. It felt as if I was talking to someone else. He just kept saying he's going to die. To stop calling him. Then he was telling me to go fuck off. ...
>
> ...he called me saying he was going to die. I asked him why and Hector replied, "because I am going to have a shoot out with the police". I kept calling him to talk but he just kept saying, "Fuck you bitch, I am going to die."
>
> [At one point, Hector said] ..."Not to worry" then Hector said, "I see you outside" and I was not there yet. He had taken a lot of pills as he told me. I don't know the names but he took too many and he could not think right.[5]

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[4] In his videotaped statement, NM asserted that Mr. Esparza did not ask for the cell phone until after NM and AE were asleep in bed. Rather, NM thought that Mr. Esparza got the cell phone from him after midnight when Mr. Esparza came into their bedroom for the first time and turned on the lights while AE and NM were sleeping. The evidence described above and the reasonable inferences that can be drawn from it suggest that AE's explanation is the more likely. Regardless, both NM and AE are certain that Mr. Esparza borrowed NM's cell phone and came into their bedroom on two separate occasions in the early morning hours of July 2, 2009.

[5] Grammatical and spelling corrections made for readability.

JT said that her cell phone showed that the first of these calls from Hector came at 10:45 p.m. followed by others at 11:16 p.m., 12:58 a.m. and then at 1:07 a.m. she received a final call from Hector.

In the midst of these calls to JT, at about midnight, Hector came into his mother's bedroom and turned on the lights. Hector was exclaiming that "a lot of people [were] shining lights into the room at him". When AE tried to calm him and tell him it was just his imagination, Hector pushed the screen out of her window to show her the people. AE looked out as Hector asked but there was no one there. Hector then told her that "Someone wants to kill me" and went back downstairs.

Within half an hour, Hector came back into the bedroom where AE and NM were trying to sleep. Hector now held a gun which he pointed at them and then pointed "all over". Hector kept saying that people wanted to kill him. Hector said, "Look at all these lights around the house. People are looking for me." AE told Hector that the lights were in his mind. Hector insisted that the lights were there and that his mother just couldn't see them. Hector pointed the gun at AE and NM again and said, "I don't need to live."

NM got out of bed and Hector immediately reacted. He said, "I'll kill everyone," pointed the gun around the room and hit NM, his stepfather, in the face with the gun. AE begged, "Hector, don't do it, don't do it Son" as she yelled to her husband to leave the room. NM ran, bleeding, to wake BG in the next room. NM told BG to get out of the house and call the police.

Back in AE's bedroom, Hector's mother got out of bed. She grabbed her son by the waist hoping to calm him down. Their struggle carried them into the hall where Hector pushed the screen out of the hall window. Saying, "I'll kill myself, I'll throw myself out the window," Hector tried to jump out. AE squeezed him around the waist and he dropped the gun. She tried to get the gun but Hector got it back. He pointed the gun at AE again and she said, "Kill me if you want, it's okay." Hector held the gun to his head two times and said, "I'm going to kill myself. I don't want to live anymore."

From the next room, BG saw his mother holding Hector in the hallway and heard Hector say something like, "I don't give a fuck, I'm going to die tonight." BG then jumped out the second floor window and went to AB's house across the street to call the police.

After getting the gun back, threatening AE and holding the gun to his own head, Hector went back into his mother's bedroom and slammed the door shut. Still in her nightgown, AE fled down the stairs and outside. There she found her husband, NM. Hector still had NM's cell phone. While they were waiting outside for the police to arrive, AE heard what she thought were two shots and told NM that she believed that Hector had either killed himself or shot at the police.

It was at 1:07 a.m. that Hector Esparza's girlfriend, JT, received her last phone call from him. In describing how Hector was "talking crazy", JT said Hector was saying:

> Just that he's going to die. That he's not going to make it to turn 26. That the cops are here and "I ain't going to jail. I am ready to die." That he's going to have a shoot out with them.

This was the situation to which Denver Police officers were responding when, at 1:23 a.m., Denver 911 received the call on this family disturbance. The initial call reported only that a man had his nose split open and was bleeding. As officers were being dispatched to the scene, they received limited additional information including that the suspect, Hector Esparza, was the stepson of the victim, NM, and that Hector was "suicidal and known to be violent with the police".

When the call was aired by Police Dispatchers, the first officer to respond was Officer Michael Oestmann. Officer Oestmann was a four year patrol officer assigned to District 2 who was working in uniform in a marked patrol car. As he arrived, Officer Oestmann saw the small cluster of people standing on the sidewalk outside of the house. He contacted Hector Esparza's mother, AE, who was still in her nightgown. AE was standing with a man who had a cut nose and blood on his white shirt. Although AE could understand English, she was speaking in Spanish. Nonetheless, AE was able to communicate to Officer Oestmann that the party involved, her son, Hector Esparza, was "acting crazy" and that he had run in the house saying someone was chasing him but that "nobody was". AE informed the officer that her son was on a lot of psychiatric medicines. She relayed to Officer Oestmann that Esparza had a gun and that she had seen the gun. She also stated that she heard that the gun was a "fake", but she wasn't sure and that it looked real.

Because there was no available cover car for Officer Oestmann and because police dispatchers had advised all personnel that this particular call required a two officer response, Sergeant Mark Beveridge went directly to the scene. Sergeant Beveridge responded both as a cover officer for Officer Oestmann and as the on scene supervisor. Riding with Sergeant Beveridge was Sergeant Glenn West who is bilingual. When the two sergeants arrived at 4503 Fillmore Street, Sergeant West immediately began assisting in the effort to gather information from Hector Esparza's mother, AE. Sergeant West confirmed that Hector had claimed people were after him; that he had a gun which she was told was a "fake" but which she believed was real; that Hector had assaulted her husband; that he was on lots of medications; and, that he had been in trouble with the police before because of "small problems" resulting from his mental condition. Sergeant West also learned which room Hector was in, that he did not have any access to the rest of the house from his location and that there was no one else in the house with Hector. The officers also learned that Mr. Esparza was fluent in English and Spanish, but spoke English.

Sergeant Beveridge moved the group of civilians and police personnel away from the window of the room in which Hector Esparza was located. He assigned other police officers who had arrived to watch the window and the back of house. Sergeant Beveridge then created an entry team consisting of himself, Officer Oestmann and Technician Christopher Wilcox, who had also arrived on scene. Both Officer Oestmann and Technician Wilcox were trained in crisis intervention tactics. That training focuses on understanding mental illness and developmental disabilities and how to de-escalate someone who is in crisis. The officers hoped to establish a line of communication with Hector Esparza, de-escalate the situation and get him help.

Sergeant Beveridge determined that there were two less lethal use of force options that may work to de-escalate and contain the situation. One of the options was the Pepper Ball Deployment System or Pepper Ball gun, which shoots balls that disintegrate on impact and release an oleoresin capsicum (OC) solution derived from capsicum peppers. This OC solution causes a painful inflammatory and burning reaction to the eyes, nose and throat to the point of incapacitation. Pepper Ball guns have a longer range than a TASER. They

create an impact effect that, like the OC effect is painful and incapacitating, but rarely fatal. However, the Pepper Ball gun for the shift had been assigned to a different officer and was unavailable. The other less lethal option Sergeant Beveridge considered was a TASER. A "TASER" is a pistol-shaped weapon that fires two charged wires over short distances – up to twenty-one feet. When an individual is struck by both probes, the electrical charge temporarily immobilizes the individual. Technician Wilcox carried his TASER with him and was assigned by Sergeant Beveridge to take the lead position on entry. Sergeant Beveridge and Officer Oestmann would provide lethal cover for the TASER used by Technician Wilcox and would make the entry with their guns drawn, in case Mr. Esparza escalated the confrontation. Sergeant West and Officer Jeremy Cain were positioned outside where they could cover the window of the south bedroom where Mr. Esparza was located and the back of the house.

Technician Wilcox, Officer Oestmann and Sergeant Beveridge knocked on the front door of the residence. Before entering the house, the officers announced themselves, saying repeatedly, "Denver Police. Hector, we need you to come out and talk to us. Keep your hands where we can see them." There was no response. The officers "cleared" the first floor by going from room to room and checking to ensure that no one else was in the house. Directly across from the front door, a narrow stairway went up to the second floor. As they were going upstairs, the officers were constantly calling, "Hector, Hector", repeating their announcement, "Denver Police!" and telling Hector that he "was not in trouble", they "just wanted to talk" to him.

Halfway up the stairs was a small landing from which additional stairs went up to the second floor. The three officers continued up to the second floor. Three doors opened into a small hallway. Two of the three doors were open. The door to the south bedroom was closed. Officer Cain, who was outside, advised them that a party in the south bedroom on the second floor had looked out of the window. Technician Wilcox cleared the other two second floor bedrooms. Both officers took positions next to the door of the south bedroom in which Mr. Esparza was located. Technician Wilcox was right next to the door on the east side and Officer Oestmann was within inches of the door on the west side. Sergeant Beveridge stood back to cover them. Technician Wilcox said, "Hector, Denver Police, I need you to come out and show us your hands." He tried to open the door but was met with resistance such that the door only opened a few inches. When the door opened, Officer Oestmann saw in the bedroom mirror, the reflection of a man, later confirmed to be Hector Esparza, inside the room. Mr. Esparza was standing with his arms together, pointed downwards, as if in a two-handed grip. Officer Oestmann told Technician Wilcox and Sergeant Beveridge, "It looks like he's holding a gun." Hector Esparza then spoke to the officers for the first time, saying, "Leave me alone or I'll shoot you" and "I'm going to shoot you."

Technician Wilcox immediately moved into the east bedroom for better cover. It was at this point, in the face of a direct threat of deadly force from a suspect known to have a gun, that Technician Wilcox transitioned from his less lethal TASER to his handgun.

Mr. Esparza's threat initiated the retreat of the officers to the cover of the stairwell. The officers continued to try to communicate with Esparza. However, Esparza continued to tell the officers to "go away". Officer Oestmann and Technician Wilcox took positions on the landing between floors and Sergeant Beveridge moved further down the stairs, making only his head visible from the door where Esparza was located.

The armed suspect, Mr. Esparza, was now confirmed to be alone. He was contained in a single, identifiable location in the home. Sergeant Beveridge determined that containment, with continued attempts at communication and negotiation, would be the best operational approach. To that end, as is required in all such situations, Sergeant Beveridge called the Denver Police Department's Metro SWAT team to respond. Sergeant Beveridge went downstairs to make the call. Officer Oestmann and Technician Wilcox were assigned to keep Mr. Esparza contained in the room. They also continued their attempts to open communication with Mr. Esparza and to de-escalate the situation. They repeatedly spoke to him, saying, "Hector, you are not in trouble, but we have to talk to you" and "we can't understand what you are saying, we need you to come out with your hands up and we can talk." Mr. Esparza would not respond.

Technician Wilcox and Officer Oestmann remained in position on the landing, watching the door to the south bedroom. Mr. Esparza periodically opened the door a couple of inches and peeked out, but quickly shut the door. He opened the door again, and holding the gun, stuck his hand out into the hallway, brandishing the weapon at the officers. Then he pulled his arm back into the room and closed the door. Officer Oestmann immediately ducked behind the landing and yelled, "Gun!" Technician Wilcox yelled, "Drop the gun" and "come out."

Outside the open south bedroom window, Sergeant West heard a voice saying, "Come on you mother-fuckers." From behind the closed bedroom door, Officer Oestmann heard Mr. Esparza say something. The words were to the effect of, "It – it's not going to hurt," or something like, "I'm coming out. This won't hurt."

Within seconds, Mr. Esparza came out of the room. He was walking briskly, holding the gun. He brought the gun up. He pointed it directly at Technician Wilcox. Esparza covered half the short distance to Technician Wilcox. The two officers were screaming, "Drop the gun", "don't do it Hector." Technician Wilcox aimed the flashlight on his handgun into Mr. Esparza's eyes to distract him. Hector Esparza closed to within six feet of Technician Wilcox. His gun was raised and pointed directly at Technician Wilcox. Officer Oestmann and Technician Wilcox fired their weapons. Hector Esparza dropped to the floor in the hallway and his weapon fell from his hand.

Officer Oestmann and Technician Wilcox approached Mr. Esparza, removed the gun which they located under his leg, and handcuffed him, in accordance with Denver Police policy and training. Sergeant Beveridge immediately called out on the radio that shots had been fired and they needed an ambulance to respond Code 10 (with lights and sirens). The officers stayed with Hector Esparza, who was still breathing but not verbally responding. As they waited for the ambulance to arrive, they kept talking to him, saying "Keep breathing, breathe Hector." When Mr. Esparza stopped breathing briefly three times, Sergeant Beveridge immediately started chest compressions and he would resume breathing. The officers did not begin rescue breathing, as it could interfere with Mr. Esparza's ability to breathe on his own. The paramedics arrived within three to four minutes. Mr. Esparza was still breathing. Because the staircase was too narrow and angular for a gurney, Technician Wilcox and a paramedic carried Mr. Esparza down the stairs. He was loaded into an ambulance and transported, Code 10, to Denver Health Medical Center. Mr. Esparza was taken into surgery immediately but he died as a result of his injuries. He was pronounced deceased at 2:54 a.m. by Dr. Jeffrey Cahid.

II. SYNOPSIS OF ADMINISTRATIVE FINDINGS

This Office responded to the scene and observed interviews of citizen and officer witnesses at the time of this incident. We carefully considered the entirety of this case, as well as the determinations made by District Attorney Mitch Morrissey and Chief of Police Gerald Whitman. Additionally, we have received and considered input from the Independent Monitor. After careful and independent review, this Office has determined that no disciplinary action should be taken against Officer Michael Oestmann and Technician Christopher Wilcox. We have concluded that Officer Oestmann and Technician Wilcox reasonably believed that the actions of Hector Esparza posed an imminent threat of death or serious bodily injury to Technician Wilcox and that the use of deadly force against Hector Esparza was reasonable and in accordance with the Denver Police Department's Use of Force Policy.

The purpose of this public statement is to provide a more detailed explanation of the basis of this decision.

III. THE INVESTIGATIVE PROCESS IN THIS CASE

As with all officer-involved shootings, this case was jointly investigated by the Denver Police Department Homicide Unit and the Denver District Attorney's Office. The Office of the Independent Monitor (OIM) was on hand to observe the investigation and provide input, as were members of the Internal Affairs Bureau. Interviews were observed by the OIM, as required by Ordinance and permitted by the protocol of the District Attorney's Office. The criminal investigation was completed and the District Attorney's decision letter was released on March 17, 2009. In the language of the statutory requirements, the District Attorney declined to file charges against Officer Oestmann or Technician Wilcox, concluding:

> Officer Oestmann and Technician Wilcox are C.I.T. trained.[6] When they initially entered the residence, Technician Wilcox was armed with a less-lethal force TASER. He was covered by Officer Oestmann and Sergeant Beveridge who were armed with their service pistols. The intent of the officers was to take Esparza into custody and get him medical treatment for the possible drug overdose. Esparza did not permit that result. At the time of Esparza's attack on the officers, they had retreated to the stair landing with the intent to contain Esparza in the bedroom so he was not a threat to others until Metro-SWAT could respond. They called for Metro-SWAT assistance because Esparza was armed, non-compliant with their commands and was contained in the bedroom.
>
> It is a tragic event for these two officers and the family and friends of Esparza that he chose to commit suicide and forced the officers to shoot him. Based on his prior attempts to commit suicide, his numerous statements to family and friends that he wanted to die, his statements that he was going to get in a shootout with police and was ready to die; his possession of an *unloaded*, authentic-looking-BB pistol, his comments at the scene, and his final act of coming out of the room with gun in hand

[6] C.I.T. (Critical Incident Team) officers are trained to respond and assist on calls of this nature. Information about the C.I.T. program can be accessed through the Denver Police Department website.

raised at Technician Wilcox while closing the distance, clearly suggest an intent to force the officers to shoot him. It would be impossible for anyone, under the specific facts of this case, to determine when attacked in this manner by Esparza that the gun he was wielding was a BB pistol.[7] His mother and stepfather, when being menaced and assaulted by him, both believed it was a "real" gun.

Officers have a right to defend themselves from a perceived imminent attack. There is no justification to attack a police officer who is performing his lawful duty. The officers were attempting to protect Esparza, family members and citizens outside the house by containing him in the bedroom. It was Esparza's non-compliant and aggressive conduct throughout the confrontation with his mother, stepfather and then the officers, combined with his clear intent to commit "suicide by cop" that ultimately forced Officer Oestmann's and Technician Wilcox's split-second decision to shoot. Had Esparza complied with the officers' lawful commands, the confrontation would have ended peacefully at that time. Esparza had a different ending in mind. Unfortunately, it was an ending no one else wanted.

Based on a review of the totality of facts developed in this investigation, we could not prove beyond a reasonable doubt that it was unreasonable for Officer Oestmann and Technician Wilcox to fire the shots that caused Esparza's death. Therefore, no criminal charges are fileable against either officer for his conduct in this incident.

At this point, the case was turned over to the Denver Police Department's Internal Affairs Bureau for review. Internal Affairs, pursuant to policy, referred the case to the Use of Force Review Board. On, September 9, 2009, the Use of Force Review Board determined that no further investigation was needed and forwarded its recommendations to the Chief of Police, Gerald Whitman. The recommendations of the Use of Force Review Board are advisory in nature and are not binding on Chief Whitman. After reviewing the investigation, considering the recommendation of the Use of Force Review Board and consulting with the Independent Monitor, who concurred with the assessment and recommendations of the Use of Force Review Board, Chief Whitman concluded that there were no violations of Department rules or policies in this incident. The case was subsequently forwarded to this Office of the Manager of Safety.

Upon the completion of the Police Department's case review and receipt of the files, this Office continued its comprehensive analysis of this case. That analysis and review began with the response to the scene and observation of all officer and civilian interviews at the time of the incident. Since that time, this Office has reviewed the entirety of the investigation files prepared by the Homicide Unit and Internal Affairs Bureau, including officer statements, witness statements, diagrams, photographs, and physical evidence reports. Additionally, this Office studied the policies in effect on the date of the shooting and is aware of relevant training materials and academy training practices. Consideration was also given to the findings of the Denver District Attorney, as well as to the input,

[7] In fact, this weapon, according to the manufacturer, is capable of producing serious injury or death. This is worth noting even though the justification for this shooting is not reliant on the BB pistol being a "deadly weapon".

recommendations and conclusions of the Independent Monitor, the Chief of Police, and the Use of Force Review Board.

IV. DETAILED FACTUAL BACKGROUND

There are some cases in which the behaviors and actions of the suspect are difficult to comprehend without an acknowledgment of that person's history. This is one such case. To fully understand this case, it is important to look both at Mr. Esparza's history as well as some of his behaviors during the weeks prior to this incident. Much of Mr. Esparza's history is recounted in the above and below. However, a brief summary of some of those actions, behaviors, issues, problems, attitudes and dangers will serve as a reminder of the potential threat with which Denver Police officers were confronted on July 2, 2009.

Hector Esparza

- was a twice convicted felon with a significant criminal history
- had threatened the life of his former girlfriend
- had spent time in prison and said he wouldn't go back
- was known to be violent with police
- had told family members that he wanted to "fuck up a cop"
- had made threats against police officers to others who knew him
- had tried to initiate a confrontation with a police officer driving by his home
- had made an obscene gesture to police officers passing by
- was a drug abuser
- had been diagnosed with brain damage from "sniffing paint" or "huffing"
- had been diagnosed as bipolar
- had both threatened and attempted suicide several times
- was on numerous medications for over two years
- had almost died from an overdose two weeks before
- had been hospitalized for psychiatric care several times
- was having trouble finding a job possibly because of his felony convictions
- was under financial pressure from his former girlfriend
- had recently pawned some of his tools
- had told his sister before June 16, 2009, that he had a gun
- was deeply depressed both on and before July 2, 2009
- both on and before July 1st and 2nd, 2009, had repeatedly told family members and his girlfriend that he would be dead before his 26th birthday on July 6, 2009
- both on and before July 1st and 2nd, 2009, had repeatedly told family members and his girlfriend that he didn't want to live
- had taken "too many pills" on July 1, 2009
- was apparently hallucinating on July 2, 2009
- used a real looking gun to threaten his mother and stepfather on July 2, 2009
- used a real looking gun to pistol whip his stepfather on July 2, 2009

On the night of this incident, Mr. Esparza made four calls to his girlfriend, JT, on her cell phone. Recorded on her cell phone were the times of those calls. In their cell phone conversations, Mr. Esparza specifically told JT that he was going to die "because I am going to have a shoot out with the police". She also reported that Mr. Esparza told her:

> That he's going to die. That he's not going to make it to turn 26. That the cops are here and I ain't going to jail. I am ready to die. That he's going to have a shoot out with them.

The last of these calls in which Mr. Esparza forecasted his death in a shoot out with the police occurred at 1:07 a.m. on July 2, 2009. The time of that final call is significant in that it was:

- sixteen minutes before the police were even called,
- twenty-two minutes before officers arrived at the scene,
- twenty-nine minutes before the officers went into the house, and
- thirty-four minutes before the officers cleared the house and located Mr. Esparza.

The above timeline could suggest that, even before police officers arrived on scene, Hector Esparza - who had repeatedly tried and repeatedly failed to commit suicide - had decided that he would ensure success in his last suicide attempt by committing "suicide by cop".

This, then, is the man whom Officer Michael Oestmann and Technician Christopher Wilcox were destined to confront on July 2, 2009.

As noted elsewhere in this Public Statement, Mr. Esparza's behavior during the hours before this confrontation covered a gamut of emotions – he was depressed, crying, sick to his stomach, loving, antsy, irrational, agitated, excited, angry, mean, violent, and apparently, hallucinating. The one consistency in his behavior was his repeated assertions that he would not live to see his next birthday four days later and that he would die on that day.

It was approximately 6:00 p.m. on July 1, 2009, that AE, the mother of Hector Esparza, arrived home from her daytime job. Mr. Esparza, who lived with AE, her husband, NM, and his brothers, told his mother that he was not feeling well and felt dizzy. Mr. Esparza also reported that he had taken at least six pills around 10:00 that morning and had not eaten anything when he took the pills. As noted above, .AE's husband NM had a different understanding of what Hector said and believed that he had taken six pills of each of his many medications. AE described Hector as "excited" and said he seemed like "his mind wasn't right". She felt that Hector's behavior was similar to his behavior two weeks earlier when he had attempted suicide by taking "about 50 pills". AE made her son a milkshake with bananas to calm him down.

Mr. Esparza then sat down on the couch for about fifteen minutes before announcing that he was leaving to see his girlfriend. Rather than have him drive, AE told her son that she would take him. AE explained to Mr. Esparza that he shouldn't be driving and that she was afraid he would get into an accident. Mr. Esparza responded that he didn't care, he didn't want to live. Hector then sat down next to his mother and told her, "Mommy I love you." Mr. Esparza got up from his mother's side and took a shower, apparently getting ready to go.

AE and NM worked two jobs to support their family. She and NM needed to leave their home around 8:00 in the evening to make it to their second job. Before AE and NM left for work, Mr. Esparza told his mother that he felt better.

About a half hour after AE and NM left for the second job, at approximately 8:30 p.m., Mr. Esparza's brother, BG, got home from work. BG said that Hector recently had been talking about killing himself and said that he would not be around for his birthday four days later, on July 6th. When BG arrived home, Hector was in the house. According to BG, Hector looked like he had been crying. BG talked with his brother for a while. Hector told BG that he didn't feel right. BG said that Hector had taken too many pills, that his speech was slurred, that he was "antsy", and unable to hold a conversation. Hector said his legs were itching and BG believed that Hector may have been having hallucinations.

Despite his physical condition, Mr. Esparza, who had the car of his girlfriend, JT, was planning to drive to get JT who needed to pick up her daughter. Like his mother earlier in the day, BG decided that Hector should not be driving in his condition. BG offered to drive the car back to JT. JT lived in Westminster on 116th Avenue. Hector and BG left the Fillmore residence at about 9:00 p.m., with BG driving. Once they returned her car, JT decided to take Hector and his brother, BG, right back to their mother's home at 4503 Fillmore Street. JT explained that she did so because of Mr. Esparza's behavior. As she explained:

> Earlier this evening he had to come pick me up from work. But Hector had his younger brother drive because he had taken too many pills and couldn't drive. Well then I took them home and he didn't seem himself 'cause he was being mean. I tried to talk to him then he just told me to leave so I went home.

According to BG, when JT dropped the brothers off at their home, it was about 10:00 in the evening. BG went over to AB's house across the street and stayed there for a while. When BG returned home, his mother and stepfather were not yet home and he did not see Mr. Esparza. That did not concern him because Mr. Esparza's bedroom was in the basement, so BG assumed that he had gone to bed. BG then went upstairs to his bedroom and went to bed.

AE and NM returned home close to 11:00 p.m. AE said that when they arrived home, Hector was awake and watching television. Mr. Esparza told his mother, AE, that he felt better. According to his mother, Mr. Esparza asked his stepfather, NM, if he could use NM's cell phone. NM gave his cell phone to Mr. Esparza, and then NM and AE went to bed.[8] It appears that this is the phone which Mr. Esparza used to make the calls to his girlfriend, JT. The timing is also consistent with the record on JT's cell phone which showed the first call from Mr. Esparza came at 10:45 p.m. on July 1, 2009. JT described the calls saying:

> ... he called me saying he was going to die. I asked him why and Hector replied, "Because I am going to have a shoot out with the police." I kept calling him to talk but he just kept saying, "Fuck you bitch, I am going to die."

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[8] See Footnote 4, above.

> So next thing I knew is Hector was calling me, telling me crazy things. It felt as if I was talking to someone else. He just kept saying he's going to die. To stop calling him. Then he was telling me to go fuck off. Not to worry. Then Hector said, "I see you outside" and I was not there yet. He had taken a lot of pills as he told me. I don't know the names but he took too many and he could not think right.[9]

JT could not remember the names of the medications that Mr. Esparza said he had taken except for a sleeping pill called Seroquel. She went on to say that Mr. Esparza was "talking crazy" and described what he was talking about:

> Just that he's going to die. That he's not going to make it to turn 26. That the cops are here and I ain't going to jail, I am ready to die. That he's going to have a shoot out with them.

JT said that her cell phone showed that the first of these calls from Hector came at 10:45 p.m. followed by others at 11:16 p.m., 12:58 a.m. and then at 1:07 a.m., she received a final call from Hector.

Around midnight, Mr. Esparza came into the bedroom where AE and NM were sleeping and turned on the lights. Mr. Esparza said that there were a lot of people shining lights into the room at him. AE tried to tell him that it was his imagination Mr. Esparza replied that they were there, but she just couldn't see them. He insisted that she could see them if she came over to the window. Mr. Esparza popped the screen out of the window and told AE to look around saying, "See, it's full of people." AE looked out the window but there was no one there. She explained to her son that there wasn't anyone there and he should go to bed. Mr. Esparza insisted that there were people out there. He told his mother that he couldn't go back to bed because "they" wanted to kill him - that "someone wants to kill me". Nonetheless, Mr. Esparza went back downstairs.

About twenty or thirty minutes later, Mr. Esparza came back into the bedroom where his mother and stepfather were trying to sleep. This time, however, Hector Esparza was holding a gun. He pointed the gun at his mother and stepfather, and all around the room. Mr. Esparza said that there were people there who wanted to kill him and said, "I don't need to live." He pointed the gun at his mother again. NM got up and Mr. Esparza hit him in the face with the gun, cutting NM's nose and cheek and knocking him to the floor. AE said, "Hector, don't do it, don't do it, Son." She told her husband to get out of the room and she would handle Hector. AE got out of bed and grabbed Hector around the waist, trying to calm him down. NM ran to BG's room across the hall and woke him up. NM told BG to go out the window to avoid Hector and his mother who were now struggling in the hallway. NM told BG that he had to call the police because NM had given his phone to Hector. BG jumped out the window with NM telling him to make sure the police were coming. NM went back into the hallway where AE was still holding onto her son. AE said that Hector pushed the screen out of the hallway window and told her, "I'll kill myself. I'll throw myself out the window", and tried to jump out. She held onto him and squeezed him around the waist, causing him to drop the gun. AE tried to get the gun but Hector kicked it away and got it back. With his mother's arms around his waist, Hector held the gun to his head twice and exclaimed, "I'm going to kill myself. I don't want to live anymore." As he stood in the

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[9] Grammatical and spelling corrections made for readability.

hallway, NM heard Hector tell his mother to get away or he would kill her. AE began yelling back at Hector, saying, "Kill me, kill me, I don't care." Only then did Mr. Esparza disengage. Still in control of the gun, Mr. Esparza went back into his mother's bedroom and slammed the door. AE and NM fled down the stairs and outside. AE was still in her nightgown and NM was in the shorts and shirt he had worn to bed, his shirt spattered with blood from his wounds. Once outside, AE talked to AB who lived across the street. It was AB that BG had gone to have him call the police. When AE talked with AB about making another 911 call, she spoke of the gun which Hector had used. AB told AE that the gun wasn't real, however, both AE and NM who had been very close to the gun and had it used against them, believed that it was a real gun.

When police dispatchers aired the original family disturbance call to District 2 officers, Officer Jeremy Cain took the call. There was no cover car available at that time so Sergeant Mark Beveridge responded to say he would cover. Officer Michael Oestmann had just completed a previous assignment and decided to cover Officer Cain so that Sergeant Beveridge, the supervisor, didn't have to respond. Shortly after the call came out, Technician Christopher Wilcox finished another call and responded as well. Although there were now other cover cars available, Sergeant Beveridge, nonetheless, decided to proceed to the call. He did so, he explained, because of information from police dispatchers that there was "a history of mental health issues" involved with the call. In the car with Sergeant Beveridge was Sergeant Glenn West. All five of the responding officers were in Denver Police Department uniforms and were driving Denver Police patrol cars marked with Denver Police badges and departmental insignia and which had visible emergency lights, as well as sirens. With the exception of Sergeant Beveridge, all the officers were C.I.T. trained. The two sergeants had 13 years of experience at the time of this incident, Technician Wilcox was a five year veteran and both Officer Oestmann and Officer Cain had been on the force for four years. Neither of the sergeants were certified in the less lethal Pepper Ball Deployment System, but all three officers were. Additionally, both Officer Oestmann and Technician Wilcox were trained in the use of the less lethal TASER weapon. Technician Wilcox carried his TASER on his duty belt.

Officer Oestmann arrived six minutes and fifteen seconds after the first 911 call was received by Denver 911. Upon arrival, Officer Oestmann contacted AE, Mr. Esparza's mother. AE was standing on the sidewalk outside of the home. As noted above, although she understood English, AE preferred to speak in Spanish on this night. Despite having something of a language barrier, AE communicated to Officer Oestmann that her son, Hector Esparza, was "acting crazy" and that he had run into the house saying someone was chasing him, but that "nobody was". She told the officer that Mr. Esparza takes a lot of medicines and pointed at her head. When Officer Oestmann asked her if these were psychiatric medicines, she said yes. AE also relayed to Officer Oestmann that Mr. Esparza had a gun and that she had seen the gun. However, AE did not explain when it was that she saw him with the gun. AE told Officer Oestmann that "he told her it was fake" but she wasn't sure because it looked real. Sergeant West, who is bilingual, then arrived with Sergeant Beveridge. Sergeant West continued the discussion with AE in Spanish. Throughout this conversation, NM stood next to his wife, AE. The officers saw that NM had facial injuries, including cuts on his nose and cheek and blood on his shirt. When asked what happened to NM, AE explained that he was her husband and that her son, Hector Esparza, had caused her husband's injuries. Sergeant West confirmed the information that AE provided to Officer Oestmann, including that her son had a gun which she was told was a "fake" but which she believed was real. He also learned from AE where Mr. Esparza was located in the house and that there was no one else in the house with Mr. Esparza.

Sergeant Beveridge had officers move everyone who was outside out of the sight line of the window in the room where Mr. Esparza was located. Officer Cain and Sergeant West took positions where they could watch that window as well as the back of the house to ensure that Mr. Esparza remained contained. Sergeant Beveridge directed Officer Oestmann and Technician Christopher Wilcox to assist him in taking Mr. Esparza into custody. He also reviewed the available less lethal options and wanted to have one of the officers armed with a TASER.[10]

Officer Oestmann started towards his patrol car to get his assigned TASER. However, Technician Wilcox, who was carrying his TASER on him, stopped Officer Oestmann. Technician Wilcox, who had not participated in the conversation between Sergeant West and AE, explained the decision to use a TASER, saying:

> ... at that point when I went upstairs, my main focus was a welfare check on him... if he has overdosed on medication or some kind of drug, and – uh - we were going to get him medical care, see what was going on with him. I didn't have any information that he actively has a gun with him or what they thought may or may not have been a gun with him, just that he had assaulted his father with his fist and that - um – that he was highly agitated and there was something that either was or was not a gun in the room. So, I didn't have anything at that point that told me that he was more than assaultive, physically, and I wanted to be able to take him into custody without hurting him. So, that's why I chose a TASER.

Sergeant Beveridge directed Technician Wilcox to take the lead position with his TASER. Both Sergeant Beveridge and Officer Oestmann would provide lethal cover for the TASER and enter with their firearms drawn.

The officers developed a plan to enter the house. As they were getting ready to enter, Technician Wilcox called Mr. Esparza by his first name and announced that they were Denver Police officers. They then knocked on the door and went into the residence. Continuously announcing their presence and calling out to Mr. Esparza, the officers cleared the first floor, going room to room making sure no one else was in the house. Next, they went up to the second floor. As they were going upstairs, they repeatedly called Mr. Esparza by his first name, announced "Denver Police" and told Mr. Esparza that they "just needed to talk to" him.

Once upstairs they could see three doors, two of which were open. The overhead light in the hall/stairway area was on, as was the light in the south bedroom. Visibility was not an issue. The officers described the lighting and visibility as fair to excellent. Around the time they were walking up the stairs, Officer Cain contacted them. Officer Cain, who was posted on the perimeter of the house to keep watch on the back door and the south side of the house, relayed that someone upstairs in the south bedroom had looked out of the window. The south bedroom was the only room off the upstairs hallway with a closed door. Technician Wilcox cleared the other 2 rooms while the other officers covered him and kept watch on the closed door to the south bedroom. The officers continued using communication and de-escalation techniques to engage Mr. Esparza and encourage him to follow their verbal commands. With the other rooms cleared, Officer Oestmann and

[10] Sergeant Beveridge had also contacted a car that was known to have a Pepper Ball Deployment System or Pepper Ball gun, but that officer was not available to respond to the scene.

Technician Wilcox took positions on each side of the closed door to the south bedroom. Technician Wilcox called for Mr. Esparza and tried to talk him into coming out, saying: "Hector, Denver Police, I need you to come out, and show us your hands". Technician Wilcox then tried to open the door, but there was resistance so the door only opened a few inches. With the door opened those few inches, Officer Oestmann was able to see the reflection in the mirror of a man inside the room, standing, with his hands together in a two-handed grip, pointed downwards. Officer Oestmann thought that the man appeared to be holding something, although he could not tell what it was. Mr. Esparza spoke to the officers for the first time, saying "leave me alone or I'll shoot you" and "I'm going to shoot you." As Mr. Esparza spoke, Officer Oestmann told Technician Wilcox and Sergeant Beveridge "it looks like he's holding a gun."

Technician Wilcox immediately moved to the neighboring bedroom on the east to obtain better cover. At this time Technician Wilcox also transitioned from his TASER to his handgun because:

> He had a, from what I understood, a handgun, and he said he was gonna use it to shoot me.

Officer Oestmann and Sergeant Beveridge retreated back into the stair-well. As they had throughout the entirety of their time in the house, the officers continued to try to communicate with Mr. Esparza. Mr. Esparza's only reply was to tell the officers to "go away"

Once he and Officer Oestmann had made it safely to the stairwell Sergeant Beveridge motioned for Technician Wilcox to join them on the stairs. As Sergeant Beveridge and Officer Oestmann covered him, Technician Wilcox crossed in front of the door of the south bedroom in which Mr. Esparza remained barricaded. Once Technician Wilcox safely reached the stairwell, he and Officer Oestmann took up positions on the landing, and Sergeant Beveridge moved down the stairs so that only his head was visible from the door behind which Esparza was located. Officer Oestmann's position was such that he could see through the railing of the stairs to the closed door between them and Mr. Esparza.

As discussed in more detail above and below, Sergeant Beveridge determined that the situation was now one involving a barricaded and contained suspect. Mr. Esparza was possibly armed, had already assaulted his father, had refused to comply with any verbal commands and had mental health problems. His only communication with the officers had been to threaten to shoot them. In accordance with policy, and consistent with his assessment of the best options for a peaceful resolution, Sergeant Beveridge requested the assistance of Denver Police Metro SWAT. Sergeant Beveridge informed Officer Oestmann and Technician Wilcox that he was calling for SWAT and went downstairs to make the call and reassign his personnel.

Officer Oestmann and Technician Wilcox continued their efforts to engage and de-escalate Mr. Esparza, calling him by name, telling him repeatedly, "Hector, you are not in trouble, but we have to talk to you" and "we can't understand what you are saying, we need you to come out with your hands up and we can talk." Mr. Esparza did not reply, although he did peek out the door periodically while Sergeant Beveridge was away. Officer Oestmann described Mr. Esparza's behavior this way

> It seemed like forever standing on that stairwell, but eventually, the door opens and he's – he's peeking out and he – he doesn't open it but maybe two inches, two and a half inches, and he's peeking out, and then he'll close the door, and then he'll open and he'll peek out, and he'll close the door. ...
>
> When he was opening the door and looking out, it was almost – because he – he saw Wilcox pretty – you know, right away when he opened the door. Then he opened it a little bit later and that's when he saw where I was at – Almost like – he was like, "Well, I know where they're at now" – Like he was just trying to get a gauge on where we were.

Technician Wilcox described Mr. Esparza's actions by saying "He – he opens the door, peeks out, and we start trying to get him to come out – 'Show us your hands. Come out.' He slammed the door." After this interaction with Mr. Esparza, Sergeant Beveridge returned to the stairwell. As he stood below them, Sergeant Beveridge informed Officer Oestmann and Technician Wilcox that Metro SWAT was responding. He also discussed the importance of holding the door to keep Mr. Esparza contained in the room and setting up a rotation with the three of them taking turns keeping watch on the door. The Sergeant emphasized that he wanted to make sure that no one tired to the point that Mr. Esparza could surprise them by unexpectedly coming out.

Sergeant Beveridge had hardly finished speaking when Mr. Esparza opened the door again, to a width of about 5 inches. He stuck his hand out into the hallway, holding the weapon - clearly showing the officers that he had a gun. He then quickly pulled his arm back in and closed the door. Officer Oestmann ducked behind the floor above the landing and yelled "gun!" The officers began yelling "drop the gun, drop the gun", "show me your hands", followed by "come out and show me your hands"

Mr. Esparza did not answer and everything was quiet for just a couple of seconds. Then Mr. Esparza began speaking. From outside, Sergeant West heard a voice in the south bedroom saying, "Come on you mother-fuckers". On the stairwell, Officer Oestmann heard Mr. Esparza talking, saying something that sounded like, "It's – it's not going to hurt" or "I'm coming out, this won't hurt, this won't hurt." Immediately following that statement, Mr. Esparza came out of the room, walking briskly, holding the gun, and advancing directly toward Technician Wilcox. Officer Oestmann stated:

> "He's not running, but he's walking with a purpose, he wasn't slowly meandering...it was a pretty quick pace".

According to Technician Wilcox:

> "a few moments after that is when he opened the door and started *walking at a brisk pace* towards us" (emphasis added).

Mr. Esparza began to raise the gun. Officer Oestmann yelled "drop the gun!" Mr. Esparza did not comply. Technician Wilcox yelled "drop the gun!" and "don't do it!", but Mr. Esparza kept advancing on Technician Wilcox. As he advanced, he was raising the gun to a firing position. Technician Wilcox tried shining the flashlight on his handgun into Mr. Esparza's eyes to "distract him and disorient him". The entire time both officers were screaming verbal commands to Mr. Esparza to put the gun down. When Mr. Esparza was within six feet of Technician Wilcox, with his gun raised and pointed at Technician Wilcox, both

officers fired. They fired simultaneously. Officer Oestmann fired three shots and Technician Wilcox fired four shots.

When each of the firing officers was asked why they fired, Officer Oestmann stated:

> Because he was walking towards Wilcox with a gun up and I didn't want him to shoot Wilcox and I didn't want him to shoot me so, I shot him.

Technician Wilcox stated:

> Because I thought he was gonna shoot me...he was gonna kill me.

When each of the firing officers was asked why they stopped firing, Officer Oestmann stated:

> Because he fell down – kind of fell out of my view. I took a step up to see if he was still trying to come at us, or come at Wilcox, and he wasn't.

Technician Wilcox stated:

> He fell backwards and was no longer trying to engage us...the threat in my opinion was over – um - the immediate threat of him shooting me was over.

As noted earlier, the overhead light in the hall/stairway area was on, as was the light in the south bedroom which now had an open door. All the officers confirmed that the lighting and visibility were not of concern.

Officer Oestmann and Technician Wilcox then approached Mr. Esparza, who had been struck by four bullets. Officer Oestmann removed the gun from under his leg where it fell and placed it on the nearby ironing board. The officers handcuffed Mr. Esparza, as mandated by policy, but placed his arms in front of him. Immediately after the officers fired, Sergeant Beveridge aired that shots had been fired and they needed an ambulance "Code 10", with lights and sirens. Technician Wilcox continued talking to Mr. Esparza and encouraging him. The officers made sure that he was on his back with his airway open so that he could breathe. On the two or three occasions Mr. Esparza would stop breathing, so Sergeant Beveridge gave him chest compressions until he would breathe again. Technician Wilcox requested a pocket mask in case Esparza stopped breathing again so he could start "rescue breathing" until the paramedics arrived. They stayed with Esparza, who was still breathing but not verbally responding, until the ambulance arrived. Once the ambulance arrived, Technician Wilcox and a paramedic carried Mr. Esparza downstairs so he could be transporter to the hospital. Mr. Esparza was transported to Denver Health Medical Center and taken immediately into surgery. Hector Esparza did not survive his wounds and was pronounced deceased at 2:54 a.m. by Dr. Jeffrey Cahid.

Medical Response

As stated above, while Officer Oestmann and Technician Wilcox secured Mr. Esparza, Sergeant Beveridge called for an ambulance to come emergently with lights and sirens, or "Code 10". As they waited for the ambulance, Sergeant Beveridge monitored Mr. Esparza's breathing and gave him chest compressions whenever his breathing would stop or slow

significantly, which happened no more than three times. The ambulance and paramedics were on scene within three to four minutes. Once the ambulance arrived, it was evident that the gurney would not make it up the narrow stairs with their sharp turns. Before Paramedic Michael Villapondo had the gurney out of the ambulance and to the front door, Technician Wilcox and Paramedic Otis McKay had already carried Mr. Esparza down the stairs to meet him. Mr. Esparza was loaded onto the gurney and immediately placed into the ambulance for the trip to Denver Health Medical Center. Mr. Esparza was not responsive while en route to Denver Health.

Upon arrival at the hospital, Mr. Esparza was immediately taken into surgery. Despite these efforts, medical personnel at Denver Health Medical Center were unable to save his life.

An autopsy was performed on July 2, 2009, by Dr. Michael Burson and Dr. Amy Martin. Signs of medical intervention were noted, as was some minor bruising and "innumerable tattoos". There was no evidence of injury from handcuffs present on the wrists and/or ankles.

The predominate finding of injury include four apparent gunshot entrance wounds and two apparent exit wounds.

Gunshot wound #1 was located on the right lateral head, approximately 10 cm from the top of the head and 2 cm lateral to the eyebrow. There was no evidence of soot, stippling, or charring. On the posterior head was a slit-like 2.5 cm laceration with soft-tissue bridging, approximately 9.5 cm above the auditory canal and 8.5 cm behind the auditory canal. Bullet fragments were found within the wound tracks related to gunshot wound #1. The skull showed a fracture radiating from the entry wound to the apex of the occipital bone with a secondary fracture extending from the apex laterally to the left. At the point of ricochet, there was evidence of a minute metal fragment on the inside of the skull. Examination of the brain revealed a bullet wound track extending from the frontoparietal lobe superficially, through the temporal lobe, parietal lobe, with an apparent exit in the right occipital lobe. Additional injury was identified in the left occipital lobe with some hemorrhage along the wound tracks.

Gunshot wound #2 was located on the lateral aspect of the left upper arm, approximately 20 cm from the top of the left shoulder. There was a single separate stipple mark present but no evidence of soot or charring. Palpation of the humerus and examination of the soft tissue revealed no palpable fracture or vital injury. The bullet traveled front to back, upward and slightly left to right, and exited approximately 5 cm from the top of the shoulder on the back of the left shoulder.

Gunshot wound #3 was located in the midline of the chest. There was no obvious sign of soot, stippling, or charring present. The bullet entered the midline chest and traveled front to back, left to right, slightly upward tearing the diaphragm, perforated the left lobe of the liver, the diaphragm, right lower lobe of the lung, posterior chest wall, and rested under the skin of the back.

Gunshot wound #4 was located in the lateral right lower quadrant of the abdomen, approximately 27 inches from the top of the head. There was no obvious soot, stippling or charring. The bullet entered the lateral right lower quadrant and traveled front to back and slightly right to left without vital injury to the abdominal organs.

Toxicology testing revealed that Hector Esparza's blood was presumptively positive for cannabinoids.

In addition to the life-saving attempts performed on Hector Esparza, both his stepfather and mother were transported to Denver Health Medical Center by ambulance for medical treatment. Denver Police Officer Christopher Johnson, in whose car AE and NM stayed during the confrontation, requested the non-emergent ambulance when AE developed stomach pains. NM also needed treatment for the wounds he suffered when Mr. Esparza struck him in the face with the gun. The ambulance attendants determined that both AE and NM would be transported to Denver Health Medical Center for treatment. Officer Johnson followed their ambulance to the hospital and stood by to assist in transporting them to headquarters for their statements.

V. CRIME SCENE INVESTIGATION AND TESTING

Pursuant to protocol Officer Oestmann and Technician Campbell were separated from each other, as well as from other officers and civilian witnesses at the scene. They were transported separately by different supervisors to police headquarters. At headquarters they were sequestered in different rooms with restricted visitation until they were separately interviewed. Their interviews were recorded on videotape. A log was kept for each officer which recorded of all the contacts they had.

Personnel from the Denver Police Department Crime Laboratory and Homicide Unit responded to the scene and collected evidence. The scene was taped off, videotaped and photographed. Measurements were taken and a neighborhood survey was conducted by detectives and officers assigned to those tasks. Detectives searched the crime scene and located all of the shell casings from the officers' weapons, including 3 .45 caliber casings and 4 9 mm casings. The casings were recovered from locations in the stairwell and the lower level which were consistent with the ejection patterns of their weapons and the officers' stated locations. Additionally, Crime Lab personnel and detectives recovered a spent .45 caliber bullet and some bullet fragments, as well as a black and silver gun from the ironing board in the upstairs hallway. That gun was found to be a high velocity Daisy BB air gun which carried a manufacturer's warning that it could "cause serious injury or death".

The upstairs hallway in which this confrontation took place was small and narrow. The layout consisted of a hallway coming off of the stairs from the landing with bedrooms on the north, south and east sides of the hallway. Consistent with the officers' descriptions, lights were found on in the south bedroom and the hallway but were turned off in the north and east bedrooms, as they were in the living room below. The south bedroom, which was the bedroom used by AE and NM, Mr. Esparza's mother and stepfather, was the bedroom in which Mr. Esparza barricaded himself when the police arrived. A mirror was located in that bedroom, corroborating Officer Oestmann's report that when the door opened a few inches, he could see the reflection in a mirror of Mr. Esparza holding something as if gripping a firearm. In the hallway where the confrontation occurred, investigators recovered the pistol which Hector Esparza had pointed at Technician Wilcox. It was lying on top of the ironing board. The position of the pistol was exactly as described by Officer Oestmann when he recounted how he had moved it after he and Technician Wilcox secured Mr. Esparza.

Blood was found in various locations, including on the sheets in the east bedroom where BG slept. This is consistent with the description from AE, NM and BG of the events that happened after Mr. Esparza pistol whipped NM in the face. All three witnesses said that NM was bleeding when he went into BG's room to get him out of the house to call the police. Additionally, the window screen in the east bedroom was missing – consistent with BG's statement that he went out the window to get help. Screens were also missing in 2 other locations on the second floor – from the south bedroom window and the hallway window. These missing screens corroborate AE's statement that Hector had pushed the screen out in her bedroom to have her look for "people in the yard" and that he pushed the screen out of the hallway window when he threatened to throw himself out the window in a suicide attempt. A window screen was found on the ground below the south bedroom window.

A marijuana pipe was found on the ledge outside the window of the east bedroom.

The gun which Mr. Esparza had during this confrontation is a powerful BB gun. It is described by the manufacturer, Daisy, as a Model 92/693 CO_2, Semiautomatic BB repeater pistol. It has a maximum shooting distance of 235 yards and a muzzle velocity of 400 feet per second (fps). The manufacturer warns on both the weapon itself and in the packaging that "this gun can cause serious injury or death". This weapon was not loaded when it was recovered.

Officer Oestmann was carrying a Glock 37, .45 caliber semi-automatic pistol. The weapon holds 10 rounds in the magazine plus one in the chamber for a total of 11 rounds. Immediately after this incident, Officer Oestmann's weapon was taken to the crime lab. At that time there were 7 rounds left in the magazine plus one in the chamber for a total of 8 rounds, supporting the assertion that Officer Oestmann fired 3 rounds.

Technician Wilcox was carrying a Glock 17, 9mm semi-automatic weapon. The magazine holds 17 rounds and one in the chamber for a total of 18 rounds. Technician Wilcox was carrying the weapon fully loaded. At that time there were 13 rounds left in the magazine plus one in the chamber for a total of 14 rounds, supporting the assertion that Technician Wilcox fired 4 rounds.

Denver Police Crime Laboratory analysts tested both of the officers' firearms. Their report, dated July 21, 2009, stated that the officers' guns were test fired and functioned as designed. The rounds and casings recovered for the test firing were compared to the spent rounds and casings recovered from the scene. The .45 caliber casings and spent bullets were consistent with the rounds from Officer Oestmann's gun. The 9mm spent rounds and casings were consistent with the weapon fired by Technician Wilcox.

Background and Criminal History

Mr. Esparza's family and those who know him recounted additional background information to investigators. Among those who provided information were his mother, AE, his stepfather, NM, his two brothers AG and BG, his best friend, AB, and his current girlfriend, JT. Additional information was available from law enforcement personnel.

Hector Esparza's Mental Health Issues

As noted above, Mr. Esparza's family reported that he had experienced mental problems after he was "huffing" as a teenager. As described by the National Drug Intelligence Center, abusers who engage in "huffing" inhale chemical vapors from a variety of substances, many of which are common household products, such as spray paint. Chronic inhalant abuse or "huffing" can result in irreversible damage to the user's brain which can cause personality changes and diminished cognitive function, among other harmful effects. Hector's doctor had informed his family that Hector's "huffing" had caused brain damage. Mr. Esparza's family also said that it was not until after he had been huffing paint for a few years that Mr. Esparza began "having trouble" with law enforcement.

Mr. Esparza's mother, AE, said that Hector had "huffed" paint for about three years when he was young and that his doctor thought it had caused brain damage. She also said that Hector had been on medication for about two years. She explained that Hector had been in trouble for "small problems" which were the result of his "mental condition" and that he was on lots of medications. At the scene on July 2, 2009, AE informed the responding officers that her son, Hector, was acting crazy. She explained that he ran into the house saying someone was chasing him but no one was chasing him. AE also said that her son took a lot of medication "for his head".

Mr. Esparza's brother, AG, said that Hector takes multiple medications for his mental health and other issues. AG also said that Hector had been diagnosed as bipolar and that he had been delusional for the last month, seeing "people who are not there".

BG, another brother of Mr. Esparza, said that Hector did a lot of drugs when he was young and it messed his brain up. He explained that Hector had sniffed paint, in addition to drinking liquor and taking ecstasy and a lot of other drugs. On July 2, 2009, the night of this confrontation, BG said that Mr. Esparza's speech was slurred, he seemed "antsy" and was unable to follow a conversation. Hector told BG that he "didn't feel right", that he had taken too many pills and that his legs were itching. BG said that Hector may have been having hallucinations.

NM, Mr. Esparza's stepfather whom he assaulted with the air pistol, said that Hector was acting strangely when he came home from work for the first time early in the day. At that time, Mr. Esparza's mother made him a fruit shake. NM reported that Hector said he had taken six of each of his many medications. Later in the evening when Hector came into the bedroom of NM and AE, NM said that Hector was hallucinating and saying that he was "seeing people" outside. When NM woke up BG to go call the police, he told BG that Hector was acting "crazy".

Hector Esparza's Suicide Attempts

AE stated that in the past, Esparza had threatened suicide. In the previous instances, they would call an ambulance and have him taken to the hospital. She told the police officers who responded to the scene on July 2, 2009, that about two weeks before, Hector had taken fifty pills and was taken to Rose Medical Center. AE also stated that Mr. Esparza would threaten suicide in front of his girlfriend, JT, who would tell him not to do it.

AG informed detectives that Hector attempted to commit suicide a few weeks ago but his sister found him. Hector was taken to the hospital but according to AG, the hospital did not give Hector any follow-up assistance after this suicide attempt. AG also said that Hector tried to hang himself about ten years ago.

Mr. Esparza's brother, BG, also recounted that Hector had tried to hang himself from the garage years ago when BG was in middle school.

As detailed in Denver Police Department records, the Denver Police had responded to the reports that Hector Esparza had attempted or threatened suicide on two occasions – September 22, 2008, and June 16, 2009. In the 2008 incident, Mr. Esparza's father-in-law reported that Mr. Esparza had attempted suicide by overdosing previously.

Accordingly, by July 2, 2009, Mr. Esparza was known to have attempted suicide on at least three prior occasions – two by overdose and one by hanging - and that he had threatened suicide by hanging on a fourth occasion.

Hector Esparza's Depression and Threats of Suicide

AE, whose statements are set forth in detail above and below, said that her son, Hector Esparza, had been having money problems because he was out of work and his ex-wife had been pressuring him for money. AE said that Hector had pawned some of his tools. While waiting in Officer Christopher Johnson's patrol car at the scene, AE stated that within the last few days, Hector had been taking lots of medications and said that he wanted to kill himself.

Mr. Esparza's brother, AG, also lived with his family at 4503 Fillmore Street but was not home during the confrontation. AG stated that Hector had been upset lately over his ex-girlfriend, MW, who was also the mother of his two daughters. She kept asking him for money. AG explained that Hector has two felony convictions and can't get a job.

BG, Mr. Esparza's other brother, who resided in the Fillmore residence, confirmed that Hector had been under financial pressure from his former girlfriend, MW, from whom he had separated four months earlier. BG also explained that Hector has been suffering from depression and stomach problems. According to BG, Hector had been talking about killing himself and said that he would "not be around" by his birthday on July 6th. On July 2nd when BG came home from work at about 8:30 p.m., Hector looked as if he "had been crying". Later in the night as BG watched his mother struggling with Hector in the hallway, BG heard Hector say something like, "I don't give a fuck, I'm going to die tonight."

JT, Mr. Esparza's girlfriend, whose statements are set forth in detail above and below, also said that Hector told her repeatedly that he was going to die and would not make it to his 26th birthday on July 6, 2009. She also said that, in the late evening hours of July 1, 2009 and the early morning hours of July 2, 2009, Hector Esparza told her that he would die in a "shoot out with the cops" that night.

Hector Esparza's Drug Use on July 2, 2009

AE, Mr. Esparza's mother, recounted that her son told her that he had taken six pills in the morning and that he didn't feel well. While waiting in Officer Christopher Johnson's patrol

car at the scene, AE told him that within the last few days, Hector was taking large amounts of Seroquel and other unknown medications.

Officers recovered a glass marijuana pipe on the ledge outside the window in the east bedroom. AG, Mr. Esparza's brother, said that Hector did smoke "pot" with his brother. Cannabinoids, the active compounds in marijuana, were also found in Mr. Esparza's system at autopsy.

BG, another brother of Mr. Esparza, said that Hector had taken too many pills on July 2, 2009, which made Hector incapable of following a conversation and caused Hector to have slurred speech.

NM reported that Hector said he had taken six of each of his many medications that day.

JT, the girlfriend of Mr. Esparza, said that Mr. Esparza told her that his brother had to drive him to pick her up because Mr. Esparza had taken too many pills. Mr. Esparza repeated that statement in his telephone calls to her later that night. Although Mr. Esparza mentioned several pills that he had taken, the only medication name which JT recalled was the sleeping pill "Seroquel". When she arrived at the scene, JT informed Officer Christopher Johnson that Hector "hasn't been doing well lately and has been taking a lot of medication".

Hector Esparza's Attitude toward Authority and Law Enforcement

AE, Mr. Esparza's mother, told officers at the scene that Hector had been in trouble with the police before but "only for small problems" that resulted from his mental condition.

Hector Esparza's brother, AG, explained that Hector does not like the police. According to AG, what Hector wanted to do was "fuck up a cop". When Hector was delusional over the last month and talked about people being there even though there was no one there, he would then talk about "fucking up a cop". AG explained further that Hector once saw a cop on patrol and wanted to go confront him. AG referred to Hector's behavior as a "Mighty Mouse syndrome". He recounted a time when Hector made an obscene gesture with his middle finger to police officers who were driving by his home and challenged them to come into his front yard. AG said that Hector is very aggressive when he is arrested or has contact with the police. AG concluded by saying that although he didn't know of any guns in the house, it wouldn't surprise him if Hector confronted the police with a gun.

GG, Mr. Esparza's sister, called Denver 911 on June 16, 2009, to request assistance for Hector who she thought had attempted suicide. In that call she reported to Denver Police Dispatchers that her brother, Hector Esparza, was very violent toward the police and that his jaw had been broken twice, once with the police.

AB, who described himself as Hector's "best friend", lived across the street. It was AB who provided the telephone to BG to call the police after Mr. Esparza attacked his stepfather, menaced his mother, threatened to "kill everybody" and held the gun to his own head. AB said that he knew Mr. Esparza for five or six years and described Mr. Esparza as "friendly, caring, loving, [a] good father". AB also stated that Mr. Esparza "didn't like authority".

Hector Esparza's Possession of a Gun

AE informed police at the scene that prior to that night she didn't know that Hector had a gun. She described the gun he was using that night as a semiautomatic pistol with chrome on the side. She also said that she was told that the gun was not real but that she didn't know and that it seemed real to her.

About a week before the confrontation, Mr. Esparza's brother, BG, saw Hector "messing around" with a silver and black BB gun. He could not remember anything specific that Hector did with the gun, but he definitely remembered that Hector did have an air gun or BB gun.

NM was the victim of Mr. Esparza's assault with the gun which Hector was carrying. NM described telling Hector to put the gun down because he was afraid it "was going to shoot". NM said that Hector pointed the gun at his mother, AE, and hit NM in the face with it, before pointing it again at AE. NM saw AE try to take the gun away from Hector. Hector told his mother to get away or he would kill her. NM said that he thought the gun was real, that he thought Hector was going to use the gun to shoot NM and AE, that they both felt in danger and that the gun felt real when Mr. Esparza struck NM in the face with it.

On June 16, 2009, as set forth below, GG, Mr. Esparza's sister, called Denver 911 to get police assistance for Hector, who GG feared, had committed suicide. In that telephone call with Denver Police dispatchers, GG related that Mr. Esparza had told her he had a gun.

Hector Esparza's Prior Interactions with Denver Police

<u>September 22, 2008</u>

On September 22, 2008, at 3:43 p.m., Denver Police were called to 4503 Fillmore Street by someone reporting that Hector Esparza was going to hang himself. The reporting party described himself as Mr. Esparza's father-in-law. The father-in-law advised that Mr. Esparza was diagnosed as bipolar and that he did not known if Mr. Esparza had been taking his medications. He also informed police that Mr. Esparza had a history of suicide attempts and that, as of that date, he had previously overdosed on pills. Responding officers were told that Mr. Esparza had a history of violence and were warned to proceed with caution. Mr. Esparza's father-in-law said that Hector Esparza had threatened his daughter's life. Denver Police took Mr. Esparza into custody and transported him to Denver Health Medical Center where he was placed on a mental health hold for evaluation and treatment.

<u>June 16, 2009</u>

At 11:34 in the morning of June 16, 2009, Denver 911 received a call from GG requesting emergency assistance at 4503 Fillmore Street to assist her brother, Hector Esparza. The reporting party, GG, said that she was not at the residence but that Hector was suicidal and that he left her a voicemail the day before saying good-bye. GG had been trying to reach him by telephone but it went into voicemail, so she had not talked to him. GG reported that Mr. Esparza was possibly bipolar but did not know what medications were prescribed or otherwise available to him. GG also informed the call taker that Mr. Esparza told her that he had a gun, but she did not know if that was accurate or, if so, anything about the weapon.

GG said that although Mr. Esparza's mother, stepfather and two brothers lived at the residence, she did not believe they were there at the time. Mr. Esparza's sister said that her brother attempted suicide two or three months ago and was hospitalized at Denver Health Medical Center in the Psychiatric Unit, GG stated that her brother, Hector, was very violent toward the police and that his jaw had been broken twice, once with the police and the other time in a fight. She described where Mr. Esparza's bedroom was in the basement of the house and repeated that she was very worried about her brother. Three Denver Police officers who had training in crisis intervention and de-escalation tactics related to situations involving suicidal and mentally ill individuals were dispatched to the residence. Further information developed suggesting that Mr. Esparza may have taken an unknown number of pills. When the officers arrived on scene they located Mr. Esparza and called for an ambulance, Code 10, with lights and sirens. Mr. Esparza was transported to the hospital for emergency medical treatment.

Hector Esparza's Criminal History

In his letter memorializing his decision that criminal charges should not be filed against Officer Oestmann and Technician Wilcox, District Attorney Morrissey detailed Hector Esparza's lengthy criminal history. As recounted in the District Attorney's letter:

> Esparza has been arrested multiple times for a variety of criminal acts...which includes commitments as a juvenile and a sentence to the Colorado Department of Corrections as an adult. His first arrest was just after turning 12 for damaging property and public order crimes. At age 13 he was arrested for possession of a firearm by a juvenile, possessing a defaced firearm, carrying a concealed weapon, possession of marijuana and for being a theft fugitive from Arapahoe County. At age 14 he was arrested for careless driving, hit and run, eluding police, and no operator's license. At age 15 he was arrested for contempt of court for failure to comply with juvenile probation. He was later arrested for possession of a firearm by a juvenile and possession of marijuana. He was incarcerated in a juvenile facility. At age 18 he had his first adult arrest for second degree assault (felony) and later had another arrest for assault. At age 19 he was arrested for failure to appear on an assault case and driving under restraint. Two weeks later he was arrested in Jefferson County for harassment. Two weeks later he was arrested for first degree assault with serious bodily injury and a deadly weapon (felony). After a series of contempt of court and failures to appear he was incarcerated in November 2004 in the Department of Corrections on a 2 year sentence. In April 2005 he had a flight-escape from felony conviction. He was later arrested for making false reports. In January 2007 he was arrested for a domestic violation of restraining order. On May 11, 2009 he was arrested for third degree assault, harassment, theft and obstruction of a telephone. And finally, on July 2, 2009 he assaulted his stepfather.

Civilian Witness Statements - Summaries

Responding police officers contacted numerous citizens in the area on the night of this incident. Set forth below are summaries of the statements of some of those witnesses. Although not detailed below, there were other witnesses who heard shots or noises relating to this shooting. Among those witnesses were MB, JL, and ML, all of whom reported

hearing gunshots. The reports regarding the specific statements of all the witnesses contacted are contained in the files relating to this case.

AE – Hector Esparza's mother.[11]. Much of the information provided by AE is detailed in other parts of this Public Statement. What follows is a summary of some of the pertinent information she provided to Officers Oestmann and Johnson and to Sergeants Beveridge and West at the scene, as well as the information she provided in her videotaped interview. She stated that she came home from work about 6:00 p.m. and Hector told her he was not feeling well, he felt dizzy, and had taken "six pills". He had taken pills around 10:00 in the morning. She was not sure what type of pills he took. He also stated that he had not eaten anything with the pills. At the time Hector seemed "really excited" like "his mind wasn't right". She had seen him like that approximately 2 weeks earlier when he had taken "about 50 pills". At that time he was taken to Rose Medical. On the night of the current incident, she told her son, Hector, to sit down because she was nervous. He sat down on the other side of her husband for about 15 minutes but then stated he was leaving to see his girlfriend. She told him that she would take him because he shouldn't be driving, she was afraid he would get into an accident. He told her that he didn't care, he didn't want to live, and then sat down next to his mother and stated, "Mommy, I love you." She asked him to sit down and relax more. He got up, took a shower and got ready. He said he felt better. She had to leave for her second job and left with her husband. At that point Hector was awake at home. They returned home around 11:00 that night. Hector borrowed her husband's cell phone. Around 12:00 Hector came into the bedroom where his mother and stepfather were sleeping and turned on the lights and said something along the lines of "there are a lot of people shining lights into the room" at him. She tried to tell him that it was his imagination and Hector told her that she could see them if she came over to the window. He popped out the screen of the window and told her to look around "it's full of people". She explained that there wasn't anyone there and he should go to bed. He told her that he couldn't because "they" wanted to kill him. About 30 minutes later he came back upstairs, but this time he had a gun with him. She was not aware of him owning a gun prior to this. He was pointing the gun around the room saying there were people there. Her husband got up; at that point Esparza hit him in the face with the gun. At that point her husband went downstairs and went outside. AE held her son around the waist to try and calm him down. He dropped the gun and she tried to get it, but Hector kicked it away with his foot. Hector stated that he was going to kill himself, and said that he was going to throw himself out the window. He also held the gun to his head twice. She got scared and went downstairs. Hector then went back into the bedroom and shut the door. AE went outside with her husband. A friend of Hector's who lived across the street called the police at the request of AE. This same friend told AE that the gun wasn't real. She stated that once the police arrived three officers went inside the house and there was one outside that was shining his light into the window where Hector had knocked out the screen. Another officer was yelling "Hector, the police are here". She thought she heard 2 gun shots before the police arrived, and told her husband that she thought Hector had already killed himself[12]. Once the police arrived, she told the officers that her son was inside with the gun, but she did not know if it was real. She also told them that Hector was talking about people being inside and that there were a lot of lights, even though there wasn't anyone there. The officer that was

[11] This interview was conducted in English with a Spanish language translator.

[12] It should be noted that the investigation did not establish that any shots had been fired prior to the arrival of Denver Police officers.

outside with her also yelled "Hector, Hector, police." AE also said that her son, Hector, understood and spoke in English.

BG – The brother of Hector Esparza. Much of the information provided by BG is detailed in other parts of this Public Statement. What follows is a summary of some of the pertinent information he provided to the Denver Police Department, including information provided in his videotaped interview. He lives at 4503 Fillmore with AE. He had returned home from work around 8:30 p.m. and found Hector there "sweaty" and stating that he wasn't himself and was not in "his state of mind". Around 9:00 p.m. he left with his brother, Hector, to pick up Hector's girlfriend, JT. They met her and then she dropped both men back off at 4503 Fillmore. At that point BG went across the street to his friend's house. He was there for a while and then he went home and went to sleep. He woke up to his stepfather, NM, telling him to make sure that the police had been called and that BG should leave before the police arrive, since he tends to be overprotective of his brother. He saw the blood on his stepfather's face and ended up jumping out of the window to get out of the house without having to get past Hector, who was struggling with their mother, AE, in the hallway. He heard the gunshots, approximately 5 or 6, coming from his house while he was across the street.

He stated that 2 weeks earlier Hector had overdosed on his pills, and had his sister not come by[13], he would have overdosed in the basement. He also stated that when he was younger, Hector had tried to hang himself. He stated that his brother had been depressed since losing his job and separating from the mother of his kids. BG stated that his brother, Hector, had been threatening suicide recently stating that his birthday (which was 4 days away) would be his last day. About a week prior to the incident, BG saw Hector "messing around with a BB gun".

AG – The brother of Hector Esparza. Much of the information provided by AG is detailed in other parts of this Public Statement. What follows is a summary of some of the pertinent information he provided to the Denver Police Department, including information provided in his videotaped interview. He lives at 4503 Fillmore with AE. He was not at home on the night of the incident. He stated that Hector had been upset recently because of troubles with his ex-girlfriend. He also stated that Hector had tried to commit suicide a few weeks earlier, and his sister had found him. AG said his brother, Hector, does not like the police and wanted to "fuck up a cop".

NM[14] **– The husband of AE**. Much of the information provided by NM is detailed in other parts of this Public Statement. What follows is a summary of some of the pertinent information which he provided, in conjunction with his wife, AE, to Officers Oestmann and Johnson and to Sergeants Beveridge and West at the scene, as well as the information he provided in his videotaped interview. NM also lives at 4503 Fillmore. On the night of the incident NM got home from his first job and found Hector Esparza at home. Hector stated he wasn't feeling well and had taken "a lot of pills" and had taken "six of each one". This made Hector anxious and shaky. His mother made him a shake to help him calm down. NM and AE then left for their second jobs. NM and AE got home from work around 10:30 or 11:00 in the evening.

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[13] See Footnote 2, above.

[14] This interview was conducted in English with a Spanish translator.

Later that same night, NM was sleeping in his bedroom with his wife. As noted above, NM's memory was that it was after NM and his wife were in bed that Hector knocked, came in and asked to use the phone[15]. Regardless of the timing, NM was clear that he gave his cell phone to Hector, that Hector came into his bedroom twice that night and that the second time he came in, Hector had a gun. When he came back to their bedroom the second time with the gun, it was about twenty to thirty minutes after the first time. NM told his stepson to put the gun down. Hector said he was seeing a lot of people and was pointing the gun at his mother. Hector pushed NM and hit him in the face. NM went into the other room where BG was sleeping and told him to get out "because your brother is crazy". BG saw that NM was bleeding and then jumped from the second story window. NM also told him to call the police because Hector still had his phone. NM then went back towards the other bedroom and at that time saw AE coming out. Hector had the gun and it appeared that he might shoot his mother. NM told him "Hector, don't do it!" Hector replied that he was going to kill everyone. NM went downstairs while AE remained upstairs with Hector. He could hear Hector saying to his mother "get away because I'm going to kill you. NM went outside and told BG to call the police "because Hector is not right." AE then came outside where they waited for the police. When the police arrived, NM told them that Hector was upstairs in their bedroom. While they were outside with the police waiting in the police car, AE told him that she thought that she heard two shots. She thought maybe Hector had shot himself or at the police.

He was aware that a few weeks earlier Hector had taken a lot of pills and told his mother, who in turn told NM, that Hector wanted to kill himself. NM said that Hector told him that he had taken six of each of his many prescriptions prior to the confrontation. He also said that Hector doesn't like the police, and calls them "fucking cops".

NM was very clear that when he saw the gun that Hector was holding that night, he thought that it was real, that Hector's use of the weapon to threaten NM and his wife, AE, put them in fear for their lives, that he thought the gun would shoot, that the gun looked real and that the gun felt real when Hector hit him in the face with it.

AB – A neighbor of Hector Esparza's, who lived at 4522 Fillmore Street. AB had been friends with Mr. Esparza for approximately 5 - 6 years. It was to AB's home that BG went after he and Mr. Esparza were dropped off at home by JT at 10:00 that evening. AB was also the person to whom BG went to have someone call the police and who AE later asked to use his phone so she could call the police. She used the phone and about 15 minutes later the police arrived[16]. Looking out the window, he saw two officers go into Esparza's house and then heard 6 gunshots. He ran across the street as Esparza was being removed from the house.

JT – Much of the information provided by JT is detailed in other parts of this Public Statement. What follows is a summary of some of the pertinent information which she provided to Denver Police officers at the scene, as well as the information from her handwritten statement and in her videotaped interview. She lives at 1400 West 116th Avenue, #26 in Westminster, Colorado. She is the girlfriend of Hector Esparza. Mr.

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[15] See Footnote 4, above.

[16] Denver 911 records establish that the first officer on scene arrived 6 minutes and fifteen seconds after the first call was received.

Esparza had come by to pick her up from work with his brother (BG). His brother had to drive because Hector "had taken too many pills and couldn't drive." JT stated that he had taken Seroquel, and wasn't sure what it was for since he was on medications for depression, bi-polar medication and mood stabilizers. He was acting different than his normal self, being mean to her. After she dropped Hector and his brother home, at around 12:30, Hector called her and was telling her "crazy things." JT stated: "It felt as if I was talking to someone else. He just kept saying he's going to die" he also stated that he would not make it to 26 [years old]. Hector also told her that he was "going to have a shootout out with the cops" and told her that he could see her car outside. She explained that she wasn't at his house yet, but he continued to insist that she was right outside. The times of Hector's calls were recorded on her cell phone.

JT stated that the month before this incident, Hector had been depressed because he had been having problems with his children's mother and he hasn't been able to get a job. JT also stated that Hector had tried to kill himself a week or two ago by taking pills. She stated that his sister had found him and called 911. She also stated that Hector is fluent in both English and Spanish.

Responding Officers

The information provided by the three officers who entered the house, Sergeant Mark Beveridge, Technician Christopher Wilcox and Officer Michael Oestmann, is set forth in detail throughout this Public Statement. In addition to the above three officers, numerous other members of the Denver Police Department, including command staff, officers, detectives and lab personnel responded to this incident. Among those who were witnesses and provided statements were Officers Jonas Apala, Eric Cardenas, Kevin Curtis, Adam Foisy, Jarrett Gray, Robert Hart, Richard Jaramillo, Kevin Lippard, Erin Nelssen, John Nelson, Jonathan Rajala, David Timmerman, Trista Turney, and Jason Vincent, Sergeants Rayford Brown, Chet Neal, and David Smith.

Sergeant Glenn West

Much of the information provided by Sergeant West is detailed in other parts of this Public Statement. What follows is a summary of some of the pertinent information which he provided, in his written statement and videotaped interview. Sergeant West works as a sergeant in the Patrol Division and is assigned to District 2. On the night of the incident Sergeant West was wearing an official DPD uniform and driving a marked vehicle. Sergeant West was riding with Sergeant Beveridge. They were the second car to arrive on scene. Because he is bilingual he took over the field interview with Mr. Esparza's parents, AE and NM, which Officer Oestmann had initiated. He was told by Mr. Esparza's mother, AE, that Hector had run into the house believing that someone was chasing him. AE also told Sergeant West that Hector had a gun but she didn't know if it was real. She had heard from one of her son's friends that the gun wasn't real, but she believed that it was. She told the officers that Hector Esparza had assaulted his stepfather, NM. She was asked specifically if Hector Esparza understood English or Spanish and she told him "English". After the other officers had entered the house, Sergeant West heard Sergeant Beveridge call for Metro SWAT. Seconds before the shots were fired Sergeant West heard a voice saying "Come on you mother-fuckers". That voice was not one of the officers, all of whom he knew, and it came from the open window in the south bedroom. He then heard some yelling and then heard 5 or 6 gunshots that overlapped, sounding like they came from more

than one gun. He ran upstairs and saw Officer Oestmann removing a gun from under the Mr. Esparza's leg to an ironing board in the hallway so that it would be out of Mr. Esparza's reach. He stated that the gun appeared to be real and if it was not, it was "a really good replica. ... I thought it was real just from looking at it". He stayed upstairs for just a few seconds and then went back outside to secure the scene. While he was leaving the house he met the paramedics on their way into the residence.

Officer Christopher Johnson

On the night of the incident Officer Johnson was working car 222A when he responded to 4503 Fillmore Street. Upon arrival he was told to park mid-block so that AE and NM could be transported to his vehicle. While in the vehicle, AE told the officer that in recent days her son was taking unknown medication and stated that he wanted to kill himself. She told him that on this night she and her husband were awakened when her son, Hector Esparza, came into their bedroom with a handgun and stated that there were people in his room who were trying to kill him. She stated that NM had tried to get the gun away from Hector, but Hector pistol whipped NM across the face. Officer Johnson then heard 4 - 5 shots coming from the residence and heard Sergeant Beveridge announce "shots fired" and requesting an ambulance Code 10. Immediately after that AE began complaining of stomach pains so Officer Johnson requested an ambulance for her Code 9, that is, without sirens. About this time Johnson was approached by JT who informed him that she was Mr. Esparza's girlfriend. She told him that Hector Esparza had called her and asked her to pick him up. While en route he called again telling her that he was going to get in a shootout with the police. She stated that Mr. Esparza was not doing well lately and was on a lot of medication.

Officer Jeremy Cain

On the night of this incident Officer Cain was assigned to District 2 and was working patrol in uniform and in a marked Denver Police patrol car. He responded to a radio call from Police Dispatchers regarding an assault at 4503 Fillmore St. He was assigned as a cover car and was told it involved a stepson of the victim, but initially received no further information. While en route, Officer Cain heard both Sergeant Beveridge and Officer Oestmann advise Denver Police Dispatchers that they were Code 6[17] at the location. When he arrived on scene the house appeared to be quiet. He took a position at the southwest corner of the yard where he could observe the side window and the back door and back windows. He was standing there for approximately one minute when Sergeant Beveridge told him to watch the back door and that the party involved was believed to have a gun although they were not sure if the gun was real. He heard the other officers announce that they were Denver Police and their request to Police Dispatchers to "hold the air" to keep their radio channel open and limited to them while they entered and searched the house for the suspect. While they searched the house, he observed someone, later identified as Hector Esparza, stick his head out of the second floor, window on the south side of the house. He provided this information to the officers inside the house. He then observed, through the west window, what appeared to be a flashlight going up the stairs, which he believed was from the officers who made entry going up the stairs. He heard the officers in the house announce "Denver Police, come out." He also heard Sergeant Beveridge ask for Metro SWAT. While he was watching, he heard what sounded like a bedroom door open and shut. He then heard an officer (he couldn't tell which one) shout "Show me your hands.

[17] Code 6 indicated that the officers are on scene or have arrived at the location.

Show me your hands." He was standing in the alleyway behind the house and could clearly hear this being said by the officers inside. He heard a bedroom door open and shut again, and then he heard multiple shots fired. He heard Sergeant Beveridge call for an ambulance "Code 10, shots fired". He did not hear Hector Esparza say anything. He stated that the hallway light and bedroom light were on while he was on-scene

All law enforcement statements and reports can be found in the case file.

VI. ANALYSIS

As a general matter, an administrative review analyzing whether an officer-involved shooting was in accordance with Departmental policy focuses on three areas: (1) the reasonableness of the tactics utilized by the officer immediately prior to the shooting; (2) the reasonableness of the officer's assessment of the threat; and (3) the reasonableness of the use of force option selected by the involved officer.

It should be noted that there is a significant difference between the evidentiary standards that were utilized by the District Attorney in his criminal review of this shooting incident and the standard utilized in an administrative review. The criminal review process required a determination of whether, at the moment force was used, there existed proof "beyond a reasonable doubt" that an officer had no legal justification under the applicable criminal statute, C.R.S. § 18-1-707, for the use of physical force and/or deadly physical force under the circumstances presented. That means that Officer Oestmann and Technician Wilcox could not be found criminally liable unless there was proof beyond a reasonable doubt that, at the time they fired their weapons, it was unreasonable for them to believe that Hector Esparza presented a threat of serious bodily injury or death to himself or to a third person.

The administrative review process is much broader in scope and requires a determination regarding whether there exists a "preponderance of evidence" to show that the involved officer violated the Department's Use of Force Policy or any other rules and regulations that were in effect on the date of the shooting.

The Use of Force Policy encompasses the criminal statute applied by the District Attorney's Office as it relates to the reasonableness of an officer's actions at the moment deadly force is used, but also encompasses other aspects of tactics and training regarding an officer's actions prior to the actual use of force. The Policy indicates that an officer should recognize that the officer's conduct immediately connected to the use of force may be a factor which can influence the level of force necessary in a given situation. It acknowledges that an officer may escalate or de-escalate the use of force as the situation progresses or circumstances change and may use tactical options (such as warnings, verbal persuasion, cover, concealment, barriers, disengagement, repositioning, retreat, containment and others) as a preferable response to a deadly force confrontation, if reasonable under the circumstances.

The Policy also specifically indicates that an officer is to rely upon his or her training in making the decision as to the level of force to be used. With regard to potential deadly force situations, Denver Police officers are trained in classroom lectures, video based scenarios, and practical exercises to employ certain tactical principles wherever possible or practical. The purpose of these principles is to better ensure the safety of officers and the safety of the public. These include:

1. the use of cover and/or concealment;
2. the use of barriers between the officers and the potential threat;
3. the use of communication among the involved officers, as well as with the potential threat;
4. the use of movement to:
   a. seek a better tactical position;
   b. increase the distance between the officers and the threat;
   c. increase the time the officers have to react to the threat.

As it relates to the sections of the Policy referencing the criminal statute, the Policy expressly incorporates C.R.S. § 18-1-707 which sets forth the legal framework under which a police officer is justified in using deadly physical force. The applicable language states, in part:

> *"A peace officer is justified in using deadly physical force upon another person...when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force."*

In applying that section of the policy, the task in this administrative review is to determine whether the evidence and circumstances of this case make it more likely than not that a police officer would not have been reasonable in believing that Hector Esparza presented a threat of the imminent use of deadly physical force against that officer or a third person.

In addition, as it relates to the provisions of the policy dealing with tactical considerations and de-escalation, the task of this administrative review is to determine whether the evidence presented makes it more likely than not that a police officer would not have been reasonable in employing similar tactics as those used in this case when confronting Hector Esparza.

In making the above determinations, consideration must be given to all the circumstances, including, without limitation, the information which was available to the involved officer(s), as well as any reasonable inferences arising from that information; the observations of the officer(s); the lighting that was present and the visibility at the scene; the distances between the officer and the threat; the logistics at the scene; the timing of the incident; the immediacy of the threat; the nature of other offenses believed to have been committed; the manner in which force was both threatened and used; and the practicality and feasibility of employing other tactical options under the circumstances. It is necessary to gauge the behavior of these officers against what would be expected of an objectively reasonable police officer under similar circumstances.

A. Reasonableness of the Officers' Tactics

This analysis requires consideration of the skills and training available to the involved officers, as well as an assessment of the officers' actions before and during the use of deadly force. In this case, Sergeant Beveridge, Officer Oestmann and Technician Wilcox went to 4503 Fillmore Street in response to a call regarding an assault committed by the

stepson of the victim. The suspect was said to be armed. En route officers also learned that the suspect was "suicidal and known to be violent with the police". All three officers drove marked Denver Police patrol cars and Denver Police Department uniforms. Significantly, of the three officers who entered the residence at 4503 Fillmore Street on July 2, 2009, two – Officer Oestmann, a four year veteran, and Technician Wilcox, a five year veteran - were C.I.T. trained, as was Sergeant West, the bilingual officer who assisted in communicating with Mr. Esparza's family at the scene. C.I.T. trained officers go through a forty hour class which emphasizes understanding mental illness, developmental disabilities and how to de-escalate someone in crisis. These officers gather as much information as possible to understand the situation with which they are confronted and to try to defuse that situation in a safe manner. Additionally, both Officer Oestmann and Technician Wilcox were trained in the use of less lethal weapons, including the Pepper Ball Deployment System and TASER.

Preparation

When they arrived at the scene, Sergeant Beveridge, Officer Oestmann and Technician Wilcox gathered as much information as possible regarding the situation. They learned about Mr. Esparza's behaviors, including his actions that evening, his history of psychiatric problems, his location in the house and whether anyone else was with him. According to his family, Mr. Esparza understood English and was fluent in both English and Spanish. The officers also learned that he had a gun which someone told them was a "fake", but which seemed real to Mr. Esparza's mother and stepfather. They had both seen the gun at close range that night when Mr. Esparza threatened them with it. The officers also learned that Hector Esparza had violently assaulted his stepfather by pistol whipping him with the gun shortly before they arrived.

In preparation for entering the house, Sergeant Beveridge attempted to locate two less lethal weapons. Those weapons, respectively, the TASER and Pepper Ball Deployment System, would provide less lethal options for both short range and mid-range situations. Officer Oestmann and Technician Wilcox were trained to use both these less lethal weapons. When Sergeant Beveridge checked the availability of the Pepper Ball weapon, he discovered that it was assigned to another office that night and was unavailable. However, Technician Wilcox had his TASER, so that less lethal weapon was incorporated into the entry approach.

Sergeant Beveridge assigned Technician Wilcox who had the less lethal TASER to take the lead on the entry. Officer Oestmann and Sergeant Beveridge would provide lethal cover for Technician Wilcox. These preparations by Sergeant Beveridge demonstrate sound tactical thinking and are both reasonable and in accord with Departmental policy. While there was speculation that the weapon which Mr. Esparza was reported to have was not a powder firearm, nonetheless, the entry team had to be prepared to confront a real weapon – either the firearm Mr. Esparza had used or another weapon available to him in the house. Less lethal weapons and de-escalation tactics can be helpful, however their success often depends on the behavior of the suspect confronted and other factors out of the control of responding officers. The duty of the officers responding to this call was to ensure the safety of citizens, responding officers and other emergency personnel, and, if possible, in light of his behavior, to take Mr. Esparza into custody without harming him. The preparations made by these officers were reasonable and tactically sound.

The Entry

Before entering the house, the officers directed police dispatchers to "hold the air" or keep other radio traffic off of their assigned channel. This directive ensures a clear channel for emergency communication if the circumstances found within the home required it. Sergeant Beveridge, Officer Oestmann and Technician Wilcox knocked on the front door on the east side of the house, out of view from the room in which Mr. Esparza was believed to be. Before entering the residence the officers had confirmed that Mr. Esparza was still in the south bedroom. As they opened the door, they announced their presence loudly, saying "Denver Police". Upon entry, they immediately initiated de-escalation tactics and attempts at communication - calling Mr. Esparza by his first name, issuing clear verbal commands and letting him know that they only wanted to talk with him. It is noteworthy that on at least two prior occasions, Mr. Esparza had been assisted by other C.I.T. trained Denver Police officers who were responding to calls from his family because he had threatened or attempted suicide or violence.

As they moved through the house, the three officers continued calling out to Mr. Esparza and attempting to get him engaged and communicating. They cleared every room except the south bedroom in which Mr. Esparza was located. This tactic ensured that Mr. Esparza had not changed his position so as to endanger them; confirmed that no other civilians were in the house and in a position to be in danger from Mr. Esparza or to assist him in evading capture or harming the officers; and provided the officers with some familiarity with the home in the event that circumstances changed.

When they finished clearing the house, Officer Oestmann and Technician Wilcox took positions of safety on either side of the door to the room in which Mr. Esparza was located, while Sergeant Beveridge provided cover. Technician Wilcox continued talking to Mr. Esparza telling him "Hector, Denver Police. I need you to come out and show me your hands". There was no response. Technician Wilcox then pushed open the door, but resistance by Mr. Esparza prevented him from opening it more than a few inches. These actions by Technician Wilcox allowed the officers to make visual contact with the suspect, assess his location, determine, if possible, whether he was still armed. They also confirmed for Mr. Esparza that the officers were actually present and that they wanted to talk with him. They encouraged Mr. Esparza to resolve the situation peacefully by giving him very specific directions on how to do so. The tactics used at this stage of the entry were sound and reasonable.

When the door opened, Officer Oestmann saw in the bedroom mirror a reflection of Mr. Esparza in a position that suggested he was holding a gun. Officer Oestmann immediately advised Sergeant Beveridge and Technician Wilcox that he believed the suspect had a gun. The officers directed Mr. Esparza to come out of the room and show his hands. Mr. Esparza then spoke to the officers for the first time. His response was not compliant. Rather, he told the officers several times, "I'm going to shoot you" and "leave me alone or I'll shoot you".

The officers had now confirmed that the suspect was in the room, apparently armed and that he was both noncompliant and escalating, as shown by his direct threat to shoot them. Accordingly, Technician Wilcox moved to a position of greater safety and transitioned from his less lethal TASER to his firearm, in order to meet the lethal threat which Mr. Esparza now presented. It is important to point out the tactical necessity behind the decision of

Technician Wilcox to holster his TASER and arm himself with his firearm. As explained by District Attorney Morrissey in his previously cited letter to Chief Whitman:

> The "TASER" is a less-lethal force, pistol-shaped weapon which fires two charged wires or leads a short distance (up to 21 feet). When an individual is struck by the probes an electrical charge temporarily immobilizes the individual. The devices are made by TASER International. We will refer to the weapon as a TASER, using the company name. The TASER is a less-lethal force option designed and deployed for use in *non-deadly force encounters*. When a party is armed with a firearm or edged weapon, the confrontation is immediately a potential deadly-force threat. This is one reason why it is tactically correct to have lethal force present to back up the less-lethal force TASER. There have been confrontations where the TASER has been successfully used against assailants with edged weapons, but the TASER is not specifically designed and intended for that type of encounter. While it is fortunate that on occasion under the right set of circumstances a TASER can be deployed to end an encounter without serious injury or death to anyone, there should be no expectation that a TASER will be used in confrontations with assailants armed with firearms and edged weapons. This is clearly stated in the Denver Police Department Operations Manual at "105.02 Less Lethal Force and Control Options." This case is an example of the fact that in these quickly evolving, tense confrontations, the presence of a TASER guarantees neither a certainty that it will be able to be deployed nor that it will be successful if deployed. When this occurs it can create an increased vulnerability and risk to the officers' safety.

This was also the point at which Sergeant Beveridge made the tactical decision to call in Metro SWAT. As discussed previously, the armed suspect, Mr. Esparza, was now confirmed to be alone. He was contained in a single, identifiable location in the home. Sergeant Beveridge determined that containment, with continued attempts at communication and negotiation, would be the best operational approach. To that end, as is required in all such situations, Sergeant Beveridge called the Denver Police Department's Metro SWAT team to respond. Sergeant Beveridge went downstairs to make the call.

While Sergeant Beveridge was calling Metro SWAT, Mr. Esparza began peeking out the door, then shutting it quickly. The officers maintained their positions and continued to use verbal commands and de-escalation tactics, telling him to come out with his hands up, that he wasn't in trouble, that they needed to talk to him, saying, "We can't understand what you're saying. Come out with your hands up and we can talk." Mr. Esparza did not respond and did not comply.

Sergeant Beveridge directed Officer Oestmann and Technician Wilcox to hold the door before he went downstairs to call Metro SWAT. After the call, he went outside and ensured that Mr. Esparza's mother and stepfather were moved to a position of safety in Officer Christopher Johnson's patrol car. Sergeant Beveridge also directed Officer Johnson to move the car halfway down the block. Sergeant Beveridge then called for additional cars to block off Fillmore and 45th Streets to ensure that no vehicle or pedestrian traffic would be at risk. After he finished with these tasks, Sergeant Beveridge rejoined the officers in the stairwell. There he advised Officer Oestmann and Technician Wilcox that he would take rotations on watching the door with them, so that they could keep fresh eyes on the door at all times and ensure they would not be taken by surprise if Mr. Esparza suddenly came out.

The decision to contain Mr. Esparza was also tactically sound and necessary to ensure that the community was not endangered by this assaultive, mentally ill suspect who was apparently armed and threatening to shoot police officers. The officers used proper tactics in securing the room, not entering it or escalating the situation, while officers outside watched to see if Esparza would jump from the window. In sum, all of the tactical decisions made by the officers after they opened the door and saw Mr. Esparza were reasonable and sound.

The Shooting

As Sergeant Beveridge stood below the landing talking with Officer Oestmann and Technician Wilcox about the importance of keeping fresh eyes on the door, both officers suddenly started yelling "gun", show me your hands, show me your hands", "put the gun down" and "come out with your hands up". Although Sergeant Beveridge was not standing high enough on the staircase to see it, Mr. Esparza had stuck his hand out the door with the gun in it and pointed it at the officers. He then quickly pulled his arm and the gun back in and shut the door.

Just a few seconds later, Officer Oestmann heard Mr. Esparza say something to the effect of "it's - it's not going to hurt" or "I'm coming out ... this won't hurt". Then the door opened and Mr. Esparza came out of the room, walking briskly directly toward Technician Wilcox and raising up the gun.

Rather than firing Officer Oestmann and Technician Wilcox both immediately yelled verbal commands, saying "drop the gun, drop the gun" and "don't do it". Mr. Esparza did not drop the gun and continued advancing on Technician Wilcox with the gun pointed directly at him. Technician Wilcox described making direct eye contact with Mr. Esparza and making a last effort to distract and disorient the suspect by aiming the flashlight on his firearm directly into Mr. Esparza's eyes. Despite the use of these sound and reasonable tactics, Mr. Esparza continued with his threat, closing the distance with his gun drawn and aimed at Technician Wilcox as he raised it to a firing position. Simultaneously, Officer Oestmann and Technician Wilcox fired their weapons to stop the threat presented by Mr. Esparza. Both officers quit firing immediately when Mr. Esparza fell to the floor and lost control of his weapon. Technician Wilcox continued to cover Mr. Esparza until Officer Oestmann removed the gun from under the suspect's leg and set it on the ironing board. Immediately after the shooting, Sergeant Beveridge called for medical assistance for Mr. Esparza. The officers stayed with Mr. Esparza until paramedics arrived and took over his care. While they waited for medical help the officers continuously talked to Mr. Esparza, encouraged him to "keep breathing" and applied chest compressions when his breathing faltered.

Sergeant Beveridge, Officer Oestmann and Technician Wilcox were dressed in clearly marked Police uniforms. They initiated their entry with less lethal force and lethal back up. Throughout the entirety of their time in the residence, the officers announced their presence, used verbal commands, and attempted to engage and de-escalate the suspect. Their movements inside the house provided cover for each other, collected additional information about the suspect and enhanced officer safety. The decision to contain the suspect alone in a single room and call in Metro SWAT provided tactical options which enhanced the chances for a peaceful resolution of the confrontation.

When Mr. Esparza came out into the small hallway, advancing on Technician Wilcox with his gun drawn and then raising it to a firing position, the officers gave verbal commands and tried to distract him. Even though Mr. Esparza was armed and not complying with their commands, neither Officer Oestmann, nor Technician Wilcox fired at that point. It was not until Mr. Esparza had closed to within six feet of Technician Wilcox and raised his gun to a firing position that both officers fired their weapons. Technician Wilcox estimated that the entire confrontation from when Mr. Esparza came out the door until the officers fired their weapons lasted no more than two seconds. Officer Oestmann said that no more than seven seconds had elapsed during the entire incident – from the time when Mr. Esparza came out the door until the officers had him in handcuffs after firing their weapons.

In assessing whether the tactics used by the officers involved in this shooting were reasonable, this Office has considered the totality of the circumstances, including the information available to the officers at the time, the investigation, planning and preparation that took place, the manner in which the entry was accomplished and the specific actions of Officer Oestmann and Technician Wilcox when they were confronted by Hector Esparza in the upstairs hallway of his family's home. The preparations taken and the tactical decisions made based on the confirmed information that Mr. Esparza was armed and violent, along with his direct threats to shoot these officers were clearly appropriate.

Throughout this incident the officers chose tactics which were intended to contain and de-escalate the situation, encourage Mr. Esparza's compliance and resolve the situation peacefully and without injury. However, Mr. Esparza did not comply. He spoke only to threaten the officers. He did not open the door, show his hands or give up his weapon. In short, he did not comply with any of the orders the officers were giving him. By choosing to raise his gun and point it towards Technician Wilcox, as he advanced on that officer, Hector Esparza eliminated all the officers' tactical options, save the use of deadly force.

In looking at the entirety of the situation, the officers' tactics were reasonable throughout this entire incident. When Hector Esparza refused to even acknowledge, let alone obey, police commands to show his hands and instead chose to raise his gun at Technician Wilcox, Officer Oestmann and Technician Wilcox were confronted by their sworn duties to protect the public and police officers, and to enforce the law and apprehend suspects. These officers properly chose to take all necessary measures, including deadly physical force, to carry out those duties. Hector Esparza's actions eliminated any opportunity for Officer Oestmann and Technician Wilcox to de-escalate the situation or to employ any other tactic that would lessen the likelihood or necessity for deadly force. In light of the immediacy and lethality of the threat which Hector Esparza posed at the point at which Officer Oestmann and Technician Wilcox fired upon him, and taking into consideration the totality of the circumstances, this Office concludes that the tactics used by the officers in this case were reasonable and appropriate.

B. The Reasonableness of the Assessment of the Threat

This analysis requires consideration of the justification for using force. In evaluating whether the officers' assessments were reasonable, we must examine what they knew at the time they were assessing the threat before them. In this case, as pointed out in the above section, at the time Hector Esparza came out of the room and started walking briskly towards Technician Wilcox raising his gun, the officers knew that he had a gun that may or

may not be real, they knew that he had assaulted his stepfather, they knew that he had threatened to shoot them, and they knew that he appeared to be having mental difficulties.

In looking at the totality of the circumstances, it is clear that Hector Esparza was the escalating force in the incident. The toxicology reports show that Esparza had used cannabis earlier. Reports from friends and family established that he had taken so many prescription pills that he was incapable of driving or carrying on a conversation. Mr. Esparza was floridly suicidal and repeatedly threatening to kill himself. Only two weeks prior, Mr. Esparza had attempted to commit suicide by overdose and would have succeeded had his sister not called the police. Mr. Esparza's behavior was very erratic throughout the day. The initial call to the police was made because of his violent assault on his stepfather and his threats to kill his mother, his stepfather and "everyone", including himself. The officers who responded made extraordinary efforts to calm Mr. Esparza and get him to comply with their commands so they could get him help – as Denver Police officers had done in the past. His response to their attempts to de-escalate the situation and peacefully resolve it was to threaten to shoot them. At every step of the way, this confrontation was escalated by Hector Esparza's actions.

The officers approached him with caution. They tried to establish communication, to engage him and to calm him down. They gave him clear directions and verbal commands that could end the situation peacefully. When he brandished the gun at them from the doorway, they did not shoot, but rather repeatedly told him to "drop the gun" and "show us your hands". When it was clear that he was not compliant, they held the door and continued trying to de-escalate him while keeping him safely contained until the additional resources of Metro SWAT could help defuse the situation. They did everything possible to de-escalate a situation with a potentially armed suspect, who had already assaulted one person in the house, and had threatened to shoot the officers.

Rather than comply with or even respond to the officers orders, Hector Esparza suddenly came out of the bedroom. He opened the door and began walking "briskly" toward Technician Wilcox, the gun aimed directly at that officer as he raised it to a firing position,. Even in these last seconds, both officers gave Hector Esparza multiple opportunities to surrender. They held their fire while repeatedly ordering him to "drop the gun!" and pleading with him, saying "don't do it, don't do it". Technician Wilcox even delayed in firing at Mr. Esparza as he tried instead to distract him by shining the flashlight on his duty gun into the suspect's eyes.

Officer Oestmann and Technician Wilcox had only two seconds to make a decision regarding Esparza's intentions and the threat he posed after he left the bedroom. In those final seconds, Hector Esparza, by his actions, escalated an already tense situation. Rather than drop the gun, he confronted the officers, gun in hand, and pointed the weapon directly at Technician Wilcox as he closed the distance between them to only 6 feet. At that point Officer Oestmann and Technician Wilcox could have reached no other objectively reasonable conclusion except Hector Esparza posed an immediate deadly threat to them. As stated by Technician Wilcox:

> "...he and I are looking directly at each other. I captured his attention as he's coming out of the room using the flashlight on my handgun to try and distract him and disorient him. And – and I was probably ... exposed to his view standing right in this area...

> Q: Okay. Are you saying anything to this individual?
>
> "Drop the gun. Drop the gun. Don't do it," as he's coming... Then Officer Oestmann – ***he gets where that gun is pretty much pointed directly at me*** and Officer Oestmann and I pretty – fire pretty much simultaneously." (Emphasis added)

As stated by Officer Oestmann:

> He's not walking – he's not running but he's walking with a purpose. He wasn't, you know, slowly meandering. He walks out and he walks straight towards Wilcox...
>
> * * *
>
> Q: Okay, and how close does this individual get to the officer's position?
>
> Six feet.

At that moment, Officer Oestmann and Technician Wilcox came to the exact same conclusion - that Hector Esparza was a deadly threat to Technician Wilcox and possibly to both officers. Both of them deemed it appropriate to use deadly force, and both of them fired their weapons. The fact that both officers fired simultaneously supports the determination that the deadliness of the threat posed by Hector Esparza was objectively obvious and that their assessment of that threat was reasonable.

A thorough review of this case shows that at every point during this encounter, rather than compliance and de-escalation, Hector Esparza, instead, engaged in escalating and threatening behavior. This conclusion is confirmed by the description of his behavior by Hector Esparza's mother and stepfather – both of whom believed that his gun was real and were afraid he would kill them when he threatened them with that weapon. It is also supported by Mr. Esparza's statements to his girlfriend, JT, in the four telephone calls he made to her that night.

These facts lead directly and reasonably to the conclusion that, in the early morning hours of July 2, 2009, Hector Esparza's actions created a clear impression that he was armed with a deadly weapon and was going to shoot Technician Wilcox and possibly Officer Oestmann. In the opinion of this Office, the perceptions of Officer Oestmann and Technician Wilcox, that Technician Wilcox was in imminent danger of having deadly physical force used against him by Hector Esparza, was objectively reasonable.

C. The Reasonableness of the Use of Force Option

This analysis requires consideration of the justification for the amount of force utilized by Officer Oestmann and Technician Wilcox at the point where they resorted to deadly physical force in firing their weapon at Hector Esparza. As stated earlier, the language of C.R.S. § 18-1-707, which defines the circumstances under which a police officer may use deadly force, is incorporated into the Denver Police Department's Use of Force policy. The section reads, in pertinent part:

> *A peace officer is justified in using deadly physical force upon another person...when he reasonably believes that it is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.*

The Department's Use of Force Policy focuses on the "objective reasonableness" of a police officer's decision to use deadly physical force under the "totality of circumstances" present at that time. The officer is required to rely on his training, experience and assessment of the situation in deciding the level of force to be employed, and to exercise reasonable and sound judgment. The Policy recognizes that police officers often face circumstances that are "tense, uncertain and rapidly evolving," requiring them to make split-second life or death decisions. In such circumstances, a higher level of force may be deemed reasonable than would be the case if the officer had minutes or hours to make that choice. The policy also provides that the greater the level of threat facing the officer, the greater the level of force that may be used by the officer.

It is important to point out that under the Department's Use of Force Policy, as well as the criminal statutes governing the use of force, an officer is not deemed to have used excessive force simply because it is later determined that the officer was mistaken in his belief that a subject posed an imminent threat of death or serious bodily injury. An officer need only base a decision to use deadly force on an "apparent necessity", not an "actual necessity". Similarly, an officer is not required or expected to wait until he is fired upon, or has a weapon pointed directly at him, in order to use deadly physical force. Such a policy or practice would subject an officer to the grave danger of being injured or killed and would be highly impractical. Thus, an officer is entitled to act on appearances. However, in doing so, it is the officer's responsibility to draw reasonable conclusions from the facts and surrounding circumstances.

The facts discussed above are also dispositive in determining whether the degree of force which Officer Oestmann and Technician Wilcox used against Hector Esparza was reasonable and justified. At the point when Officer Oestmann and Technician Wilcox fired their weapons, the actions of Mr. Esparza had created a situation in which both officers reasonably believed that deadly physical force was imminent and that the life of Technician Wilcox was in danger. By his actions Hector Esparza led Officer Oestmann and Technician Wilcox to believe that he intended to use his gun against them and that the gun was real.

Both Officer Oestmann and Technician Wilcox in fact did believe that the gun was real. Esparza's mother, who had been told the gun was a "fake", nonetheless, also thought the gun looked real and, in fact, was real. Mr. Esparza's stepfather saw the gun, and he also believed it to be real. As noted by District Attorney Mitchell Morrissey in his previously cited letter to Chief Whitman:

> At the time of this incident, Esparza was armed with a model 93, CO2 powered BB pistol. It is described by its manufacturer as a "CO2 powered semi-automatic" with a "maximum muzzle velocity of 400 feet per second." Its overall length is 7.9 inches and it fires 4.5 mm BB. The barrel is "smooth bore steel." It has a capacity of "15 shots from a drop-in clip" and a "maximum shooting distance of 235 yards." The side of the barrel is engraved with the statement: "WARNING: MISUSE OR CARELESS USE MAY CAUSE SERIOUS INJURY OR DEATH. FOR USE BY AGES 16 OR OLDER. The

> weapon was not loaded with a CO2 cartridge or the drop-in clip when recovered at the scene after the shooting. ...
>
> It is a tragic event for these two officers and the family and friends of Esparza that he chose to commit suicide and forced the officers to shoot him. Based on his prior attempts to commit suicide, his numerous statements to family and friends that he wanted to die, his statements that he was going to get in a shootout with police and was ready to die; his possession of an *unloaded,* authentic-looking-BB pistol, his comments at the scene, and his final act of coming out of the room with gun in hand raised at Technician Wilcox while closing distance, clearly suggest an intent to force the officers to shoot him. It would be impossible for anyone, under the specific facts of this case, to determine when attacked in this manner by Esparza that the gun he was wielding was a BB pistol.10 His mother and stepfather, when being menaced and assaulted by him, both believed it was a "real" gun.
>
> Officers have a right to defend themselves from a perceived imminent attack. There is no justification to attack a police officer who is performing his lawful duty. The officers were attempting to protect Esparza, family members and citizens outside the house by containing him in the bedroom. It was Esparza's non-compliant and aggressive conduct throughout the confrontation with his mother, stepfather and then the officers, combined with his clear intent to commit "suicide by cop" that ultimately forced Officer Oestmann's and Technician Wilcox's split-second decision to shoot. Had Esparza complied with the officers' lawful commands, the confrontation would have ended peacefully at that time. Esparza had a different ending in mind. Unfortunately, it was an ending no one else wanted.

After interviewing Mr. Esparza's family and girlfriend his behavior on July 2, 2009 became a bit clearer. Hector Esparza had been suicidal for at least a few weeks. He had tried to commit suicide - and almost succeeded - on June 16th, little more than two weeks prior to this incident. Had his sister, GG, not become concerned that he didn't answer the phone and called the Denver Police, Hector Esparza may have died by his own hand before this incident ever took place[18]. Both before and after the June 16th suicide attempt Mr. Esparza had been improperly taking his medications, which seemed to adversely affect his mental health. He had already attacked his stepfather and was even threatening his mother and, on this final night, he seemed intent on killing those that he believed were after him. Unfortunately for all involved, this ended up in a deadly confrontation with police.

When Officer Oestmann and Technician Wilcox were confronted by Esparza, all of the information available to them indicated that he was someone who would do them harm. Throughout this incident they tried to use the least aggressive option – initially Technician Wilcox had a TASER, and Sergeant Beveridge attempted to locate a Pepper Ball gun. They tried to engage him and get him to communicate with them. They provided him with clear verbal commands that, if followed, would have peacefully resolved the situation. When none of their efforts at de-escalation worked, the officers tried to keep Mr. Esparza safely contained in the bedroom until Metro SWAT could get there. They continued to talk to Mr. Esparza and encouraged him to drop his weapon. Even when he came out of the bedroom holding the gun, Officer Oestmann and Technician Wilcox held their fire and gave

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[18] See Footnote 2, above.

Mr. Esparza time to put the gun down. They told him repeatedly to "drop the gun!" before they fired. Had Mr. Esparza complied with the officers' orders at almost any point during this confrontation, this volatile situation would have had a far less tragic outcome.

These facts and the circumstances surrounding this event lead to the conclusion that the beliefs of Officer Oestmann and Technician Wilcox that they were in imminent danger from deadly physical force were objectively reasonable. Additionally, these facts and the circumstances surrounding this event lead to the conclusion that Technician Wilcox specifically, was in imminent danger from deadly physical force, and further, that the beliefs of both Officer Oestmann and Technician Wilcox that they needed to use deadly force in response were also objectively reasonable.

D. Summary of Findings

It is the finding of this Office that the actions of Officer Oestmann and Technician Wilcox in discharging their firearms on July 2, 2009 were reasonable and necessary to defend against the active and imminent threat posed by Hector Esparza. The officers' actions were direct and appropriate responses to what they reasonably believed to be the imminent use of deadly physical force against them collectively, as well as specifically against Technician Wilcox. Given these circumstances, this Office concludes that Officer Oestmann's and Technician Wilcox's actions were in compliance with the provisions of the Denver Police Department Use of Force Policy.

VII. Additional Issues

Replica Handguns

As noted above, officers are entitled to act upon appearances in assessing the imminent danger they are confronting when they must make a decision regarding the use of deadly force. The reasonableness of those perceptions and decisions must be determined on a case-by-case basis, taking into consideration the totality of the circumstances.

Numerous factors can be considered in reaching a determination about the reasonableness of an officer's use of force in response to a suspect's use of a simulated weapon. Some of these factors may include, without limitation, the information that the officer knew or should have known prior to utilizing force; any reasonable inferences that should have been drawn from that information; the observations of the officer; the logistics of the scene; the timing of the incident; physical factors such as the lighting in the area; the distance between the officer and the person with the alleged weapon; the physical appearance of the alleged weapon and the manner in which the person handles it; the immediacy of the threat and the time available for reaction by the officer; and the movement and activity of the person with the alleged weapon.

All of these factors, as well as a multitude of others, can - and often will - affect the determination of whether an officer's use of force was reasonable under the circumstances. In this case, as previously discussed, Mr. Esparza's own mother and stepfather believed the gun to be real. His mother thought the gun looked so real, that she continued to believe it was a real gun, even after being told by someone that it was a "fake". All of the officers who saw the gun believed it to be real. Esparza himself told the officers that he was going to

shoot them and told his girlfriend that he was going to get into a shootout with the police, indicating Esparza wanted his girlfriend and the police to believe that the gun was real.

Hector Esparza did not simply hold an air gun in his hand. He deliberately gripped it with two hands as if it were real. He showed it to the officers so that they could see he had a gun. He told the officers that he was going to shoot them. He advanced on Technician Wilcox while raising the gun to a firing position. In short, Mr. Esparza did everything in his power to further the impression that the real looking – and potentially lethal - air gun which he held was, in fact, a deadly weapon with which he intended to shoot Technician Wilcox and, possibly, Officer Oestmann. Based on these facts, this Office believes that Officer Oestmann and Technician Wilcox were reasonable in interpreting the actions of Hector Esparza to mean that he was in possession of a deadly weapon and intended to use it against Technician Wilcox.

VII. CONCLUSION

In closing, this Office wants to assure the public and the members of this Department that it has reviewed and analyzed this case carefully. The conclusions reached here are consistent with those of the District Attorney's Office, the Chief of Police and the Independent Monitor. These consistent conclusions result from no other reason than that they are dictated by the facts. It is always a concern to the Department when a police officer has to use deadly force in the line of duty. However, in many instances, as in this case, the actions of the person against whom force was used have precipitated that use of force.

These officers were responding to a domestic disturbance, involving a person who had previously been suicidal and was known to be violent with the police. The volatility of the situation was exacerbated by Mr. Esparza's misuse of his medications, his depression, his violent acts against his family, his possession of a real looking and potentially lethal air gun and his apparent determination to force police officers to kill him and thus commit suicide. Sergeant Beveridge, Officer Oestmann and Technician Wilcox gathered all the information they could, made innumerable attempts to de-escalate the situation and calm Mr. Esparza down. They attempted to engage Mr. Esparza and gave him multiple opportunities to conclude the situation peacefully. Additional resources were requested to help contain and defuse the situation. Despite all of these efforts, Mr. Esparza's behavior continued to escalate. He threatened to shoot Officer Oestmann and Technician Wilcox, then menaced them with a gun through the bedroom door and ultimately advanced on Technician Wilcox with a realistic looking and potentially lethal air gun in an aggressive manner. Throughout this deadly encounter, the actions taken and tactics used by Officer Oestmann and Technician Wilcox were those which they reasonably believed were necessary to protect the life of Technician Wilcox. Both officers acted appropriately and reasonably to stop the imminent threat posed by Hector Esparza.

It may well be that none of those involved in this tragic incident will ever fully understand what motivated Hector Esparza's bizarre, violent and aggressive behavior on July 2, 2009. What is clear is that Mr. Esparza was suicidal, depressed, anxious and possibly having hallucinations on the night of his death. He had attempted suicide just two weeks prior to this incident, and seemed intent on precipitating a deadly force confrontation with law enforcement. Whether he intended to "commit suicide by cop" can never be known with certainty. However, it may be posited that the answer lies in Mr. Esparza's final words.

Hector Esparza said "It – it's not going to hurt - I'm coming out. This won't hurt." just before he opened the door and walked out, with an unloaded gun in hand, to confront the officers. Perhaps these words were meant only for him. Perhaps they were intended to give some measure of comfort as he forced Officer Oestmann and Technician Wilcox to give him the death he had long sought. Regardless, at every juncture leading up to the fatal confrontation, Hector Esparza ensured that the trained C.I.T. officers who hoped to help him had no choice but to use deadly force.

It is clear that on July 2, 2009, Officer Michael Oestmann and Technician Christopher Wilcox acted reasonably under the circumstances with which they were confronted.

Alvin J. LaCabe, Jr.
Manager of Safety

1/4/10
Date

Mary A. Malatesta
Deputy Manager of Safety

1/10/10
Date