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August 12, 2015

Chief Jerry Garner  
Greeley Police Department  
2875 W. 10<sup>th</sup> Street  
Greeley, CO 80634

**RE: Investigation of the June 19, 2015 Officer-Involved Shooting of Louis Atencio**

Chief Garner:

The investigation into the shooting of Louis Joseph Atencio has been completed by this office in conjunction with the Greeley Police Department. Applying the facts from the investigation to applicable Colorado law, criminal charges will not be filed against the officers who discharged their weapons. Included with this report is a summary of the investigation and the pertinent Colorado law.

**INVESTIGATIVE SUMMARY**

On June 19, 2015 at 6:33:51 a.m, a 911 call was received at the Weld County Communications Center from Aaron Hathaway of 601 15<sup>th</sup> Avenue Court, Greeley, Colorado. Mr. Hathaway advised an injured and bleeding woman was at his front door. The call was aired as a medical assist with Greeley Police dispatched to assist Fire and Paramedics.

Louis Joseph Atencio (4/8/65), unbeknownst to responding emergency personnel, had shot his wife, Angelina Abeyta (9/30/73), who had fled to the Hathaway residence seeking help. While the Hathaways and fire personnel were assisting Ms. Abeyta, Atencio, armed with a handgun, approached the scene and fired at least one round toward his own head. Fire personnel fled the scene and the Hathaways fled to the rear yard of their residence while advising dispatch of Atencio's actions.

Officer Oliveros arrived on scene as the nature of the call was changed from a medical assist to an attempted suicide. As he exited his patrol vehicle he heard a woman screaming as if in pain and then heard gunshots being fired. Officer Sanchez arrived on scene and immediately took a position of cover with Officer Oliveros behind a tree north of 601 15<sup>th</sup> Avenue Court.

The officers observed the Hathaways in the backyard of their residence in obvious distress and motioning to the officers toward the front of their residence. Shortly thereafter, both officers observed Atencio walk into the street in the 600 block of 15<sup>th</sup> Avenue Court, armed with a handgun, wailing and screaming something unintelligible. Atencio turned toward the officers, made eye contact, and raised the gun toward the officers. The officers fired their weapons at

Atencio, who was in front of his residence at 600 15<sup>th</sup> Avenue Court. One round struck Atencio and he fell, mortally wounded.

An Armscor .38 revolver, Model 206, was found lying on the curb a short distance from where Atencio was found.

Atencio's wife, Ms. Abeyta, had been shot by Atencio inside their residence. Ms. Abeyta was transported to NCMC where she underwent surgery for the gunshot wound inflicted by Atencio.

Upon review of 911 calls by witnesses and Atencio, as well as police radio traffic with dispatch, the following information was gained. The initial call from the Hathaways requesting medical assistance for Ms. Abeyta was received at 6:31:51 a.m. At 6:34:29 a.m., Atencio called dispatch, incoherent and despondent, and then put down the phone. He did not hang the phone up, leaving the phone line open and recording. At 6:38:05 a.m., fire personnel notified dispatch that they were performing CPR on Ms. Abeyta. At 6:39:34 a.m., a gunshot can be heard on Atencio's open line with dispatch. At 6:39:37 a.m. Hathaway told the dispatcher that his neighbor (Atencio) was "trying to kill himself" in front of them, and at 6:39:40 a.m., fire personnel aired "shots fired." At 6:39:42 a.m. Officer Oliveros aired "shots fired," then told Officer Sanchez which direction to approach from, and informed dispatch that he was employing his long gun. At 6:41:29 a.m. Officer Sanchez aired that he was on scene. Based on Hathaway's statement to dispatch, at 6:42:06 a.m., dispatch aired that the suspect was at the front of the house with a small handgun, which the officers observed at 6:42:20 a.m. At 6:42:27 a.m., eight gunshots were heard through dispatch. At 6:42:44 a.m., officers aired "shots fired," and requested medical to respond emergent.

Officer Oliveros told investigators that he was dispatched to the scene as a medical assist, and shortly thereafter, dispatch aired an attempted suicide near that location. When he arrived, he parked his marked police car to the north of 601 15<sup>th</sup> Avenue Court. He then heard gunshots, and aired this information to dispatch. After hearing the gunshots, he could hear a female in distress. Due to the danger of the situation, he retrieved his rifle from his police car and took cover behind a tree. At that point, Officer Sanchez arrived on scene, and the officers observed the Hathaways retreating in fear to their backyard in an effort to hide. He stated he gave commands to the Hathaways who were pointing towards the front of their house, indicating the location of the shooter. Oliveros then observed Atencio emerge from behind a car parked in front of the Hathaway residence and walk toward the middle of the street. Officer Oliveros saw a gun in Atencio's right hand, and described Atencio as screaming and moaning unintelligibly. Atencio brought his gun to his head and then pointed it in the direction of the officers. At that time Officer Oliveros heard Officer Sanchez discharge his firearm. Atencio was able to get behind a car parked across the street from the Hathaways, at 600 15<sup>th</sup> Avenue Court. Still armed, Atencio pointed his gun in the direction of the officers again, and fearing for his and Officer Sanchez's life, Officer Oliveros stated he discharged his rifle. At that point, Atencio fell to the ground. He stated as the officers approached Atencio, he saw Atencio's handgun laying on the sidewalk. He was then able to see Ms. Abeyta in front of the Hathaway residence, bleeding from the left side of her body and screaming in pain. Sergeant Bollig then arrived on scene and called for paramedics.

Officer Sanchez was interviewed by investigators and stated he was dispatched to the location as a backup officer on a medical call that changed to a suicide call. While en route, he heard "shots fired" aired by dispatch, so he turned his lights and sirens on and drove emergent to the scene. Upon arrival he saw Officer Oliveros behind a tree with his rifle, so Officer Sanchez drew his sidearm and ran over behind Officer Oliveros. Officer Sanchez said he saw the Hathaways in their backyard and gave them commands to come over to where the officers were. He then described seeing Atencio come from behind a car parked in the Hathaway driveway, armed with handgun, walking to the middle of the street. Atencio refused to comply with commands and was making indecipherable sounds. At that point, Officer Sanchez said that Atencio turned and faced the officers and raised the gun toward them. Fearing for his life and Officer Oliveros' life, Officer Sanchez said he fired at Atencio, shooting several times. After he raised the gun toward the officers, Officer Sanchez said he saw Atencio move the gun from the officers and put it to his own head. When Officer Sanchez saw Atencio turn the gun and point it at himself, Officer Sanchez stated he stopped firing, and Atencio walked towards a car in front of 601 15<sup>th</sup> Avenue Court and fell down behind it. The officers approached Atencio and Officer Sanchez saw a black revolver handgun lying on the sidewalk next to him. Officer Sanchez said he then looked across the street and saw Ms. Abeyta, wearing a white t-shirt with blood on it. At that time, firefighters arrived and started treating Atencio and Abeyta.

Other witnesses were interviewed by investigators. Evelyn Meyer, who lives at 607 15<sup>th</sup> Avenue Court, described hearing voices of "trashed" people outside at 6:30 a.m., and shortly after that, hearing someone cry and heard a fire truck arrive on scene. She looked outside and saw a firefighter get out of the fire truck, she then heard a gunshot and saw the firefighter get back into the truck and leave quickly. She heard more sirens and then approximately six gunshots. She said several minutes passed between the first gunshot and the group of six shots.

Aaron Hathaway stated that he was awoken at 6:25 a.m. by Ms. Abeyta pounding on his front door. He saw there was blood on his door and on Ms. Abeyta, who was lying on the landing. He went and woke up his father, Guy Hathaway. His father checked on Ms. Abeyta and told him to call 911. Aaron stated that shortly after calling 911, the firefighters arrived and at that same time he saw Atencio come out of his house across the street, armed with a handgun. Atencio stopped in front of the Hathaway house and said, "Oh my God!" Atencio put his handgun to his head and fired. Aaron stated at that point he and his father fled to their backyard. He saw the Greeley Officers arrive and heard them giving Atencio commands to put the gun down. He was unable to see Atencio from his location at that time.

Guy Hathaway stated that he had known Louis (Atencio) and Angie (Abeyta) for about three years. On the morning of this incident he stated he went to render aid to Ms. Abeyta. He believed that Ms. Abeyta told him, "Louie shot me." He told his son to call 911, and shortly after he called, Guy saw the fire truck arrive. Guy stated that as fire personnel began to render aid to Ms. Abeyta, Atencio came across the street, armed with a handgun. He heard Atencio say, "Oh my God, my baby." He said Atencio then attempted to shoot himself in the head. He did not know if Atencio shot himself. Atencio then lowered the gun in Guy's and Ms. Abeyta's direction, so Guy fled to the back of the house with Aaron. He saw police officers arrive and heard them giving commands to Atencio to get on the ground. Guy stated that he was able to see Atencio near Atencio's gate, still armed with his handgun. He then observed police shoot and hit the car near Atencio, and ultimately saw Atencio fall to the ground. He stated that the police

were right to shoot since Atencio refused to put the gun down and described Atencio as doing “wild things” with his gun.

Firefighter Brian Ball responded to render aid to Ms. Abeyta. He described hearing screaming and wailing as he exited the fire truck and then observed Atencio holding a gun in his right hand. Atencio came within three feet of Ms. Abeyta, fired a round with the gun pointed at his own head, and fell to the ground. According to Firefighter Ball, the shot appeared to miss Atencio’s head. Atencio then got up and picked his gun up. At that point Firefighter Ball left the scene.

Firefighter Frank Meis was driving the fire truck and saw aid being rendered to Ms. Abeyta, who was on the ground bleeding. Firefighter Meis stated that as he was exiting the fire truck he heard a gunshot, possibly more than one. The rest of the firefighters got back onto the truck and he drove them away. The firefighters waited on standby near the scene and returned to render aid when they were informed the scene was secure.

Crime scene investigators also processed the scene. Atencio’s handgun was found and collected on the sidewalk in front his residence (600 15<sup>th</sup> Avenue Court). The handgun was a .38 caliber revolver and the hammer was back, in single action firing mode. The .38 cylinder has a six round capacity; inside the cylinder, there were three spent casings, two live rounds, and one other live round that had a dent on the primer, indicating that there was an attempt to fire that particular round.

Officer Oliveros’ rifle was fired three times, based on the casings recovered at the scene and a count of the remaining live rounds in the rifle. Officer Sanchez’s handgun was fired five times, based on the casings recovered at the scene and a count of the remaining live rounds in the handgun. All spent rounds from the officers’ weapons were found near the tree they sought cover behind. Crime scene investigators observed bullet holes in the Honda Civic parked next to where Atencio and Atencio’s handgun was found. The trajectory of the bullet holes corroborate the officers’ location when the shots were fired.

An autopsy was conducted on Atencio on June 20, 2015. The forensic pathologist determined that Atencio had been shot one time and that the cause of his death was this penetrating gunshot wound of the torso. Toxicology testing determined that at the time of his death, Atencio had high levels of methamphetamine, heroin and oxycodone in his system.

## **APPLICATION OF THE FACTS TO THE LAW**

The District Attorney’s office is ethically required to charge an individual with a crime only in cases where there is a reasonable likelihood of conviction. The law states that Criminal liability is established in Colorado only if it is proven beyond a reasonable doubt that someone has committed all of the elements of an offense defined by Colorado statute.

Further, it must be proven beyond a reasonable doubt that the offense was committed without any statutorily-recognized justification or excuse. While knowingly or intentionally shooting another human being is generally prohibited as homicide or attempted homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force is justified, also known as an affirmative defense. Because the evidence establishes that Atencio

was shot and killed by officers, the determination of whether their conduct was criminal is primarily a question of legal justification.

C.R.S. § 18-1-707(2)(a) establishes when a peace officer can use deadly force to defend himself or others. The statute reads, in pertinent part, as follows:

A peace officer is justified in using deadly physical force upon another person...only 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.**

C.R.S. § 18-1-901(3)(d) of the Colorado Revised Statutes defines the term “Deadly Physical Force” as follows:

(2)(d) “**Deadly Physical Force**” means force, the intended, natural, and probable consequences of which is to produce death, and which does, in fact, produce death.

Further, Colorado case law unequivocally states that when determining whether it was necessary for an individual to act in self-defense or in the defense of someone else, that person is entitled to rely on “apparent necessity.” This can be relied on so long as the conditions and circumstances are such that a person would reasonably believe the defensive action was necessary. See *People v. LaVoie*, 395 P.2d 1001 (1964); *Riley v. People*, 266 P.3d 1089 (Colo. 2011). Thus, it is irrelevant in this analysis whether Atencio intended to shoot the officers. The issue is whether or not it was reasonable for the officers to believe that Atencio was going to fire his gun at the officers.

In this case, the officers were attempting to contact Atencio based on the information relayed by dispatch and observed on scene, discussed above. The information included the possession of a handgun by Atencio, the belief that Atencio fired at least one round as Officer Oliveros arrived, and that Atencio had previously pointed the firearm at Ms. Abeyta and Mr. Hathaway outside of 601 15<sup>th</sup> Avenue Court.

Throughout the course of the incident, Atencio refused to comply with the commands of the officers. He refused to show them his hands and put down his weapon. Atencio ignored these commands and pointed his handgun directly at the officers on two separate occasions.

The officers reasonably believed, at that time, based on all of the surrounding facts and circumstances known to them, they were in imminent danger of death or serious bodily injury.

Atencio would also have known that the individuals giving him commands were police officers because they were in uniform and they arrived in law enforcement vehicles and parked in clear view and mere feet from Atencio’s location.

Based on the facts gathered during this investigation and the legal analysis outlined above, I find that the officers were justified in using lethal force against Atencio because they reasonably believed that it was necessary to defend themselves and other members of the public from Atencio’s threatened use of deadly physical force.

## CONCLUSION

Under C.R.S. § 18-1-707(2)(a), the officers' actions in this situation were justified and authorized by law in order to defend and protect themselves and others from the volatile and dangerous circumstances they faced. As a result, the Weld County District Attorney's Office will not file charges against Officer Oliveros or Officer Sanchez for the use of deadly physical force in this event. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Michael J. Roufke". The signature is written in a cursive style with a blue ink color.

Michael J. Roufke  
District Attorney