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July 20, 2016

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

**RE: Investigation of the May 11, 2016 Officer-Involved Shooting of Sean Mondragon**

Chief Garner:

The investigation into the shooting of Sean Mondragon has been completed by the Critical Response Incident Team (CIRT). 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.

I have determined that, under the circumstances presented in this investigation, I will not release the names of the officers involved in this incident. The Colorado Supreme Court in *Harris v. Denver Post Corporation*, 123 P.3d 1166 (Colo. 2005) and *Freedom Colorado Information v. El Paso County Sheriff's Department*, 196 P.3d 892 (Colo. 2008) addressed the issue of whether, and under what circumstances, the Criminal Justice Records Act requires disclosure of records of official actions by criminal justice agencies. These cases are not directly on point as the release of the officers' names alone does not fall squarely within the Criminal Justice Records Act. They are, however, informative in analyzing whether such disclosure is appropriate. Each of those cases require a custodian of criminal justice records to undertake a balancing test prior to the disclosure of criminal justice records and the information contained therein. This balancing test considers "the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request." *Harris* at 1175; *Freedom Colorado Information* at 899.

When I engaged in this balancing test, I was persuaded that the privacy interests of the individuals who may be impacted by a decision to allow inspection (i.e. the officers involved in this incident) outweigh the other four factors to be considered. The continued safety of the officers and their families is of paramount concern in this case when, as here, the individual involved in the incident with law enforcement has very strong and documented ties to known criminal gangs. This investigation has determined through a number of sources that Mondragon was an active member of Park Hill Gangster Bloods. His membership has been documented in prior police reports, and is corroborated by the tattoos on Mondragon's body. Therefore, I will not release the names of these officers, and they will be referred to in this report as Officers 1 and 2.

## **INVESTIGATIVE SUMMARY**

On May 11, 2016, 21:57 hours, the Weld County Communication Center received a phone call from an employee of Chipper's Lanes at 2454 8<sup>th</sup> Ave in Greeley, Colorado. The employee said a customer told her two of her friends were being held at gunpoint in the parking lot of the business. The employee further advised that the suspect said he would shoot the friends if police were called. It would later be learned by investigators that a male had committed an armed robbery of three individuals in the parking lot of the business. When unsatisfied with the proceeds of the robbery, the male instructed one of the victims to enter the business and retrieve money from an ATM. The other two victims told investigators that they were held at gunpoint by the male in the parking lot who was in possession of a pistol and a shotgun. The victim that returned inside alerted a Chipper's Lanes employee of the incident prior to returning to the parking lot with the money she had retrieved from the ATM.

Greeley Police officers were dispatched to the incident. As officers arrived at the business they observed the male run to a white Pontiac sedan and enter the vehicle. Officers began giving commands to the male to show his hands and exit the vehicle. At 22:03 hours the male disregarded the commands and drove away from the parking space and out of the parking lot at a high rate of speed heading northbound on 8<sup>th</sup> Ave. As the male exited the parking lot he raised a sawed-off shotgun and pointed it out the driver's side window at a responding officer. The officer had his weapon drawn but did not fire due to other individuals behind the male in the line of fire. Another officer was able to provide the license plate of the vehicle to dispatch. Dispatch replied advising officers the license plate had been reported stolen.

Officers pursued the vehicle northbound from Chipper's Lanes to the area of 16<sup>th</sup> St. and 6<sup>th</sup> Ave. in Greeley where officers lost visual contact of the vehicle. The last visual contact occurred at approximately 22:06 hours. At approximately 23:26 hours Greeley Police officers located the vehicle in an alley near 14<sup>th</sup> St. and 6<sup>th</sup> Ave., still occupied by the male previously encountered at Chipper's Lanes. Several officers approached the vehicle and observed a shotgun across the lap of the male. As officers gave verbal commands to the male, the male started the vehicle and backed rapidly from its parked position, narrowly missing officers. The vehicle continued backward across the alley striking and causing damage to a garage. The vehicle then left northbound in the alley and collided with a marked patrol vehicle and another parked vehicle on 16<sup>th</sup> St, then continued eastbound to 8<sup>th</sup> Ave.

Greeley Police officers pursued the vehicle northbound on 8<sup>th</sup> Ave to Highway 85. The pursuit continued northbound to the area of County Road 70 just north of the Town of Lucerne. The vehicle then crossed the center median and headed southbound on Highway 85 toward Greeley. The pursuit continued southbound on Highway 85 Bypass, onto Highway 34 westbound, and then onto Highway 85 southbound. The pursuit reached reported speeds of over 100 mph.

As the pursuit approached 31<sup>st</sup> St. on Highway 85 in the city of Evans, CO, the southbound and northbound traffic signals were red and all southbound lanes were occupied by stopped vehicles. The suspect vehicle veered to the right of the intersection colliding with one of the stopped vehicles. The suspect vehicle was disabled during the collision and rolled into the intersection coming to a stop. The male then exited the disabled vehicle with a handgun in his right hand and ran across the intersection to a white Chevrolet stopped northbound at the traffic signal.

When the male reached the white Chevrolet he opened the driver's side door and ordered the driver out of the vehicle at gunpoint. He then reached into the vehicle and forcefully pulled the driver from the vehicle, the driver was able to flee the scene. The passenger in the vehicle exited on her own and fled from the vehicle. The male then entered the driver's seat of the vehicle and closed the driver's side door.

Two Greeley Police officers who had been involved in the pursuit approached the Chevrolet on foot with weapons drawn. As he approached the vehicle from the south, Officer 2 said he saw the barrel of a firearm pointed toward officers above the steering wheel of the vehicle. Officer 1, also approaching from the south, said he feared for the safety of the public should the male gain control of the vehicle and again flee the scene based on the suspect's previous irrational and dangerous actions. Both officers discharged their weapons at the male seated in the driver's seat, striking him multiple times.

Crime Scene Investigators from the Critical Incident Response Team determined Officer 1 fired 12 rounds from a FNH SCAR16 rifle utilizing a .223 caliber round. The rifle was set to automatic mode when the trigger was pulled. Officer 2 fired 3 rounds from a Sig Sauer 1911 .45 caliber semiautomatic handgun. Round counts were verified through examination of the officers' weapons and collection of spent shell casings on scene by CIRT investigators. The distance from the closest spent shell casing to the driver's seat of the vehicle in which Mondragon was seated is approximately 45 feet.

After the male had been shot, officers attempted to render aid on scene. The male was transported by paramedics to North Colorado Medical Center where he was pronounced deceased. During the crime scene processing, a sawed off 20 gauge shotgun was located on the driver's side floorboard of the Pontiac exited by the male. Through the course of the investigation, it was determined that the Pontiac was stolen. A handgun was located by investigators on the center console of the Chevrolet in which the male was seated when shots were ultimately fired. Investigators located ammunition for both the handgun and the sawed-off shotgun in a duffel bag in the Pontiac.

Investigators were able to identify the male as Sean Mondragon (DOB 11/26/91) and learned through the course of the investigation that Mondragon was on parole and had an active fugitive warrant for a parole violation. He also had an active warrant for First Degree Assault of a Police Officer, a class 3 felony, among other charges. Investigators also learned through several sources that he was an active member of the Park Hill Gangster Bloods. Mondragon's mother informed law enforcement that when she spoke to her son a month ago, he told her that she would not be seeing her again, and that if law enforcement attempted to contact him, he was going to commit "suicide by cop."

An autopsy was conducted on the afternoon of May 12, 2016, however the report was not received by the District Attorney's Office until July 19, 2016. The medical examiner determined that Mondragon suffered six gunshot wounds to his head. Only one bullet, a .223 round, was located near the lower right base of his skull. The cause of death was these gunshot wounds to the head. Mondragon's post mortem toxicology report indicated the presence of methamphetamines (510 ng/mL), marijuana (9.1 ng/mL), and a blood alcohol level of .051.

The above summary is based on the extensive investigation conducted by the Weld County Critical Incident Response Team. The Weld County District Attorney's Office utilized recorded statements from all officers, witnesses, and victims, as well as reports from the Weld County Critical Incident Response Team, the Dispatch and radio traffic recordings, and relevant evidence reports in the review of this incident.

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

The District Attorney's office may ethically 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 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 Mondragon 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)** 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...OR to effect an arrest...of a person he reasonably believes has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon.**

**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.

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 Mondragon intended to use deadly force. The issue is whether or not it was reasonable for the officers to believe that he was about to use deadly physical force against the officers or another person with a deadly weapon. In this case the firearm or the vehicle can be considered a deadly weapon.

In this case, the officers were attempting to stop Mondragon who wielded a firearm as he fled from Officers after he committed an armed robbery at Chipper’s Lanes. During the search for Mondragon, officers located him, still armed with the shotgun sitting on his lap. Mondragon nearly ran over officers with his vehicle as he recklessly fled from law enforcement again. Mondragon then took officers on a high speed chase north and then back south on Highway 85. When he was ultimately confronted by Officers 1 and 2, Mondragon had just carjacked another vehicle at gunpoint. Thus, it is clear that law enforcement knew that Mondragon was in possession of a firearm and had committed a felony with a deadly weapon in their presence.

Throughout the course of the incident, Mondragon recklessly eluded police and refused to pull his vehicle over. Mondragon refused to comply with the commands of the officers throughout the entire criminal episode, starting with armed robbery at Chipper’s Lanes. When ultimately stopped, he refused to show them his hands and put down his weapon. Mondragon ignored these commands.

Mondragon would have clearly known that the individuals giving him commands were police officers because they were in uniform and they arrived in law enforcement vehicles, which were parked in sight of him with their overhead lights activated. He had also been eluding law enforcement on highway 85 for approximately ten minutes. It should also be noted that Mondragon had been continuously pursued by officers after committing the armed robbery at Chipper’s nearly two hours earlier.

The officers reasonably believed, at that time, based on all of the surrounding facts and circumstances known to them that other citizens on Highway 85 and they were in imminent danger of death or serious bodily injury.

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 Mondragon because they reasonably believed that it was necessary to defend themselves and other citizens from Mondragon’s threatened use of deadly physical force, and further, Mondragon had just committed a felony with a deadly weapon.

## CONCLUSION

Under C.R.S. § 18-1-707(2)(a) and (b), the officers' actions in this situation were justified and authorized by law in order to defend and protect themselves and others from the lawless and dangerous actions of Mr. Mondragon. In fact it is likely the officers' actions prevented serious bodily injury or death. As a result, the Weld County District Attorney's Office will not file charges against Officer 1 or 2 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, appearing to read "Michael J. Rourke". The signature is written in a cursive style with a large, stylized initial "M".

Michael J. Rourke  
District Attorney