



**OFFICE OF THE FIRST JUDICIAL
DISTRICT ATTORNEY OF COLORADO
District Attorney Alexis King**

September 4, 2023

Chief Ed Brady
Arvada Police Department
8101 Ralston Road
Arvada, Colorado 80002

Re: *Officer Involved Shooting, January 26, 2022, 58th Avenue & Sheridan Boulevard*

Dear Chief Brady,

The First Judicial District Critical Incident Response Team has completed its investigation into the shooting of Oscar Eli Mercado-Flores by Arvada Police Officer Koolmees, Officer Wintz, and Officer Coakley (the "Officers") on the evening of January 26, 2022, at about 58th Avenue and Sheridan Boulevard. Wheat Ridge Police Commander Scott Bellomy presented the investigation to my office on April 14, 2022. The corresponding criminal case was resolved on August 31, 2023.

After a thorough review and analysis of the evidence, I find that the Officers' use of deadly physical force was legally justified to defend themselves and others from the threat posed by Mr. Mercado-Flores. Given my conclusion, no criminal charges will be filed against the Officers. I am issuing this letter to you pursuant to § 20-1-114(1), C.R.S.

The First Judicial District Critical Incident Response Team (CIRT) investigates any incident in which a law enforcement officer within the First Judicial District uses deadly force, or attempts to use deadly force, against a person while acting under the color of official law enforcement duties. The CIRT team is comprised of highly trained and skilled investigators working under my authority and appointed from multiple law enforcement agencies, including my office. This multi-jurisdictional team of objective, dispassionate professionals protect the integrity of the investigation by exercising independent judgment in conducting a thorough investigation. To maintain transparency and reduce conflict of interest, officers from the involved agency do not perform critical duties related to the investigation.

Here, the Arvada Police Department ("APD") immediately activated the CIRT team to investigate the use of deadly force by the Officers. Consistent with CIRT policy, APD did not participate in the substantive portions of the CIRT investigation. The CIRT team promptly responded to investigate, led by Commander Bellomy. Under his direction, the CIRT team processed the scene, completed interviews



with those who saw or heard the events, and preserved necessary evidence. The involved officers provided voluntary statements and submitted to questioning. These interviews were recorded, reviewed as part of the investigation, and included within the file. Commander Bellomy briefed me, my leadership team, and CIRT team members on this investigation and provided the file for my review.

My team reviewed over 1256 photographs and approximately 525 pages of reports by the Lakewood Police Department, Jefferson County Sheriff's Office, Wheat Ridge Police Department, Golden Police Department, and other CIRT agencies throughout the First Judicial District. I reviewed the recorded interviews of the officers and witnesses who heard or saw the events and the evidence collected from the scene and evaluated by independent examiners.

As District Attorney, my role is to determine whether the Officers committed a criminal offense. No charges may be legally or ethically brought unless a crime can be proven beyond a reasonable doubt, a standard that applies to officers and civilians alike. Because this shooting was justified under Colorado law, no criminal charges can or should be filed against the Officers.

A person may be held criminally liable under Colorado law only when the evidence proves beyond a reasonable doubt that they committed every element of an offense defined by Colorado statute. When a person intentionally shoots another person, resulting in that person's death, they commit the crime of murder, unless a legally recognized justification exists. If a justification exists, the shooter is not criminally liable. Generally, acting in self-defense or defense of others is one such justification. These defenses are available to all Coloradans, including an officer. An officer is also specifically authorized to use deadly physical force under certain circumstances.

As relevant here, a peace officer is justified in using deadly force if: 1) the officer has objectively reasonable grounds to believe that the officer or another person is in imminent danger of being killed or suffering serious bodily injury; 2) the officer does in fact believe that the officer or another person is in imminent danger of being killed or suffering serious bodily injury; and 3) the officer has an objectively reasonable belief that a lesser degree of force is inadequate. § 18-1-707(4.5), C.R.S. Acting in self-defense or defense of others is subject to the same analysis. § 18-1-704(1)-(2), C.R.S. By law, in deciding whether the Officers were justified in acting in self-defense or defense of others, it does not matter whether Mr. Mercado-Flores was actually trying to injure the Officers or another person, so long as a reasonable person, under like conditions and circumstances, would believe that it appeared that deadly physical force was necessary to prevent imminent harm. The facts must be viewed as they appeared to the Officers at the time; future developments are irrelevant to the legal analysis.

Therefore, I must determine whether, at the time the Officers shot Mr. Mercado-Flores, they had objectively reasonable grounds to believe, and did in fact believe, that they or another person was in imminent danger of being killed or suffering great bodily injury, and whether they reasonably believed a lesser degree of force was inadequate. In other words, would a reasonable person, confronted with the same facts and circumstances, believe that it was necessary to use deadly physical force to defend himself or others from Mr. Mercado-Flores? If so, the shooting is justified under Colorado law, and no criminal charges can or should be filed.

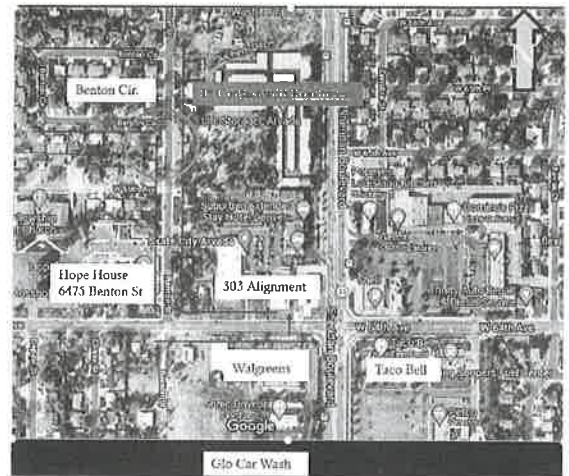
FACTS ESTABLISHED BY CIRT INVESTIGATION

On January 26, 2022 at around 9:00 p.m., APD officers were wrapping up an unrelated call at the Taco Bell located at 6390 Sheridan Boulevard. Officers heard a noise they believed to be consistent with the sound of a gunshot, which drew their attention across the street to the parking lot of Walgreens at 6395 Sheridan Boulevard. At 9:02:16 p.m. a sergeant aired his observations over the radio regarding possible shots fired at Walgreens, with a black SUV fleeing and a person limping into Walgreens. The driver of the fleeing SUV was later identified as Mr. Mercado-Flores.

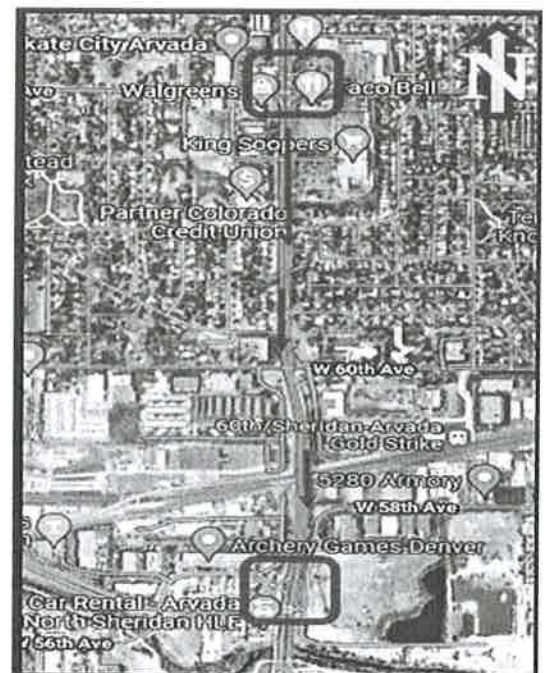
While concluding the call to Taco Bell, Officer Koolmees, an APD officer and firearms instructor with nine years of experience, also heard a noise he recognized as a gunshot. He saw the black SUV speed away from Walgreens and a person limping away from the SUV. The black SUV drove away at a high rate of speed. Officer Koolmees saw the black SUV travelling without headlights and it almost crashed as it turned south onto Benton Street. Officer Koolmees aired that the black SUV was southbound on Sheridan Boulevard at 9:03:46 p.m. Officer Koolmees was under the impression that the black SUV was involved in a carjacking based on his observations at the Walgreens. The sergeant authorized a pursuit at 09:04:00 p.m. and Officer Koolmees initiated it, activating his lights and sirens, on southbound Sheridan Boulevard.

Meanwhile, the black SUV had traveled westbound on 64th Avenue, northbound Benton Street, westbound Benton Circle, and circled around to travel southbound on Benton Street, then eastbound 64th Avenue, and ultimately southbound Sheridan Boulevard to about 58th Avenue, where Officer Koolmees used his car to hit the black SUV and end the pursuit.

Before coming into contact with the black SUV, Officer Koolmees saw it weaving in and out of traffic, traveling into oncoming traffic lanes and reaching speeds of 80 mph. Officer Koolmees was about five feet from the black SUV's rear bumper while traveling southbound on Sheridan Boulevard over the RTD bridge. He saw traffic stopped at the intersection of Ralston Road and Sheridan Boulevard, waiting to go south. The black SUV braked hard, which caused Officer Koolmees to swerve into the right lane. The black SUV accelerated and Officer Koolmees was concerned that the SUV would ram another car to get away. Officer Koolmees executed a PIT maneuver and the black SUV spun, coming to rest facing the wrong way in the southbound lanes of Sheridan Boulevard.



Path of black SUV totaling about 1.1 miles

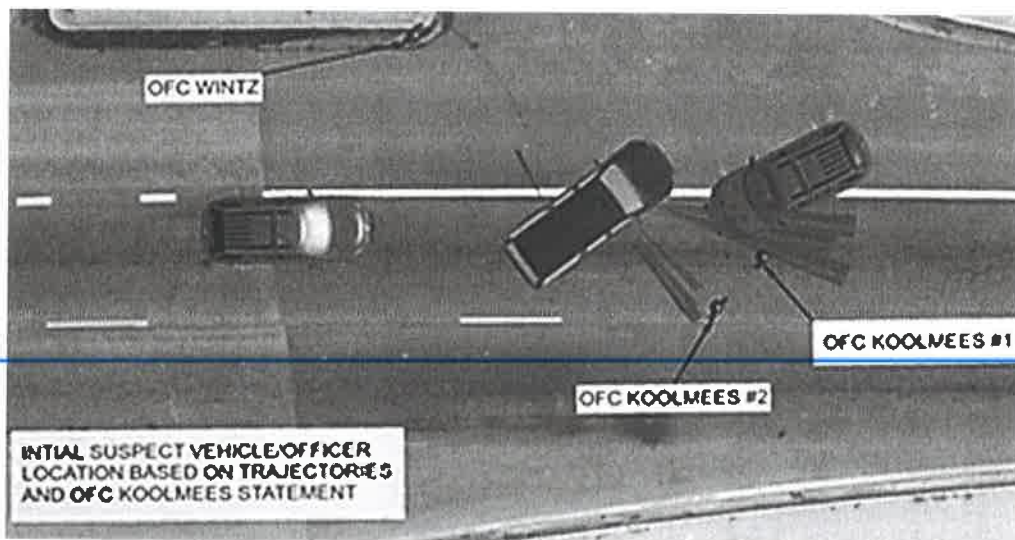


Path of black SUV after it left the neighborhood and headed south on Sheridan to the point of the shooting.

At the same time, Officer Wintz, a policeman with two years of experience, had been on patrol in the area of 52nd and Vance Street when he heard a sergeant air that shots were fired and the suspect vehicle was a black SUV. Officer Wintz then heard Officer Koolmees air that he was behind the SUV at 64th and Sheridan Boulevard and the sergeant authorized a pursuit. Given that pursuits are rarely allowed, Officer Wintz realized that this was a very serious situation. Officer Wintz got ready at 58th Avenue and Sheridan Boulevard, with his lights and siren off so he did not attract Mr. Mercado-Flores' attention. Officer Wintz observed Officer Koolmees perform the PIT maneuver.

Once the SUV stopped, Officer Koolmees parked his patrol vehicle at a 45-degree angle with his headlights illuminating the front compartment of the black SUV. He observed Mr. Mercado-Flores alone in the driver seat. Officer Koolmees stepped out of his vehicle and placed Mr. Mercado-Flores at gunpoint and yelled commands for Mr. Mercado-Flores to show his hands. Officer Koolmees saw Mr. Mercado-Flores's right arm raise with a black gun in his right hand. The gun was pointed directly at Officer Koolmees and he was looking down the barrel of Mr. Mercado-Flores's gun. Officer Koolmees moved to the left, then fired through the windshield. As he shot, Mr. Mercado-Flores dropped out of sight below the dash. After hearing a shot from the black SUV, Officer Koolmees again shot at Mr. Mercado-Flores, this time through the passenger side window and door, as he suspected Mr. Mercado-Flores was low in the driver's compartment.

Officer Wintz planned to get out of his vehicle and go to Officer Koolmees to avoid crossfire. As soon as Officer Wintz opened his door, he believed Officer Koolmees and Mr. Mercado-Flores were shooting at each other, as he heard the sound of two different guns being shot. Officer Wintz saw the windshield on the SUV shatter, but could not see Officer Koolmees. Officer Wintz ran northwest, to the side of the road, to get out of the crossfire because he was right behind the suspect vehicle. The second that he got off the road, the door to the SUV opened and Mr. Mercado-Flores bailed out. Officer Wintz saw a black handgun in Mr. Mercado-Flores's hand. He was an estimated twelve feet from the SUV. The suspect was close to Officer Wintz, with a gun in hand, that Officer Wintz thought he would be shot at next.



This is a diagram showing the initial placement of the suspect SUV (black) and the locations Officer Wintz and Koolmees based on trajectories of shots fired and Officer Koolmees statement.

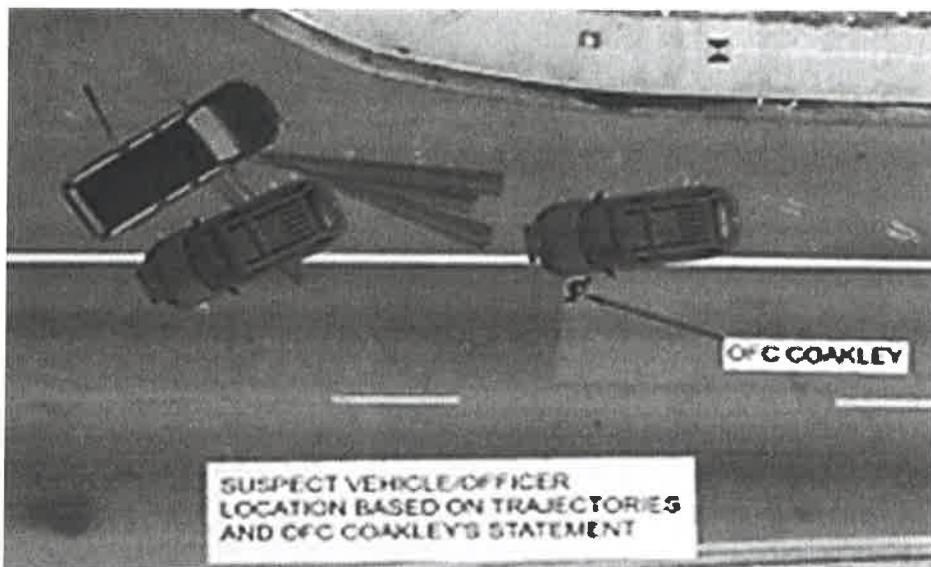
Officer Wintz drew his firearm and started shooting at Mr. Mercado-Flores. Officer Wintz did not recall if Mr. Mercado-Flores pointed the handgun in a specific direction. Mr. Mercado-Flores did not directly engage Officer Wintz or say anything to him. Officer Wintz did not give commands as everything happened very fast.

Officer Koolmeez saw Officer Wintz moving north behind the black SUV and Officer Koolmees stopped firing on Mr. Mercado-Flores. Officer Koolmees moved to where he could see through the windshield, saw the driver's door open and heard gunfire. Officer Koolmees saw Officer Wintz shoot at Mr. Mercado-Flores. Officer Koolmees went to Officer Wintz, as he believed that Mr. Mercado-Flores was shooting at Officer Wintz too. Mr. Mercado-Flores fled, sprinting on foot around Officer Wintz's patrol vehicle and the two Officers chased him.

Like the other Officers, Officer Coakley, a patrol officer with 3 years of experience, had heard the information the sergeant shared on the radio, including an authorized pursuit. Officer Coakley believed the events at Walgreens was a drive-by shooting and someone had been shot. Officer Coakley drove into the area of 64th Avenue and Benton Street. As he did, the black SUV drove directly at him at a high rate of speed southbound on Benton Street. Officer Coakley avoided a crash and joined in the pursuit. He assumed the lead car was Officer Koolmees.

As Officer Coakley crested the RTD bridge, he saw one patrol car stopped facing southbound, the black SUV pointed northwest, and a second patrol car making a U-turn behind the black SUV. An officer aired the PIT and shots fired at 9:04:48 p.m. As he pulled up the scene, Officer Coakley saw Officer Koolmees shooting into the black SUV. Officer Coakley did not know if the victim at Walgreens was killed or injured, but he believed the black SUV had evaded officers and Officer Koolmees was in a gunfight with a person inside the SUV. While moving to the front of his patrol car for cover, Officer Coakley heard two gunshots that did not fit the cadence of Officer Koolmees' firing. He was unsure where those gunshots were coming from. Officer Coakley did not have a good sight picture to engage initially, until the SUV started moving slowly forward.

When Coakley saw the black SUV moving, he did not know if it was being driven or not and he did not know if Mr. Mercado-Flores was trying to flee again. Officer Coakley saw a silhouette in the driver's seat and fired his gun until he no longer saw a silhouette. He did not know if Mr. Mercado-Flores got out of the SUV or was slumped down under the dash as he perceived movement inside the SUV. When he started firing, Officer Coakley heard other gunfire but when he stopped, there were no sounds of gunshots. Movement to the east caught Officer Coakley's eye and he saw Officers Koolmees and Wintz had Mr. Mercado-Flores down and in custody on Sheridan Boulevard. Officer Coakley then cleared and secured the black SUV with other officers who were not involved in the shooting.



This is a diagram of the Officer Coakley's location based on trajectories of shots fired and his statement.

As Officer Koolmees and Officer Wintz pursued the fleeing suspect on foot, they knew Mr. Mercado-Flores was running toward people sitting in their cars at the intersection. Concerned about risk to the public, both Officers shot at Mr. Mercado-Flores again. Mr. Mercado-

Flores fell down in the northbound lanes of Sheridan Boulevard. Officers Koolmees and Wintz moved forward with verbal commands and put Mr. Mercado-Flores in custody. No weapon was found on Mr. Mercado-Flores. Medical services were called and Mr. Mercado-Flores was treated and transported.

Two officers were also on scene who did not fire their guns. The first went behind the black SUV when it was on Benton Street but as other officers got involved, this officer was not the first to arrive on scene. Upon arrival, he heard gunshots and shots fired had been aired on the radio. He saw three patrol cars on scene. He had his gun in ready position, but officers were in his line of sight. As he was trying to determine the location of the threat he heard 15-20 gunshots.

The other officer heard the shot fired at Walgreens, saw the black SUV and the person limping away from it. She tried to follow the SUV, lost sight of it, and caught up to it at the scene. The officer heard shots being fired and thought Officer Koolmees was dead on the other side of Officer Coakley's vehicle. She parked near Officer Coakley and saw Officer Coakley firing his gun. She saw officers running after a man, who was not involved, on an embankment across Sheridan and then run to Mr. Mercado-Flores who was down and handcuffed. She then checked the black SUV that she recognized from Walgreens. She did not know how many shots she heard.

The investigation revealed that the black SUV was carjacked from a driver parked at Walgreens. The driver was approached by Mr. Mercado-Flores and he shot at her. The driver got out of the SUV and Mr. Mercado-Flores took it. The driver went into Walgreens for help. The driver had minor injuries.

Mr. Mercado-Flores was treated for multiple wounds and later jailed on various offenses related to this incident. The Officers were not equipped with body-worn cameras, as APD was still piloting body worn cameras with limited use. Despite all the events between Mr. Mercado-Flores and the Officers, the time from which the sergeant aired the information about the carjacking to Mr. Mercado-Flores being aired down on Sheridan Boulevard was from 09:02:16 p.m. to 9:05:18 p.m., approximately three minutes and two seconds.

THE SCENE

CIRT detectives and analysts from the Jefferson County Regional Crime Lab (JCRCL) processed the scene, coordinated the preservation and analysis of physical evidence, and obtained statements from all witnesses who saw or heard parts of the event.

This diagram depicts the location of the cars, the suspect, and the suspect's firearm when the Officers render medical aid.



At APD, the Officers were relieved of their firearms, photographed, and processed. Officer Koolmees fired a total of 21 rounds from his Glock 34 Gen 5, 9 mm. Officer Wintz fired a total of 15 rounds from his Glock 34 Gen 5, 9 mm. Officer Coakley fired a total of 16 rounds from his Stacatto - 1911 Platform 9mm. All of the recovered casings on Sheridan appear to belong to the Officers.

A Steyr M9-AD MF handgun was recovered on the ground by the rear panel of Officer Wintz' patrol car, which was along the route Mr. Mercado-Flores fled from the black SUV to the other side of Sheridan Boulevard. The handgun contained bullets of mismatched ammunition and different manufacturers. JCRCL found a bullet in the chamber with a dimple on the strike plate.

The Steyr M9-A2 MF pistol was examined, test-fired, and found to be operable by JCRCL. The accompanying magazine was used to test-fire the pistol. The fired 9mm Luger cartridge case, that was recovered from the Walgreens's parking lot, was compared microscopically to test-fired cartridge cases obtained from the Steyr pistol. The test cartridge and the cartridge from Walgreens were identified as having been fired by the same gun. Therefore, the fired cartridge case was fired by the Steyr pistol.



ANALYSIS

The three Officers who encountered Mr. Mercado-Flores on the night of January 26, 2022, all understood the basic information from the Walgreens shooting and carjacking. Officer Koolmees was across the street from the Walgreens when he heard a gunshot and saw a black SUV driving dangerously away at a high rate of speed, while a person limped into the Walgreens. Officer Wintz was not with Officer Koolmees but heard a sergeant share that shots were fired over the radio and that a pursuit was authorized. Officer Coakley also heard about the event at Walgreens via radio and that a pursuit was authorized. As Officer

Coakley jumped into the fray at 64th Avenue and Benton Street he was almost hit head-on by the black SUV.

Down the road, Officer Wintz got ready for the incoming pursuit at 58th Avenue and Sheridan Boulevard. Officer Wintz watched the PIT maneuver and the SUV spin to a stop. When the SUV stopped moving, Officer Koolmees saw Mr. Mercado-Flores, alone in the driver's seat with a black handgun pointed at him. In that moment, Officer Koolmees moved away from his initial position, fired his weapon, and lost sight of Mr. Mercado-Flores. Officer Coakley came upon the SUV on Sheridan Boulevard once it was stopped, and Officer Koolmees had opened fire. Officer Coakley got out of his car and moved to the front for cover. In that moment, Officer Coakley heard two gunshots that did not sound like Officer Koolmees. In hindsight, it is possible they were coming from Officer Wintz. The SUV started to move slowly forward and Officer Coakley believed he saw a silhouette in the driver's seat, and shot at the silhouette until it was no longer visible. Mr. Mercado-Flores may or may not have been in the SUV at that time.

Officer Wintz was concerned about crossfire and believed he could hear two guns shooting, Officer Koolmees and Mr. Mercado-Flores. Officer Wintz saw the black SUV's windshield shatter and could not see Officer Koolmees. As Officer Wintz moved away from potential crossfire, Mr. Mercado-Flores jumped out of the black SUV, only a handful of steps away from Officer Wintz, who could see that Mr. Mercado-Flores was armed with a handgun. Officer Wintz shot at Mr. Mercado-Flores. Unbeknownst to Officer Koolmees, the SUV continued to move forward though no one was inside. Officer Koolmees stopped firing when he saw Officer Wintz and then tried to move toward him. Officers Koolmees and Officer Wintz saw Mr. Mercado-Flores running southeast down Sheridan and ran after him. When Officer Coakley looked up, he saw Mr. Mercado-Flores on the ground with Officer Koolmees and Officer Wintz.

The Officers all had objectively reasonable grounds to believe and did believe that they were imminent danger of being killed or suffering serious bodily injury at the hands of Mr. Mercado-Flores given the shooting at Walgreens and subsequent pursuit. All three Officers understood the events at 63rd Avenue and Sheridan Boulevard differently, based on their different positions and perspectives. Of particular import, is what each individual could see and hear. Specifically, Mr. Mercado-Flores' efforts to shelter and eventually run from the SUV and the SUV continuing to move forward impacted each Officer's perception based on their vantage point. Nonetheless, for all of the Officers, a reasonable person under like conditions and circumstances, at the time each Officer decided to fire his weapon, would believe that deadly force was necessary to prevent imminent deadly harm to the Officer and those around him. No lesser degree of force could ameliorate the threat posed by Mr. Mercado-Flores at that point. Thus, no criminal charges will be brought against the Officers for their decision to use deadly force that evening.

Please do not hesitate to contact me with questions or concerns regarding my determination of this matter.

Sincerely,

A handwritten signature in black ink that reads "Alexis D. King". The signature is fluid and cursive, with a long horizontal line extending to the right.

Alexis D. King
District Attorney
First Judicial District