



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

September 4, 2023

Chief Smith  
445 South Allison Parkway  
Lakewood, CO  
80226

Re: *Agent Involved Shooting, March 27, 2023, 10880 West Alameda Avenue*

Dear Chief Smith,

The First Judicial District Critical Incident Response Team has completed its investigation into the fatal shooting of Mariana Martinez by Lakewood Police including Sergeant Donovan, Agent Newhard and Agent Weems (the “Agents”) on March 27, 2023, shortly before 2:00 p.m. in front of the Grease Monkey located at 10880 West Alameda Avenue, in the City of Lakewood. CIRT Commander Kevin Bost of the Jefferson County Sheriff’s Office presented the investigation to my office on May 18, 2023.

After a thorough review and analysis of the evidence, I find that the Agents’ use of deadly physical force was legally justified to defend themselves and others from the threat posed by Miss Martinez. Given my conclusion, no criminal charges will be filed against the Agents. 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 conflicts of interest, officers from the involved agency do not perform critical duties related to the investigation.

Here, the Lakewood Police Department (“LPD”) immediately activated the CIRT team to investigate the use of deadly force by the Agents. Consistent with CIRT policy, LPD did not participate in the substantive portions of the CIRT investigation. The CIRT team promptly responded to investigate, led by Commander Bost. 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 Agents provided voluntary statements and submitted to questioning. These interviews were recorded, reviewed as part of the investigation, and included within the file. Commander Bost and his lead investigator briefed me, my leadership team, and CIRT team members on this investigation and provided the file for my review.

My team reviewed over 2,049 photographs and approximately 875 pages of reports by the Arvada 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 Agents 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 Agents.

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 or agent. An officer or agent 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 Agents were justified in acting in self-defense or defense of others, it does not matter whether Miss Martinez was actually trying to injure the Agents 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 Agents at the time; future developments are irrelevant to the legal analysis.

Therefore, I must determine whether, at the time the Agents shot Miss Martinez, 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 Miss Martinez? If so, the shooting is justified under Colorado law, and no criminal charges can or should be filed.

## **FACTS ESTABLISHED BY INVESTIGATION**

On March 27, 2023, at approximately 1:41 p.m., the Lakewood Police Department ("LPD") received the first 911 call reporting an armed robbery of a postal worker at gunpoint near a house located at 455 South Oak Street in the City of Lakewood. The caller said two females just robbed a postal worker at gunpoint. After the robbery, the postal worker abandoned his mail truck, jumped over the caller's fence, and was now hiding in the caller's back yard. The caller said both people were wearing black hoodies. The postal worker told to the caller that he believed both people were young women and possibly Hispanic. During the robbery, the young women stole the postal worker's phone. The postal worker was not injured during the robbery. The caller reported she could see the mail truck, adding that one of the young women was sitting in the passenger seat.

Twelve Lakewood agents responded to the robbery call. The agents going to the call drove LPD vehicles, and while enroute they activated their emergency lights and sirens. The Agents responding were all wearing official LPD uniforms, which further identified them as police officers.

Upon arrival in the area, a responding agent radioed that one of the young women, later identified as Mariana Martinez, was fleeing on foot, running northbound on South Oak Street. The agent confirmed that Miss Martinez was wearing a black hoodie and jeans. Miss Martinez was last seen running westbound on West Dakota Avenue.

### **Agent Newhard**

At the time of the shooting, Agent Newhard had worked for LPD for about four and a half years. That day, Agent Newhard was driving a fully marked LPD vehicle and was dressed in an official police uniform, equipped with a functioning body worn camera. Agent Newhard was armed with a 9mm Glock 17 semi-automatic handgun, along with other less lethal options.

Once Agent Newhard found Miss Martinez on foot, he followed her in his patrol vehicle and activated his emergency lights and siren. As Miss Martinez reached the intersection of South Owens Street and West Dakota Avenue, Agent Newhard got out of his car, drew his firearm, and began to pursue her on foot northbound on South Owens Street. During this time, Agent Newhard verbally identified himself as a police officer and ordered Miss Martinez to stop and get on the ground. Miss Martinez did not respond to Agent Newhard's commands and continued running north on South Owens Street. As he continued his foot pursuit, Agent Newhard saw Miss Martinez's right hand tucked into her hoodie pocket, giving the impression she was gripping or holding something inside her pocket. Agent Newhard had heard on the radio that the postal worker was robbed with a handgun.

Agent Newhard pursued Miss Martinez on foot for about 20 seconds, when she reached the Grease Monkey building. Miss Martinez slowed and stood near a garage bay door. Simultaneously, Agent Newhard saw Sgt. Donovan approaching from the west, and Agent Weems approaching from the north. Both were on foot.

As the Agents approached Miss Martinez at the bay door, Agent Newhard heard Sgt. Donovan giving verbal commands to Miss Martinez, ordering her to stop. Sgt. Donovan then yelled "TASER," which caused Agent Newhard to begin transitioning to his TASER with his other hand. As Agent Newhard was holstering his handgun, he saw Miss Martinez pull a black handgun from her hoodie pocket and point the gun at Sgt. Donovan and himself. Agent Newhard quickly lowered his TASER and unholstered his handgun, while still holding the TASER in his support hand.

Fearing for his life, as well as the lives of Sgt. Donovan and Agent Weems, Agent Newhard fired his gun. Agent Newhard then saw Miss Martinez drop her gun and fall backwards against the closed bay door. Agent Newhard was unaware if the other Agents fired their weapons. Once the weapon and Miss Martinez were secured, the agents on scene began life saving measures.

### **Sgt. Donovan**

On the day of the shooting, Sgt. Donovan had worked at LPD for approximately nine years and before joining LPD, he was a police officer for the Longmont Police Department for about three years. On the day of the robbery, Sgt. Donovan was driving an official LPD all-black sergeant's vehicle, equipped with lights. Sgt. Donovan was also dressed in an official police uniform with a functioning body worn camera. Sgt. Donovan was armed with a 9mm SIG Saur P320 semi-automatic handgun, along with other less lethal options.

Upon arrival in the area of the Grease Monkey, Sgt. Donovan saw an LPD Agent, later identified as Agent Newhard, following behind Miss Martinez as she walked from the north to a garage bay door. Sgt. Donovan was aware that Miss Martinez was a suspect in a robbery and possibly in possession of a firearm. Sgt. Donovan got out of his patrol car, drew his firearm, and began running towards Miss Martinez and Agent Newhard. Sgt. Donovan was cognizant that Agent Weems was off to his left as they both ran toward the garage bay door.

As Sgt. Donovan approached Miss Martinez, he immediately began shouting loud repetitive commands for her to stop and put her hands up. Sgt. Donovan also heard loud commands from the other Agents on scene; however, he could not distinguish exactly what was being said. Sgt. Donovan saw Miss Martinez stop moving while her right hand was in her front hoodie pocket. The hand movement led Sgt. Donovan to believe she was trying to manipulate something in her pocket, which caused the hoodie to bulge and sag. At this point Sgt. Donovan did not know what Miss Martinez had in her hoodie pocket, as she was somewhat turned away from him. Sgt. Donovan and the other Agents continued to give loud verbal commands which Miss Martinez ignored.

As Agent Newhard ran up to Miss Martinez, Sgt. Donovan told him to use his TASER. Almost simultaneously, as Agent Newhard switched to his TASER, Sgt. Donovan saw Miss Martinez quickly pull a black semi-automatic handgun with a mounted light from her front hoodie pocket. As Miss Martinez held the gun in her right hand, slightly bladed (or turned) away from Sgt. Donovan, he watched her sweep her head around and look directly at all three Agents.

Sgt. Donovan was concerned that Miss Martinez was deciding which agent she was going to shoot first. Sgt. Donovan then saw Miss Martinez's right hand move upwards, pointing the handgun in the direction of Agent Weems. Sgt. Donovan feared for the life of Agent Weems, as well as his own. In response, Sgt. Donovan began to fire his weapon at Miss Martinez. He heard shots fired by the other Agents. Miss Martinez fell to the ground and let go of the firearm. Once Miss Martinez was secured, agents on scene began life saving measures.

### **Agent Weems**

At the time of the shooting, Agent Weems had worked for LPD for about five years. That day, Agent Weems was driving a fully marked LPD vehicle and was dressed in an official police uniform, equipped with a functioning body worn camera. Agent Newhard was armed with a 9mm Glock 17 semi-automatic handgun, along with other less lethal options.

Agent Weems arrived at the Grease Monkey from the north at about the same time as Sgt. Donovan, who arrived from the west. As Agent Weems got out of his car, he saw Sgt. Donovan also getting out of his car. Agent Weems drew his firearm after he got out of his patrol vehicle because he believed Miss Martinez was the suspect in an armed robbery. Agent Weems knew that neither he nor Sgt. Donovan had cover or concealment as they approached Miss Martinez on foot. Agent Weems ran toward her anyway out of concern that she could be a threat to the public if she accessed nearby businesses or public roadways.

As the Agents approached Miss Martinez, Agent Weems saw Agent Newhard about 15 to 20 feet behind her, traveling northbound. Agent Weems described Miss Martinez's pace as brisk, but not running. Agent Weems saw Miss Martinez's left hand next to her ear, as if she was talking on the phone, while her right hand was down by her leg, possibly holding a gun though Agent Weems was not certain.

In the same brief moments, Agent Weems heard Agent Newhard repeatedly shout commands to Miss Martinez, including "police" and "stop." Agent Weems saw Agent Newhard with his TASER while giving

commands. Agent Weems also heard Sgt. Donovan shout commands at Miss Martinez and identify himself as police. Agent Weems heard Sgt. Donovan direct Agent Newhard to “Tase her.” As the commands were yelled, Agent Weems and Sgt. Donovan continued get closer to Miss Martinez.

Once Agent Weems heard Sgt. Donovan yell “Tase her,” he saw Miss Martinez turn towards Sgt. Donovan and raise her right arm towards Sgt. Donovan. At that point Agent Weems confirmed Miss Martinez had a black handgun in her hand and it was pointed directly at Sgt. Donovan. In fear for the life of Sgt. Donovan and people believed to be in the building directly behind Sgt. Donovan, Agent Weems began to fire his gun at Miss Martinez. Agent Weems heard Sgt. Donovan and Agent Newhard also fire their weapons at the same time.

During the gun fire, Agent Weems saw Miss Martinez stagger backwards, towards the garage bay doors, and felt something “graze along [his] cheek.” Agent Weems’ face was injured along his jaw line, requiring medical treatment. Later, Agent Weems did not know if Miss Martinez had fired her gun and caused the injury to his face.

Agent Weems saw Miss Martinez fall backwards against the building in a semi-seated position. As Agent Weems approached Miss Martinez, he could see she had dropped her phone but was still in possession of the handgun, with her finger on the trigger. Agent Weems took possession of the handgun. Once Miss Martinez was secured, agents on scene began life saving measures.

## THE SCENE

Critical Incident Response Team (CIRT) detectives and analysts from the Jefferson County Regional Crime Laboratory (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. The CIRT team utilized digital documentation to memorialize the scene. Ballistics examination was conducted by JCRCL.

Sergeant Donovan, Agent Newhard, and Agent Weems, were relieved of their handguns, photographed, and processed. During the ammunition count it was determined that Sergeant Donovan and Agent Newhard fired nine rounds, and Agent Weems fired eight or nine rounds. JCRCL determined the Agents’ firearms were operational on the day of the shooting. Sergeant Donovan, Agent Newhard, and Agent Weems’ body worn cameras were collected and downloaded.

Miss Martinez was in possession of a black semi-automatic handgun that had one round in the chamber and four rounds in the magazine. No casings associated with Miss Martinez’s handgun were recovered from the scene.

## AUTOPSY

An autopsy was conducted on Miss Martinez by Forensic Pathologist Doctor John Carver on March 28, 2023. Miss Martinez was seventeen years old when she died. The autopsy was attended by CIRT Investigators, with the following results:

1. Superficial gunshot wound, top of the right shoulder. The wound trajectory is front to back, roughly horizontal with no discernible right/left deviation.
2. Gunshot wound of left upper chest. The wound trajectory is front to back, down, and slightly right to left.
3. Gunshot wound to right upper arm. The wound trajectory is right to left, slightly back to front, and slightly up.
4. Gunshot wound to the left forearm and chest. The wound trajectory through the arm is back to front, up, and left to right.
5. Multiple gunshot wounds (six) mainly located in the trunk area. Gunshot defects to the lower trunk include six entrances and three exits. The entrances and exits over the right flank are likely associated with extensive lacerations to the right lobe of the liver.

Toxicology showed that Ms. Martinez was only presumptively positive for caffeine.

The manner of the death is homicide.

Regarding the injury to Agent Weems, he suffered an abrasion to his right cheek and received medical treatment. The specific origin of the injury to Agent Weems cannot be confirmed.

## ANALYSIS

On March 27, 2023, Agent Newhard, Sgt. Donovan, and Agent Weems, responded to an armed robbery involving a firearm. Agent Newhard quickly found Miss Martinez in the area of the robbery, and she fit the robber's description. He followed her in his car and then on foot to the garage bays of the nearby Grease Monkey.

As they responded, all three Agents were concerned that Miss Martinez could be armed. Early in the pursuit, Agent Newland noted that Miss Martinez had her hand in her hoody pocket and seemed to be gripping something. Sgt. Donovan was also concerned about her hand manipulating something in her pocket as he ran towards her and Agent Newhard. And Agent Weems believed he saw a gun by her side as he also ran towards her and the Grease Monkey garages.

As the three Agents blocked Miss Martinez in all directions, Agent Newhard saw her pull a black handgun from her hoodie pocket and point it at Sgt. Donovan. Simultaneously, Sgt. Donovan saw her draw a black semi-automatic handgun from her pocket and, though she was slightly turned away from him, Sgt. Donovan saw her sweep her head around and look at all three of the Agents. Like Agent Newhard, Agent Weems saw Miss Martinez's black handgun rise and point at Sgt. Donovan. In that very brief moment, all three Agents chose to fire their weapons, ultimately resulting in the death of Miss Martinez.

Given their individual recollections and collaborating material, including body worn cameras, I find that each Agent had objectively reasonable grounds to believe that they, their teammate, and the community was in imminent danger of being killed or suffering serious bodily injury. Each Agent engaged with Miss Martinez, saw her hold the gun like someone who planned to shoot it, and knew she had just engaged in an armed robbery. When the Agents saw her gun and the manner in which she presented it, and having considered using a TASER, no lesser degree of physical force was adequate for the threat presented by Miss Martinez pointing the gun at the Agents. Therefore, a reasonable person, confronted with the same facts and circumstances, would believe that it was necessary for the Agents to use deadly physical force to defend themselves and other and no charges shall be brought.

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

Sincerely,



Alexis King  
District Attorney  
First Judicial District  
Colorado