

March 19, 2021

Chief Harold Medina  
Albuquerque Police Department  
400 Roma NW  
Albuquerque, NM 87102

RE: Prosecution review of use of deadly force against Aaron Ortiz by Albuquerque Police Officer Randy Serrano in the May 25, 2020, incident at 5410 Phoenix N.E.

APD case # 20-0041871  
DA case # 2020-09251-1

Dear Chief Medina,

I have been appointed as a Special Prosecutor by Raul Torrez, Second Judicial District Attorney, to review the May 25, 2020, use of lethal force by Albuquerque Police Department (APD) Officer Randy Serrano. This incident occurred after Aaron Ortiz fired a gun in close proximity to, and possibly at, two officers standing on the street on Phoenix N.E., after they cleared a disturbance call at a nearby apartment complex. I have reviewed all relevant evidence provided, including police reports, criminalistics reports, witness statements, photos, and numerous audio and video recordings. I also visited the scene where the incident took place.

#### RELEVANT FACTS

On May 25, 2020, at approximately 1:30 am, APD officers Shaun Findley and Randy Serrano were dispatched to a loud television disturbance call at the Aspen Springs Apartments at 5410 Phoenix Ave. N.E. The two officers made contact with the resident whose tv was the subject of the complaint and cleared the call. Officers Findley and Serrano had arrived in separate police vehicles. They parked on Phoenix Ave., roughly in front of the apartment

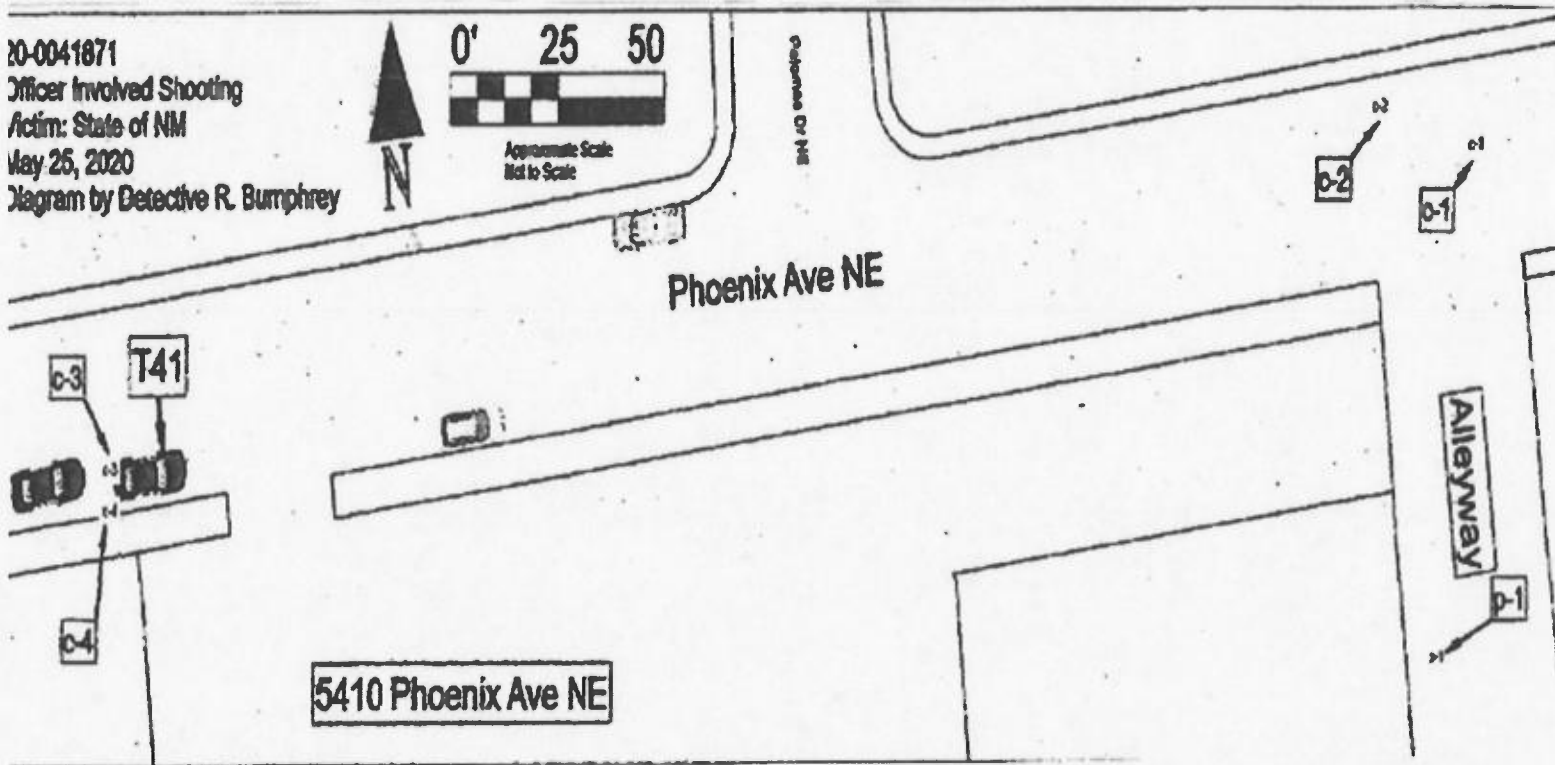
complex. Officer Findley arrived first, and when Officer Serrano arrived he parked his police car directly behind officer Findley. The two officers dealt with the noise complaint and returned to the street where their police units were parked.

Officers Findley and Serrano stood in front of Officer Findley's vehicle and were having an informal conversation. Both officers noticed a car east of them on Phoenix traveling west toward them. As the car got within approximately eighty to ninety yards of their location, gunshots were fired from the approaching vehicle. Officer Serrano perceived that the shots were fired in their direction, telling radio as he called in the shooting, "Vehicle fired shots at us".

The vehicle continued west on Phoenix traveling at a high rate of speed. Officers Serrano and Findley took cover behind Officer Findley's car. As the vehicle passed their location, Officer Serrano fired two shots at the car with his Smith and Wesson M & P Shield, 9 mm caliber handgun. The vehicle continued west on Phoenix and crossed San Mateo Blvd. without stopping. The officers lost sight of the car at that point, but radioed a general description of a small, dark colored sedan, probably foreign, with one headlight out. The officers noted that the driver's side window was down, and they noted there was only one occupant of the vehicle. The vehicle and driver were not located.

Two Winchester S & W .40 caliber cartridge casings (C-1 & C-2 in the diagram) were collected from the roadway on Phoenix approximately eighty to ninety yards east of the

officers' location. Two Federal 9 mm caliber casings (c-3 & C-4) were collected from between the two police vehicles where the officers took cover and Officer Serrano fired shots. The following diagram shows locations of items relevant to the scene.



In the early morning hours of May 25<sup>th</sup>, a woman and her partner delivering newspapers saw a gun lying in the street at the intersection of Graceland and Claremont N.E. This was approximately twelve blocks from the scene of the shooting. The newspaper carrier kicked the gun to the curb and waited for officers to arrive and take custody of the weapon. The gun was identified as a Glock 23, .40 caliber handgun, with one round chambered and a magazine containing nine Winchester S & W .40 caliber cartridges. The magazine was designed to hold thirteen rounds. The gun was discovered to have been stolen from a law enforcement officer's vehicle in Mesa, Arizona in 2016.

The following photo shows the location of the recovered gun.



The Glock handgun was processed by APD Crime Lab personnel, and it was determined that the Glock had fired the two casings found on Phoenix St. at the scene of the shooting. It was also discovered that the Glock handgun had fired casings that were found at the scene of two other recent shootings. On May 17th, shots were fired in the area of 1709 Indiana St. N.E. Casings were collected and analyzed, but later destroyed. On May 20<sup>th</sup>, shots were fired at a cinder block wall near 525 Martha St. N.E. In that incident a witness and a resident's Ring door

camera reveals five shots fired, and shows a small blue BMW speeding off after the shots were fired.

The Glock handgun, including magazine and bullets, were processed for fingerprints and DNA evidence. No workable fingerprints were found. When the gun was checked for DNA evidence, sufficient DNA was found on the trigger to make an identification. The information was entered into the New Mexico DNA Identification System (NMDIS). A match came back to Aaron Ortiz. A search warrant was obtained for Mr. Ortiz's DNA to provide confirmation of the preliminary DNA identification.

#### OFFICER SERRANO STATEMENTS

Immediately after the shooting, Sergeant Tanner Tixier arrived on the scene and turned on his lapel camera. He asked Officer Serrano, "Who shot?" Officer Serrano replied, "I did." Sergeant Tixier asked Officer Findley if he fired any shots, to which Officer Findley replied, "no". Officer Serrano further explained: "The car pulled up, then it slowed down and fired off rounds. That's when we ran back here and got cover and that's when I fired off two rounds at him." Sergeant Tixier asked: "Did you see, was he like firing them off at you or was it out of the vehicle?" The lapel camera does not show who is speaking, but it appears Officer Findley said, "It was up in the air". It appears officer Serrano replied, "I couldn't really tell. But then he fired off rounds and he came towards us, so we ran behind the car. That's when we fired off--well I fired off rounds."

Officer Serrano gave a formal statement to detectives on May 29<sup>th</sup>, 2020. He was accompanied by his attorney, John D'Amato and APD Officer Steve Harris. Officer Serrano recounted the moments surrounding the shooting:

[W]e were just chatting for a minute and I heard pops and I knew they were—it, it was gunfire. I knew, I knew for sure. Um, so then I looked back and I dropped my flashlight and I can see the flashes of, of a, of a gun towards us.... [I]n my mind I was like, “holy crap, this guy’s, this guy’s really shooting at us.” I, at that moment, I take out, I unholstered my gun and then I, like, I got to the engine block of Shaun’s car.... I don’t remember for sure if the car slowed down or what it did. Um, to me, it seemed like it slowed down just because of how fast it happened, um, and how scared I was.... I just remember me raising my gun to fire back because he’s shooting at us... After that is when I could hear the engine being really loud, and then, like, like if, like, if he floored it. He floored his gas pedal and instead of driving north on Palomas, he decided to drive towards us. And I remember him being really close to our vehicles. And as he passed...I knew that I had to shoot because I wasn’t gonna let—I wasn’t gonna risk him shooting me or my partner or him hitting, him hitting the cars and hitting, uh, cars hitting us.... [I]’m decided that I had to shoot. I had no other choice. At that point I remember raising my, my sights and pointing ‘em to where the driver was, and I fired off one round. And then as he was, just as he was passing me, I remember shooting another round when I saw, when my sights were back on him.

When asked about how many muzzle flashes he saw, Officer Serrano stated that he perceived that multiple gunshots were fired from the small dark vehicle. He estimated that there were approximately five shots. “I know it was multiple. But there’s, there’s one that I, that I will never forget. I think it was—you can clearly see the direction of the, of the, of the flashes. And I, I can tell it was toward us ‘cause it, it—you can tell...”

When detectives asked Officer Serrano about what he was feeling at the time, he expounded on how scared he was: “At that point, like, I don’t think I’ve ever been that scared

at work.... I've been through a lot in my career as far as like in the Marine Corps. Um, but by far that was probably the scariest moment of, of my life--in, in APD for sure."

Officer Serrano appeared to activate his lapel camera at about the point shots were fired to the east of the officers' location. The camera was affixed to his belt. The cameras do not start recording audio until thirty seconds after the camera is activated. The video in the thirty seconds before sound was activated show the headlight of a vehicle to the east. Officer Serrano begins to walk backward toward the passenger side of Officer Findley's vehicle. A vehicle with one headlight out drives west toward the officers' location. The shadow cast by Officer Serrano from street lights appears to show him unholstering his gun and raising it as the vehicle approaches their location. Officer Serrano takes a couple of quick steps to the west, coming to a stop near the back of Officer Findley's vehicle. As he stops, the vehicle is passing Officer Serrano's police car (which is parked directly behind and west of Officer Findley's vehicle). It is about at that point the audio activates, and the vehicle can be seen and heard speeding westward toward San Mateo Blvd. No shots are heard on the recording device.

Officer Serrano was quite sure that his first shot struck the car from which the shots were fired. The vehicle was never recovered so it is not possible to be able to make a determination of the accuracy of his belief.

#### OFFICER FINDLEY STATEMENT

Officer Shaun Findley gave a statement to detectives a couple hours after the shooting. He stated that he heard two gunshots to the east of where he and Officer Serrano were standing. He described how he and Officer Serrano took cover behind his police vehicle, and

that Officer Serrano took a couple shots at the car as it passed them. Officer Findley said that the suspect's car picked up speed as it drove toward them after the shots were fired.

Officer Findley appeared to activate his lapel camera when he heard the shots coming from east of their location. His camera was also attached to his belt, and mostly just showed the side of his vehicle as he and Officer Serrano took cover behind his vehicle. As Officer Findley rotated his body to face west, the video shows a car's taillights going west toward San Mateo Blvd. When the audio activated after thirty seconds, the sound of a loud, revving engine can be heard emanating from the car that is heading west.

#### AARON ORTIZ STATEMENT AND HISTORY

Aaron Ortiz was taken into custody on November 17, 2020. He was given his Miranda rights and agreed to speak with detectives. Mr. Ortiz acknowledged that the black BMW involved in the shooting on May 25<sup>th</sup>, was his. Mr. Ortiz denied that he fired shots, however. He claimed that a passenger and buddy known to him only by the name of "Shorty" from San Jose fired the shots from the passenger side of the vehicle, and threw the gun out the window after they fled the scene. He said the shots were not fired at the police officers. He said they did not see the officers until after the shots were fired. Ortiz stated that the officers fired at him as he drove off. He said he had checked the car for a bullet damage, but couldn't find anything. At some point after the shooting, the BMW was repossessed by a title company, and was not located.

Mr. Ortiz claimed the gun belonged to "Shorty". After initially denying that he had ever fired the gun, he admitted that he had fired it one time to try it out. He said he could not



remember where he shot it, as he was using heroin at the time. He said it was possible he fired the gun another time, but couldn't remember because of being "strung out".

Mr. Ortiz has a long criminal history, including felony convictions for robbery, aggravated assault (deadly weapon), armed robbery (deadly weapon), conspiracy to commit possession of methamphetamine, receiving or transferring a stolen motor vehicle, and felon in possession of a firearm. He was on federal probation at the time of the shooting reviewed in this case. Aaron Ortiz was charged in federal court for felon in possession of a firearm, and awaits trial.

#### LEGAL FRAMEWORK

Under New Mexico law, a peace officer, acting in the course of regular duties, is entitled to legally use deadly force when the officer reasonably believes that the officer or another is threatened with serious harm or deadly force. NMSA 1978 § 30-2-6. An officer may also use deadly force to prevent the escape of a dangerous felon. "Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer, or to others, it is not constitutionally unreasonable to prevent escape by using deadly force." *Tennessee v. Garner*, 471 U.S. 1, 11 (1985); *Archuleta v. LaCuesta*, 1999-NMCA-113, ¶18. An officer who uses deadly force does not have to prove that a suspect actually posed a threat of death or great bodily harm--only that the suspect's actions would cause a reasonable person to believe there is the possibility of such.

Once an officer who uses deadly force raises the reasonable possibility that a suspect's actions posed a threat of death or great bodily harm, the burden is on the prosecution at the trial of an officer charged with a crime, to prove beyond a reasonable doubt that the use of

deadly force was *not* reasonable. This inquiry is an objective standard, viewed from the perspective of the officer at the time, keeping in mind that officers often must make split-second decisions in difficult situations. It only requires a finding that a reasonable person in the same circumstance as the officer would have come to the same conclusion--that the use of force was necessary because of the threat of death or great bodily harm posed by the suspect. *State v. Mantelli*, 2002-NMCA-033, 42 P.3d 272. If the jury has a reasonable doubt as to whether the use of deadly force was reasonable, they must acquit. Uniform Jury Instruction—Criminal: 14-5173, Justifiable Homicide, Public Officer or Employee.

#### CONCLUSION

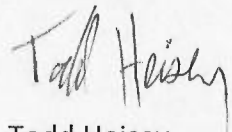
Officer Randy Serrano was acting in the course of his legal duties, as he was on-duty and had just finished taking a routine disturbance call. When shots were fired from Aaron Ortiz's vehicle in close proximity to Officers Serrano and Findley, and Officer Serrano perceived that at least one of the shots was towards himself and Officer Findley, he came to a reasonable conclusion that he and Officer Findley were in danger of death or serious bodily harm. Taking cover behind Officer Findley's vehicle was a rational and predictable reaction to Ortiz's firing of a deadly weapon, and is indicative of the danger which the officers perceived.

When Ortiz's vehicle accelerated toward the officers' location, it was reasonable to fear that further gunshots could be fired at them. It was also reasonable to fear that the accelerating vehicle could hit their patrol cars, which in turn could hit and seriously injure one or both officers. There can be no question that an automobile can be a deadly weapon. When Officer Serrano fired two shots at Aaron Ortiz's vehicle, he did so out of a reasonable fear that if he did not act to stop Ortiz's actions, he or Officer Findley could be seriously injured or killed.

When Officer Serrano fired at the BMW as it passed his location and was accelerating toward San Mateo Blvd., he was also firing at a fleeing felon who had demonstrated serious disregard for the safety of others. Mr. Ortiz had committed the possible felony offenses of shooting from a motor vehicle, and aggravated assault with a deadly weapon. It was reasonable for Officer Serrano to believe that if he did not stop Ortiz's escape, he would pose a threat of serious physical harm to others in the path of his possible escape-either by gunshots or by reckless driving in his attempted getaway.

A jury in this case would agree that Officer Serrano's actions under the circumstances were reasonable and justified. There would not be evidence to show beyond a reasonable doubt that when Officer Serrano reacted to Ortiz's actions with deadly force, he was *not* acting reasonably under the laws of New Mexico. There would be no reasonable likelihood of a successful prosecution of Officer Serrano. No charges will be filed, and this case will be closed.

Sincerely,



Todd Heisey  
Special Prosecutor

Cc: Raul Torrez, Second Judicial District Attorney  
Detective Tod Babcock, Lead Investigator, APD  
John D'Amato, attorney for Officer Randy Serrano  
Aaron Ortiz