

January 7, 2019

United States Marshal Sonya K. Chavez
Office of the United States Marshal
333 Lomas Blvd. NW.
Albuquerque, N.M. 87102

Re: Prosecutorial Review of the February 20
2016 fatal shooting of Edgar Camacho-
Alvarado, State Police Case # 16-23-
0030, DA case # 2016-01761-1

Dear United States Marshal Chavez:

I have been appointed as a Special Prosecutor by Raul Torrez the Second Judicial District Attorney, to review the fatal shooting of Edgar Camacho-Alvarado, which occurred on February 20, 2016, for potential prosecution. After a review of all available evidence, including police reports, witness statements, laboratory and medical reports, trajectory analysis, numerous audio recordings, photographs, and a visit to the scene of the incident, I conclude that it is not possible to prove beyond a reasonable doubt, that U.S. Deputy Marshal Paul Hernandez was not acting under a belief that Edgar Camacho-Alvarado's actions posed a threat of death or great bodily harm to DUSM Hernandez. No charges will be filed. The case will be closed. My decision does not limit administrative or criminal action by other agencies or civil suits by other parties.

Statement of Facts

On February 20, 2016 Deputy U.S. Marshal Paul Hernandez was attempting to arrest a murder suspect, George Bond, in the mobile home trailer park Loon Creek, located at 7501 Central Avenue NW Albuquerque, N.M.. Deputy U.S. Marshals and several fugitive task force officers had pursued Bond for most of the day narrowing his location through the use of cell phone pings to one of several trailers located in the Loon Creek Trailer Park. At about 3:45a.m. Deputy U.S. Marshal Hernandez wearing undercover clothing entered the trailer park on foot to try to ascertain the exact trailer Bond was hiding in. While inside the trailer park Hernandez was approached by Edgar Camacho-Alvarado who asked him what he was doing in the trailer park. Hernandez responded by saying "what the hell does that matter". In that instant Camacho-Alvarado produced a handgun from his hooded jacket, Hernandez responded by drawing his gun, identifying himself as a police officer and commanding Camacho-Alvarado not to move. In response Camacho-Alvarado turned and ran north in the direction of Camacho-Alvarado's trailer. Hernandez pursued Camacho-Alvarado on foot closing the distance to approximately 10 yards before losing sight of Camacho-Alvarado. When Hernandez next saw Camacho-Alvarado he was standing to his left, ten to fifteen 10 yards away. Camacho-Alvarado turned towards Hernandez,

raised his right arm up and pointed his handgun at Hernandez. Hernandez drew his handgun and fired at Camacho-Alvarado 4 times, striking him one time in the right armpit. Camacho-Alvarado fell on the front steps of his trailer landing partially inside the trailer itself. When describing this sequence of events Hernandez said he shot Camacho-Alvarado “because he was in fear of his life that Camacho-Alvarado was going to shoot the weapon”.

Hernandez then radioed for help and waited for additional officers to arrive. Deputy Marshals Hoyle and Malone were first to arrive at the scene. Hoyle and Malone removed the body of Camacho-Alvarado from the steps to the adjacent ground for officer safety. Rescue was called and emergency medical attention was given to Camacho-Alvarado. Medical efforts were unsuccessful and Camacho-Alvarado was pronounced dead later that same day.

The gun Camacho-Alvarado used to threaten Deputy U.S. Marshal Hernandez with was found within feet of Camacho-Alvarado’s body. Both Hoyle and Malone saw the gun as they secured the scene. Hernandez picked the gun up and placed it in Deputy Hix’s police vehicle for safekeeping. The gun was found to have been stolen in May of 2015. A DNA test dated June 13, 2016 showed Camacho-Alvarado as being the source of the major DNA profile found on the gun. The same test excluded U.S. Deputy Marshal Hernandez as having contributed to the DNA profile. The gun at the time of the incident was found to have one bullet in the chamber. Additional bullets were found in the magazine. The bullet in the chamber was a “Perfecta 9mm Luger”. A search of Camacho-Alvarado’s bedroom found four more “Perfecta 9mm Luger” bullets, among other 9mm ammunition, a pistol holster, a 380 handgun and a ballistic body armour vest.



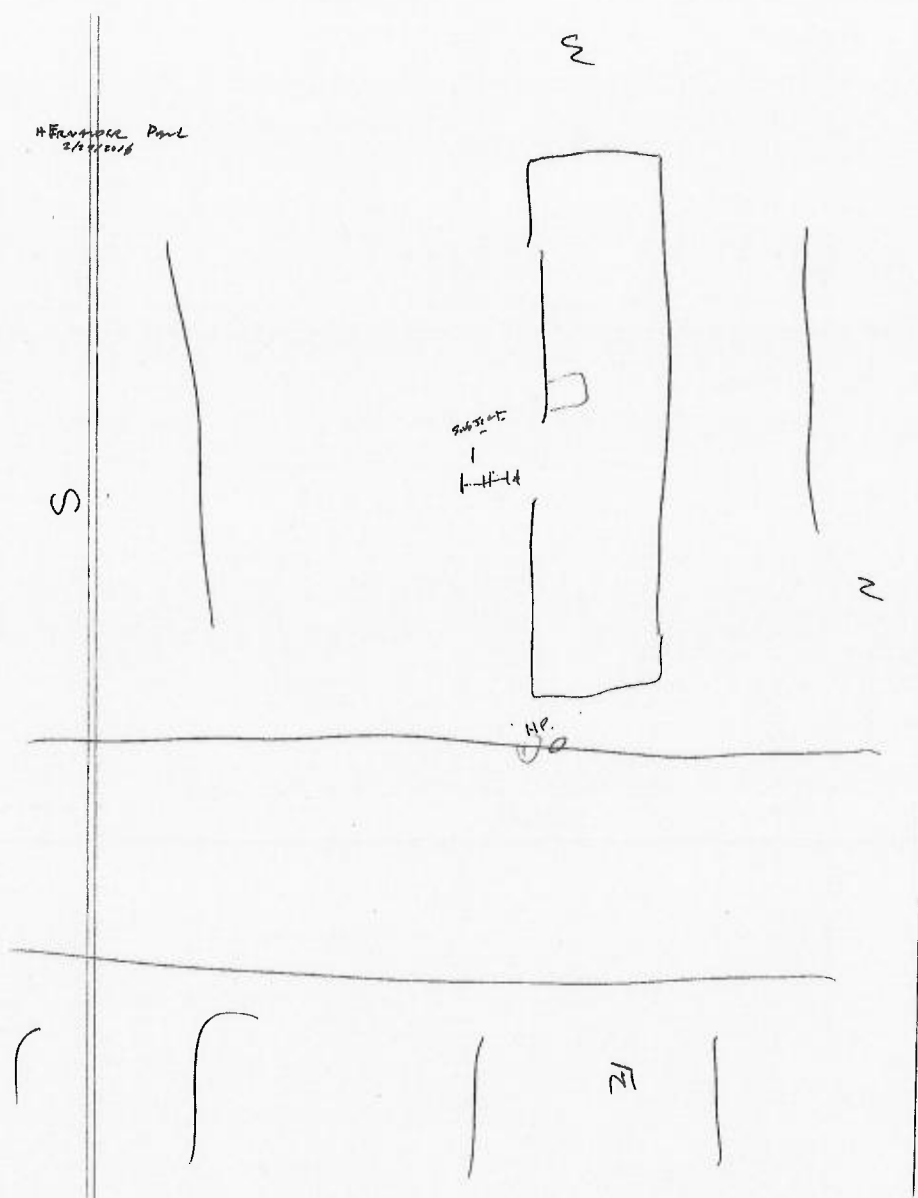
A records check showed Camacho-Alvarado to have a warrant for his arrest for a probation violation stemming from a larceny conviction in 2014. An autopsy performed on the body of Camacho-Alvarado found the cause of death to be a single gunshot entering his right armpit and lodging in his left mid back. Toxicology showed the presence of morphine, amphetamine and methamphetamine.

In the aftermath of the shooting an exhaustive canvass of the residents of the trailer park was conducted to determine if anyone had been an eyewitness to the incident. Although many residents heard shots, no one saw the incident or the circumstances leading up to the shooting. In

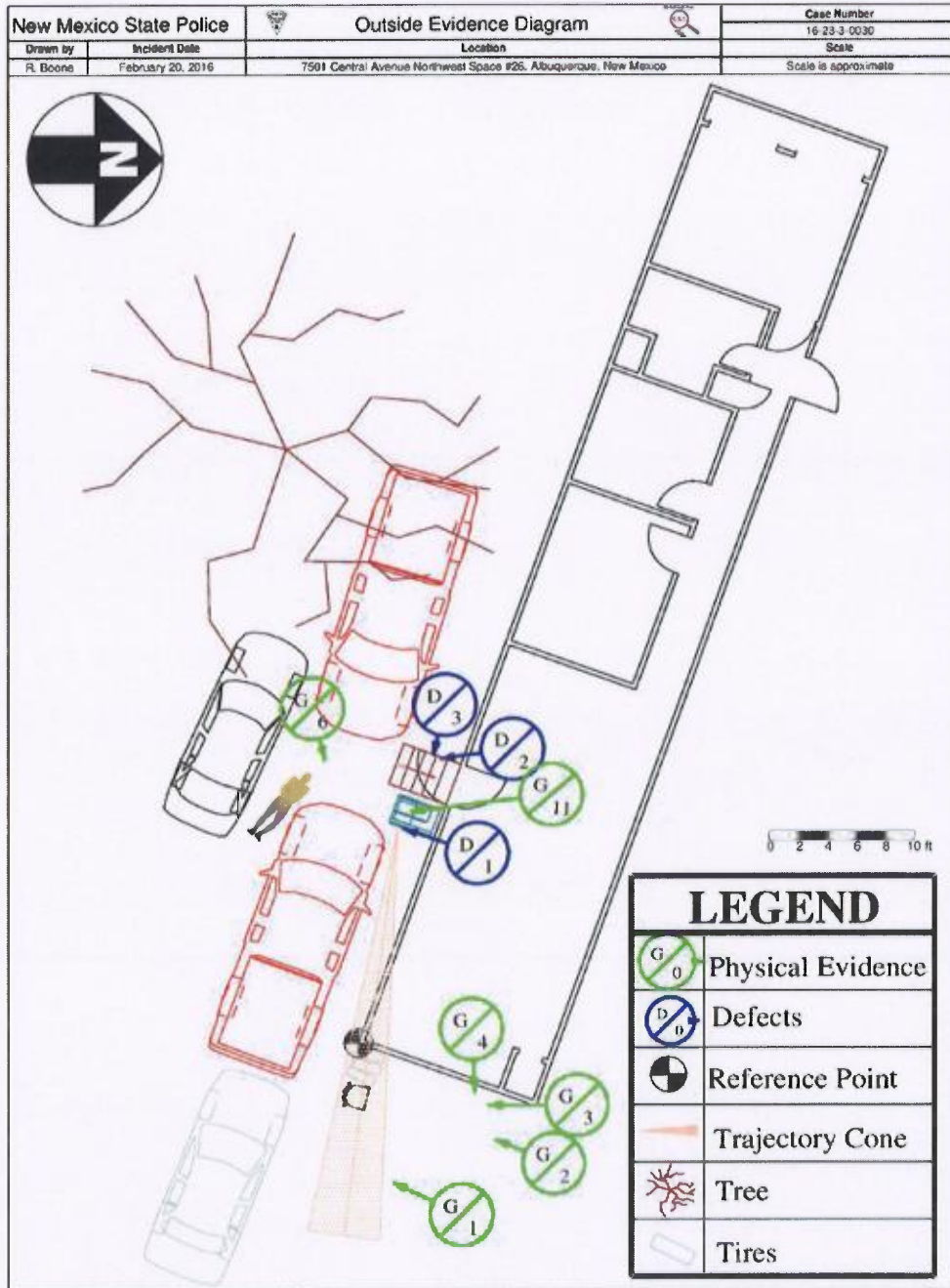
addition a thorough investigation into whether any portion of the incident was captured on surveillance cameras was conducted. None was found.

DUSM Hernandez did not activate his lapel camera.

On February 24, 2016 DUSM Hernandez gave a statement describing the events of February 20, 2016. As part of that statement DUSM Hernandez drew a diagram showing the relative positions of the two men at the time of the shooting. An inspection of that diagram shows DUSM standing at the east end of the Camacho-Alvarado's trailer.



Using casings, projectiles and defects caused by bullets impacting the trailer and porch area found at the scene, a trajectory analysis was performed on April 7, 2016 by Agent Ryan Boone of the New Mexico State Police Investigations Bureau. The trajectory analysis found that DUSM Hernandez was standing at the east end of Camacho-Alvarado's trailer firing from east to west. The trajectory cone, highlighted in orange below (just to the left of G/1) illustrates this point. DUSM Hernandez' diagram is consistent with the trajectory cone diagram performed by Agent Boone.



Legal Analysis

DUSM Hernandez was in the process of arresting Edgar Camacho-Alvarado who just moments before had threatened him with a gun. This would allow DUSM Hernandez to raise the defense of justifiable homicide by a public officer, NMSA 1978 Section 30-2-6(A)(2). Section 30-2-6(A)(2) allows a peace officer to use deadly force when committed in overcoming actual resistance to the execution of a legal process or other legal duty.

Under New Mexico law an officer need not prove that the suspect posed a threat of death or great bodily harm to another, he need only offer evidence that raises the possibility. The burden then falls on the prosecution to prove beyond a reasonable doubt, that the use of deadly force was unreasonable. If the jury has a reasonable doubt about any aspect of the prosecution claim that the killing was justified, they must acquit the officer. The reasonableness of an individual officer's actions is an objective analysis evaluated from the perspective of the officer at the time of the incident and is necessarily a factual inquiry, State v. Mantelli, 2002 NMCA-033. 131 N.M. 692.

Conclusion

With the exception of DUSM Hernandez there are no eyewitnesses to the shooting of Edgar Camacho-Alvarado. Because there are no eyewitnesses an evaluation of whether a successful prosecution against DUSM Hernandez for the murder of Edgar Camacho-Alvarado necessarily would require the presentation of evidence which contradicts his version of events, however the physical evidence found at the scene supports DUSM Hernandez' version of the event.

At the heart of this case is the gun found at the scene. If there is evidence to support that Camacho-Alvarado threatened DUSM Hernandez with this gun then a prosecution of DUSM Hernandez is not possible. One of the key pieces of evidence is the DNA found on the gun next to Camacho-Alvarado's body. On June 13, 2016 the New Mexico Department of Public Safety Forensic Laboratory tested the gun for DNA. The test showed Camacho-Alvarado's DNA on the gun to the exclusion of DUSM Hernandez. Ammunition found in Camacho-Alvarado's bedroom matched the ammunition in the gun. If the gun found next to Camacho-Alvarado was *not* used to threaten DUSM Hernandez then an elaborate conspiracy of improbable events occurred to explain the presence of the gun. Deputy US Marshalls Richard Hoyle and Marcus Malone were first on the scene after the shooting. They both approached Camacho-Alvarado's body with Hernandez and saw the weapon lying next to Camacho-Alvarado as they secured the scene. On March 1, 2016 Hoyle was interviewed about his involvement in the shooting. Hoyle described Camacho-Alvarado as laying on his left side and remembered the gun falling from the porch steps as they placed Camacho-Alvarado in handcuffs. Similarly Malone provided a statement on February 22, 2016. He described Camacho-Alvarado also laying on his left side with the gun lying in front of Camacho-Alvarado. Both men's description of Camacho-Alvarado's body and the proximity of Camacho-Alvarado's body to the gun supports DUSM Hernandez' version of the

shooting.

Another key piece of evidence is the location of the bullet which entered Camacho-Alvarado's body. The Office of the Medical Investigator located the entry wound to be the right armpit. This was the only bullet that struck Camacho-Alvarado. For a bullet to have entered the armpit means that Camacho Alvarado necessarily had to have his arm raised. This is consistent with the statement given by DUSM Hernandez who said Camacho-Alvarado had raised his right arm up and pointed the handgun at him which prompted Hernandez to fire at Camacho-Alvarado.

The trajectory of the bullet as determined by The Office of the Medical Investigator goes from right to left, front to back in a downward trajectory. This again supports DUSM Hernandez' statement that he was to the right (east) of Camacho-Alvarado when Camacho-Alvarado, who was facing north turned in Hernandez' direction while raising his gun. This would account for a right to left front to back direction. The Office of the Medical Investigator also noted the lack of soot or unburned gunpowder particles surrounding the defects. The lack of soot or gunpowder particles indicates the shooter was some distance away as opposed to close proximity. This is consistent with DUSM Hernandez' approximate distance between the two men. The relative positions of the two men as described by DUSM Hernandez is supported by the trajectory of the bullet, the entry wound on Camacho-Alvarado's body and the distance from which the shot was fired.

The actions of Camacho-Alvarado as described by DUSM Hernandez are consistent with someone on the run from law enforcement. Camacho-Alvarado had an outstanding warrant for a probation violation with a no bond hold. He had been on the run since October 10, 2014. Because he was certain to be going back to jail and probably prison he had a motive to avoid arrest. When DUSM Hernandez identified himself as a police officer Camacho-Alvarado turned and ran. Under New Mexico law flight is evidence of guilt. State v. Trujillo, 95 N.M. 535 In a trial against DUSM Hernandez for the murder of Camacho-Alvarado this evidence would be admitted to support Hernandez' position that Camacho-Alvarado produced the gun to prevent Hernandez from arresting him and sending him back to jail.

Camacho-Alvarado's behavior is also consistent with the drugs found in his system. On April 22, 2016 the Scientific Laboratory Division completed a toxicology analysis for the presence of drugs in Camacho-Alvarado's system. Camacho-Alvarado's blood tested positive for the presence of morphine, amphetamine and methamphetamine. The methamphetamine level was .76 mg/l. Blood levels in this range have been reported in methamphetamine abusers who exhibited violent and irrational behavior. In a trial for murder against DUSM Hernandez this evidence would also be admitted to show Camacho-Alvarado's state of mind.

To convict at trial the prosecution would have to prove that all this evidence is false, that DUSM Hernandez' use of force was unreasonable and prove beyond a reasonable doubt that Edgar Camacho-Alvarado did not possess a gun at the time he was shot. The jury confronted with substantial evidence that Camacho-Alvarado did threaten DUSM Hernandez with a gun would be

forced to acquit DUSM Hernandez for the shooting death of Edgar Camacho-Alvarado. There is no reasonable likelihood of a successful prosecution. No charges will be filed against Deputy United States Marshal Hernandez. The case will be closed.

Sincerely,



Jody R. Curran
Special Prosecutor

cc: Raul Torrez, District Attorney Second Judicial District
Agent Nathan Searle, New Mexico State Police
Attorney Mark Baker, Attorney for United States Deputy Marshal Paul Hernandez
Attorney Jason Bowles, Plaintiff's Attorney
Leah Taylor, Assistant United States Attorney, Civil Division
Juliana McPhearson, Assistant United States Attorney, Civil Division