

April 15, 2020

Chief Tim Johnson  
New Mexico State Police  
PO Box 1682  
Santa Fe, NM 87504-1628

RE: Prosecution review of use of deadly force by Officer Nathaniel Renteria in the apprehension of Jesus Arenivar

NMSP case 19-23-3-0068  
DA case 2019-04542-1

Dear Chief Johnson,

I have been appointed as a Special Prosecutor by Raul Torrez, Second Judicial District Attorney, to review the May 16, 2019, use of non-lethal deadly force by New Mexico State Police Officer Nathaniel Renteria, which occurred during the attempted apprehension of Jesus Arenivar, who was in possession of a stolen vehicle. I have reviewed all relevant evidence, including police reports, crime lab reports, witness statements, photos, and audio and video recordings. I also visited the scenes where the shooting and subsequent apprehension took place.

I have concluded that the evidence shows that Officer Renteria was in legitimate fear for his life and safety, and the safety of the community, at the time he fired shots at Mr. Arenivar. A jury would in all likelihood reach the same conclusion., and would not find beyond a reasonable doubt that the shooting was *not* a reasonable use of force by a law enforcement officer. No criminal charges could be successfully prosecuted against Officer Renteria. The case will be closed. This decision does not limit administrative or criminal action by other agencies, or civil action by other agencies or parties.

## RELEVANT FACTS

On May 16, 2019, Jesus Arenivar was driving a stolen grey 2015 Hyundai SUV in southwest Albuquerque. An acquaintance of Mr. Arenivar, Kayla Rasmussen, was a passenger in the car. New Mexico State Police (NMSP) Officer Nathaniel Renteria was on patrol in the area in his marked police unit. Officer Renteria, along with numerous other state police officers, was on special assignment in Albuquerque to assist Albuquerque police with a special operation to crack down on crime in the City. Officer Renteria observed Jesus Arenivar run the stop sign at Churchill and Old Coors Blvd. Officer Renteria began to follow Mr. Arenivar, without activating his emergency equipment. Mr. Arenivar obviously saw a police officer following him, and he sped up. Officer Renteria at that point turned on his emergency equipment, and called in the stop to NMSP radio. Mr. Arenivar refused to pull over and actively started to try to elude Officer Renteria. As Officer Renteria was following the SUV, radio advised him that the vehicle was stolen.

Mr. Arenivar continued to elude Officer Renteria. As he tried to elude Officer Renteria, Arenivar drove in a reckless manner through several main streets and through residential areas. Speeds were mostly in the forty to fifty mph range, although at points speeds reached fifty-seven mph. At one point on Old Coors Blvd., speeds reached seventy-two mph. Arenivar ran several stop signs during the chase. The pursuit lasted approximately four minutes.

When Mr. Arenivar reached the intersection of Corregidor Dr. and Los Abuelos Pl., he ended up in a cul-de-sac at the end of Los Arbuelos Pl. Officer Renteria was right behind him. Officer Renteria stopped his police vehicle at the neck of the cul-de-sac, hoping to block Arenivar from escaping. Officer Renteria jumped out and stood between his vehicle and the driver's door. He drew out his Smith and Wesson M & P 9 mm handgun. Mr. Arenivar drove around the perimeter of the cul-de-sac and headed toward Officer Renteria. As Arenivar's vehicle came toward him, Officer Renteria yelled "stop". Mr.

Arenivar did not stop, and appeared to accelerate toward Officer Renteria's vehicle. There was very little space between Officer Renteria's vehicle and an SUV that was parked to Officer Renteria's left at the opening to the cul-de-sac. Mr. Arenivar drove between the two vehicles. In doing so, he clipped the driver's side of Officer Renteria's vehicle. He also struck the side of a vehicle that was parked to the left side of Officer Renteria's unit at the opening of the cul-de-sac. In doing so he broke off the passenger side view mirror of the stolen SUV. As Arenivar was heading toward Officer Renteria, Officer Renteria fired what appear to be four shots in rapid succession at the oncoming car. After a one second pause, two more shots were fired. As Mr. Arenivar went past Officer Renteria, he struck his open driver's side door. The door struck Officer Renteria, resulting in a busted lip on the inside of his mouth, and an abrasion to his gum.

As Mr. Arenivar escaped the cul-de-sac, Officer Renteria jumped in his police vehicle, made a quick u turn in the cul-de-sac, and tried to follow Arenivar. He turned onto Corregidor Dr., but lost sight of him. A person in the area pointed Officer Renteria in the direction of Sunset Gardens Rd. Officer Renteria turned on Sunset Gardens, and saw the silver SUV slowly rolling to a stop against the curb with the driver's door open. He stopped several car lengths behind the SUV, and retrieved his rifle. He held on the SUV with his rifle while he waited for backup. He did not know if anyone was still in the vehicle.

Backup officers arrived within a few minutes. Officers approached the SUV to clear it, but discovered that Mr. Arenivar and Ms. Rasmussen had fled the SUV before Officer Renteria turned the corner. A massive area search commenced to try to locate Mr. Arenivar. Approximately a half hour later Arenivar and Kayla Rasmussen were located in a nearby mobile home park on Rim Dr. SW. They were located outside of a residence where the homeowner was outside speaking with them after signaling to a neighbor to alert police. Arenivar and Rasmussen were taken into custody by the Albuquerque Police Department Canine Unit.

When Mr. Arenivar was apprehended, it was discovered that he had a superficial grazing gunshot wound to his right shoulder. He was transported to UNMH for treatment of his injury. Upon his release he was booked into the Metropolitan Detention Center.

#### OFFICER RENTERIA DASHCAM AND STATEMENT

Officer Renteria's vehicle dashcam was running during the entirety of the incident. The recording begins as Mr. Arenivar crosses Old Coors after running the stop sign at Churchhill. The dashcam reveals information discussed in the previous section. Officer Renteria called out "shots fired" as soon as he discharged his weapon.

Once the chase ended, and other officers arrived, Officer Renteria's dashcam audio, as well as other officers' video, reveal that Officer Renteria recounted a minimum of five times to radio and to other officers what transpired when shots were fired. Two representative examples are as follows: Approximately three and one-half minutes after calling out "shots fired", officer Renteria says, "I shot at the driver. He pulled into a cul-de-sac. I had him trapped. He came back towards the vehicle—towards me. He was trying to hit me, so I shot." Officer Renteria then told the sergeant on-scene what happened: "We were in that cul-de-sac back there. I was putting it in park, and he was turning around. I thought he was going to come right at me. He came right at me, and squished me in the door."

On May 24, 2019, Officer Renteria gave a formal statement about the incident to lead investigator Jose Aguilar. He was accompanied by his attorney, Luis Robles. Prior to giving his statement, Officer Renteria and his attorney were allowed to watch Officer Renteria's dashcam video. Officer Renteria stated that he had been with NMSP about a year, having graduated from the academy six months prior. He stated that he carries his 9 mm handgun loaded with a magazine holding seventeen rounds, with one additional in the chamber.

Officer Renteria was asked to recount what happened during the incident. He read the following from a prepared statement as to what happened at the point shots were fired:

The driver chose to drive his vehicle straight towards me as I was outside my vehicle. The subject then proceeded to accelerate toward me, using his vehicle as a deadly weapon to run me over. The driver could have chosen to drive around my vehicle to the passenger side to avoid me, but he chose instead the path with the most resistance—trying to run me over. As the vehicle was coming straight towards me, I yelled at the driver to “stop”. The fleeing subject did not stop, and drove right at me as I fired my duty weapon two to three times at the driver in reaction to the driver choosing to drive right at me and choosing to try to run me over. The driver then proceeded to make his way through me and my unit, striking my unit driver’s side door.

Later in the interview Officer Renteria was asked about his state of mind at the time he fired his handgun. He stated: “As I exited the vehicle, I thought maybe if I show, you know, my gun, that if we do a high risk stop, that he would kind of put it in park and then just go from there. But that didn’t happen... He was trying to run me over. That he was trying to injure me.” Agent Aguilar then asked, “So you feel in danger because he was trying to run you over?” Officer Renteria answered, “correct”.

Officer Renteria also said that he did not see a passenger in the vehicle. As noted in the quote above, Officer Renteria believed he only fired his weapon two to three times, but admitted he did not know for sure how many times he shot.

#### OTHER WITNESSES

##### Jesus Arenivar

Jesus Arenivar was interviewed at the hospital on the morning of May 17, 2019, after being given his Miranda warnings. Mr. Arenivar said he had picked up Kayla Rasmussen earlier in the day of May 16<sup>th</sup>.

Mr. Arenivar said he borrowed the silver SUV from a friend named "Joe" two days prior. He denied knowing the vehicle was stolen, but figured that it probably was when the cop started following him and turned on his lights and siren. He said he ran from the officer because he was scared.

Mr. Arenivar at first claimed that he did not remember the shooting. As the interview progressed, he stated that when he was in the cul-de-sac, the cop didn't say anything before he shot at them. He said that after the cop shot, he just put his head down and sped up. He firmly denied that he was trying to run over the officer. Mr. Arenivar said he got a "scratch" on his arm from a gunshot.

#### Kayla Rasmussen

Kayla Rasmussen was interviewed in the early morning hours of May 17<sup>th</sup>. Ms. Rasmussen stated that she had been picked up by a person she only knows as "Cholo" earlier the previous day. She and Cholo drove around during the afternoon and into the evening. She stated that Cholo did not seem drunk or high. She denied using drugs or alcohol the day of the incident.

At one point a cop started following them, and Cholo tried to get away from the pursuing officer. When they came to a "dead end", Cholo turned around, and when they did that, the cop started shooting at them. Ms. Rasmussen said that the officer got out of his car and was standing between his car and the door. She said the officer did not say anything to them—he just started shooting. She claimed the officer had no reason to shoot at them, and that there was plenty of room for their SUV to get by the officer. She said the officer shot four to five times, including about two times after they were past him. Ms. Rasmussen stated that Cholo was not trying to run over the officer, although he did accelerate to get past the officer. She stated that as the SUV came to rest, she ran because she was afraid the officer was going to start shooting again.

### Other witnesses

Numerous persons in the neighborhood saw and/or heard parts of the shooting and subsequent search for, and apprehension of, Mr. Arenivar and Ms. Rasmussen. Most add nothing of substance to the subject of this report. Many heard what they perceived to be between three and five shots. A few witnesses' observations are noteworthy, however.

Fourteen year-old Alvarado A. was in the second story bedroom of his home on Los Arbuelos Pl. playing video games at the time the chase entered the cul-de-sac. When he heard the siren, he looked out of his open bedroom window and observed the incident as it unfolded in the cul-de-sac. Alvarado saw the grey SUV enter the cul-de-sac, followed by the police officer. He saw the officer stop at the entrance to the cul-de-sac and get out of his car with his gun drawn. The officer told the SUV to "stop", but it did not stop and drove toward the officer. He said the officer jumped back in his car "because he knew he was going to get hit." He saw the SUV accelerate and hit the officer's car as it left the cul-de-sac. Alvarado saw the SUV strike the SUV on the other side of Officer Renteria's vehicle as it passed between the two vehicles, breaking off the "window" (mirror?). Alvarado did not perceive that the SUV driver was trying to hit the officer, just that he "was trying to leave." He said that he heard five to six shots—all consecutive.

Elsa Aguirre lives on Los Abuelos Ct. and was home and in her garage at the time of the shooting. She saw the officer chasing the light-colored SUV. The officer yelled "stop" to the SUV. Although she did not see who fired shots, she perceived it was the officer. She heard about five shots total. She perceived two shots as the vehicles were "opposite" each other, and three more as the officer turned around in the cul-de-sac and started following the SUV out of the cul-de-sac.

Lourdes Riquetti also lives on Los Abuelos Ct. She was outside unloading laundry from her car when the chase entered the cul-de-sac. She saw the vehicles enter the cul-de-sac. She heard about four or five gunshots, which she described as either three, then two; or two, then three. She did not see any actual collision, but did hear glass shattering. She felt quite certain that the officer was in his car when the shots were fired.

#### PHYSICAL EVIDENCE AND CRIMINALISTICS

Officer Renteria was processed by Criminalistics agents. He was photographed and the injury to his mouth was documented. His handgun and ammunition were documented. He had three magazines. The two that were not loaded in his gun contained seventeen bullets each. The magazine inserted in his handgun contained eleven bullets. There was one round in the chamber. Although the dashcam audio makes it sound like Officer Renteria fired seven total shots, the number of rounds left in Officer Renteria's gun (11 plus one in the chamber), make it likely that he shot six rounds—four as the SUV approached him, and two at the rear of the SUV as it passed him.

Criminalistics agents searched the cul-de-sac on Los Abuelos Ct. They collected five 9 mm shell casings. One projectile was also recovered from the street. Additionally, some vehicle parts were located next to a vehicle on the left side of the cul-de-sac.

The search of the 2015 Hyundai SUV revealed several items of evidentiary value. It was noted that the vehicle was still in "drive" at the point it came to rest. The front passenger tire was flat. The front passenger door window was gone—apparently shot out. The passenger side view mirror was broken off. An apparent bullet impact point was noted in the plastic of the driver's side headlight. Three additional impact points were noted in the windshield. A projectile was recovered from the front driver's side A pillar separating the front windshield from the driver's door. The following photo shows Arenivar's vehicle with evidence markers indicating three points on the front driver's side bumper where the SUV



made contact with Officer Renteria's police vehicle and black paint was transferred. It also shows three of the four bullet impact points on the front of the car—two with angle rods.

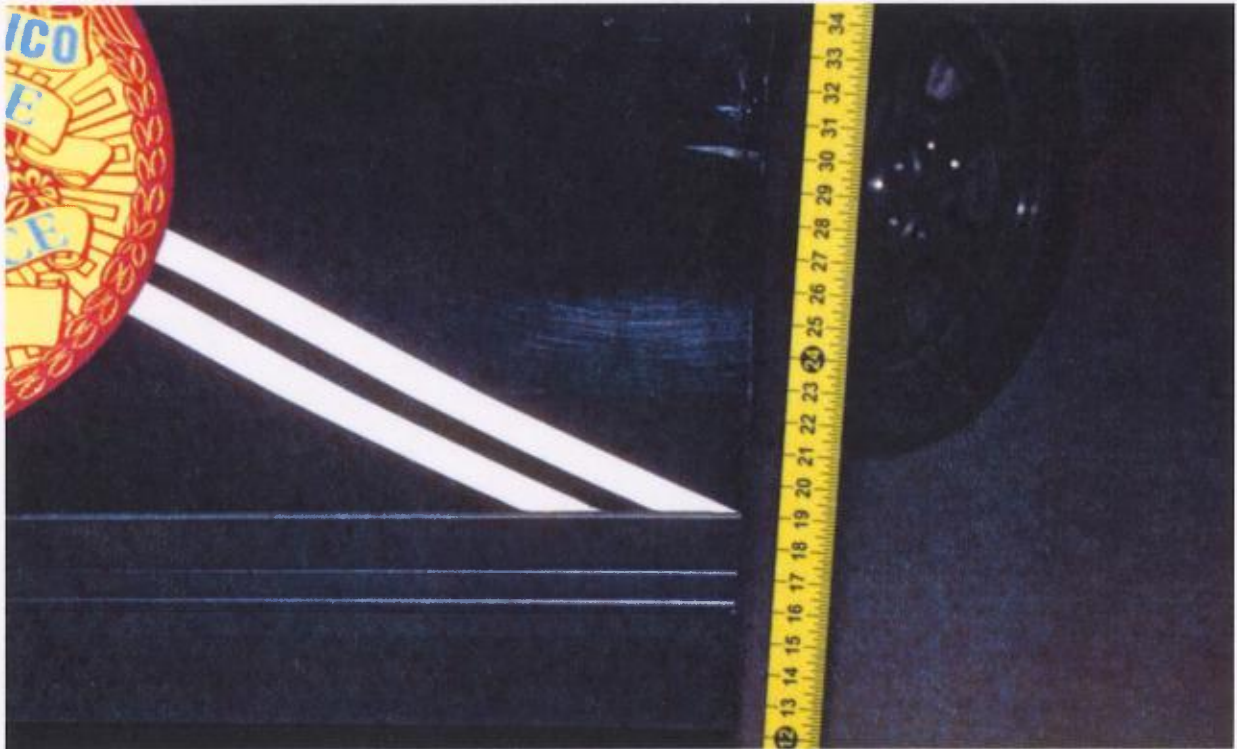


The rear of the SUV had a bullet impact point near the driver's side rear taillight. A projectile was recovered from a toolbox in the rear of the SUV. The back windshield was also shot out.

Swabs were taken from locations around the driver's seat for DNA testing/comparison. The swabs were compared to Jesus Arenivar's DNA. His DNA matched a swab from the driver's side center console.

Also located in the SUV were numerous syringes in the front center console. The syringes were not collected or tested to determine whether they contained any controlled substance. Also found were papers and identification belonging to a person who was not involved in this incident.

Officer Renteria's police SUV was processed and photographed. The following photo shows scrapes and light paint transfer on the driver's door of the officer's vehicle.



#### CRIMINAL HISTORY AND CHARGES

Jesus Arenivar has prior felony convictions for three separate incidents. All three convictions occurred in 2016. The convictions are for possession of a controlled substance, and two charges of receiving or transferring a stolen motor vehicle (possession).

In the current incident, Mr. Arenivar was charged by indictment with one count of Aggravated Assault on a Peace Officer, one count of Aggravated Fleeing a Law Enforcement Officer, and one count of Receiving or Transferring a Stolen Motor Vehicle (2<sup>nd</sup> offense). On March 4, 2020, Mr. Arenivar pled

guilty to one count of Aggravated Fleeing a Law Enforcement Officer, and one count of Receiving or Transferring a Stolen Motor Vehicle. He also agreed to a four year habitual offender enhancement. He agreed in the plea to be sentenced to four years in prison, followed by five years of supervised probation.

## 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 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 any reasonable doubt as to whether the use of deadly force was reasonable, they must acquit.